COMMISSION REGULATION (EC) No 540/2002

of 26 March 2002

imposing a provisional anti-dumping duty on imports of certain welded tubes and pipes, of iron or non-alloy steel originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 29 June 2001 the Commission announced by a notice ('notice of initiation') published in the *Official Journal of the European Communities* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain welded tubes and pipes, of iron or non-alloy steel originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine.

(2) The proceeding was initiated as a result of a complaint lodged in May 2001 by the Defense Committee of the Welded Steel Tube Industry of the European Union ('the complainant'), on behalf of producers representing a major proportion of the Community production of certain welded tubes and pipes, of iron or non-alloy steel. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

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

(4) A number of exporting producers in the countries concerned, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the above time limit and showed that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) In view of the large number of importers and exporting producers in the exporting countries concerned, and in conformity with Article 17 of Regulation (EC) No 384/96 (the 'basic Regulation'), it was considered appropriate to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, importers and exporting producers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide information on their imports and resale in the Community (importers) or their production, turnover and exports to the Community (exporting producers) during the investigation period (see recital 11) as well as the names and the activities of all related companies.

(6) Seven importers agreed to be included in the sample and provided the requested information within the deadline. Five of them were chosen for the sample on the basis of largest representative volume of imports which could be reasonably investigated within the time available. Two of the five companies did not provide the information requested in the questionnaire for importers and were therefore considered as non-cooperating according to Article 18 of the basic Regulation.

(7) In view of the number of exporting producers concerned sampling had only to be applied for Turkey. Thirteen exporting producers agreed to be included in the sample and provided the requested information within the deadline. Six of them (of which four were related two by two) were chosen for the sample on the basis of largest representative volume of exports which could be reasonably investigated within the time available.

(8) In order to allow exporting producers in the Ukraine to submit a claim for market economy treatment ('MET') or individual treatment if they so wished, the Commission sent to all Ukrainian companies known to be concerned a market economy status and an individual treatment claim form. The Commission also sent questionnaires to all Community producers, all exporters/producers, all importers as well as all users and suppliers known to be concerned as well as to all the parties which made themselves known within the deadlines set out in the notice of initiation.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 183, 29.6.2001, p. 3.

(9) Replies were received from nine of the complainant Community producers, 11 exporting producers in the countries concerned as well as from two importers in the Community which were not related to exporting producers. The Commission also received replies from another Community producer and from four suppliers. Finally, the Commission received one claim form for MET/individual treatment from an Ukrainian producing exporter of the product concerned.

(10) The Commission sought and verified all the information it deemed necessary for the purpose of a determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) *Community producers*

— Tubeurop France SA, Lexy, France,

— Arvedi Tubi Acciaio srl, Cremona, Italy,

— Dalmine SpA, Dalmine, Italy,

— Tuberie de Differdange SA, Differdange, Luxembourg,

— Corus Tubes BV, Oosterhout, the Netherlands,

— Aceralia Perfiles Madrid sl, Madrid, Spain,

— Aceralia Transformados SA, Vera de Bidassoa, Spain,

— Caparo Steel Products Ltd, Tredegar, United Kingdom,

— Corus UK Ltd, Corby, United Kingdom;

(b) *Suppliers in the Community*

— Usinor, Paris, France;

(c) *Exporting producers in the Czech Republic*

— Jäkl Karvina as, Karvina-Hranice,

— Zelezárny Veseli as, Veseli nad Moravou;

(d) *Exporting producer in Poland*

— Huta Buczek SA, Sosnowiec;

(e) *Exporting producers in Turkey*

— Noksel Celik Boru Sanayi AS, Ankara,

— Borusan Birlesik Boru Fabrikalari AS, Istanbul (related to Mannesmann Boru Endustrisi AS),

— Mannesmann Boru Endustrisi AS, Istanbul (related to Borusan Birlesik Boru Fabrikalari AS),

— Cayirova Boru San Ve Tic AS, Istanbul (related to Yücel Boru Profil Endüstrisi AS),

— Yücel Boru Profil Endüstrisi AS, Istanbul (related to Cayirova Boru San Ve Tic AS),

— Erbosan Erciyas Boru Sanayii ve Ticaret AS, Kayseri;

(f) *Exporting producer in the Ukraine*

— OJSC Nizhnedneprovsky Tube Rolling Plant, Dnipropetrovsk;

(g) *Analogue country*

Exporting producers in Turkey

— Noksel Celik Boru Sanayi AS, Ankara,

— Borusan Birlesik Boru Fabrikalari AS, Istanbul (related to Mannesmann Boru Endustrisi AS),

— Mannesmann Boru Endustrisi AS, Istanbul (related to Borusan Birlesik Boru Fabrikalari AS),

— Cayirova Boru San Ve Tic AS, Istanbul (related to Yücel Boru Profil Endüstrisi AS),

— Yücel Boru Profil Endüstrisi AS, Istanbul (related to Cayirova Boru San Ve Tic AS),

— Erbosan Erciyas Boru Sanayii ve Ticaret AS, Kayseri.

(11) The investigation of dumping and injury covered the period from 1 July 2000 to 30 June 2001 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 1997 to the end of the IP ('period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(12) The product concerned is welded tubes and pipes, of iron or non-alloy steel, of circular cross-section, threaded or threadable (gas pipes) and certain other welded tubes and pipes, of iron or non-alloy steel, of circular cross-section, of an external diameter not exceeding 168,3 mm. It is currently classifiable within the CN codes 7306 30 51, 7306 30 59, ex 7306 30 71 and ex 7306 30 78.

(13) Welded tubes and pipes are used in a wide range of applications including, amongst others, the conveyance of water, steam, natural gas, air and other liquids and gases in plumbing heating and ventilation systems, air-conditioner units, automatic sprinkler systems, and other similar uses. Quite often they are also used for construction purposes, for load-bearing, fence tubing or as protection means.

(14) The major raw material for the product concerned are hot-rolled coils (HRC), which are formed into tubes. Welded tubes and pipes may then further be treated by coating or galvanisation. These further treatments are intended to increase the quality of the product. They are mostly delivered with plain ends, but also can have bevelled or threaded ends, with or without couplings. The product concerned is produced in numerous sizes and according to various national standards and classifications. It is to a considerable extent interchangeable with regard to their end-use and, therefore, there exists a significant degree of overlap and competition between the various types of the product concerned. It is therefore concluded, as has been done in previous investigations covering the same product, that all types of the product concerned should be considered as a single product for the purpose of this investigation.

2. **Like product**

(15) It is provisionally determined that the product produced in the Czech Republic, Poland, Thailand and Turkey and exported to the Community is alike in all aspects to the product sold on the domestic markets of these countries as well as to the product produced by the Community producers and sold on the Community market. The same is true with regard to the product produced and sold for export to the Community as compared to the product produced and sold in Turkey which served as a market economy third country for the Ukraine. All these products were therefore considered to be alike within the meaning of Article 1(4) of Regulation (EC) No 384/96.

C. **DUMPING**

A. MARKET ECONOMY COUNTRIES

1. **General methodology**

(16) The general methodology set out hereinafter has been applied for all exporting market economy countries concerned. The presentation of the findings on dumping for each of the countries concerned therefore only describes what is specific for each exporting country.

Normal value

(17) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the product concerned were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(18) The Commission subsequently identified those types of tubes, sold domestically by the companies having representative domestic sales, that were identical or directly comparable to the types sold for export to the Community.

(19) For each type sold by the exporting producers on their domestic markets and found to be directly comparable to the type of tube sold for export to the Community, it was established whether domestic sales were sufficiently representative for the purposes of Article 2(2) of the basic Regulation. Domestic sales of a particular type of tube were considered sufficiently representative when the total domestic sales volume of that type during the IP represented 5 % or more of the total sales volume of the comparable tube type exported to the Community.

(20) An examination was also made as to whether the domestic sales of each tube type could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the tube type in question. In cases where the sales volume of tubes, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales volume and where the weighted average price of that type was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of tubes represented less than 80 % of the total sales volume or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only, provided that these sales represented 10 % or more of the total sales volume.

(21) In cases where the volume of profitable sales of any type of tube represented less than 10 % of the total sales volume, it was considered that this particular type was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(22) Wherever domestic prices of a particular type of tube sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In this regard, the Commission used the prices of the product concerned charged on the domestic market by another producer. In all cases where this was not possible, and in absence of any other reasonable method, constructed normal value was used.

(23) In all cases where constructed normal value was used and in accordance with Article 2(3) of the basic Regulation, normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG & A') and a reasonable margin of profit. To this end, the Commission examined whether the SG & A incurred and the profit realised by each of the producing exporters concerned on the domestic market constituted reliable data.

(24) Actual domestic SG & A expenses were considered reliable where the domestic sales volume of the company concerned could be regarded as representative. The domestic profit margin was determined on the basis of domestic sales made in the ordinary course of trade. In all cases where these conditions were not met the Commission used the SG & A expenses and profit of other producers in the domestic market of the exporting country according to Article 2(6)(a) of the basic Regulation. In cases where this was not possible or appropriate, the amount applicable for the same general category of products was taken as a basis for the construction of the normal value in accordance with Article 2(6)(b) of the basic Regulation.

Export price

(25) In all cases the product concerned was exported to independent customers in the Community, and the export price was therefore established in accordance with Article 2(8) of the basic Regulation, namely on the basis of export prices actually paid or payable.

Comparison

(26) For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation. Appropriate adjustments were granted in all cases where they were found to be reasonable, accurate and supported by verified evidence.

Dumping margin

(27) According to Article 2(11) of the basic Regulation, for each exporting producer the weighted average normal value was compared with the weighted average export price. However, in cases where there was a pattern of significant price variations between regions, customers or time periods, and where the method comparing weighted average normal value with weighted average export price did not reflect the full degree of dumping, the weighted average normal value was compared to the individual export transactions.

(28) For non-cooperating companies, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(29) For those countries with a level of cooperation close to the information provided by Eurostat, i.e. where there was no reason to believe that any exporting producer abstained from cooperating, it was decided to set the residual dumping margin at the level of the cooperating company with the highest dumping margin in order to ensure the effectiveness of any measures.

(30) For those countries where the level of cooperation was low, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community of representative quantities. This approach was also considered necessary in order to avoid giving a bonus for non-cooperation and in view of the fact that there were no indications that a non-cooperating party had dumped at a lower level.

2. **Czech Republic**

(31) Two exporting producers in the Czech Republic replied to the questionnaire. These replies included data on domestic sales made by related domestic sales companies.

Normal value

(32) Normal value was established on the basis of domestic sales for those types of the product concerned which were directly comparable to the types of tubes exported to the Community. Only in those cases where there were no sales of comparable types of tubes on the domestic market, was normal value constructed in accordance with Article 2(6) of the basic Regulation. For that purpose, for both cooperating exporting producers' own cost of production and the companies' own SG & A expenses and profits were used.

Export price

(33) The procedures and methodologies followed by the Commission to assess the export price of products originating in the Czech Republic were the same as those explained in recital 25, i.e. export sales made directly to an independent customer in the Community were established pursuant to Article 2(8) of the basic Regulation.

Comparison

(34) Adjustments were made for transport, ancillary costs (bank charges), insurance and credit costs, for differences in physical characteristics and in level of trade.

Dumping margin

(35) The comparison between the normal value and the export price on a weighted to weighted average basis showed the existence of dumping in respect of both cooperating exporting producers. The provisional dumping margins expressed as a percentage of the cif import price at the Community border are:

— Jäkl Karvina, Karvina-Hranice 28,9 %,

— Zelezárny Veseli as, Veseli nad Moravou 65,3 %.

(36) The level of cooperation for the Czech Republic was high. The residual provisional dumping margin was therefore set at the same level as for the highest margin level established for a cooperating company, i.e. 65,3 %.

3. **Poland**

(37) One exporting producer in Poland replied to the questionnaire.

Normal value

(38) The exporting producer's domestic sales of the product concerned were not made in the ordinary course of trade during the investigation period, and domestic prices could therefore not serve as a basis for normal value. Given the fact that there were no other Polish producers cooperating in this investigation, normal value could also not be based on prices of other sellers or producers.

(39) Consequently, normal value was constructed by using the company's own cost of production and SG & A expenses, plus a profit margin for the same general category of products, in accordance with Article 2(6)(b) of the basic Regulation.

Export price

(40) The procedures and methodologies followed by the Commission to assess the export price of products originating in Poland were the same as those explained in recital 25, i.e. export sales made directly to an independent customer in the Community were established pursuant to Article 2(8) of the basic Regulation.

Comparison

(41) No adjustments were claimed and found to be necessary for a fair comparison between normal value and export price since both were established on an ex-works basis.

Dumping margin

(42) The comparison between the normal value and the export price on a weighted to weighted average basis showed the existence of dumping for the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

— Huta Buczek, Sosnowiec 17,4 %.

(43) The exporting producer covered an extremely small proportion of all Polish exports of the product concerned to the Community. Indeed, the volume of exports covered by the cooperating producer represented only 0,3 % of the import data recorded in Eurostat during the IP. The provisional residual dumping margin for Poland was therefore determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available. A comparison between the normal value as established for the cooperating Polish exporting producer and the export price as recorded under Eurostat showed a provisional residual dumping margin of 52,6 %, at cif Community frontier level.

4. **Thailand**

(44) One exporting producer in Thailand replied to the questionnaire but subsequently declined to cooperate in this investigation, and in particular refused a verification of the information submitted in his reply. The Commission consequently had no option but to apply Article 18 of the basic Regulation and to make use of the facts available.

Normal value

(45) To establish normal value data on domestic sales in Thailand, the information received in the above questionnaire reply was used as this information was also in line with the data submitted in the complaint and, as no other data or cooperation were available with regard to Thailand, this was the most reasonable information available in this case.

Export price

(46) The export volume covered by the information received during the investigation (see recital 44) represented only a part of the import volume originating in Thailand during the IP. Also the price level claimed in that information differed substantially from the price level according to Eurostat for the product concerned and originating in Thailand. It was therefore considered that provisionally the most reasonable basis to establish the export price was data as available in Eurostat.

Comparison

(47) Adjustments were made for transport, handling, and charging of the product concerned, where appropriate.

Dumping margin

(48) A comparison between the normal value and the export price as established under recitals 44 and 46 on a weighted to weighted average basis showed the existence of dumping of imports from Thailand. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is 37,6 %.

5. **Turkey**

(49) As explained in recitals 5 and 7, and given the large number of exporting producers concerned in Turkey, sampling was applied. The companies selected in the sample are:

— Noksel Celik Boru Sanayi AS, Ankara,
— Borusan Birlesik Boru Fabrikalari AS, Istanbul,
— Mannesmann Boru Endustrisi AS, Istanbul,
— Cayirova Boru San Ve Tic AS, Istanbul,
— Yücel Boru Profil Endüstrisi AS, Istanbul,
— Erbosan Erciyas Boru Sanayii ve Ticaret AS, Kayseri.

The following companies were not selected but agreed to cooperate:

— Borutas Boru Sanayii ve Ticaret AS, Adapazari,
— Cinar Boru Profil San. Tic. Ltd STI, Eregli,
— Guven Boru ve Profil Sanayi ve Ticaret Ltd, Istanbul,
— Özdemir Boru Profil San.ve Ticaret AS, Eregli,
— Sevil Boru-Profil Sanayii ve Ticaret AS, Istanbul,
— Toscelik Profil ve Sac. Endüstrisi AS, Iskenderun,
— Özborsan Boru San.ve Ticaret AS, Istanbul.

Normal value

(50) Given the significant inflation in Turkey as well as the devaluation of the Turkish lira in February 2001, the Commission established normal value on a monthly basis for those types of the product concerned which were directly comparable to the types of tubes exported to the Community. Only in those cases where there were no sales or no representative sales of comparable types of tubes on the domestic market or where monthly domestic sales were not made in the ordinary course of trade, normal values were constructed in accordance with Article 2(6) of the basic Regulation. For all cooperating exporting producers, their own cost of manufacturing plus the companies' own SG & A expenses and profits were used.

Export price

(51) The export price of products originating in Turkey is based on export sales made directly to independent customers in the Community and is thus established pursuant to Article 2(8) of the basic Regulation.

Comparison

(52) Adjustments were made for rebates, discounts, transport, handling, charging, discharging costs, ancillary costs (bank charges), insurance and credit costs where appropriate.

Dumping margin

(53) According to Article 2(11) of the basic Regulation, for each exporting producer the monthly weighted average normal value was compared to the monthly weighted average export price. However, with regard to five of the six exporting producers, there was a pattern of export prices which differed significantly between the time periods when these exports were made. Therefore, and since a comparison between a weighted average normal value and a weighted average export price or by comparison of individual normal values to individual export prices would not reflect the full degree of dumping exercised, the weighted average normal value was compared to the individual export transactions. No such pattern was found with regard to the sixth exporting producer. Therefore, the dumping margin of the latter company was established on a comparison between a weighted average normal value with a weighted average export price.

(a) Cooperating producers in the sample

(54) It is the Commission's standard practice to establish one dumping margin for related exporting producers, in order to preclude the possibility that future exports to the Community might be channelled through the companies having the lower margin.

(55) Six exporting producers in Turkey chosen for the sample, of which four were related i.e. Borusan Birlesik Boru Fabrikalari AS, Istanbul is related to Mannesmann Boru Endustrisi AS and Cayirova Boru San Ve Tic AS, Istanbul is related to Yücel Boru Profil Endüstrisi A.S., replied to the questionnaire. These replies included data on domestic sales made through related domestic sales companies.

(56) The provisional dumping margins expressed as a percentage of the cif import price at the Community border are:

— Noksel Celik Boru Sanayi AS, Ankara	0 %
— Borusan Birlesik Boru Fabrikalari AS, Istanbul and Mannesmann Boru Endustrisi AS, Istanbul	9,8 %
— Cayirova Boru San Ve Tic AS, Istanbul and Yücel Boru Profil Endüstrisi AS, Istanbul	4,2 %
— Erbosan Erciyas Boru Sanayii ve Ticaret AS, Kayseri	12,7 %

(b) Other cooperating producers not included in the sample

(57) In order to establish the dumping margin to be applied to the cooperating Turkish producers not included in the sample, the Commission calculated a weighted average dumping margin for the producers in the sample, as stipulated in Article 9(6) of the basic Regulation.

(58) This exercise led to a weighted average dumping margin of 8,0 % for the following companies:

— Borutas Boru Sanayii ve Ticaret AS, Adapazari,
— Cinar Boru Profil San. Tic. Ltd STI, Eregli,
— Guven Boru ve Profil Sanayi ve Ticaret Ltd, Istanbul,
— Özdemir Boru Profil San. Ve Ticaret AS, Eregli,
— Sevil Boru-Profil Sanayii ve Ticaret AS, Istanbul,
— Toscelik Profil ve Sac. Endüstrisi AS, Iskenderun,
— Özborsan Boru San.ve Ticaret AS, Istanbul.

(c) Non-cooperating companies

(59) The level of cooperation for Turkey was high and the residual provisional dumping margin was set at the same level as for the highest margin level of a cooperating company, i.e. 12,7 %.

B. ECONOMY IN TRANSITION: UKRAINE

1. **Market economy treatment**

(60) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports from countries in transition like the Ukraine, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c), i.e. that market economy conditions prevail in respect of the manufacture and sale of the product concerned.

(61) One exporting producer in the Ukraine requested MET pursuant to Article 2(7)(b) of the basic Regulation, or individual treatment should the investigation establish that they did not meet all of the conditions for MET, and replied to the MET claim form for exporting producers.

(62) The Commission sought all information deemed necessary and verified all information submitted in the MET application at the premises of the company in question.

(63) It was found that the company's business decisions relating to costs and prices were not made in response to market signals reflecting supply and demand and were not without significant State interference. The production costs and financial situation of the company was also subject to significant distortions carried over from the former non-market-economy system. In addition, it could not be said that the company had one clear set of basic accounting records which were independently audited and applied for all purposes. Consequently, it was concluded that the company did not fulfil the conditions set out in Article 2(7)(c) of the basic Regulation.

(64) The company concerned and the complainant were given an opportunity to comment on the above findings.

(65) The Ukrainian exporting producer contested the Commission's findings, in particular regarding State interference and distortion of the financial situation. However, no new arguments were brought forward to alter the MET determination.

(66) It was therefore decided to reject the MET claim for the Ukrainian company concerned. The Advisory Committee was consulted and did not object to the Commission's conclusions.

2. **Individual treatment**

(67) In accordance with Article 9(5) of the basic Regulation, it is the institutions consistent policy to calculate a country-wide duty for countries falling under Article 2(7), except in those cases where companies are able to demonstrate that their export prices and quantities as well as the conditions and terms of the sales are freely determined, exchange rates are carried out at market rate, and that any State interference is not such as to permit circumvention of measures if exporters are given different rates of duty. This would justify a departure from the determination of a single country-wide duty.

(68) The same Ukrainian exporting producer, which was not granted MET, also requested individual treatment. The Commission consequently sought and verified all information deemed necessary for the purposes of determining whether the company qualified for individual treatment. It was found that the export prices and export quantities and conditions and terms of sale were freely determined. The Commission is reasonably assured, that there is no risk of circumvention of the measures if that exporter were granted individual treatment in this case.

(69) It was therefore considered justified to grant individual treatment to OJSC Nizhnedneprovsky Tube Rolling Plant, Dnipropetrovsk.

3. **Dumping**

Selection of the analogue country

(70) According to Article 2(7) of the basic Regulation, for companies to which MET could not be granted, normal value has to be established on the basis of the price or constructed value in an analogue country.

(71) In the notice of initiation of the proceeding, the Commission indicated its intention to use Turkey as an analogue country for the purpose of establishing normal value for Ukraine, and invited interested parties to comment on this intention.

(72) The investigation revealed that Turkey was experiencing considerable inflationary movements on its domestic market as well as a considerable devaluation of its currency, the Turkish lira, during the IP. Consequently, other options with regard to the choice of the analogue country were also explored by the Commission.

(73) In that respect it is recalled that the cooperation from producers in Poland and Thailand was very limited, and only rudimentary information was available with regard to the normal value in these countries. Therefore, Poland and Thailand seemed not to be an appropriate choice.

(74) The Commission examined further the possibility of using the Czech Republic as an analogue country in this case. The information obtained for the Czech domestic market in the course of the investigation showed that the Czech Republic, with only two producers, a limited number of consumers, restricted import volumes due to duties on imports from certain countries, as well as production processes which were not, in all cases, the most efficient ones, would not be the most appropriate choice as an analogue country in this case.

(75) It is noted that no objections were raised from any interested party with regard to the initial proposal for Turkey. Turkey has numerous producers (13 exporting producers cooperated in this investigation) with modern and efficient production processes manufacturing tubes according to international standards directly comparable to the tubes produced in the Ukraine, as well as a sufficiently sized supply and demand structure on the domestic market, supplied with unrestricted imports. The Turkish domestic sales were also representative as compared to the Ukrainian export volume of the product concerned to the Community.

(76) In view of the above it was provisionally concluded that Turkey would be the most appropriate and reasonable analogue country in accordance with Article (2)(7) of the basic Regulation.

Determination of normal value in the analogue country

(77) Pursuant to Article 2(7)(a) of the basic Regulation normal value for Ukraine was established on the basis of verified information received from producers in the analogue country, i.e. on the basis of the prices paid or payable on the domestic market in Turkey for tube types comparable to those sold by the Ukrainian exporting producer to the Community.

(78) Since domestic sales by the Turkish producers concerned for those types of tubes comparable to Ukrainian exports were made in the ordinary course of trade, normal value was established on the basis of the monthly weighted average domestic sales prices of the product concerned to unrelated customers by the cooperating Turkish producers in accordance with Article 2(4) of the basic Regulation.

Export price

(79) All export sales to the Community by the cooperating Ukrainian exporter were made directly to independent importers in the Community and the export price was established pursuant to Article 2(8) of the basic Regulation by reference to the prices actually paid or payable.

Comparison

(80) The comparison was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were claimed and demonstrated to affect prices and price comparability. On this basis, allowances for differences in transport and handling charges were made.

Dumping margin

(81) The comparison between the normal value and the export price on a weighted to weighted average basis showed the existence of dumping for the cooperating exporting producer. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

OJSC Nizhnedneprovsky Tube Rolling Plant, Dnepropetrovsk	30,9 %.

(82) The level of cooperation from the Ukraine was extremely low. The volume of exports covered by the cooperating Ukrainian exporting producer represented only some 3 % of the import data as registered under Eurostat during the IP. The provisional residual dumping margin for the Ukraine was therefore determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available. A comparison between the normal value as established for the cooperating Ukrainian exporting producer (see recital 78) and reliable and representative export price data as recorded under Eurostat showed a provisional residual dumping margin of 44,1 %, at cif Community frontier level.

D. **COMMUNITY INDUSTRY**

1. **Total Community production**

(83) Within the Community, the product considered is manufactured by 11 producers located in France, Italy, Luxembourg, the Netherlands, Spain, Sweden and the United Kingdom, on behalf of which the complaint was lodged and by eight other producers.

Nine of the 11 complainant Community producers fully cooperated in the investigation. One of the eight others submitted some basic information even though not fully replying to the questionnaire and not being a complainant, but supporting the investigation.

(84) It is considered that all the above 19 producers constitute the Community production within the meaning of Article 4(1) of the Basic Regulation.

2. **Definition of the Community industry**

(85) The nine cooperating complainant Community producers fulfil the requirements of Article 5(4) of the Basic Regulation, since they account for a major proportion of the total Community production of the product concerned, in this case 65,8 %. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.

E. **INJURY**

1. **Apparent Community consumption**

(86) For the calculation of the apparent consumption of the product concerned on the Community market, the Commission added the sales volume of the Community industry, of one other Community producer and an estimated sales volume (on the basis of the complaint and of the sales/production ratio of the Community industry) of the remaining Community producers in the Community to the total imports into the Community as shown under CN codes 7306 30 51, 7306 30 59 and a portion (as estimated on the basis of the complaint) of imports made under CN codes 7306 30 71 and 7306 30 78.

(87) On this basis, between 1997 and the IP, apparent consumption of the product concerned in the Community decreased by 9 %. Apparent consumption went from 887 969 tonnes in 1997 to 869 142 tonnes in 1998, to 845 961 tonnes in 1999, to 870 600 tonnes in 2000 and to 806 042 tonnes in the IP.

(88) Apparent consumption decreased by 2 % between 1997 and 1998 and by another 3 % between 1998 and 1999. It increased by 3 % between 1999 and 2000. It should be noted that the increase in the apparent consumption in the year 2000 is mainly attributable to the accumulation of stocks of traders/importers for sales in the following period. Apparent consumption decreased again by 7 % between 2000 and the IP. This decrease in apparent Community consumption of 9 % (actual consumption decreased at a lesser extent given the accumulation in stocks in the year 2000) during the period considered is attributable mainly to the slowdown of the economic growth in the Community, in particular in the construction sector and secondly to the substitution effect of the product concerned with tubes made of copper or plastic.

2. **Cumulative assessment of the effects of the imports concerned**

(89) The Commission examined whether imports of the product concerned originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(90) The margin of dumping established in relation to the imports from each of the countries concerned was more than *de minimis* as defined in Article 9(3) of the basic Regulation and the volume of imports from each of these countries was not negligible.

(91) As regards the conditions of competition, the investigation showed that the product concerned imported from the countries concerned and those of the Community industry, considered on a type-by-type basis, were alike in all their essential physical and technical characteristics. Furthermore, on that basis, these products were interchangeable and were marketed in the Community during the period considered mostly through comparable sales channels (i.e. traders). Therefore, the imports of the products concerned were considered to compete with each other and with the ones produced in the Community.

(92) It was argued that the Czech Republic and Ukraine should be decumulated as imports from these countries are only marginally directed to the Member States where the Community industry is located. In this respect, it should be noted that the Community is one single market and the fact that the Community industry is not located in each Member State to which part of the imports were directed does not mean that these products are not competing in the same market.

(93) One exporter claimed that the conditions for competition were not comparable as its sales to the Community were made through a related company unlike sales of the other exporting producers. It should be noted that the related company in question is located outside the Community and that sales made in the Community of the product concerned were made through comparable sales channels as other imports and as the Community industry. In addition, it should be noted that the question of whether to assess imports from a country cumulatively with other imports is determined on a country-wide basis and is not an examination where it is decided for each individual exporter whether its exports should be assessed cumulatively.

(94) It was argued that imports originating in the Czech Republic and Turkey should be decumulated from the investigation as imports from these countries have decreased their market shares since 1998. In this respect, it should be noted that although imports originating in the Czech Republic and Turkey decreased since 1998, their volumes were not negligible. Moreover, the development of import volumes alone is not decisive. It is important to assess whether or not cumulation is appropriate in the light of all the relevant conditions of competition. In this respect, it should be noted that imports from the Czech Republic and Turkey were interchangeable and marketed in the Community through comparable sales channels as other imports and as sales of the Community industry.

(95) Furthermore, it was requested that imports originating in the Czech Republic should be decumulated as they are not causing injury or any threat of injury to the Community industry as their volume is below the ceiling quota imposed by Council Regulation (EC) No 1968/93 [1], as amended by Regulation (EC) No 1005/95 [2]. It should be noted that the quota imposed by the aforementioned Regulation, was in force till the end of 1995 and that in the present investigation the period considered for the injury analysis is 1997 to the IP. The request is therefore rejected.

(96) It was also argued that Ukraine should be decumulated as it has a low market share compared to the other investigated countries. In this respect, it should be noted that even if its market share were lower than the one held by the other investigated countries, it cannot be considered as negligible as defined in Article 5(7) of the basic Regulation. Moreover, in the context of an examination as to whether cumulation is appropriate, the market share is not necessarily decisive. In this instance, cumulation is considered appropriate in the light of the conditions of competition, as imports from Ukraine were interchangeable and marketed in the Community through comparable sales channels as other imports and as sales of the Community industry.

(97) In the light of the above, the Commission provisionally considered that all the criteria set out in Article 3(4) of the basic Regulation were met and that imports from the countries concerned should therefore be examined cumulatively.

[1] OJ L 180, 23.7.1993, p. 1.
[2] OJ L 101, 4.5.1995, p. 35.

3. **Imports originating in the countries concerned**

Volume

(98) The volume of imports of the product concerned from the Czech Republic, Poland, Thailand, Turkey and Ukraine into the Community increased by 16 % between 1997 and the IP.

(99) The imports from the countries concerned increased by 19 % between 1997 and 1998 from 206 271 to 245 281 tonnes despite the fact that the Community market decreased by 2 % over the same period. Subsequently, these imports decreased by 14 % between 1998 and 1999 to 211 204 tonnes and increased by 28 % between 1999 and 2000 to 271 236 tonnes. They decreased again by 12 % between 2000 and the IP reaching 239 399 tonnes.

(100) Imports from the sole Turkish exporter found not to have dumped represented below 0,5 % of the imports from Turkey and below 0,3 % of the imports from the countries concerned during the IP. Therefore, if these volumes are excluded, the increase in volume and market share of dumped imports would remain significant. Accordingly, the findings concerning prices and undercutting for Turkey and the other countries concerned would essentially remain the same.

Market share

(101) The joint market share held by the five countries concerned increased by 6,5 percentage points during the period considered from 23,2 to 29,7 %. It increased by 5 percentage points between 1997 and 1998, then decreased by 3,2 percentage points between 1998 and 1999 and went up again by 9,4 percentage points between 1999 and 2000. It then decreased in the period 2000 to the IP by 1,5 percentage points.

(102) It should be noted that over the period 1997 to the IP the increase in imports and market shares from the countries concerned coincided with a decrease in consumption by 9 %.

Prices

(a) Price evolution

(103) Between 1997 and the IP, the average cif prices of imports of certain welded tubes originating in the Czech Republic, Poland, Thailand, Turkey and Ukraine evolved from 401 ECU/EUR/tonne in 1997 to 422 ECU/EUR/tonne in 1998, to 357 ECU/EUR/tonne in 1999, to 425 ECU/EUR/tonne in 2000 and to 423 ECU/EUR/tonne in the IP.

(104) Average import prices increased by 5 % between 1997 and 1998, then decreased by 15 % between 1998 and 1999 following the decrease in HRC prices and increased again by 19 % between 1999 and 2000. Between 2000 and the IP import prices remained practically stable.

(b) Price undercutting

(105) A comparison for comparable models of the product concerned was made between the exporting producers' and the Community industry's average selling prices in the Community net of all rebates and taxes to unrelated customers, at the same level of trade and adjusted for differences in payment terms. The prices of the Community industry were at an ex-works level. The cif Community frontier prices of exporting producers of the countries concerned were adjusted for post importation costs, on the basis of the information provided by the cooperating unrelated importers.

(106) This comparison showed that during the IP the products concerned originating in the countries concerned were sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, on average as follows: the Czech Republic 15,6 %, Poland 14,5 %, Thailand 21,8 %, Turkey 14,0 % and the Ukraine 33,0 %. It should also be noted that the actual sales prices of the Community were depressed as the industry was just above the break-even point.

4. **Situation of the Community industry**

(107) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(a) *Capacity, production and capacity utilisation rate*

(108) The production capacity remained practically stable during the period between 1997 and the IP. There was only a minimal increase between 1997 and 1998 from 1 105 257 to 1 110 257 tonnes as a result of the rationalisation of the production facilities by one of the complaining Community producers. It should be noted that some producers produce other products in the same production lines and their actual production capacity was therefore allocated to the product concerned.

(109) The production of the Community industry decreased by 20 % during the period considered from 463 949 in 1997 to 369 681 tonnes in the IP.

(110) Between 1997 and 1998 production decreased by 10 %. Between 1998 and 1999 production increased by 4 % and between 1999 and the IP the production of the Community industry decreased continuously. It should be noted that production decreased following the trend of Community industry's decreasing sales.

(111) Given the practically stable capacity, capacity utilisation followed the same trend as production. It decreased by 10 % between 1997 and 1998, increased by 4 % between 1998 and 1999 and then declined steadily by 15 % between 1999 and the IP. Accordingly, capacity utilisation decreased by 21 % between 1997 and the IP from 42 to 33 %.

(b) *Stocks*

(112) Some producers produce to order and therefore stocks are goods awaiting despatch to customers while other producers produce for stocks. In this context the evolution of stocks does not appear to be relevant for the examination of the economic situation of the Community industry. However, for the sake of completeness the evolution of stocks is analysed below. The level of closing stocks of the Community industry evolved from 32 742 tonnes in 1997, to 35 615 tonnes in 1998, to 34 314 tonnes in 1999, to 34 851 tonnes in 2000 and to 34 359 tonnes in the IP.

(113) Stocks increased by 5 % during the period considered. They increased by 9 % between 1997 and 1998, then decreased by 4 % in 1999 and remained relatively stable thereafter.

(c) *Sales volume and market share*

(114) The sales by the Community industry on the Community market to unrelated customers decreased by 17 % during the period considered from 407 142 tonnes in 1997 to 338 088 tonnes in the IP. They amounted to 358 450 tonnes in 1998, to 386 739 tonnes in 1999 and to 346 696 tonnes in 2000.

(115) Within the period considered sales volume decreased by 12 % between 1997 and 1998, increased by 8 % between 1998 and 1999 and decreased thereafter by 13 %.

(116) This development should be seen in the light of the fact that the Community industry, when faced with increasing low priced imports originating in the countries concerned, had the choice of either maintaining its sales prices at the expense of a negative development of its sales volume and market share, or to lower its sales prices and follow the trend of the imports concerned at the expense of its profitability.

(117) Between 1997 and 1998, the Community industry increased its sales prices and thus suffered from a decrease of its sales volume and market share. Between 1998 and 1999, the Community industry decreased its prices increasing its sales and market shares. However, between 1999 and the IP the increased volume of dumped products at low prices exerted a particular negative effect on the Community industry's prices since this did not lead only to a loss on sales and market share, but also had a wider impact on profitability since cost increases could not be passed on. It should be noted that although the prices of dumped imports increased during the period 1999 to the IP, this increase was not sufficient to allow Community industry's prices to increase at a sufficient level to reach satisfactory margins.

(118) The market share held by the Community industry decreased by 4 percentage points over the period considered, from 45,9 % in 1997 to 41,9 % in the IP. It amounted to 41,2 % in 1998, to 45,7 % in 1999 and to 39,8 % in 2000.

(119) Within the period considered market share decreased by 4,7 percentage points between 1997 and 1998, increased by 4,5 percentage points between 1998 and 1999, decreased by 5,9 percentage points between 1999 and 2000 and was 2,1 percentage points higher in the IP compared to 2000.

(d) *Growth*

(120) Between 1997 and the IP, when the Community consumption decreased by 9 %, the sales volume of the Community industry decreased by 17 %. The Community industry thus lost 4 percentage points of its market share, whereas the share of the imports concerned increased by 6,5 percentage points during the same period. Thus, the Community industry reduced its presence in the market to an extent exceeding the decline in growth of the market between 1997 and the IP.

(e) *Sales prices*

(121) The weighted average prices of the product concerned sold by the Community industry increased by 2 % over the period considered from 545 ECU/EUR/tonne in 1997 to 555 ECU/EUR/tonne in the IP.

(122) After an increase of 4 % between 1997 and 1998, prices decreased by 14 % between 1998 and 1999 and increased again by 15 % between 1999 and 2000. In the IP prices were 1 % lower than in 2000.

(123) This evolution in prices should be seen in comparison with the evolution of the cost of production. Between 1997 and 1998 the total cost of the Community industry increased by 3 % mainly because of the decrease in production. Between 1998 and 1999 the costs of the Community industry decreased by 10 % due to an important decrease in the costs of the main raw material (HRC) which represents on average about 55 % of the total costs and to an increase in production. Between 1999 and 2000 the Community industry's costs increased by 15 % as a consequence of an increase in the cost of HRC and a decrease in production. In the IP costs decreased by 1 %. During the period considered, costs increased by 5 %. This increase in costs was not fully reflected in prices as they only increased by 2 % and as a consequence, the Community industry suffered in terms of decreasing profitability.

(f) *Employment*

(124) The level of employment of the Community industry decreased from 1 085 persons employed in 1997 to 1 005 in 1998, to 901 in 1999, to 838 in 2000 and to 817 in the IP.

(125) The level of employment in the Community industry decreased constantly between 1997 and the IP. This sharp decrease is linked to the decrease in production and sales and to an effort to increase productivity in order to reduce unit costs.

(g) *Productivity*

(126) Productivity of the Community industry's workforce, measured as output per person employed per year, developed from 475 tonnes per year per person employed in 1997 to 468 in 1998, to 547 in 1999, to 528 in 2000 and to 517 in the IP.

(127) Productivity increased by 9 % over the period considered.

(h) *Wages*

(128) Between 1997 and the IP, the average wage per employee increased by 18 % from ECU/EUR 27 796 in 1997 to ECU/EUR 32 867 in the IP.

(129) Average wages per employee increased by 9 % between 1997 and 1998, they remained almost stable between 1998 and 1999 and increased again by 6 % between 1999 and 2000 and by 3 % between 2000 and the IP. When analysing wages account should be taken of the fact that as many of the companies composing the Community industry also produce other products and are part of groups of companies, the increase in wages also reflects the situation of other activities and/or of the group.

(i) *Investments*

(130) The Community industry's total investments in the product concerned decreased by 75 % between 1997 and the IP from 4 444 000 ECU/EUR in 1997, to ECU/EUR 10 823 000 in 1998, to ECU/EUR 5 214 000 in 1999, to ECU/EUR 2 581 000 in 2000 and to ECU/EUR 1 116 000 in the IP.

(131) The Community industry's investments more than doubled between 1997 and 1998 mostly due to a replacement of an old production line of one Community producer, to a new stock system for another Community producer and to a slight technical increase in capacity for a third Community producer. Investments then dropped constantly and steadily between 1998 and the IP.

(j) *Profitability*

(132) During the period considered, profitability of sales in the Community to unrelated customers in terms of return on net sales before taxes decreased from 3,4 % in 1997 to 0,4 % in the IP. It was 5,1 % in 1998, 1 % in 1999 and 0,6 % in 2000.

(133) Profitability improved between 1997 and 1998 when the increase of total costs by 3 % was reflected in the increase of prices by 4 %, at the expenses of sale volume (– 12 %) and market shares (– 10 %). Profitability then decreased constantly during the following periods, reaching a level insufficient to ensure the long term viability of the Community industry. It should be recalled that prices decreased by 14 % between 1998 and 1999 while costs only decreased by 10 % and that in the following periods prices did not increase to a further extent than the increase in costs.

(k) *Cash flow, return on investments and ability to raise capital*

(134) The net cash in(out) flow of operating activities, developed from ECU/EUR 14 413 000 in 1997 to ECU/EUR 25 697 000 in 1998, to ECU/EUR 17 722 000 in 1999 to ECU/EUR 15 201 000 in 2000 and to ECU/EUR 10 282 000 in the IP.

(135) The above indicator was provided at a total company level, therefore it was allocated to the product concerned on the basis of turnover. The cash flow of operating activities increased by 78 % between 1997 and 1998. It then decreased constantly between 1998 and the IP. It decreased by 29 % over the period considered.

(136) The return on investments in terms of return on total assets (ROTA), went from 3,5 % in 1997 to 0,5 % in the IP. It amounted to 5,2 % in 1998, to 1,1 % in 1999 and to 0,7 % in 2000.

(137) The return on total assets like the cash flow of operating activities, was provided at a total company level and it was therefore allocated to the product concerned on the basis of turnover. It increased by 1,7 percentage points between 1997 and 1998. It then decreased constantly between 1998 and the IP. It decreased by 3 percentage points over the period considered.

(138) The investigation has shown that the complaining Community producers were not experiencing difficulties in their ability to raise capital. In this respect it should be noted that the Community industry and their groups decided to support the welded tubes business and to provide the necessary capital.

(l) *Magnitude of dumping margin*

(139) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the countries concerned, this impact cannot be considered to be negligible.

5. **Conclusion on injury**

(140) Between 1997 and the IP the volume of the dumped imports of the product concerned originating in the Czech Republic, Poland, Thailand, Turkey and Ukraine increased significantly by 16 % and its share of the Community market went from 23,2 % in 1997 to 29,7 % in the IP. The largest increase took place between 1999 and 2000, when the volume of dumped imports increased by 28 % gaining 6,2 percentage points in market shares. The average prices of dumped imports from the five countries concerned were consistently lower than those of the Community industry during the period considered. Furthermore, during the IP the prices of the imports from the countries concerned undercut those of the Community industry by 16,8 % on average.

(141) The examination of the abovementioned factors shows that between 1997 and the IP the situation of the Community industry deteriorated. This resulted in a deteriorating market share of the Community industry. Between 1997 and the IP, many injury indicators developed negatively: production decreased by 20 %, production utilisation by 21 %, sales volume decreased by 17 % and market share decreased by 4 percentage points, employment decreased by 25 %, investments by 75 %, the cash flow from operating activities by 29 % and the ROTA decreased by 3 percentage points. Profitability deteriorated from 3,4 % in 1997 to 0,4 % in the IP. Prices could not increase at the same rate as costs. Wages increased during the period considered following mainly the development of inflation and productivity while the increase in productivity in itself was not enough to avoid the unsatisfactory financial performance of the Community industry.

(142) In the light of the foregoing it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

F. **CAUSATION**

1. **Introduction**

(143) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports of the product concerned originated in the countries concerned have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effects of the dumped imports**

(144) The significant increase in the volume of the dumped imports by 16 %, i.e. from 206 271 tonnes in 1997 to 239 399 tonnes in the IP, and of its corresponding share of the Community market, i.e. from 23,2 % in 1997 to 29,7 % in the IP as well as the undercutting found (16,8 % on average during the IP) coincided with the deterioration of the economic situation of the Community industry. This market penetration of the dumped imports was particularly significant between 1999 and 2000, when the import volume increased by 28 % and the market share of the dumped imports by 6,2 percentage points.

(145) During the same period, the Community industry suffered a loss of sales volume (– 17 %), market share (– 4 percentage points) and a deterioration of profitability (– 3 percentage points). This development should be seen in the context of Community consumption of the product concerned, which decreased by 9 % over the period considered.

(146) In addition, dumped prices were below those of the Community industry throughout the period considered and exerted a pressure on them which prevented the Community industry's prices from developing at the same rate as the increase in the costs of production between 1997 and the IP thus reducing the already low level of profitability of the Community industry.

(147) It is therefore considered that the dumped imports had a significant negative impact on the situation of the Community industry.

3. **Effects of other factors**

(a) *Performance of other Community producers*

(148) One Community producer not being part of the Community industry and representing less than 5 % of the total Community production in the IP provided some information. As the data submitted refer only to one company, exact figures could not be given but only ranges covering these exact figures in order to preserve confidentiality of the data submitted in accordance with Article 19 of the basic Regulation.

(149) It was found that the production of the said Community producer decreased by between 20 and 30 % over the period considered. During the same period, the sales volume decreased by between 20 % and 30 % and the corresponding market share went down from between 5 % and 0 % in 1997 to between 3 % and – 2 % in the IP. It should be noted that the development of the aforementioned three indicators corresponds by and large to the development of the situation of the Community industry.

(150) In addition, it should be noted that two other Community producers (Tubimar in Italy and Krieglach in Austria) stopped production in the year 2000.

(151) The above seems to be an indication that other producers in the Community experienced similar problems as the Community industry.

(b) *Impact of the economic crisis in South East Asia*

(152) It was argued that any injury suffered by the Community industry was caused by the economic crisis in South East Asia.

(153) It should be noted that the Asian crisis may be a cause of the decrease in the price of the steel products and therefore of the main raw material (HRC) used in the production of the product concerned. Therefore, if it could have affected the upstream industry, the producers of the product concerned could benefit from lower prices of the main raw material. In fact when in 1999 the HRC prices were at their lowest level, the Community industry was able to decrease its prices and increase its sales.

(154) It should be noted that the investigation did not show any surge in imports of the product concerned from Asian countries apart from Thailand which is part of the present investigation.

(155) In view of the above, it is provisionally concluded that the Asian crisis did not contribute to the injury suffered by the Community industry.

(c) *Trade protective measures imposed by USA and Russia*

(156) It was argued that any injury suffered by the Community industry was caused by the protective measures (safeguards) imposed by the USA and Russia.

(157) Concerning the protective measures imposed by the USA, it should be noted that in the IP exports represent about 8 % of the Community industry's total sales of the product concerned. Exports decreased by 32 % between 1997 and the IP, i.e. by 14 000 tonnes. The decrease in exports influenced the production level and the capacity utilisation but it should be recalled that profitability is calculated for sales to unrelated customers in the Community and therefore a decrease in exports may only have a minimal influence on profitability because of higher fixed costs per unit. In addition, a decrease in exports cannot explain the significant decrease in sales (both in absolute figures and as a percentage) of the Community industry in the Community.

(158) Concerning the protective measures imposed by Russia, it should be noted that these are not directed against imports from the Community but against Ukrainian imports. They can therefore partially explain the surge of Ukrainian imports in search of new markets in the Community. In this respect, it should be noted that Ukrainian imports are covered by the present investigation.

(159) In view of the above, it is provisionally concluded that the protective measures imposed by the USA and Russia only contributed to the injury suffered by the Community industry to a very limited extent and their effect was consequently not such as to alter the finding that there is a genuine and substantial relationship of cause of and effect between the dumped imports from the countries concerned and the material injury suffered by the Community industry.

(d) *Imports from other third countries*

(160) According to the available information, the total import volume of the product concerned originating in third countries decreased by 28 % from 91 220 tonnes in 1997 to 65 706 tonnes in the IP, and their market share by 2,1 percentage points over the same period from 10,3 % in 1997 to 8,2 % in the IP.

(161) As regards the weighted average cif prices of these imports, they have increased by 8 % between 1997 and the IP, from 434 ECU/EUR/tonne in 1997 to 470 ECU/EUR/tonne in the IP. It should be noted that the prices of imports from other third countries were higher than the weighted average prices of the imports from the countries concerned during the period considered.

(162) It has been argued that imports originating in Russia should have been included in the investigation. It should be noted that Russia held a market share below 1 % during the IP and in addition no evidence was provided showing dumping for this country.

(163) On the other hand, it was found that only imports originating in four countries other than the countries concerned had a share of the Community market above 1 % during the IP, i.e. Romania, Hungary, Switzerland and India.

(164) Regarding Romania and Hungary, it was found that their market share decreased from 1997 to the IP (respectively from 3,3 % to 1,4 % for Romania and from 1,7 % to 1,1 % for Hungary). Concerning Romania, it should be noted that its market share was lower than 1 % in 2000 (0,6 %) and then increased suddenly in the IP. Average import prices of the two countries have always been lower than those of the imports from the investigated countries with the exception of imports from Romania in 2000.

(165) Regarding Switzerland and India, it was found that their market shares were just above the 1 % threshold only in the IP (1,1 % Switzerland and 1,05 % India) and their prices were higher than those of the imports from the investigated countries.

(166) In conclusion, any effects of these imports on the Community industry's situation was only marginal, given the average prices, the small volume of these imports and their limited market share. It is therefore provisionally concluded that the imports from third countries only contributed to the injury suffered by the Community industry to a very limited extent, if at all, and that their effect was consequently not such as to alter the finding that there is a genuine and substantial relationship of cause and effect between the dumped imports from the countries concerned and the material injury suffered by the Community industry. Furthermore, neither the complainant nor the exporters have submitted any evidence that these imports may have been made at dumped prices.

4. **Conclusion on causation**

(167) In conclusion, it is confirmed that the material injury of the Community industry, which is characterised by decrease in production (– 20 %), production utilisation (– 21 %), sales volume (– 17 %), market share (from 45,9 % in 1997 to 41,9 % in the IP), employment (– 25 %), investments (– 75 %), cash flow from operating activities (– 29 %), ROTA (– 3 percentage points) and profitability (from 3,4 % in 1997 to 0,4 % in the IP) was caused by the dumped imports concerned. Indeed, the effects of the performance of other Community producers, of the economic crisis in South East Asia, of the trade protective measures imposed by the USA and Russia and of imports from third countries, on the Community industry's negative developments in terms of production, sales and profitability was only very limited and consequently not such as to alter the finding that there is a genuine and substantial relationship of cause of and effect between the dumped imports from the countries concerned and the material injury suffered by the Community industry.

(168) It is therefore provisionally concluded that the dumped imports originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

(169) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned in the investigation.

1. **Interest of the Community industry**

Nature and structure of the Community industry

(170) The Community industry is composed of nine companies. Almost all of them are part of international groups acting mainly in the steel sector. None of them is upstream or downstream integrated but many of them purchase the main raw material (HRC) from other companies of their group at market prices. The Community industry employed a total of 9 483 people out of which 817 were employed directly for the product concerned in the IP.

Possible effects of the imposition/non-imposition of measures on the Community industry

(171) Following an imposition of measures, it is expected that the volume of sales of the product concerned by the Community industry on the Community market would rise. This would enable the Community industry to recover lost market shares and, by increasing capacity utilisation, decrease unit production costs and further increase productivity. Furthermore, the level of the Community industry's prices would in all likelihood increase moderately, although not by the level of any anti-dumping duty since competition will still remain amongst Community producers, imports originating in the countries concerned made at non-dumped or non-injurious prices and imports originating in other third countries. In conclusion it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, combined with a moderate price increase, will allow the Community industry to improve its financial situation.

(172) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend of the Community industry will continue. The Community industry is particularly marked by a loss of sales volume and market shares and insufficient profitability. Indeed, in view of the decreasing sales volume and the material injury suffered during the IP, it is obvious that the financial situation of the Community industry will deteriorate further in the absence of any measures. This will in all likelihood lead to further cuts in production, closures of certain production lines and therefore threaten employment and investments in the Community as has already happened in the past to other Community producers.

Conclusion

(173) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the injurious dumping found.

2. **Interest of unrelated importers/traders in the Community**

(174) The distribution of the product concerned in the Community is characterised by the presence of importers/traders who trade in a large number of other products as well. Both Community industry and exporting producers sell their products in the Community through traders.

(175) Given the large number of importers involved, the Commission decided to apply sampling pursuant to Article 17 of the basic Regulation and announced this in the notice of initiation accordingly. It also contacted 117 importers listed in the complaint asking for their total turnover, their total number of employees, their volume and value of imports into and resales made in the Community market during the IP of the product concerned.

(176) Answers from 32 companies have been received within the deadline, out of which 16 declared not to be concerned by the investigation as they did not import from the countries concerned or they did not import the product concerned at all during the IP; six did not state their willingness to be included in the sample; three did not provide the volumes imported or reported imports including products other than the product concerned.

(177) Of the remaining seven companies, five have been chosen for the sample on the basis of largest representative volume of imports.

(178) Two of the five companies selected did not answer the Commission's questionnaire and one other declared that it was related to an exporting producer at a later stage of the proceeding. The two companies which cooperated represent about 5 % of the total import volume of the product concerned from the countries concerned in the Community during the IP:

— Kromat Trading Ltd, London, United Kingdom,

— Thyssen Mannesmann, Woking, United Kingdom.

(179) Should anti-dumping measures be imposed, it is possible that the level of imports originating in the countries concerned may decrease. Furthermore, it cannot be excluded that the imposition of anti-dumping measures may result in a moderate increase in the prices of the product concerned in the Community, thus affecting the economic situation of importers and traders.

(180) However, the impact of any anti-dumping duty on the situation of importers and traders should be seen in the light of the small part of their overall activities represented by trade in the product concerned. On the basis of the information provided by the cooperating importers/traders, it has been found that the product concerned represented on average about 10 % of the cooperating companies' total turnover. Thus, the effect of any measures on the traders' overall business would be limited. Furthermore, the effect on importers/traders of the increase in the prices of imports of certain welded tubes will depend on their ability to pass on increases in prices to their customers. Given the low proportion of the product concerned in costs of users, it is likely that importers/traders pass any increases in prices of the product concerned on to users.

(181) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is not likely to have a serious negative effect on the situation of importers/traders in the Community.

3. **Interest of the user industry**

(182) The main user of the product concerned in the Community is the construction industry. Consequently, the demand for the product concerned is primarily dependent upon the evolution of construction works in the private and industrial sectors.

(183) Questionnaires were sent to nine associations of users which were invited to forward copies of the questionnaire intended for users to those of their members which were concerned by the investigation. In addition, questionnaires were sent directly to four known users. No questionnaire replies were received either from interested users or their representative associations.

(184) Given the non-cooperation of the users and their associations in the investigation and given the low impact of certain welded tube costs compared to other costs (for example in building a house) for users, it can be provisionally concluded that the imposition of any anti-dumping measure is not likely to cause a considerable increase in their costs and seriously affect their situation.

4. **Interest of the upstream industry**

(185) Questionnaires were sent to eight producers of the main raw material used in the production of the product concerned (HRC), and four of them cooperated in the investigation:

— Duferco La Louvière, Belgium,

— Stahlwerke Bremen, Germany,

— Riva Group SpA, Italy,

— Usinor, France.

(186) The cooperating companies had a joint turnover in 2000 of around EUR 17 412 million and they employed around 92 000 people. Their sales of HRC represented on average around 0,5 % of their turnover and sales within the Community represented on average 98 % of their total HRC volume of sales. Between 1998 and the IP their sales of HRC increased by 8 % in terms of value and by 3 % in terms of volume. In terms of volume, sales increased by 50 % between 1998 and 1999 and then decreased by 31 % between 1999 and the IP. One producer stopped its production of HRC in 2000 due to the low volume and price. Producers of HRC also supply this material to producers of products other than the product concerned.

(187) If measures were imposed, HRC producers will continue to benefit of the existence of part of the market of HRC in the Community.

(188) Producers of HRC in the Community faced unfair competition in the past and antidumping measures are presently in force against imports originating in Bulgaria, India, South Africa, Taiwan and Yugoslavia [1] and countervailing measures are in force against India and Taiwan [2]. In addition, quantitative restrictions are imposed on HRC originating in Russia [3] and Ukraine [4]. If measures are not imposed, HRC producers are likely to face a reduction in demand and have even more difficulties in recovering from past dumping.

(189) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is in the interest of producers of the main raw material used in the production of the product concerned in the Community.

5. **Consequences for relations with third countries**

(190) It has been argued that the imposition of measures is against the Community interest as it is contrary to the Partnership and Cooperation Agreement between the EC and the Ukraine (PCA) and in addition it is alleged to be in conflict with the EC-Czech Europe Agreement.

(191) It should be noted that the abovementioned agreements do not prevent either party from taking appropriate measures against dumping practices in accordance with its own legislation and the relevant provisions of the agreement.

[1] Commission Decision No 283/2000/ECSC (OJ L 31, 5.2.2000, p. 15), as last amended by Decision No 1357/2001/ECC (OJ L 182, 5.7.2001, p. 27).
[2] Commission Decision No 284/2000/ECSC (OJ L 31, 5.2.2000, p. 44), as last amended by Decision No 2071/2000/ECC (OJ L 246, 30.09.2000, p. 32).
[3] Commission Decision No 2136/97/ECSC (OJ L 300, 4.11.1997, p. 15).
[4] Commission Decision No 1401/97/ECSC (OJ L 193, 22.7.1997, p. 12).

6. **Conclusion on Community interest**

(192) The effects of the imposition of measures can be expected to afford the Community industry with the opportunity to regain lost sales and market shares and to improve its profitability. On the other hand, in view of the deteriorated situation of the Community industry, there is a risk that in the absence of measures, certain Community producers may close down their production lines or even whole production facilities and, in that event, the Community market will become more dependent on imports.

(193) Whilst some negative effects are likely to result in the form of decrease in the volumes imported and moderate price increases for the importers/traders, the extent of these may be reduced by decreasing margins or by passing the increase on to the users.

(194) Users, in turn, are unlikely to suffer serious consequences from such an increase given the likely low incidence of certain welded tubes on their final products.

(195) With the imposition of measures, the upstream industry will continue to benefit from the existence of a demand of HRC in the Community market.

(196) In the light of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures in the present case and that the application of measures would be in the interest of the Community.

H. **PROVISIONAL ANTI-DUMPING MEASURES**

(197) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury to the Community industry by the dumped imports.

1. **Injury elimination level**

(198) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(199) On the basis of the information available, it was preliminarily found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious dumping, taking into account the level of profitability obtained by the Community industry in the period 1997 to 1998.

(200) The necessary price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of each company composing the Community industry to a break even point and by adding the abovementioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

(201) The injury elimination margins found were as follows:

Country	Company	Injury margin
Turkey	Yücel Boru Profil Endüstrisi SA	29,4 %
	Cayrova Borou San Ve Tic AS	29,4 %
	Borusan Birslesik Borou Fabrikalari SA	21,2 %
	Mannesmann Boru Endustrisi TAS	21,2 %
	Noksel Celik Boru Sanayi AS	21,3 %
	Erbosan Erciyas Boru Sanayii VE Ticaret AS	8,0 %
	Non-sampled cooperating companies	
	— Borutas Boru Sanayii Ve Ticaret AS	23,0 %
	— Cinar Boru Profil San. Tic. LTD STI	23,0 %
	— Guven Boru VE Profil Sanayi Ve Ticaret Limited	23,0 %
	— Özdemir Boru San.ve Ticaret AS	23,0 %
	— Sevil Boru-Profil Sanayii Ve Ticaret AS	23,0 %
	— Toscelik Profil Ve Sac. Endüstrisi AS	23,0 %
	— Özborsan San.ve Ticaret AS	23,0 %
	All other companies	29,4 %
Czech Republic	Jäkl Karvina	19,8 %
	Zelezarny Veseli a.s.	53,1 %
	All other companies	53,1 %
Poland	Huta Buczek	0,0 %
	All other companies	23,0 %
Ukraine	OJSC Nizhnedeneprovsky Tube Rolling Plant	61,6 %
	All companies	61,9 %
Thailand	All companies	35,2 %

2. **Provisional anti-dumping measures**

(202) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, a provisional anti-dumping duty should be imposed in respect of imports originating in the Czech Republic, Poland, Thailand, Turkey and the Ukraine at the level of the dumping margins found, or at the level of the injury margins found, if these are lower.

3. **Undertakings**

(203) Pursuant to the relevant provisions of the Europe Agreement concluded between the European Community and its Member States, on the one part, the Czech Republic and Poland on the other part, as well as Article 46 of Decision No 1/95 of the EU-Turkey Association Council on implementing the final phase of the customs union, cooperating exporting producers in the Czech Republic, Poland and Turkey received early information on the findings of the investigation. A number of the companies concerned expressed their willingness to offer a price undertaking. Their offers continue to be examined by the Commission, in particular with a view to ascertaining whether any minimum price levels proposed are sufficient to remove injurious dumping.

I. **FINAL PROVISION**

(204) In the interest of a sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings made for the purpose of this Regulation are provisional and may have to be reconsidered for the purpose of any definitive finding,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of welded tubes and pipes of iron or non-alloy steel, of circular cross-section and of an external diameter not exceeding 168,3 mm, excluding tubes and pipes of a kind used for oil or gas pipelines, of a kind used in drilling for oil or gas, or with attached fittings for use in civil aircraft, other than precision tubes, falling within CN codes ex 7306 30 51, ex 7306 30 59, ex 7306 30 71, and ex 7306 30 78 (TARIC-codes 7306 30 51 10, 7306 30 59 10, 7306 30 71 10, 7306 30 71 20, 7306 30 78 10 and 7306 30 78 20), and originating in the Czech Republic, Poland, Thailand, Turkey and Ukraine.

2. The rate of duty applicable to the net-at-Community-frontier price, before duty, for products produced by the following companies shall be as follows:

Country	Company	Rate of duty (%)	TARIC additional code
Turkey	Yücel Boru Profil Endüstrisi AS	4,2	A330
	Cayrova Boru San Ve Tic AS	4,2	A331
	Borusan Birslesik Boru Fabrikalari AS	9,8	A332
	Mannesmann Boru Endustrisi TAS	9,8	A333
	Noksel Celik Boru Sanayi AS	0,0	A334
	Erbosan Erciyas Boru Sanayii ve Ticaret AS	8,0	A335

Country	Company	Rate of duty (%)	TARIC additional code
	Non-sampled cooperating companies:		
	— Borutas Boru Sanayii ve Ticaret AS	8,0	A336
	— Cinar Boru Profil San. Tic. Ltd STI	8,0	A337
	— Guven Boru ve Profil Sanayi ve Ticaret Ltd	8,0	A338
	— Özdemir Boru Profil San. Ve Ticaret AS	8,0	A339
	— Sevil Boru-Profil Sanayii ve Ticaret AS	8,0	A340
	— Toscelik Profil ve Sac. Endüstrisi AS	8,0	A341
	— Özborsan Boru San. Ve Ticaret AS	8,0	A342
	All other companies	12,7	A999
Czech Republic	Jäkl Karvina	19,8	A343
	All other companies	53,1	A999
Poland	Huta Buczek	0,0	A344
	All other companies	23,0	A999
Ukraine	OJSC Nizhnedeneprovsky Tube Rolling Plant	30,9	A345
	All other companies	44,1	A999
Thailand	All companies	35,2	—

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

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

Article 2

1. Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties requesting disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, shall present their views in writing and request a hearing from the Commission within one month of the date of entry into force of this regulation.

2. Pursuant to Article 21(4) of Regulation No 384/96, the parties concerned may request a hearing concerning the analysis of the Community interest and may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

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

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

Done at Brussels, 26 March 2002.

For the Commission
Pascal LAMY
Member of the Commission