COMMISSION REGULATION (EC) No 618/1999

of 23 March 1999

imposing a provisional countervailing duty on imports of stainless steel wire having a diameter of 1 mm or more originating in India and the Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community [1] and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) In June 1998 the Commission announced by a notice (hereafter 'notice of initiation') published in the *Official Journal of the European Communities* [2] the initiation of an anti-subsidy proceeding with regard to imports into the Community of stainless steel fine wire having a diameter of 1 mm or more originating in India and the Republic of Korea (hereinafter 'Korea') and commenced an investigation.

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

Prior to the initiation of the proceeding and in accordance with Article 10(9) of Council Regulation (EC) No 2026/97 (hereinafter referred to as the 'Basic Regulation'), the Commission notified the Governments of India and Korea that it had received a properly documented complaint alleging that subsidized imports of SSW originating in India and Korea are causing material injury to the Community industry. Both Governments were invited for consultations with the aim of clarifying the situation as regards its contents and arriving at a mutually agreed solution. The Government of Korea accepted the offer of consultations which were held with the responsible Commission services on 12 June 1998 in Brussels. Due note was taken of the comments made by the Government of Korea in regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

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

The Government of India (hereinafter 'GOI') and Korea (hereinafter 'GOK'), a number of exporting producers in India and Korea as well as some producers, importers and suppliers in the Community made their views known in writing. All parties who so requested within the time limits set in the notice of initiation were granted a hearing.

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

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

(a) *Community producers*

— AB Sandvik Steel, Sandviken, Sweden
— Bekaert N.V., Zwevegem, Belgium
— Bridon Wire Special Steel Division, Sheffield, United Kingdom
— Fagersta Stainless AB, Fagersta, Sweden
— Gusab Stainless, Mjolby, Sweden
— Sprint-Metal, Paris, France
— Sprint Metal Edelstahlzieherein GmbH, Hemer, Germany
— Rigby-Maryland Stainless Ltd., Sheffield, United Kingdom
— Rodacciai S.p.a and Rodasider S.r.l, Bosisio Parrini, Italy
— Societa Italiana Kanthal S.p.a, Cinisello Balsamo, Italy
— Trafilerie Bedini S.r.l, Peschiera Borromeo, Italy
— Winterbottom Wire, Sheffield, United Kingdom

[1] OJ L 288, 21. 10. 1997, p. 1.
[2] OJ C 199, 25. 6. 1998, p. 5.

(b) *Government of India*

— Ministry of Commerce, New Delhi
— Undersecretariat for Customs, New Delhi
— Ministry of Finance, New Delhi

(c) *Exporting producers in India*

— Bhansali Bright Bars Pvt. Ltd., Mumbai
— Devidayal Industries Ltd., Mumbai
— Indore Wire Company Ltd., Indore
— Isibars Limited, Mumbai
— Isinox Steels Ltd., Mumbai
— Kei Industries Limited, New Delhi
— Macro Bars and Wires Pvt. Ltd., Mumbai
— Mukand Ltd., Mumbai
— Raajratna Metal Industries Ltd., Ahmedabad
— Triveni Shinton International Ltd., Indore
— Venus Wire Ltd., Mumbai

(d) *Government of Korea*

— Ministry of Foreign Affairs and Trade
— Ministry of Finance and Economy
— Korea Asset Management Corporation
— Small and Medium Business Administration
— Small and Medium Industry Promotion Corporation
— Office of National Budget
— Ministry of Maritime Affairs and Fisheries
— Bank of Korea
— The Export-Import Bank of Korea
— The Korea Development Bank
— Industrial Bank of Korea
— Korea Technology Finance Corporation
— The Commercial Bank of Korea, Ltd.
— Pusan Bank
— Korea Electric Power Corporation

(e) *Exporting producers in Korea*

— Korea Welding Electrode Co. Ltd., Seoul
— Shine Metal Co. Ltd., Pusan
— Dae Sung Rope Mfg. Co. Ltd., Pusan
— Korea Sangsa Co. Ltd., Seoul/Pusan
— Mjung Jin Co. Ltd., Pusan (related company of Korea Sangsa Co. Ltd.)
— Kowel Special Steel Wire Co., Pusan
— SeAH Metal Products Co. Ltd., Chang Won

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

— Isibars GmbH, Düsseldorf, Germany
— Mukand International Ltd., London, United Kingdom

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

— Trio Handels GmbH, Eppstein, Germany
— Bodo Trading GmbH, Dreieich, Germany

(6) The investigation of subsidization covered the period from 1 April 1997 to 31 March 1998 (hereafter referred to as 'the investigation period'). The examination of injury covered the period from 1994 to the end of the investigation period. The period used in particular for the findings on undercutting is the above-mentioned investigation period.

(7) On 25 June 1998 the Commission initiated an anti-dumping investigation concerning imports of the same product originating in India and Korea [1]. This investigation is still in progress; provisional anti-dumping duties have been imposed on imports originating in India by means of Commission Regulation (EC) No [617]/1999 [2].

B. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

1. Product under consideration

(8) The product concerned is wire of stainless steel, containing by weight 2,5 % or more of nickel, other than containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but not more than 22 % of chromium, having a diameter of 1 mm or more (hereinafter 'SSW'). This product is currently classifiable within CN code ex 7223 00 19.

(9) This product is basically defined by its physical aspect as cold finished wire and its classification into a specific group of stainless steel grades. SSW is obtained by shaping wire rod by operations which reduce the cross-section of the wire rod. The final cross-section of the SSW is generally round but may also be square, triangular or rectangular. Several processes are used to transform wirerod into SSW. Depending on customer requirements, SSW will have specific mechanical characteristics (diameter, tensile strength, stainless steel grade) and surface aspects (bright, mat, coating), which result in a large number of product types (hereinafter also referred to as references and models).

[1] OJ C 199, 25. 6. 1998, p. 7.
[2] See page 13 of this Official Journal.

(10) Despite those differences, all types of SSW are to be considered as one product. SSW is further transformed by users which manufacture for example filtration elements, reinforcing elements, anti-vibration pads, springs, cables and wire ropes. These semi-finished products are then used in sectors such as the automotive, electro-mechanical, fibre, textile, building industry, etc.

(11) During the investigation it has been provisionally found that there are differences in physical characteristics and uses between stainless steel wires with a diameter of 1 mm or more on the one hand and with a diameter of less than 1 mm (i.e. fine wires) on the other hand. These physical differences relate in particular to tensile strength, coating and ductability. In addition, the use of fine wires is largely concentrated in the field of ultra-fine applications such as medical and surgery equipment, fine filters etc., while large wires are mainly used for construction, in the automotive industry and certain mechanical and household applications. For these reasons it appears that there is no or only very limited interchangeability between large and fine wires' applications. However, the question whether a clear dividing line can be drawn between these two products will be further investigated.

2. **Like product**

(12) The investigation established that the SSW produced in India and Korea and sold domestically or exported to the Community and the SSW produced and sold in the Community by the complainant Community producers had effectively identical physical characteristics and uses and were thus like products within the meaning of Article 1(5) of the 'Basic Regulation'.

C. **SUBSIDIES**

I. INDIA

1. **Introduction**

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

— Passbook Scheme

— Duty Entitlement Passbook Scheme

— Export Promotion Capital Goods Scheme

— Export Processing Zones/Export Oriented Units

— Income Tax Scheme

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

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

2. **Passbook Scheme (PBS)**

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

(a) *Eligibility*

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

(b) *Practical implementation*

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

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

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

(19) Passbook credits are not transferable. The Passbook is valid for a period of 2 years from the date of issue. Any credit at the end of the two-year period is allowed to be utilised within a period of 12 months thereafter. At the end of the third year, any unutilised credit lapses. Within this general timetable there is no time limit for claims for credit to be made for a particular export transaction.

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

(21) It has been argued that the Passbook Scheme is not countervailable because it is a *bona fide* duty drawback scheme. Article 2(1)(ii) of the Basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed to be a subsidy provided that it is granted in accordance with the provisions of Annexes I to III of the Basic Regulation. Item (i) of Annex I (the Illustrative List of Export Subsidies) of that Regulation specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy. Furthermore, Annex II to the Basic Regulation requires investigating authorities, in determining whether inputs are consumed in the production process, to establish whether the government of the exporting country has in place a system or procedure to confirm which inputs are consumed in the production process of the imported product. In this case, no such system exists. In fact, the benefit granted in India to exporters of the products concerned in the form of Passbook credits is automatically calculated on the basis of the Standard Input/Output norms independently of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production.

Furthermore, the exporter is under no obligation to either import actual inputs or consume the imported goods in the production process under the PBS. What happens in the PBS, in effect, is that upon export of a finished product, an exporter is granted an amount of credit based on the amount of customs duty which is deemed to have been paid on normally imported inputs used in producing the finished product. This credit amount can be used to offset customs duty due on future imports of any product. A benefit accrues to the exporter in the form of unpaid customs duty on imports of any product (whether raw materials or capital goods). This scheme therefore allows an exporter to import goods without paying customs duty once it has previously exported some goods.

(c) *Conclusion on PBS*

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

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

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

(24) In early 1997, the GOI announced that the PBS was effectively terminated and credit claims could no longer be made for export transactions taking place after 31 March 1997. An exporter may, however, continue to use a Passbook which has already been issued, for a period of 3 years after the date of issue. Additionally, there is no time limit within which claims for credit must be made for export transactions made before 31 March 1997. While the scheme in that form has technically been terminated, exporters can continue to benefit from this scheme by importing goods, free of customs duties, until all credits have been exhausted or until 31 March 2000 at the latest. In these circumstances, it is considered that the scheme can be countervailed.

It should also be stressed that the PBS was substituted by the DEPB (See recitals 26 to 35 below). The DEPB came into effect when the PBS was terminated. Although the DEPB is a revised version of the PBS, it was possible to obtain benefits under both programmes during the investigation period.

(d) *Calculation of the subsidy amount*

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

Seven companies benefited from this scheme during the investigation period and obtained subsidies of between 4,1 % and 23,3 %.

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

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

— DEPB on pre-export basis

— DEPB on post-export basis

(a) *DEPB on pre-export basis*

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

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

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

(28) The DEPB on post-export basis is virtually identical to the PBS described above. As explained above, it has replaced the PBS and is effectively a substitute programme. It is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

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

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

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

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

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

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

(31) This scheme is clearly contingent upon export performance. When a company exports goods, it is granted a credit which can be used to offset amounts of customs duties due on future imports of any goods. Like the PBS, it is not a permitted drawback or substitution drawback scheme for the same reasons as stated above in recital (22). The scheme constitutes a subsidy as the financial contribution by the GOI in the form of duties forgone on imports confers a benefit upon a company which can import goods free of customs duty. It is a subsidy contingent in law upon export performance and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation.

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

(32) The benefit to the exporters has been calculated in two separate ways according to the use the company has made of the DEPB licenses.

(33) In the event that the company used the licences to make duty-free imports, the benefit was calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the DEPB.

(34) In the event the company sold its licences, the benefit was calculated on the basis of the amount of credit granted in the licence regardless of the sales price of the license. Some companies claimed that the benefit should be limited to the effective sales price of the licence which is often less than the face value of the credits in the license. However, this claim cannot be granted since the sale of a licence at a price less than the face value is a pure commercial decision which does not alter the amount of benefit received from the scheme.

(35) In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest of 7 % during the investigation period; the rate of interest is calculated as described in recital 25. The amount of subsidy has been allocated over total exports during the investigation period.

Eight companies benefited from this scheme during the investigation period and obtained subsidies of between 5,7 % and 18,4 %.

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

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

(a) *Eligibility*

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

(b) *Practical implementation*

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

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

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

(c) *Conclusion on EPCGS*

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

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

(d) *Calculation of the subsidy amount*

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

Two companies availed themselves of this scheme during the investigation period and obtained subsidies of between 0,9 % and 1,2 %.

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

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

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

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

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

(a) *Eligibility*

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

(b) *Practical implementation*

(46) To benefit from the above-mentioned deductions/exemptions from paying tax, a company will make the relevant claim when submitting its tax return to the Tax Authorities at the end of the tax year. The tax year runs from 1 April to 31 March. The tax return must be submitted to the authorities by the following 30 November. The final assessment by the authorities can take up to 3 years after submitting the tax return. A company can only claim one of the deductions available under the three sections mentioned above.

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

(c) *Conclusion on ITES*

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

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

(d) *Calculation of the subsidy amount*

(49) Claims for benefit under sections 10A, 10B and 80HHC are made when submitting a tax return at the end of the tax year. As the tax year in India (1 April to 31 March) is the same as the investigation period, the benefit was calculated on the effective income tax exemption during that period. The benefit to the exporters has therefore been calculated on the basis of the difference between the amount of taxes normally due with and without the benefit of the exemption. Account has been taken of the fact that some companies are liable to the payment of Minimum Alternate Tax which is an alternative method of calculating tax due under the Income Tax Act. The rate of corporate tax applicable during this tax year was 35 %. In order to establish the full benefit to the recipient, this amount has been adjusted by adding interest during the investigation period. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 14 % was considered appropriate. The amount of subsidy has been allocated over total exports during the tax year 1997/98.

(50) During the tax year 1997/98 three companies benefited from this scheme under Section 80HHC and obtained subsidies of from 1,3 % to 5,9 %. One company, Bhansali Bright Bars, did not provide a copy of its income tax return within the deadline established by the Commission. Since this company was considered to be non-cooperating for the ITES, the Commission, in accordance with Article 28 of the Basic Regulation, used the facts available to determine the amount of subsidy for the company under this scheme. On this basis, and in order not to grant a bonus for non-cooperation, the amount of subsidy for Bhansali Bright Bars was considered to be the equivalent to the highest rate of the cooperating companies i.e. 5,9 %.

7. **Amount of countervailable subsidies**

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

	Passbook	DEPB	EPCGS	Income Tax	TOTAL
Bhansali Bright Bars	4,1 %	14,4 %	0,0 %	5,9 %	24,4 %
Devidayal	0,0 %	18,4 %	0,0 %	0,0 %	18,4 %
Indore Wire	7,7 %	10,7 %	0,9 %	0,0 %	19,3 %
Isibars/Isinox	4,2 %	7,8 %	1,2 %	0,0 %	13,2 %
Kei Industries	0,0 %	0,0 %	0,0 %	0,0 %	0,0 %
Macro Bars	9,6 %	12,6 %	0,0 %	3,2 %	25,4 %
Mukand Ltd	7,5 %	5,7 %	0,0 %	0,0 %	13,2 %
Raajratna	23,3 %	13,7 %	0,0 %	5,9 %	42,9 %
Triveni Shinton	0,0 %	0,0 %	0,0 %	0,0 %	0,0 %
Venus Wire	19,8 %	14,3 %	0,0 %	1,3 %	35,4 %

II. KOREA

1. **Introduction**

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

— Loan Programmes
— Policy Loans (i.e. publicly funded loans)
— Government direction of commercial loans
— Government direction of foreign currency loans
— Export Financing Loans granted by the Export-Import Bank of Korea (hereinafter 'EXIM')
— Tax Schemes
— Duty Drawback Scheme
— Supply of Electricity Without Adequate Remuneration
— Ad-hoc Subsidies and Equity Infusions
— Debt Forgiveness

Further details of these schemes are set out below.

2. **Loan programmes**

(a) *General*

(53) In its questionnaire response, the GOK stated that between 1980 and March 1998, the responding companies and related companies used short-term and long term policy loans, foreign currency loans and export financing loans. According to the GOK, the companies received policy loans under the following programmes:

— Basic Structuring Loans for Small and Medium Enterprises (SMEs)
— Technology Development Business Loan
— Fishing Net Production Operation (Facility) Loan
— Environment Pollution Prevention Loan
— Science and Technology Promotion Fund
— National Investment Fund
— National Housing Fund
— SMEs Start-up and Promotion Fund
— Industrial Accident Prevention Fund
— Agricultural and Fishery Products Price Stabilisation Fund
— Informationalization Promotion Fund Loan
— Technology Innovation Special Loan
— Special Facility Loans

— Export Industry Facility Loans

— Industrial Development Fund Loan

(54) With regard to government direction of foreign currency loans, the GOK stated that Korean companies have three options for obtaining foreign currency:

— domestic foreign currency loans from domestic financial institutions

— direct foreign currency loans from foreign-based financial institutions

— direct financing from foreign capital markets.

(55) From the above categories of funds, the co-operating companies only used domestic foreign currency loans. According to the GOK, the Guidelines issued by the Ministry of Finance for the approval of foreign currency loans apply only to direct foreign currency loans and it was claimed that the GOK did not have any influence in the lending decisions of domestic financial institutions (see recitals 145 to 147 below).

(56) Concerning the government direction of commercial loans, the GOK stated that during the application of the 'Heavy and Chemical Industry Programme' (HCI) between 1973 and 1982, enterprises in the heavy and chemical industries were given priority in credit allocation by financial institutions. Additionally, key sectors (including steel) received preferential interest rates on domestic currency loans. In the questionnaire response the GOK stated that, since the abolition of this programme in 1982, the GOK had not been involved in the lending decision of commercial banks. Even the regulation of interest rates, of which the Bank of Korea (BOK) was in charge, had been liberalised in 1991 and the Interest Limitation Act setting an interest ceiling of 25 % was abolished on 31 December 1997.

(57) With regard to export financing loans granted by EXIM, the GOK stated that three types of loans were used by the cooperating exporters:

— Export Finance Loans for production of exported goods

— Export loans for production of capital goods for SMEs

— Foreign Investment Credit

(58) The GOK confirmed that all loans granted by EXIM were in compliance with the OECD Arrangement on Guidelines for Officially Supported Export Credits and that Korean export credit practice was in conformity with international undertakings since the interest rate on domestic currency loans was based on commercial market rates and foreign currency loans were based on borrowing interest rates plus a reasonable mark-up.

(b) *Calculation of subsidy amount in the case of loans*

(59) The subsidy is the difference between the amount of interest paid on the loan during the investigation period and the interest normally payable on a comparable commercial loan during the same period. The comparable loan should be a loan of a similar amount with a similar repayment period actually obtained by the recipient from a representative private bank operating on the domestic market. For the purposes of this investigation, loans were categorised, on the one hand, into loans with a principal of up to 200 million won, 200 to 400 million won, 400 to 600 million won, 600 to 800 million won and exceeding 800 million won and, on the other hand, into short-term (duration of up to one year), medium-term (between one and up to 4 years) and long term loans (exceeding 4 years). If there was no comparable commercial loan granted to the company in the respective category, it was considered that the appropriate benchmark would be the average interest rate paid on commercial loans to the other cooperating exporters with a similar amount and repayment period. The resulting difference is the benefit to the company under the preferential loan which is countervailed. If there are no interest payments during the investigation period because the loan was repaid before the investigation period, it must be first determined whether the loan was used for the acquisition of fixed assets. If the answer is yes, the total amount of benefit must be allocated over the average depreciation period in the steel industry in accordance with Article 7(3) of the Basic Regulation, which is 7 years in the case of the stainless steel wire industry in Korea. The amount which relates to the investigation period is the countervailable benefit to the company. If the loan was only used for operational purposes and was paid back before the investigation period, there is no countervailable benefit to the company during the investigation period.

(60) If the grace period under the loan both for repayment of principal and interest is longer than such grace periods for a comparable commercial loan during the investigation period, there is a subsidy which confers a benefit to the company in the form of an interest free loan. The interest free loan is considered to be granted for a period which represents the difference between the actual grace period for the loan in question and the grace period for a comparable commercial loan for the amount of payments of interest or principal normally due during that period. If there are no interest or principal payments during the investigation period because the loan was repaid before the investigation period, the same analysis as explained in the above recital applies.

(61) Similarly, if loan repayments have been deferred, in a manner which does not reflect normal commercial practice, such deferrals constitute an interest-free loan and the amount of subsidy is calculated as above.

(62) If loan repayments are forgiven, in a manner which does not reflect normal commercial practice, the forgiven amount is treated as a grant.

(63) In order to encompass the full benefit to the company, for any amount as calculated above, interest was added at the average commercial interest rate in Korea during the investigation period, i.e. 13,35 %. The full subsidy amount is allocated over total export sales if the subsidy is contingent upon export performance, in all other cases it is allocated over total turnover.

Programmes used by co-operating exporters

(c) *Policy Loans*

General finding on countervailability of policy loans

(64) All policy loans share two common features. Firstly, policy loans involve a financial contribution by the government in the meaning of Article 2(1)(a)(i) of the Basic Regulation since the payment of loans constitutes a direct transfer of funds either from state-owned banks or from public funds. Additionally, the rules for eligibility and procedures are issued by government agencies or state-owned banks. Secondly, these loans are granted at interest rates which are generally lower than rates applicable to comparable commercial loans and thereby confer a benefit on the recipient in the meaning of Article 2(2) of the Basic Regulation. Unless indicated otherwise, these conditions are fulfilled for each policy loan described below.

(65) Regarding the issue of grace periods and deferral of loan repayments referred to in recitals 60 and 61 above, the Commission has provisionally determined that any benefits accruing thereunder are negligible. Finally, it was found that no repayments of policy loans to be made by the cooperating exporters were forgiven.

(66) Some of the policy loan programmes were terminated before the investigation period but loans under these programmes were still outstanding in the investigation period. Since the companies under investigation received benefits in the investigation period and will continue to receive benefits in the future, it is considered that these programmes should be countervailed in accordance with Article 17 of the Basic Regulation.

(i) **Basic Structuring Loans for SMEs (BSL-SME)**

(67) The legal basis for this loan programme is the Regulation on Basic Structuring Loans for Small and Medium Enterprises which entered into force on 15 March 1994 and its implementing Operation Plans. The programme was terminated in 1996 and only interest and principal repayments are still collected under outstanding loans.

(a) *Eligibility*

(68) The BSLSME is available for SMEs for certain activities such as the construction of production facilities or purchase of domestically-made machinery either for the production of export merchandise or for the production of import substitution materials or parts.

(b) *Practical Implementation*

(69) In order to obtain a loan, a company must apply to a commercial bank which then disburses the loan which is provided from funds which were distributed by the Ministry of Finance and Economy (MOF) through the Industrial Bank of Korea (IBK).

(c) *Conclusion on BSL-SME*

(70) The loans are financial contributions by the government and confer a benefit to the recipient as explained above in recital 64.

(71) One of the purposes of the loan programme is to provide funding for building facilities for the production of goods for export. Hence, the scheme is contingent upon export performance and therefore specific in the meaning of Article 3(4) of the Basic Regulation. The scheme is also contingent upon the use of domestic over imported goods since one of the conditions is that the loans can be used only for the purchase of domestically-made machinery, and for production facilities for import substitution materials and parts. This scheme constitutes therefore an import substitution subsidy and is therefore specific within the meaning of Article 3(4) of the Basic Regulation and countervailable.

(d) *Calculation of the subsidy amount*

(72) The subsidy amount is calculated as explained above in recitals 59 to 63. One company benefited from this programme and received subsidies of 0,06 %.

(ii) **Fishing Net Production Loan (FNPL)**

(73) This scheme is based on Article 11 of the Special Act on Development of Agricultural and Fishing Villages and its implementing regulations and guidelines. The programme was established in January 1994.

(a) *Eligibility*

(74) Companies which produce fishing nets are eligible for loans to finance the production of fishing nets. Some of these companies also produce the product concerned.

(b) *Practical Implementation*

(75) A company applies to the president of the National Federation Fisheries Cooperative (NFFC) after recommendation of the president of the Fishing Net Corporation (FNC) and the NFFC then disburses the loan.

(c) *Conclusion on FNPL*

(76) The loans are financial contributions by the government and confer a benefit to the recipient as explained above in recital 64. Concerning the attribution of the subsidy to the product concerned, the cheap loans allow the producers of fishing nets, which are also producers of the product concerned, to reduce their overall cost of financing which also benefits the product concerned.

(77) Since the loans are furthermore specific to the fishing net industry, the programme is a countervailable subsidy in the meaning of Article 3(2) of the Basic Regulation.

(d) *Calculation of the subsidy amount*

(78) The subsidy must be calculated as explained above in recitals 59 to 63. One company benefited from this programme and received subsidies of 0,14 %.

(iii) **SMEs Start-up and Promotion Fund Loans (SME-SPFL)**

(79) The legal basis for this scheme is the Promotion of Small and Medium Enterprises and Encouragement of Purchase of their Products Act of 22 December 1994 as amended and its implementing regulations and guidelines. The scheme in its current form commenced in 1996.

(a) *Eligibility*

(80) There are three categories of eligibility:

— Loans for start-up of SMEs (Type A loans). The cooperating exporters did not receive Type A loans.

— Loans for structural improvement of SMEs (Type B loans). Type B loans are available for SMEs except for companies in the agricultural, forestry and fisheries sector. Loans can be used for certain projects such as automation, technical development and operation normalisation.

— Loans for development of local SMEs (Type C loans). These loans can be obtained by SMEs located in each local government area. Detailed guidelines for the operation of the fund are determined by the local government. Under the Kyung Sang South Province SME Support Fund Establishment and Operation Bylaw, funds can be obtained by SMEs to be used for certain projects such as change of equipment and structural improvement. According to the Pusan Metropolitan City SMEs Support Fund Establishment and Operation Bylaw, SMEs can apply for loans for *inter alia* structural adjustment and business conversion.

(b) *Practical Implementation*

(81) To obtain a Type B loan, the company submits an application to a commercial bank which then forwards it to the Small and Medium Industry Promotion Corporation for review and approval. With regard to Type C loans, the company applies directly to the local government which approves it if it fulfils the eligibility criteria. After obtaining the approval, the commercial bank pays out the loan.

(c) *Conclusion on SME-SPFL*

(82) The loans involve financial contributions by the government and confer a benefit to the recipient as explained above in recital 64.

(83) With regard to Type B loans, no evidence was found that the scheme is specific.

(84) Concerning Type C loans, the Basic Guidelines of Local SME Support issued by the Office of Small and Medium Enterprises which applies to all Type C loans, and the Kyung Sang South Province SME Support Fund Establishment and Operation Bylaw applicable for that particular region do not contain any export or import substitution requirements. Additionally, these Guidelines do not limit the eligibility to certain sectors of the economy. No evidence was found that Type C loans granted on the basis of the Basic Guidelines of Local SME Support and the Kyung Sang South Province SME Support Fund Establishment and Operation Bylaw are specific. The Pusan Metropolitan City SMEs Support Fund Establishment and Operation Bylaw, however, contains an export requirement since it limits the use of loans to, *inter alia,* 'export promotion business of conversion from rented factory to self factory'. Therefore, Type C loans granted under the authority of that Bylaw are specific since they are contingent upon export performance. Hence, it is considered that Type B loans and Type C loans granted under the Kyung Sang South Province SME Support Fund Establishment and Operation Bylaw are not specific and are therefore not countervailable. Type C loans granted under the Pusan Metropolitan City SMEs Support Fund Establishment and Operation Bylaw are specific and countervailable.

(d) *Calculation of the subsidy amount*

(85) The amount of the subsidy under Type C loans granted under the Pusan Metropolitan City SMEs Support Fund Establishment and Operation Bylaw is calculated as explained above in recitals 59 to 63. Three companies received benefits under this scheme and obtained subsidies of from 0,02 % to 0,14 %.

(iv) **Special Facility Loans (SFL)**

(86) The legal basis of this programme is the 'Operation Guideline of Special Facilities Loans' and it commenced in 1989. Under this programme the IBK and the Korea Development Bank (KDB) provide loans directly to companies or provide funds to companies through commercial banks.

(a) *Eligibility*

(87) For loans administered by the IBK, only SMEs are eligible. Loans administered by the KDB can also be obtained by large companies. To be eligible, companies must be part of the manufacturing industry (including computer software industry). Funds cannot be used for the purchase of imported foreign machinery. Loans can be used only for the

purpose of production facilities of export merchandise and/or import substitution materials or merchandise ('Export Industry Equipment Loans'), investment in R&D ('Research & Development Loans') and industries designated by the MOF in consultation with other government agencies ('High Technology Facility Loans').

(b) *Practical Implementation*

(88) Companies apply for a Special Facility Loan to the IBK, the KDB or any commercial bank. If the loan is administered by the KDB (for certain SMEs and large companies), approval of the KDB must be obtained by the commercial bank. Then the loan is paid out by the bank to the company.

(c) *Conclusion on SFL*

(89) The loans involve financial contributions by the government and confer a benefit to the recipient as explained above in recital 64. Eligibility for funds is *inter alia* limited to the financing of production facilities of goods for export. Hence the scheme is an export subsidy and specific. It is also limited to purchases of domestic machinery and one of the allowed usages of the loans is the financing of production facilities of import substitution materials or merchandise. Therefore, the scheme is also contingent upon the use of domestic over imported goods and therefore specific. In any case, since eligibility is limited to the manufacturing industry, the programme is specific to certain enterprises within the meaning of Article 3(2) of the Basic Regulation and therefore countervailable.

(d) *Calculation of the subsidy amount*

(90) The amount of the subsidy must be calculated as explained above in recitals 59 to 63. Three companies received benefits under this scheme and obtained subsidies of up to 0,32 %.

(v) **Export Industry Facility Loans (EIFL)**

(a) *General*

(91) The legal basis of this programme is the Bank of Korea Act and the Regulation for Administration of Facility Loans for Export Industries and Import Substitution of Basic Materials and Parts Industries enacted on 11 September 1986. As of 1 January 1991, no new loans were extended to large companies and companies which were part of a business group. The programme was abolished also for SMEs as of March 1994. Even though the programme has been terminated as of March 1994, loans of 115 million US$ are still outstanding.

(b) *Eligibility*

(92) Until 1 January 1991, all companies which were part of the manufacturing industry could apply for these loans for the purpose of investing in equipment for the production of goods for export or for the production of import substitution basic materials and parts. The eligible project also had to be used for construction or enlargement of a production facility, purchase of domestically produced machinery and technology development facility and inducement of technology. As of 1 January 1991 only SMEs fulfilling the above conditions were eligible for this programme.

(c) *Practical Implementation*

(93) A company could apply for a loan under this programme to any commercial bank which granted the loan after it confirmed the compliance with the eligibility criteria. The BOK provided the funds needed to pay out the loans by a re-discounting facility operated between the BOK and the lending institutions under this programme.

(d) *Conclusion on EIFL*

(94) The loans involve financial contributions by the government and confer a benefit to the recipient as explained above in recital 64. The subsidy is contingent upon export performance and upon the use of domestic over imported goods and therefore specific.

(e) *Calculation of the subsidy amount*

(95) The amount of the subsidy is calculated as explained above in recitals 59 to 63. Four companies received benefits under this scheme and obtained subsidies of up to 0,56 %.

(vi) **Industrial Development Fund Loan (IDFL)**

(96) The legal basis of this programme is Article 17 of the Industrial Development Act of 8 January 1986 and its implementing regulations and guidelines.

(a) *Eligibility*

(97) Loans are available for the purpose of improvement of productivity and high value-added enterprises (operated by the Ministry of Trade and Industry, the Footwear Association, the Korea Textiles Industry Federation and the Machinery Industry Promotion Association), rationalisation of distribution sector (operated by the Industrial Advancement Administration) and Foundation Project of SMEs (operated by certain designated commercial and state-owned banks, in particular the Industrial Bank of Korea). Eligible projects are newly or extended construction of factory or the investment in domestic equipment to produce goods for export or materials and parts as announced by the GOK.

(b) *Practical Implementation*

(98) A company can apply for a loan under this programme to a designated commercial or state-owned bank. Except for loans for 'Foundation Project of SMEs,' the granting of the loan by the bank requires the permission of the Ministry of Trade and Industry.

(c) *Conclusion of IDFL*

(99) The loans involve financial contributions by the government and confer a benefit to the recipient as explained above in recital 64. Eligible projects require the use of domestic goods for the construction of production facilities for export goods. The subsidy is therefore contingent upon export performance and upon the use of domestic over imported goods and therefore specific and countervailable.

(d) *Calculation of the subsidy amount*

(100) The amount of the subsidy is calculated as explained above in recitals 59 to 63. One company received benefits under this scheme and obtained subsidies of 0,08 %.

(vii) **Technology Development Business Loan (TDBL)**

(101) This scheme is based on the Technology Development Promotion Act and its implementing regulations and guidelines. The programme was terminated in 1995 but payments on outstanding loans are still collected.

(a) *Eligibility*

(102) The following projects are eligible: Industry fundamental technology development Projects, technology development support by Korea Electric Power Corporation (KEPCO), technology development support by the Ministry of Telecommunication and development support by the KDB.

(b) *Practical Implementation*

(103) If a company intends to develop a production technology for certain specified uses for each sector as notified by the Ministry of Trade and Industry, it can apply for a loan which is then granted if the project fulfils the criteria.

(c) *Conclusion on TDBL*

(104) The loans are financial contributions by the government and confer a benefit to the recipient as explained above in recital 64. Loans under this programme are available to industries which invest in certain projects. The Ministry of Trade and Industry issues guidelines to which are annexed, sector by sector, detailed lists of priority projects (e.g. 'cold drawing technology development'). Accordingly, only companies in certain sectors investing in certain projects will benefit from this programme. The programme is therefore considered to be specific within the meaning of Article 3(2)(a) of the Basic Regulation.

(d) *Calculation of the subsidy amount*

(105) The amount of the subsidy is calculated as explained above in recitals 59 to 63. A 'technology development' loan granted to a cooperating exporter, which could not be classified more precisely on the basis of the information submitted, was considered within the framework of this programme. The company received benefits under this scheme and obtained subsidies of 0,02 %.

(viii) **Science and Technology Promotion Fund (STPF)**

(106) This programme is based on the Science and Technology Promotion Act and its Enforcement Decree. The Fund was established in 1992.

(a) *Eligibility*

(107) Loans under this programme are available to all industries which invest in the following projects: Leading technology development projects, follow-up research and development projects, improvement research and development projects and industrial projects using new technology methods.

(b) *Practical Implementation*

(108) Loan applications are submitted to the Korea Technology Banking Corporation (KTBC) which manages the fund. The KTBC has the power to accept or reject applications for loans. The Ministry of Science and Technology sets the interest rates at which companies must repay loans from this fund.

(109) The Ministry decides from time to time on priority projects for investment in R&D. Industry would be aware in advance of such priority projects for which financing would be more readily available. No information has been provided on the criteria used by the Ministry in deciding upon priority projects.

(c) *Conclusion on STPF*

(110) The loans involve financial contributions by the government and confer a benefit to the recipient as explained above in recital 64.

(111) Loans under this programme are available to all industries which invest in certain projects. However, as stated above, the Ministry of Science and Technology maintains a certain discretion in deciding on priority projects. Accordingly, only companies investing in certain projects will benefit from this programme. The programme is therefore considered to be specific within the meaning of Article 3(2)(c) of the Basic Regulation.

(d) *Calculation of the subsidy amount*

(112) The amount of the subsidy is calculated as explained above in recitals 59 to 63. One company received benefits under this scheme and obtained subsidies of 0,15 %.

Policy loans not considered to be countervailable

(ix) **Environment Pollution Prevention Loan (EPPL)**

(113) Since the benefits conferred under this scheme are considered to be negligible, the countervailability of this programme was not further investigated.

(x) **National Housing Fund (NHF)**

(114) There is no evidence that the subsidy is specific to certain enterprises within the meaning of Article 3 of the Basic Regulation. Since the subsidy is not specific, it is considered not to be countervailable.

(xi) **Informationalization Promotion Fund Loan (IPFL)**

(115) There is no evidence that the subsidy is specific to certain enterprises within the meaning of Article 3 of the Basic Regulation because it is generally available to all companies without restriction. Since the subsidy is not specific, it is considered to not to be countervailable.

(xii) **Technology Innovation Special Loan (TISL)**

(116) There is no evidence that the subsidy is specific to certain enterprises within the meaning of Article 3 of the Basic Regulation since the limitation to SMEs is based on objective and neutral criteria. Since the subsidy is not specific, it is considered not to be countervailable.

(xiii) **Loan Programme for SME Export Promotion Loan Relating to IMF (SME-EPL-IMF)**

(117) The interest rate for these loans was generally not lower than interest rates for similar commercial loans. Since no benefits were conferred under this scheme, its countervailability was not further investigated.

Policy loans not used by co-operating exporters in the investigation period

(xiv) **National Investment Fund**

(xv) **Agricultural and Fishery Products Price Stabilisation Fund**

(xvi) **Industrial Accident Prevention Fund**

(d) *Export Financing Loans*

(118) EXIM is a state-owned bank under the supervision of the MOF. EXIM was established in July 1976 under the Export-Import Bank of Korea Act to facilitate the development of the national economy and economic cooperation with foreign countries by providing medium and long-term loans for export and import transactions, overseas investment and the exploitation of natural resources abroad. The cooperating exporters used the following schemes:

— Export Credit (EXIM-EC),

— Foreign Investment Credit (EXIM-FIC), and

— Export loans for SME's that export capital goods (EXIM-SM).

(a) *Eligibility*

(119) In general, the programmes are available to all companies that are currently exporting or investing abroad. EXIM-EC is available to all companies that export capital goods and other products falling under the specification 'manufactured products' determined by Article 13 of the Presidential Enforcement Decree of the Export-Import Bank of Korea Act.

(120) EXIM-FIC is available to all companies that make foreign investments.

(121) EXIM-SM is available to SME's that export capital goods 'greatly devoted to the national economy' as determined by Article 45 of the Internal Loan Regulation (these products are the same as the ones defined under the EXIMEC's 'manufactured products').

(b) *Practical Implementation*

EXIM-EC

(122) EXIM reviews applications for an export credit on a transaction-by-transaction basis. Applicants have to export goods or produce goods destined for export and must have a Master Letter of Credit (LC) from a foreign buyer, or a contract with a Korean company that has a LC, as a requirement for obtaining an export loan. Export credits are either pre-shipment based or post-shipment based.

(123) Pre-shipment based export credits are given in the form of a loan to finance the production of 'manufactured products' destined for export. The interest rate for a foreign currency loan is floating at London Interbank Offered Rate (LIBOR). The interest rate for a loan denominated in Won is floating, fluctuating with the prime rate of commercial banks. Interest has to be paid monthly, with the first payment taking place one month after receiving the loan. The principal has to be repaid within two years from the day of receiving the loan.

(124) Post-shipment based export credits are loans to finance the deferred payment of exported 'manufactured products'. These loans are considered long-term loans (longer than 2 years) and therefore have to follow the OECD guidelines as from January 1997. The OECD distinguishes between Category 1 and 2 countries. The latter refers to developing countries. The interest rate is fixed and has to match at least the lowest rate provided by the OECD guidelines. Interest has to be paid at the end of every 6th month after receiving the loan. The principal of a Category 1 loan has to be repaid within 8,5 years from the day of receiving the loan and the principal of a Category 2 loan has to be repaid within 10 years.

EXIM-FIC

(125) Applicants have to submit to EXIM a business plan for the planned investment abroad. If the application is accepted, the applicant can obtain a foreign investment credit up to 90 % of the total investment. The interest rate of foreign investment loans can be either fixed against swap rate (i.e. the rate of foreign currency funds in the international financial market) plus spread (composed of risk premium and term charge) or variable against LIBOR plus spread.

EXIM-SM

(126) EXIM judges applicants not on their present export performance (as for EXIM-EC) but on their export performance over the past 2 years. When an application is approved by EXIM, the SME can get a credit up to 90 % of the total investment needed to produce and export the expected exports during the lending period. The maximum credit amount an SME can get from EXIM will be 1/3 of total export sales of the previous year. The interest rates are floating at prime rate plus spread composed of risk premium and term charge. The prime rate is the prime rate used by commercial banks, the risk premium and term charges are calculated by EXIM on an individual basis per SME. The principal has to be repaid at once at the end of the loan period (bullet loan).

(c) *Conclusion on Export Financing Loans*

(127) There is a financial contribution by the Government since EXIM is a state-owned bank.

(128) For the loans used by the cooperating exporters, interest rates are calculated either on the basis of LIBOR, SWAP or on the prime rate of commercial banks adjusted with risk premiums and term charges. According to information provided by the cooperating exporters, EXIM-EC loans on post-shipment basis were not used in the investigation period. In order to review whether there was a benefit conferred under the other programmes, a comparison was made with comparable commercial loans obtained by the respective cooperating exporter, or, if no such information was available, with comparable commercial loans obtained by other cooperating exporters which are considered to be in the same financial situation and the same sector. This analysis showed that EXIM-EC loans on pre-shipment basis, EXIM-FIC and EXIM-SM loans were granted at interest rates which were generally lower than comparable commercial loans, thereby conferring a benefit on the recipient of the loans.

(129) EXIM-EC on pre-shipment basis and EXIM-SM are contingent upon export performance and therefore specific within the meaning of Article 3(4)(a) of the Basic Regulation. EXIM-FIC is available only to companies which invest abroad. This criterion is not considered to be neutral since it favours companies which invest abroad over companies which do not. Since the eligibility is therefore not based on neutral criteria, it is specific to certain enterprises within the meaning of Article 3(2)(b) of the Basic Regulation. Hence, EXIM-EC on pre-shipment basis, EXIM-SM and EXIM-FIC are considered specific and countervailable.

(130) It is furthermore provisionally determined that EXIM-EC on pre-shipment basis does not fall under item (k) of Annex I of the Basic Regulation since only export financing with a duration of two years or more can normally be regarded as 'export credits' in the meaning of that provision since this is the definition of the OECD Arrangement on Guidelines for Officially Supported Export Credits. This provision is also not applicable to EXIM-SM or EXIM-FIC since these loans are not used for export transactions but for the investment in facilities for export production or foreign investment, respectively.

(d) *Calculation of the subsidy amount*

(131) The amount of the subsidy is calculated as explained above in recitals 59 to 63. Four companies received benefits under this scheme and obtained subsidies between 0,07 % and 2,19 %.

Loan Programmes not used by co-operating exporters

(e) *Government direction of commercial loans*

(132) The complainant alleged that companies receive long-term credit financing at preferential interest rates from commercial banks which grant loans as directed by the Government of Korea.

(133) No conclusive evidence was found of government involvement in lending decisions of commercial banks regarding commercial loans to the co-operating exporters. There is anecdotal evidence that, at least in the recent past, the government had a certain role in providing financial resources in particular to big Korean companies, the *chaebols*. The cooperating exporters, however, are all SMEs and no company-specific evidence for such government direction of commercial loans could be found. Hence, it is considered that the cooperating exporters did not receive any countervailable benefits from commercial loans granted by commercial banks.

(f) *Government direction of foreign currency loans*

(134) In the complaint it was alleged that the Korean government allowed selected industries preferential access to foreign currency loans at low interest rates. In the course of the investigation it was verified that the only source of foreign currency financing for the cooperating exporters were foreign currency loans granted by domestic banks.

(135) The rules on such foreign currency loans indicate that, in the case of foreign currency loans by commercial banks, there is no financial contribution of the government involved since the loans are privately funded and the government plays no formal role in the lending decisions of the commercial banks or the setting of interest rates. There was also no evidence found, at least with regard to the cooperating exporters, indicating any informal involvement of government officials in the bank's lending decisions concerning foreign currency loans.

(136) Therefore, it is considered that the cooperating exporters did not receive any countervailable benefits from foreign currency loans.

3. **Tax Programmes**

(a) *General*

(137) In its response to the Commission's questionnaire in these proceedings, the Government of Korea (GOK) set out details of various provisions of the tax legislation from which Korean producers/exporters may benefit. An analysis of these provisions is set out below and has been split into two parts i.e. those provisions used by the cooperating stainless steel producers/exporters in these proceedings and those not used by them. Unless otherwise stated, the legal basis for all of the tax deferrals/credits is the Tax Exemption and Reduction Control Law (TERCL). The TERCL was enacted in 1964. To obtain tax deferrals/credits, a claim must be made on the tax return and accompanied by supporting documents. There is no separate application or approval process for receiving benefits under any provision of TERCL. A company is liable for corporation tax on its income during the financial year.

(138) A 'Minimum Tax System' operates in Korea whereby, when a company has taxable income, a minimum tax at the rate of 12 % (10 % in the case of SMEs) of the taxable income before deduction of any tax incentives, or the normal tax due after deduction of incentives, whichever is the larger, is payable. These rates have been increased to 15 % and 12 % respectively with effect from 1 January 1998.

(b) *Calculation of subsidy amounts in the case of taxes*

(139) In the case of tax reserves, the subsidy is calculated as follows: A reserve functions as a tax deferral system and such tax deferral is to be regarded as an interest-free loan. The amount of subsidy should therefore be calculated as the amount of interest that the company would have to pay on a comparable commercial loan during the investigation period i.e. an amount equivalent to the amount of tax deferred. In effect, this would mean that amounts of taxes deferred in tax years prior to that falling within the investigation period should also be included in the amount of the loan to the extent that they have not been fully repaid.

(140) In the case of tax credits, the amount of subsidy should be calculated as the amount of tax which remains unpaid in the form of a grant.

(141) In order to encompass the full benefit to the company, for any amount as calculated above, interest was added at the average commercial interest rate in Korea during the investigation period, i.e. 13,35 %. The full subsidy amount is allocated over total export sales if the subsidy is contingent upon export performance, in all other cases it is allocated over total turnover.

Tax programmes used by cooperating exporters

(i) **General finding of countervailability of tax programmes**

(142) For all tax programmes discussed below, the following statement applies: In the case of reserves, the programme can be considered a tax deferral system since a certain amount is deducted from the taxable income and must be added back to the taxable income after a two or three year grace period in equal amounts over three years. There is a financial contribution by the GOK in the form of taxes deferred and a benefit accrues to the recipient (i.e. the exporting producer concerned) by not having to pay a certain amount of taxes until a later date. From the recipient's point of view, the deferral is an interest-free loan. Concerning tax credits, there is a financial contribution by the GOK in the form of taxes foregone and a benefit accrues to the recipient (i.e. the exporting producer concerned) by not having to pay a certain amount of taxes.

(ii) **Article 8 (Reserve for Technology Development)**

(143) Under Article 8 of TERCL, certain companies are allowed to establish a 'Reserve for Technology Development'. A reserve of 3 % of the total revenue of the current tax year, or 5 % in the case of companies in the capital goods industry (which includes the stainless steel industry) or technology intensive industry, may be established under Article 8 when expenditure is incurred in the development of new technology. Amounts put in reserve under this provision must be added back to the taxable income after a three-year grace period in equal amounts over three years.

(a) *Eligibility*

(144) Eligible companies are those involved in manufacturing, mining and certain other business such as construction and engineering.

(b) *Conclusion on Article 8*

(145) This reserve constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Only manufacturing, mining and certain other businesses are eligible for this tax deferral when they have incurred expenditure in the development and innovation of new technology. On this basis, therefore, it is obvious that a large number of Korean enterprises are not eligible for benefits under this tax deferral. The provisions of this Article are therefore considered to be specific and therefore countervailable in accordance with the provisions of Article 3(2)(a) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(146) The amount of the subsidy must be calculated as explained above in recitals 139 to 141. One company received benefits under this scheme and obtained subsidies of 0,03 %.

(iii) **Article 16 (Reserve for Export Loss)**

(147) Under Article 16 of TERCL, certain companies are allowed to establish a 'Reserve for Export Loss' at the level of 1 % of the value of export sales or 50 % of taxable income resulting from export sales, whichever is the lesser. Amounts put in reserve under this provision must be added back to the taxable income after a two-year grace period in equal amounts over three years. This provision will no longer be effective from 1 January 1999.

(a) *Eligibility*

(148) All exporting companies, with the exception of the shipbuilding industry, are eligible to establish reserves under this provision.

(b) *Conclusion on Article 16*

(149) This reserve constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. As this reserve is contingent upon export performance, it is specific under the provisions of Article 3(4)(a) of the Basic Regulation, and therefore, countervailable.

(c) *Calculation of the subsidy amount*

(150) The subsidy amount should be calculated as explained above in recitals 139 to 141. Even though this provision is no longer effective after 1

January 1999, benefits will continue to accrue to exporters for a number of years thereafter. In these circumstances, it is considered that the benefits accruing thereunder in the investigation period should be countervailed. Three companies received benefits under this scheme and obtained subsidies of between 0,05 % and 0,09 %.

(iv) **Article 17 (Reserve for Overseas Market Development)**

(151) Under Article 17 of TERCL, certain companies are allowed to establish a 'Reserve for Overseas Market Development'. Amounts put in reserve under this provision must be added back to the taxable income after a two-year grace period in equal amounts over three years. This provision will no longer be effective from 1 January 1999.

(a) *Eligibililty*

(152) All exporting companies, with the exception of those in the shipbuilding industry, are eligible to establish reserves under this provision at the level of 1 % of the value of export sales. For companies which (i) are SMEs, (ii) are exporters of machines, shoes and textile products or (iii) export to certain countries/regions, an additional 1 % of the value of exports may be granted. If any of the companies under (i) to (iii) above exports under its own trademark, a further 1 % may be added i.e. a total reserve of up to 3 % of the value of exports is possible.

(b) *Conclusion on Article 17*

(153) This reserve constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. To establish the reserve under this Article, a company must, have had export sales during the relevant tax year. As this reserve is, therefore, contingent upon export performance, it is specific under the provisions of Article 3(4)(a) of the Basic Regulation, and therefore, countervailable.

(c) *Calculation of the subsidy amount*

(154) The subsidy amount should be calculated as explained above in recitals 139 to 141. Even though this provision is no longer effective after 1 January 1999, benefits will continue to accrue to exporters for a number of years thereafter. In these circumstances, it is considered that the benefits accruing thereunder in the investigation period should be countervailed. Four companies received benefits under this scheme and obtained subsidies of from 0,02 % to 0,13 %.

(v) **Article 7 (Special Reduction and Exemption of Tax Amount for Small and Medium Manufacturing Industry, etc.)**

(155) This provision was not alleged in the complaint but discovered during the verification of two co-operating exporters. Under Article 7 of TERCL, certain SMEs can use this tax credit which is the equivalent of 20 % of the income tax or corporate tax on any income from the business.

(a) *Eligibility*

(156) Any SME operating a manufacturing industry, secondary communication business, research and development business, engineering business, a data processing and computer operation-related business or physical distribution industry is eligible for claiming this provision.

(b) *Conclusion on Article 7*

(157) This tax credit constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Only SMEs in the above-mentioned industries/businesses are eligible for this tax credit. By the nature of these eligibility criteria, it is inevitable that a limited number of companies will benefit from the tax credit. In the light of the above, the provisions of this Article are considered to be specific and therefore countervailable in accordance with the provisions of Article 3(2)(a) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(158) The subsidy amount should be calculated as explained above in recitals 139 to 141. Two companies availed themselves of this scheme and obtained subsidies of 0,09 % and 0,18 %.

(vi) **Article 25 (Tax credit for investment in Facilities for Increasing Productivity)**

(159) Article 25 of TERCL allows a company to receive a tax credit of 5 % of the amount invested in certain productivity-improving facilities. The amount of tax credit is deducted from the total amount of corporate tax due to be paid. Until 31 December 1996, the rates of credit had been 3 % tax credit for imported productivity-improving facilities, 10 % tax credit for productivity-improving facilities sourced domestically and 15 % tax credit for productivity-improving facilities sourced domestically by SMEs.

(160) Where an investment project commenced before 31 December 1996 but was not completed until after that date, a company may choose whether to claim a credit based on the credit rates applicable before or after that date.

(161) Article 25 of TERCL provides that this tax credit will only be available for investments made up until 31 December 1998. However, the GOK has stated that this, and other provisions of TERCL which would run until 31 December 1998, would probably be renewed by the Korean National Assembly before that date. No further information on this issue was provided.

(a) *Eligibility*

(162) Any company involved in the manufacturing or mining industries is eligible for the tax credit for investments in the following productivity-improving facilities: Facilities for process improvement and automation, advanced technology equipment, facilities for improving obsolete facilities and rationalisation facilities as prescribed by the Industrial Development Act.

(b) *Conclusion on Article 25*

(163) This tax credit constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Only manufacturing or mining industries are eligible for this tax credit when they have invested in certain productivity-improving equipment. By the nature of these eligibility criteria, it is inevitable that a limited number of companies will benefit from the tax credit. In the light of the above, the provisions of this Article are considered to be specific and therefore countervailable in accordance with the provisions of Article 3(2)(a) of the Basic Regulation.

(164) In addition, prior to the change in the rates of credit from 31 December 1996, investments in domestic facilities attracted a higher rate of credit than imported facilities. As companies may opt to benefit from the rates in force prior to that date for investment projects commenced before then, the provisions of this Article are considered to be specific and therefore countervailable also in accordance with the provisions of Article 3(4)(b) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(165) The subsidy amount should be calculated as explained above in recitals 139 to 141. One company received benefits under this scheme and obtained subsidies of 0,21 %.

(vii) **Article 23 (Reserve for Overseas Investment Loss)**

(166) Under Article 23 of TERCL, certain companies are allowed to establish a 'Reserve for Overseas Investment Loss'. Amounts put in reserve under this provision must be added back to the taxable income after a two-year grace period in equal amounts over three years. This provision is no longer effective from 1 January 1998.

(a) *Eligibility*

(167) Any Korean company which invests in shares in a foreign company or remits capital to operate a business in a foreign country, is permitted to deduct 20 % of the amount of foreign investment in that fiscal year from its taxable income.

(b) *Conclusion on Article 23*

(168) This reserve constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. As the provisions of this Article are limited to those Korean companies which invest abroad, the provisions of this Article are considered to be specific within the meaning of Article 3 of the Basic Regulation and therefore countervailable.

(c) *Calculation of the subsidy amount*

(169) The subsidy amount should be calculated as explained above in recitals 139 to 141. One co-operating exporter availed itself of this scheme and obtained a benefit of 0,12 %.

(vii) **Article 5 (Special Tax Credit for SMEs)**

(170) The complainant did not make any allegations concerning this provision of TERCL. During the verification visit to the GOK, the government authorities reported that this tax credit had been obtained by one of the cooperating exporters. The exporter concerned also provided information on its use of this tax credit. In these circumstances, the Commission has examined the countervailability of the provision.

(171) Article 5 of TERCL allows a company to receive a tax credit of 3 % of the value of investments in imported machines, or 5 % of the value of domestically produced machines. Since 10 April 1998, a rate of 3 % applies to investments in all machines whether imported or domestically produced.

(a) *Eligibility*

(172) All small and medium enterprises are eligible to obtain this tax credit.

(b) *Conclusion on Article 5*

(173) This tax credit constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Prior to the change in the rates of credit from 10 April 1998, investments in domestic machinery attracted a higher rate of credit than imported machinery. As companies may opt to benefit from the rates in force prior to that date for investment projects commenced before then, the provisions of this Article are considered to be specific and therefore countervailable in accordance with the provisions of Article 3(4)(b) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(174) The amount of subsidy should be calculated as the amount of tax which remains unpaid, in excess of the standard 3 % tax credit, in the form of a grant and should be calculated as explained above in recitals 139 to 141. One company received benefits under this scheme and obtained subsidies of 0,01 %.

(ix) **Article 27 (Temporary Investment Tax Credit)**

(175) This provision was not alleged in the complaint but discovered during the verification of two co-operating exporters. During the verification visit to the GOK, the government authorities did not report that this tax credit had been obtained by any of the cooperating exporters. The exporters concerned, however, provided information on its use of this tax credit. In these circumstances, the Commission has examined the countervailability of the provision.

(176) Under Article 72 of TERCL as effective during the tax year of 1993/1994, a manufacturing or mining industry investing in facilities could claim 10 % of domestically purchased machinery or 3 % of imported machinery. In 1994 the number of this Article was changed to Article 27 of TERCL without changing the nature of the provision. The different rates of credit for imported and domestic machinery were removed in 1996.

(a) *Eligibility*

(177) Any company involved in the manufacturing or mining industries is eligible for the tax credit for investments in facilities.

(b) *Conclusion on Article 27*

(178) This tax credit constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Only manufacturing or mining industries are eligible for this tax credit when they have invested in certain productivity-improving equipment. By the nature of these eligibility criteria, it is inevitable that a limited number of companies will benefit from the tax credit. In the light of the above, the provisions of this Article are considered to be specific and therefore countervailable in accordance with the provisions of Article 3(2)(a) of the Basic Regulation.

(179) In addition, prior to the change in the rates of credit in 1996, investments in domestic facilities attracted a higher rate of credit than imported facilities. As companies may opt to benefit from the rates in force prior to that date for investment projects commenced before then, the provisions of this Article are considered to be specific and therefore countervailable also in accordance with the provisions of Article 3(4)(b) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(180) The subsidy amount should be calculated as explained above in recitals 139 to 141. Two companies availed themselves of this scheme and obtained a benefit of 0,03 % and 0,19 %.

(x) **Article 9 (Tax credit for Technology & Manpower Development Expenses)**

(181) Under Article 9 of TERCL, certain companies are able to obtain a tax credit for expenses incurred in the development of technology and manpower. The tax credit can be calculated either as 5 % of expenses incurred for technology and manpower development during the tax year (15 % in the case of SMEs and 10 % for a company other than an SME for technology transfer to an SME), or 50 % of the expenses for technology and manpower development incurred in the tax year which exceeds the average technology and manpower development expenses incurred during the immediately preceding two years. Tax credits claimed but not used in a particular tax year may be carried forward for the following seven years.

(a) *Eligibility*

(182) This tax credit is available to the following types of businesses: manufacturing, mining, construction, engineering, data processing and computer-related businesses, telecommunications, warehousing, industrial waste disposal, sewage disposal or product design.

(b) *Conclusion on Article 9*

(183) This tax credit constitutes a financial contribution by the government and confers a benefit to the recipient as explained above in recital 142. Only manufacturing, mining industries, construction and certain service industries are eligible for this tax credit when they have invested in manpower and technology development. By the nature of these eligibility criteria, it is inevitable that a limited number of companies will benefit from the tax credit. In the light of the above, the provisions of this Article are considered to be specific and therefore countervailable in accordance with the provisions of Article 3(2)(a) of the Basic Regulation.

(c) *Calculation of the subsidy amount*

(184) The subsidy amount should be calculated as explained above in recitals 139 to 141. Two companies availed themselves of this scheme and obtained a benefit of 0,02 % and 0,08 %.

Tax programme considered not to be countervailable

(xi) **Corporation Tax, Article 18-2: entertainment expenses**

(185) Article 18-2 of the Corporation Tax Act provides for the deduction of a certain amount of entertainment expenses from taxable income.

(a) *Eligibility*

(186) All companies are eligible to obtain this tax deduction.

(b) *Conclusion on Article 18-2*

(187) As all companies are eligible to claim allowances for entertainment expenses without any different limits applying to overseas and domestic expenses, this provision of the Act is considered not to be specific and thus not to be countervailable.

Tax programmes not used by cooperating exporters

(xii) **Article 14 (Reserve for Investment and Financing Loss)**

(xiii) **Article 15 (Exemption from Income Tax for Foreign Engineer or Technician)**

(xiv) **Article 19 (Reserve for Overseas Business Loss)**

(xv) **Article 20 (Deduction Overseas Business)**

(xvi) **Article 10 (Tax Credit/Special depreciation for Investment in Facilities for Development of Technology & Manpower)**

(xvii) **Corporation Tax Law, Article 24-3 (Double Taxation)**

(xviii) **Article 26 (Tax Credit for Investment in Specific Equipment)**

(188) As the provisions of the above-mentioned programmes have not been used by the cooperating exporters, the countervailability of these provisions has not been examined.

4. Duty Drawback Scheme

(189) The legal basis for this scheme is the 'Act on special cases concerning the refund of customs duties, etc. levied on raw materials for export' and the 'Enforcement decree of the act', both of which entered into force on 1 July 1997.

(a) *Eligibility*

(190) The duty drawback system is available to all manufacturer-exporters in Korea. To be eligible under this scheme, the company must have either directly imported raw materials and paid the applicable customs duties, or purchased on the Korean domestic market, raw materials previously imported (or raw materials processed in Korea but incorporating imported inputs), for which the supplier issued, under customs supervision, a special certificate transferring to the purchaser the right to benefit from the duty drawback (these transactions are known as 'local letter of credit' purchases). The company must then export goods, in the production of which, the imported raw materials have been consumed.

(b) *Practical implementation*

(191) Upon importation of raw materials, the importer pays customs duties. After subsequent exportation of the processed goods (obtained from foreign raw materials directly imported by the manufacturer-exporter acting as an importer or domestically bought under a 'local letter of credit'), the manufacturer-exporter is entitled to make a duty drawback application to the Customs service. For the calculation of the amount to be refunded, there are two systems in force: the individual duty drawback (available to all operators), and the fixed amount refund, which is only available to small and medium enterprises (SMEs) having received as duty drawback less than 100 Million Won during the previous year (this system is also applicable to 'goods having an extraordinary production process').

(192) During the investigation period, out of seven SSW manufacturer-exporters having cooperated, five used the individual duty drawback system, while one availed itself of the fixed amount refund system. Within the framework of the individual duty drawback system, manufacturer-exporters may in theory calculate their own raw material input usage rate (which should factor for recoverable scrap). In practice, manufacturers prefer to cooperate with the National Institute of Technology & Quality (NITQ) with a view to establishing 'uniform usage rates'. These yield rates, which factor for recoverable scrap, are regularly subjected to surveys. A 'uniform usage rate' is established for each raw material consumed in the production of the exported output and consists of a formula stating what quantity of a given raw material is necessary for producing one unit of a given output. The refundable duty is then calculated on the basis of the duty actually paid on the corresponding raw materials. The five SSW manufacturer-exporters having availed themselves of this system were found to have an actual yield rate very close to the standard rate established by the NITQ.

(193) The 'fixed amount refund system' is of a different nature as it directly establishes the duty amount to be refunded. For that purpose, the customs authorities calculate the ratio 'duty drawback obtained' over 'total export value' of the manufacturer-exporters using the individual duty drawback system. The calculation is re-done every year on the basis of data available from the preceding year.

(c) *Conclusion on Duty Drawback Scheme*

(194) A distinction should be made in this respect between the individual duty drawback system and the fixed amount refund system. Within the framework of the individual duty drawback system, the GOK was found to have in place and to apply a procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. It was accordingly concluded that the Korean individual duty drawback system in force during the investigation period does not provide for an excessive refund of import charges and therefore does not constitute a subsidy, in accordance with item (i) of Annex I of the Basic Regulation.

(195) Under the fixed amount refund system, the refunded amount of import charges is not calculated in relation to inputs actually consumed in the production process by the manufacturer-exporter concerned (but rather as a lump sum based on overall data). Furthermore, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product and in what amounts. Annex II(II)(5) and Annex III(II)(3) of the Basic Regulation provide that, where it is determined that the government of the exporting country does not have such a system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOK did not carry out such an examination. The Commission did not, therefore, examine whether there was in fact an excess drawback of import charges on inputs consumed in the production of the exported product.

(196) The Korean fixed amount duty drawback system constitutes a subsidy as the financial contribution by the GOK in the form of refunded duties confers a direct benefit upon the recipient. It is a subsidy contingent in law upon export performance (it is an export subsidy according to the provisions of item (i) of Annex I to the Basic Regulation) and is therefore deemed to be specific under Article 3(4)(a) of the Basic Regulation.

(d) *Calculation of the subsidy amount*

(197) The benefit to the exporters has been calculated on the basis of the amount of customs duty refunded during the investigation period and treated as a recurring grant. The commercial borrowing rate in Korea during the investigation period of 13,35 % has been added to the face amount of the grant. The amount of benefit has been allocated over total exports during the investigation period. One company availed of this scheme during the investigation period and obtained a benefit of 1,15 %.

5. **Supply of Electricity Without Adequate Remuneration**

(198) The investigation established that the cooperating SSW manufacturer-exporters paid their electricity charges due in the investigation period. It was considered appropriate to further investigate the conditions under which electricity was supplied to them, in particular with a view to determining whether they benefited from any discounts/incentives.

(199) It was found that under the tariff schedule of Korea Electric Power Corporation (KEPCO), three types of discounts were available during the investigation period:

— the power factor adjustment (PFA),

— the summer vacation and repair adjustment (SVRA), and

— the regulation load adjustment (RLA).

It was found that, during the investigation period, the co-operating SSW manufacturer-exporters only benefited from the PFA and the SVRA.

(i) **Power factor adjustment (PFA)**

(a) *Eligibility*

(200) This scheme is available to all customers of KEPCO whose contract demand is at least of 6kW.

(b) *Conclusion on PFA*

(201) The PFA is not limited to certain enterprises and therefore not specific and countervailable.

(ii) **Summer Vacation and Repair Adjustment (SVRA)**

(a) *Eligibility*

(202) This scheme is available in Korea to all customers of KEPCO whose contract demand is at least of 500kW.

(b) *Conclusion on SVRA*

(203) The access to the benefit granted under the SVRA program is limited to certain enterprises with a relatively high consumption. However, the program is available to a wide variety of companies across all industries and the benefit so granted is conditional upon the achievement of an objectively measured target. It was accordingly concluded that KEPCO's SVRA program in force during the investigation period does not constitute a specific and countervailable subsidy.

6. Ad-hoc Subsidies and Equity Infusion

(204) The Commission examined the alleged availability of ad-hoc subsidies (such as equity infusions, loans/credits provided by government institutions on favourable conditions and the provision of financial assistance to large companies on an ad-hoc basis) to steel producers.

(205) It was found that none of the co-operating exporters received any of the abovementioned ad-hoc subsidies.

7. Debt Forgiveness by the Korea Asset Management Corporation (KAMCO)

(206) The main purpose of the establishment of KAMCO was to liquidate the non-performing loans from financial institutions. The services of KAMCO are, as such, only available to financial institutions. It was found that, up to the end of the investigation period, the co-operating exporters were meeting their loan repayments. There was accordingly no involvement by KAMCO in the affairs of these companies. The countervailability of the operations of KAMCO was, accordingly, not further investigated.

8. Amount of countervailable subsidies

	Loans (export)	Loans (other)	Tax (export)	Tax (other)	Duty drawback	Total Subsidy
Korea Welding	0,54	0,01	0,34	0,08	0	0,97
Shine Metal Products	1,63	0	0	0	1,15	2,78
Dae Sung Rope Mfg. Co. Ltd	0,09	0,15	0,06	0,55	0	0,85
Korea Sangsa Co. Ltd/ Mjung Jin Co. Ltd	0,17	0	0,15	0,25	0	0,57
Kowel Special Steel Wire Co.	0,88	0	0	0,03	0	0,91
SeAH Metal Products Co. Ltd	2,21	0,18	0,02	0	0	2,41

D. INJURY

1. Definition of the Community industry

Community Producers

(207) The Community production within the meaning of Article 9(1)(a) of the Basic Regulation is constituted by:

— producers on behalf of which the complaint was lodged and which co-operated in the investigation, ('the co-operating complainants'),

— producers on behalf of which the complaint was lodged and which did not cooperate in the investigation, ('the non co-operating complainants'), and

— other Community producers which are not complainants, which did not cooperate to the proceeding and which did not oppose to it.

Community industry

(208) The co-operating complainants fulfil the requirements of representativity within the meaning of Article 10(8) of the Basic Regulation, since they account for more than 65 % of the total Community production of the product concerned. They are therefore deemed to constitute the Community industry within the meaning of Article 9(1) of the same Regulation.

2. Preliminary remark: competition aspects

(209) In the course of the investigation, certain exporting producers have argued that all data submitted by the Community industry within the framework of

the current proceeding would be unreliable as a result of the uniform application of the 'alloy surcharge' system, and that it would, therefore, not be possible to conduct any accurate injury analysis within the framework of the anti-subsidy proceeding.

(210) These exporting producers based their allegations on the findings set out in a Commission decision (IV/35.814, 'Alloy surcharge') [1] which stated that the Community producers of stainless steel — flat products — have modified 'in a concerted fashion the reference values used to calculate the alloy surcharge, a practice having the object and effect of restricting and distorting competition within the common market'.

(211) The exporting producers acknowledged the fact that the above decision related to flat products (as opposed to long products, such as stainless steel wires), but they argued that, firstly a concerted practice also existed for the product concerned and, secondly, that even if such a practice would not be established for the product concerned, the existing illegal practice for flat products would have a synergy or downstream effect on the product concerned.

(212) As SSW are not produced, for technical reasons, from flat products, any downstream effect of the concerted practice found for flat products on SSW is doubtful. Furthermore, the producers of flat products and of SSW are, to a large extent, not identical and the number of SSW producers is significantly higher than that of flat steel producers.

(213) In this respect, while the exporting producers concerned have filed a complaint (IV/E-1/37.271) with DG IV on 5 October 1998, there has been no investigation opened by DG IV concerning the alleged infringement of Article 85 of the EC Treaty with respect to the product concerned. Indeed, this complaint is in fact an extension of the complaint concerning stainless steel bright bars (likewise belonging to the category of long products) filed with DG IV on 3 February 1998 (IV/E-1/36.930) for which, pursuant to Article 6 of Commission Regulation 99/63 [2], a letter of rejection of complaint has been sent to the complainants on 28 October 1998, although a final decision has not yet been adopted.

(214) In accordance with the above-mentioned Decision, the application of an alloy surcharge system could only be illegal if it were applied in a concerted manner. However, the current investigation has shown that there is no uniform application of the alloy surcharge by the Community industry: some companies apply it for all their customers or only for some of them, others do not apply it at all.

(215) Furthermore, it was noted that — when comparing the sales prices of the members of the Community industry among themselves — the sales prices for identical references varied. Finally, even where it is applied, the alloy surcharge constitutes only a small percentage in the total price of the product concerned.

(216) The Commission therefore concludes that there is no evidence that the injury data collected be unreliable as a result of the application of the 'alloy surcharge'.

3. **Community consumption**

(217) For the purpose of the assessment of the apparent Community consumption of SSW, the Commission relied on data on the sales volume of the product concerned in the Community provided by the Community industry and EUROFER. These data have been added to import figures established on the basis of the data submitted by the co-operating exporting producers from the countries concerned, as well as on Eurostat.

(218) During the period 1994 to the investigation period, the apparent Community consumption of SSW expressed in tonnes amounted to 69 212 in 1994, 80 539 in 1995, 70 489 in 1996, 78 576 in 1997, and 82 772 during the investigation period. It thus increased by 20 % between 1994 and the investigation period.

4. **Cumulation**

(219) It has been argued that the imports of SSW from Korea should not be cumulated with those from India as the conditions laid down in Article 8(4) of the Basic Regulation were not fulfilled. It was argued that the import volume of the product concerned was negligible, and that the conditions of competition in terms of market shares and prices were sharply different between the K orean and the Indian imports.

[1] Commission Decision 98/247/ECSC (OJ L 100/55 1998).
[2] OJ 127, 20. 8. 1963, p. 2268/63.

(220) First, the amounts of countervailable subsidies established for both countries concerned are more than *de minimis,* and imports from both countries are not negligible within the meaning of Articles 10(11) and 14(4) of the Basic Regulation.

(221) Second, the imported products are alike in all respects, interchangeable and marketed in the Community under similar commercial and pricing policies. With respect to the imported products by comparison to the Community produced products, the investigation has likewise shown that the they are alike in all respects, interchangeable and marketed in the Community under the same conditions.

(222) Therefore, all conditions of Article 8(4) of the Basic Regulation being fulfilled, it is provisionally considered that South Korean imports should be assessed cumulatively with the Indian imports for the purpose of the injury analysis.

5. **Import volume and market share of subsidized imports**

(223) The subsidized imports in tonnes developed as follows: 1 203 in 1994, 5 016 in 1995, 7 648 in 1996, 9 599 in 1997, and 10 384 during the investigation period. They have therefore increased considerably and steadily over the period under consideration, i.e. by 763 %.

(224) The market shares of the subsidized imports increased constantly from 1,7 % in 1994 to 6,2 % in 1995, 10,8 % in 1996, 12,2 % in 1997, and 12,5 % during the investigation period.

6. **Prices of the subsidized imports**

(a) *Price evolution*

(225) Average sales price per kg (in ECU) of the subsidized imports increased between 1994 and 1995 (from 2,11 to 2,55), but steadily decreased from that year onwards (2,37 in 1996, 2,18 in 1997 and 2,16 during the investigation period).

(b) *Price undercutting*

Methodology

(226) For the investigation period, sales prices of matching models, both for the Community industry and the exporting producers, established on a customer-delivered basis, have been compared. The export prices at a customer-delivered level have been obtained by adding to the export CIF values a reasonable percentage covering insurance and freight costs from the Community border to the final customer.

(227) Exporting countries' country-wide undercutting margins have been calculated on the basis of a weighted average of the undercutting margins found for the cooperating exporting producers.

Undercutting margins

(228) The following weighted average undercutting margins have been found:

— India: on weighted average 22 % (ranging between 13 % and 36 %)

— Korea: on weighted average 13 % (ranging between 2 % and 30 %)

7. **Situation of the Community industry**

(a) *Production*

(229) Since producers do not hold significant stocks, the trend reflected for production is similar to the one of sales volume shown below. The total production of the product concerned followed until 1996 the evolution of the market, increasing from 54 380 tonnes in 1994 to 59 052 tonnes in 1995 and then decreasing to 48 196 tonnes in 1996. As from 1997, it remained more or less stable (54 316 tonnes in 1997, 55 539 tonnes during the investigation period), while the total market size increased, showing that the Community industry did not benefit from the upward trend of the market.

(b) *Capacity utilisation*

(230) The capacity utilisation, while reaching a peak in 1995 (86 %), decreased significantly in 1996 (65 %). While it slowly picked up towards the investigation period (75 %), it did not reach earlier levels.

(c) *Investment*

(231) Investment has slightly increased between 1994 and the investigation period, from 3 098 KECU in 1994 to 3 591 KECU during the investigation period.

(d) *Employment*

(232) As regards employment, the Community industry's workforce has steadily decreased as from 1995 (798 in 1995, 727 during the investigation period).

(e) *Sales volume*

(233) Sales volumes of the Community industry, while decreasing between 1995 (46 278 tonnes) and 1996 (37 997 tonnes), have slightly increased since then, reaching 45 766 tonnes during the investigation period.

(f) *Market shares*

(234) The Community industry's market share decreased significantly from 1994 to 1996 (from 63 % to 53,9 %), and from that year onwards, it first recovered slightly (56,2 % in 1997) and then decreased again (55,3 % during the investigation period).

(g) *Prices*

(235) Average sales prices of the Community industry reached a peak in 1995 (3,71 ECU/kg) and strongly decreased from 1996 onwards (3,61 in 1996, 3,19 in 1997 and 3,19 during the investigation period). In addition to this price depression, the Community industry has suffered price suppression. Indeed, as a reaction to increasing imports at low prices, the Community industry had no choice but to stop production and sales of certain standard product models, privileging some market niches where prices (but also costs of production) were higher and direct competition from the countries concerned was less pronounced. Therefore, it can be assumed that the price decrease would have been even more accentuated if the Community industry had kept the same product mix throughout the period under consideration.

(h) *Profitability*

(236) Profitability of the Community deteriorated between 1994 and the investigation period (from 6,4 % in 1994 to 1,1 % during the investigation period). It can be assumed that the trend would have been even worse if the Community industry had kept on producing and selling those models subject to the most aggressive pricing policy by the exporting producers from the countries concerned.

8. **Conclusion on injury**

(237) Until 1996, the sales volume and market share of the Community industry followed the evolution of the market. From that year onwards, however, the Community industry did not benefit anymore from the growing trend of the market. Indeed, the Community industry managed to keep its sales volume stable but at the expense of its profitability which, in a context of depressed sales prices, strongly deteriorated. In addition, its market share did not recover previous levels.

(238) For these reasons, it is provisionally concluded that the Community industry has suffered material injury in terms of loss of market shares, price depression and price suppression as well as strongly deteriorating profitability and decreasing employment.

E. **CAUSATION**

1. **Effect of the subsidized imports**

(239) The significant increase of the sales volume (from 1 203 tonnes to 10 384 tonnes) and of the market shares (from 1,7 % to 12,5 %) of the subsidized imports between 1994 and the investigation period as well as the substantial undercutting found coincided with the deterioration of the situation of the Community industry in terms of loss of market shares, price depression as well as deteriorating profitability.

(240) In the context of the general fall of the market in 1996, which followed the strong growth of the year 1995, the Community industry was negatively affected by the continuous rise of the subsidized imports. Indeed, the imports from the countries concerned were the only ones which grew during that year.

(241) As from 1997, the growing trend of the market mainly benefited the subsidized imports. Sales volumes of the Community industry did not follow the upward trend of the market, and sales prices did not recover their previous levels. On the contrary, the Community industry suffered price suppression and strong price depression, as shown by the undercutting found. This situation is reflected in a deteriorating profitability situation and decreasing employment.

2. **Effect of other factors**

(242) In accordance with Article 8(7) of the Basic Regulation, the Commission has examined whether factors other than the subsidized imports from the countries concerned might have had an effect on the situation of the Community industry, with particular regard to the role of other Community producers not cooperating in the investigation and of imports from other third countries.

(a) *Other Community producers*

(243) It has been alleged by some interested parties that other Community producers, in view of their significant market share, might have contributed to the injury suffered by the Community industry. In this respect, it has to be outlined that the sales volume of these other Community producers has remained relatively stable between 1994 and the investigation period, and that their market share decreased sharply as from 1996 (from 27,2 % to 23,1 % during the investigation period). Overall, the situation of these other Community producers is not any different from that of the Community industry. As to sales prices of these other Community producers, no indication of any price undercutting of the Community industry's sales prices was found during the investigation. The argument should therefore be rejected.

(b) *Third countries imports*

(244) The same interested parties have underlined the role allegedly played by other third countries' imports, and mostly by Switzerland, regarding the injury suffered by the Community industry.

(245) Concerning first imports from Switzerland, they increased by 25 % between 1994 and the investigation period, but their market share remained relatively stable all over the period under consideration (6,6 % in 1994, 6,9 % during the investigation period), indicating therefore that Swiss imports within the Community did only just follow the upward trend of the market. When comparing their situation with the one of the subsidized imports between 1994 and the investigation period, they remain overall significantly below the level reached by the subsidized imports both in terms of volume and market shares. As to prices, no indication of any price undercutting of the Community industry's sales prices was found in the course of the investigation. The argument should therefore be rejected.

(246) Second, as to other third countries' imports, they are of negligible quantities and while their market shares slightly fluctuated between 1994 and the investigation period (from 1,4 % to 2,2 %), they remained overall at a low level. As to prices, no indication of any price undercutting of the sales prices of the Community industry was found in the course of the investigation. The argument should therefore be rejected.

(c) *Other*

(247) The Commission also examined whether other factors than the above-mentioned might have contributed to the injury suffered by the Community industry, in particular, a contraction in demand or the changes in the patterns of consumption, developments in technology and the export performance and productivity of the Community industry.

(248) As to the development of demand and the changes in the pattern of consumption, it has been previously established that the market for SSW has expanded between 1994 and the investigation period. At the same time, it has been established that the Community industry did not benefit from this expansion of the market whilst the exporting producers substantially increased their sales volume and market share.

(249) In relation to the developments in technology and productivity of the Community industry, it has been established that between 1994 and the investigation period, the Community industry has tried to maintain its production and investment levels in order not to lose competitiveness. Furthermore, its level of exports has been stable over the period taken into consideration and the Community industry's sales have proved to be more profitable in export markets than on the Community market.

(250) Thus, it can be concluded that the effect of other factors than the subsidized imports were not such as to break the causal link between the subsidized imports and the material injury suffered by the Community industry therefrom.

3. **Conclusion on causation**

(251) In view of the above, it is provisionally concluded that the subsidized imports from India and Korea have caused material injury to the Community industry.

F. **COMMUNITY INTEREST**

1. **General comment**

(252) For the investigation of Community interest, the Commission examined two scenarios, i.e. the most likely effects in the event that anti-subsidy measures were taken and that the most likely effects in the event that no such measures were taken. In this context, particular consideration was given to the effect that countervailing duties, if any, would have on the Community industry, on suppliers of the raw material and on users of the product concerned.

2. **Community industry and other Community producers**

(a) *General*

(253) The Community industry has proven to be a structurally viable industry, able to adapt its product range to the changing competitive conditions on the market and to concentrate on market niches where there was less competition from subsidized imports from countries concerned.

(254) Despite this structurally viable background, it can however not be excluded that this industry would reduce its manufacturing activities for the product concerned in the Community if no measures against subsidized imports were taken. This conclusion is justified in view of the duration of the deteriorating profitability situation suffered due to subsidized imports. Indeed, without measures, the price-depressive effect of the subsidized imports will continue to frustrate all efforts of the Community industry to regain a satisfactory margin of profitability.

(b) *Employment*

(255) The situation of the Community industry has steadily deteriorated since 1995. Should this trend continue, the Community industry might be forced to stop production in the Community, and around 700 jobs directly linked to the product concerned would be endangered in the Community. On the other hand, the imposition of measures would enable this industry to maintain and further develop its activities in the Community.

(c) *R&D*

(256) The product concerned requires continuous investments in R&D, mainly related to the production process, i.e. to the development of environmentally friendly and energy-saving manufacturing technologies. In this respect, it cannot be excluded that the Community industry will have to reduce substantially its investments if no measures are imposed.

3. **Unrelated importers**

(257) Limited co-operation was obtained from unrelated importers of the product concerned in the Community. For the co-operating companies, neither employment nor significant investment were directly related to the product concerned.

(258) This justifies the provisional conclusion that countervailing duties, if any, will most likely not have a decisive impact on the unrelated importers.

4. **Suppliers**

(259) The following 6 suppliers co-operated in the investigation and the data they submitted were verified by the Commission:

— Acciaierie Valbruna s.r.l, Vicenza, Italy

— Acciaierie Bolzano s.r.l, Bolzano, Italy

— Cogne Acciai Speciali, Aosta, Italy

— Fagersta Stainless AB, Fagersta, Sweden

— Roldan SA, Madrid, Spain

— Ugine Savoie Imphy, Ugine, France

Two other replies were received from suppliers of the Community industry, Avesta Sheffield Ltd (Sheffield, United Kingdom) and Krupp Edelstahlprofile (Siegen, Germany).

(260) These suppliers raised the argument that they suffered both from direct competition from third countries' imports of wire rod, which had substantially increased during the last years, and from the upstream effect of the subsidized imports of the product concerned. Indeed, since competition for stainless steel wires was fierce, the Community industry had tried to find cheaper suppliers for the raw material, sourcing as a consequence in countries outside the Community, i.e. Korea, India and Taiwan, and had exerted price pressure on its suppliers in order to secure low raw material prices.

(261) Countervailing duties on the product concerned would help the Community suppliers of stainless steel wire rod to improve their deteriorating economic situation and to regain profitability, which would enable their to carry out the necessary investments.

5. **Users**

(262) Users are wires processors whose semi-finished products are used afterwards in construction, in the automotive industry, for domestic appliances, for medical purposes, etc. Out of the 60 questionnaires sent, only four replies were received:

— Bever GmbH, Kirchhunden, Germany

— Tucai SA, Barcelona, Spain

— Tubiflex, Orbassano, Italy

— Max Rhodius GmbH, Weissenburg, Germany

(263) The limited co-operation justifies the provisional conclusion that countervailing duties, if any, will most likely not have a decisive impact on the user industry, either because this raw material is not a significant cost factor for them or because their production of downstream products relating to SSW only accounts for a small proportion of their total production. Furthermore, it is expected that, given the relatively moderate duty rates proposed for the exporters concerned, the high number of competing producers located in the Community, and the existence of imports from other third countries, the measures are not likely to lead to an overall major price increase for SSW in the Community.

6. **Competition and trade distorting effects**

(264) As to trade effects of possible countervailing duties, although the product concerned is being exported by the Community industry to other third countries, it is not exported to the countries concerned due, amongst others, to the high import duties existing in these countries for SSW. Furthermore, due to the current international situation, the Community market is one of the few open markets where demand for steel remains strong.

(265) With respect to the effects of possible measures on competition in the Community, some interested parties have argued that duties would lead to the disappearance of the exporting producers concerned from the Community market, thus considerably weakening competition, and to an increase of the prices for SSW.

(266) In view of the above-mentioned market position of the exporting producers, the relatively low duties proposed, the large number of producers in the Community as well as the transparency of the market, it can be concluded that Community producers continue to have a considerable number of strong competitors on the Community market. Thus, users will also in future benefit from the choice of different suppliers of the product concerned.

(267) Finally, certain interested parties have argued that it could not be in the interest of the Community to impose measures taking into account the afore mentioned alleged practices in the calculation of the alloy surcharge. In this respect reference is made to the comments made under recitals (209) sequ. above.

7. **Conclusion on Community interest**

(268) Given the above reasons, it is provisionally considered that there are no compelling reasons against the imposition of countervailing duties.

G. **PROVISIONAL DUTY**

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

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

(271) To that effect, the Commission considered that the prices of subsidized imports should be increased to a non-injurious level. The necessary price increase was determined on the basis of a comparison of the weighted average import price used to establish price undercutting, as outlined in recital (226) et subseq. with the non-injurious price of different references or models by the Community industry. The non-injurious price has been obtained by deducting from the sales price of the Community industry its average actual profit margin and by adding a profit margin of 5 %. This profit margin corresponds to what has been found as a minimum necessary in earlier cases for this type of industry. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

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

(a) *India*

— Bhansali Bright Bars Pvt. Ltd, Mumbai	24,4 %
— Devidayal Industries Ltd, Mumbai	18,4 %
— Indore Wire Company Ltd, Indore	19,3 %
— Isibars Limited, Mumbai	13,2 %
— Isinox Steels Ltd, Mumbai	13,2 %
— Kei Industries Limited, New Delhi	0 %

— Macro Bars and Wires Pvt. Ltd, Mumbai 25,4 %

— Mukand Ltd., Mumbai 13,2 %

— Raajratna Metal Industries Ltd, Ahmedabad 28,6 %

— Triveni Shinton International Ltd, Indore 0 %

— Venus Wire Ltd., Mumbai 35,4 %

(b) *Korea*

— Korea Welding Electrode Co. Ltd, Seoul 0 %

— Shine Metal Co. Ltd, Pusan 2,6 %

— Dae Sung Rope Mfg. Co. Ltd, Pusan 0 %

— Korea Sangsa Co. Ltd, Seoul/Pusan 0 %

— Mjung Jin Co. Ltd, Pusan 0 %

— Kowel Special Steel Wire Co. 0 %

— SeAH Metal Products Co. Ltd, Chang Won 2,4 %

(273) In order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-cooperating companies as the sum of the highest rate established per individual subsidy programme for the cooperating companies, i.e. 48,9 % for Indian producers and 6 % for Korean producers, since both these rates are lower then the highest injury margin found for a cooperating exporter in the respective country.

H. FINAL PROVISION

(274) In the interests of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is hereby imposed on imports of wire of stainless steel with a diameter of 1 mm or more, containing by weight 2,5 % or more of nickel, excluding wire containing by weight 28 % or more but no more than 31 % of nickel and 20 % or more but no more than 22 % of chromium, falling within CN code ex 7223 00 19 (TARIC code 7223 00 19.90) and originating in India and Korea.

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

Indian Manufacturers	Rate of duty (%)	Taric additional code
Bhansali Bright Bars Pvt Ltd, Mumbai	24,4	A009
Devidayal Industries Ltd, Mumbai	18,4	A010
Isinox Steels Ltd, Mumbai	13,2	A002
Isibars Ltd, Mumbai	13,2	A011
Mukand Ltd, Mumbai	13,2	A003
Indore Wire Company Ltd, Indore	19,3	A004
Raajratna Metal Industries Ltd, Ahmedabad	28,6	A005
Venus Wire Industries Ltd, Mumbai	35,4	A006
Macro Bars and Wires Pvt. Ltd, Mumbai	25,4	A008
Kei Industries Ltd, New Delhi	0	A020
Triveni Shinton International Ltd, Indore	0	A012
All other Indian companies	48,9	A999

Korean Manufacturers	Rate of duty (%)	Taric additional code
Korea Welding Electrode Co. Ltd, Seoul	0	A013
Shine Metal Co. Ltd, Pusan	2,6	A014
Dae Sung Rope Mfg. Co. Ltd, Pusan	0	A015
Korea Sangsa Co. Ltd, Seoul	0	A016
Myung Jin Co. Ltd, Kyoungbuk	0	A017
Kowel Special Steel Wire Co. Ltd, Kyungnam	0	A018
SeAH Metal Products Co. Ltd, Kyungnam	2,4	A019
All other Korean companies	6	A999

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

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

Article 2

Without prejudice to Article 30 of Regulation (EC) No 2026/97, the interested parties which made themselves known within the time limit specified in the notice of initiation may make known their views in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

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

Article 3

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

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

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

Done at Brussels, 23 March 1999.

For the Commission

Leon BRITTAN

Vice-President