COMMISSION REGULATION (EC) No 1235/2003
of 10 July 2003
imposing a provisional anti-dumping duty on imports of silicon originating in Russia

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] (the basic Regulation), as last amended by Regulation (EC) No 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 12 October 2002, 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 silicon originating in Russia.

(2) The anti-dumping proceeding was initiated following a complaint lodged on 30 August 2002 by Euroalliages (Liaison Committee of the Ferro-Alloy Industry) (the complainant) on behalf of producers representing 100 % of the Community production of silicon. 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 a proceeding.

(3) The Commission officially advised the complainant, the exporting producers, importers/traders, suppliers and users, as well as their associations known to be concerned and the representatives of Russia, 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) The complainant, the exporting producers, importers, suppliers and users made their views known in writing. All parties who so requested within the time limit and showed that there were particular reasons why they should be heard were granted a hearing.

(5) In order to allow exporting producers in Russia to submit a claim for market economy treatment (MET) or individual treatment (IT), the Commission sent claim forms to the three Russian companies listed in the complaint. All three Russian companies requested MET pursuant to Article 2(7) of the basic Regulation or individual treatment, should the investigation establish that they did not meet the conditions for MET.

(6) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from the complainant Community producers, the cooperating exporting producers, three importers, three suppliers, five users and one users' association.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 246, 12.10.2002, p. 12.

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

(a) *Exporting producers*

— OJSC Bratsk Aluminium Plant, Bratsk, Irkutsk Region, Russia (belonging to the RUSAL Holding Group)

— SUAL-Kremny-Ural LLC (SKU), Kamensk, Ural Region, Russia (belonging to the SUAL Holding Group)

— JSC ZAO Kremny, Irkutsk, Irkutsk Region, Russia (belonging to the SUAL Holding Group)

(b) *Importer*

— Pultwen Ltd, Maidenhead, United Kingdom

(c) *Community producers*

— Invensil, Pechiney Group, Paris, France

— Ferroatlantica, Madrid, Spain

— R W Silicium, Pocking, Germany

(d) *Analogue country producers*

— Fesil ASA, Trondheim, Norway

— Elkem ASA, Oslo, Norway.

(8) The investigation of dumping and injury covered the period from 1 October 2001 to 30 September 2002 (investigation period or IP). The examination of trends in the context of the injury analysis covered the period from 1 January 1998 to the end of the IP (period under consideration).

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. **Product concerned**

(9) The product concerned is silicon originating in Russia, currently classifiable within CN code 2804 69 00 (silicon content less than 99,99 % by weight).

(10) Silicon is produced in electric submerged arc furnaces with carbothermic reduction of quartz (silica) in the presence of various types of carbon reductants. It is marketed in the form of lumps, grains, granules or powder according to internationally accepted technical specifications as regards its purity. Silicon is used primarily by two industries, the chemical industry for the production of methylchlorosilanes or trichlorosilanes and tetrachlorosilicon, and the aluminium industry for the production of aluminium alloys, primary and secondary smelters, intended for the production of casting alloys for different industries, in particular the automotive industry. Silicon with a higher purity, that is containing by weight not less than 99,99 % of silicon, used mostly in the electronic semiconductor industry, falls under a different CN code and it is not covered by this proceeding.

2. **Like product**

(11) All Russian exporting producers cooperating in the investigation argued that silicon produced in Russia and exported to the Community market could not be considered comparable with that produced in the Community. In particular, they claimed that the silicon manufactured in Russia was of a much lower quality than that produced by the Community industry due to differences in its chemical composition.

(12) The Commission considers that, despite some differences in the chemical composition and purity of the product produced, silicon produced in the Community, in Russia, and indeed in the analogue country (Norway) is essentially the same product, since the chemical differences relate to trace elements and do not alter the fundamental nature of the product. It was also found that the silicon from the EU, Russia and Norway all had the same physical characteristics and that they were all sold to different user groups for different applications. Quality differences were taken into account when comparing exports from Russian producers with the product produced and sold in the EU market. The claim is therefore provisionally rejected.

(13) Accordingly it is provisionally considered that silicon manufactured in Russia and sold domestically as well as that exported to the Community, the silicon sold on the domestic market of Norway and that manufactured and sold in the Community by the Community industry have basically the same physical, chemical and technical characteristics and the same uses. It is therefore provisionally concluded that these products constitute one like product within the meaning of Article 1(4) of the basic Regulation.

(14) One Russian exporting producer claimed that the product control number (PCN) table provided by the Commission in the anti-dumping (AD) questionnaire did not include sufficient details of the chemical composition of the different types of silicon and it was therefore not possible to make a proper comparison of the different grades of silicon. As this claim was substantiated by a concrete proposal well after the deadline for returning the reply to the AD questionnaire, the Commission can not, at this stage of the proceeding, make the necessary analysis to justify a modification to the PCN table in the questionnaire. Nevertheless, the Commission will continue to analyse this issue in more depth during the remainder of the proceeding.

C. **DUMPING**

1. **Normal value**

(a) *Market economy treatment*

(15) As the current investigation was initiated before the date of entry into force of the amendment to the basic Regulation, i.e. by Regulation (EC) No 1972/2002, the new regime defined by this amendment does not apply to the present investigation. Therefore, pursuant to Article 2(7)(b) of the basic Regulation normal value was determined in accordance with paragraphs 1 to 6 of Article 2 for those exporting producers which were able to show that they met the criteria laid down in Article 2(7)(c) of that Regulation, i.e. that market economy conditions prevailed in respect of the manufacture and sale of the like product concerned.

(16) Claims for MET were received from all cooperating Russian exporting producers. The claims were analysed on the basis of the five criteria required by Article 2(7)(c) of the basic Regulation. The investigation showed that all three companies fulfilled the required criteria.

(17) The Community industry was given the opportunity to comment and in particular questioned whether the raw material prices were market prices. The subsequent investigation showed that prices for the main raw materials of the three Russian exporting producers were in line with world market prices as well as with the purchase prices of the Community industry. With regard to electricity prices it was clearly indicated that, should any distortion appear in the course of the further investigation, this would be corrected by an appropriate adjustment.

(18) However, in view of the fact that the cooperating Russian exporting producers represented 100 % of the Russian production of silicon, and all received market economy status, the use of analogue country's items was not necessary.

(b) *Determination of normal value*

(19) 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. The comparison showed that domestic sales were representative.

(20) For each type sold by the exporting producers on their domestic markets and found to be directly comparable with the type of the product concerned 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 the product concerned 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 type exported to the Community.

(21) The Commission subsequently examined whether the domestic sales of each company could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(22) An examination was made as to whether the domestic sales of each type of the product concerned 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 type in question. In cases where the sales volume of silicon, 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 silicon 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.

(23) In cases where the volume of profitable sales of any type of silicon 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.

(24) 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.

(25) With regard to the manufacturing costs, and in particular energy costs, it was found that the price charged by Russian electricity suppliers to two silicon producers could not reasonably reflect the costs associated with the production of electricity, when compared to prices of representative electricity producers in the Community, the analogue country and Russia, including those in Russia. It was therefore concluded that the energy cost was not reliable for these two producers. It was therefore provisionally decided to use the power price charged to another producer in Russia.

(26) As regards SG & A and profits, in accordance with Article 2(6) of the basic Regulation, the amounts for SG & A and profits used were those pertaining to the exporting producer concerned.

2. **Export price**

(27) All three cooperating exporting producers sold most of the product concerned to importers, located in the European Union (United Kingdom), Switzerland and the British Virgin Islands. On the basis of the information available at this stage of the proceeding, these importers must be considered independent. Therefore the export prices for the three cooperating exporting producers were established provisionally on the basis of their sales prices to these importers.

3. **Comparison**

(28) For the purposes of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences that were claimed and demonstrated to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made in respect of level of trade, inland freight, ocean freight, packing, credit costs and other charges, such as handling and loading and customs declarations. Two companies requested an adjustment for differences in quantities. This adjustment was not granted, as these differences in quantities have been taken into account by granting the level of trade adjustment for different types of customers. One company requested an adjustment for differences in physical characteristics. Within the evidence given for the request, it was found that more than 95 % of the types were sold to both markets, the European Community and domestic. Therefore, a comparison was made within the PCNs having similar characteristics. Consequently, an adjustment for differences in physical characteristics could not be granted, since they were not sufficiently substantiated on a transaction by transaction basis.

4. **Dumping margin**

(29) In accordance with Article 2(11) of the basic Regulation, the dumping margin was established on the basis of a comparison of the weighted average normal value with the weighted average export prices, as determined above. This comparison showed the existence of dumping. The provisional dumping margin was expressed as a percentage of the cif Community frontier price duty unpaid.

(30) With regard to SKU LLC and ZAO Kremny, as they both belong to the same group (SUAL), only one weighted average dumping margin has been calculated, as 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.

(31) The provisional dumping margins are:

OJSC 'Bratsk Aluminium Plant' (RUSAL group)	24,0 %
SKU LLC, Sual-Kremny-Ural and ZAO Kremny (SUAL group)	33,4 %

(32) As the level of cooperation for Russia was 100 %, the residual provisional dumping margin was set at the same level as that of the highest margin level of a cooperating company, i.e. 33,4 %.

D. **INJURY**

1. **Definition of the Community industry**

(33) The three complainant Community producers replied to the questionnaires and fully cooperated in the investigation. During the IP they represented 100 % of the Community production. It was found that, during the IP, one of the three complainant Community producers imported the product concerned from other third countries, principally from South Africa. This Community producer imported the product concerned essentially to supplement products supplied to their customers. These imports decreased over the period under consideration, particularly between 1998 and 1999 when they dropped by half, following the installation of new Community production facilities by the producer concerned and a strategic commitment to the EU silicon market. During the IP the quantities imported represented, by volume, only 2,1 % of the Community industry's sales of silicon within the Community (3,5 % of the sales of the producer in question). In respect of production, the percentages are 1,9 % and 3,2 % respectively. In view of the small proportion represented by those imports, it is concluded that they do not affect the status of Community producer for the producer in question.

(34) On this basis, the three complainant Community producers are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

2. **Injury**

2.1. Community consumption

(35) Community consumption was based on the combined volume of supplies made by the Community industry in the Community, imports from other third countries (based on Eurostat), as well as verified sales into the Community from the country concerned.

TABLE 1

Community consumption (based on sales volumes)

	1998	1999	2000	2001	IP
Tonnes	290 684	325 234	388 938	373 950	371 540
Index *Y/Y trend*	*100*	*112* *+ 12 %*	*134* *+ 20 %*	*129* *– 4 %*	*128* *– 1 %*

Source: verified questionnaire replies and Eurostat.

(36) EU consumption of silicon peaked in the year 2000 at almost 390 000 tonnes before falling back again in both 2001 and the IP to end at 371 540 tonnes. In total there was a 28 % increase over the whole period under consideration.

2.2. Imports concerned

(a) *Volume of the imports concerned*

(37) Between 1998 and the IP, the volume of imports into the EU originating in Russia developed as follows:

TABLE 2

Volume of imports concerned

	1998	1999	2000	2001	IP
Tonnes	10 798	6 272	14 172	16 907	18 006
Index	*100*	*58*	*131*	*157*	*167*
Y/Y trend		*– 42 %*	*– 126 %*	*+ 19 %*	*+ 7 %*

Source: verified questionnaire replies.

(38) Between 1998 and 1999 Russian imports of silicon fell by over 40 % (or by 4 526 tonnes). From 1999 onwards, throughout the remainder of the period under consideration, imports increased in absolute terms year on year. These imports increased particularly strongly in 2000 (by 7 900 tonnes) and increased again in both 2001 (by 2 735 tonnes) and during the IP (by 1 099 tonnes), even in the face of declining EU consumption in 2001 and the IP. As a result, imports from Russia increased by over 67 % in total over the period under consideration.

(b) *Market share of the imports concerned*

(39) The market share held by imports from the country concerned developed as shown below:

TABLE 3

Market share of the imports from Russia (based on sales volume)

	1998	1999	2000	2001	IP
% age of EU market	3,7	1,9	3,6	4,5	4,8
Y/Y trend (% age points)		*– 1,8 %*	*+ 1,7 %*	*+ 0,9 %*	*+ 0,3 %*

Source: verified questionnaire replies and Eurostat.

(40) The market share of imports from Russia followed a similar increasing trend to that seen for the volume of imports, albeit on a lesser scale due to the dampening effect of increasing EU consumption. Over the period under consideration, the market share of the dumped imports increased by 1,1 percentage points or by nearly a third.

(41) Between 1998 and 1999, a reduced export volume caused the Russian producers to lose almost half of their market share (from 3,7 % to 1,9 %). This loss was largely recouped in the following year, and market share further increased thereafter to peak in the IP at 4,8 %.

(c) *Average prices of dumped imports*

(42) The price evolution of Russian silicon at the Community border level and sold on the Community market is shown below.

TABLE 4

Average price of dumped imports

	1998	1999	2000	2001	IP
EUR	1 048	963	1 131	999	929
Index	*100*	*92*	*108*	*95*	*89*
Y/Y trend		*– 8 %*	*+ 17 %*	*– 12 %*	*– 7 %*

Source: Eurostat.

(43) Over the period under consideration the average price of dumped imports decreased by 11 %. The price decrease was particularly evident (-19 %) between 2000, when the average price reached a high of EUR 1 131 per tonne, due to increased EU demand, and the IP, which saw the lowest price of EUR 929 per tonne.

(d) *Price undercutting and price depression*

(44) For the determination of price undercutting data pertaining to the IP were analysed. As outlined in recital 10, there are various types of silicon which are produced and sold on the Community market both by the Community industry and by exporting producers in Russia. Price undercutting was established on the basis of a direct comparison of the sales prices for each type of silicon charged by the Community industry and the sales prices charged by the exporting producers concerned. For each type all prices were compared after deducting discounts and rebates.

(45) The sales prices for the exporting producers concerned were those at cif Community border level, to which were added customs duties and unloading costs. The sales prices of the Community industry were adjusted where necessary to an ex-works level, i.e. excluding transport costs.

(46) The results of the comparison, on a weighted-average to weighted-average basis, showed that the average price undercutting margins, expressed as a percentage of the Community industry's average selling prices, were over 11 % for Russia.

(47) This level of undercutting should also be seen in light of the fact that prices decreased significantly over the period under consideration and, in view of the losses incurred by the Community industry, can be considered to be depressed.

2.3. Economic situation of the Community industry

(a) *Preliminary remark*

(48) In accordance with Article 3(5) of the basic Regulation, all economic factors and indices having a bearing on the state of the industry on the EU market were examined.

(b) *Production, production capacity and capacity utilisation*

TABLE 5

Production

	1998	1999	2000	2001	IP
Tonnes	107 303	129 285	143 268	147 811	143 818
Index	*100*	*120*	*134*	*138*	*134*
Y/Y trend		*+ 20 %*	*+ 14 %*	*+ 3 %*	*– 3 %*

Source: verified questionnaire replies of Community industry.

(49) Over the period under consideration Community industry production increased by 34 %, but did fall by 3 % between 2001 and the IP. During the IP Community industry production of silicon represented 38,7 % of Community consumption.

TABLE 6

Production capacity

	1998	1999	2000	2001	IP
Tonnes	125 000	142 300	158 000	165 600	162 000
Index	*100*	*114*	*126*	*132*	*130*
Y/Y trend		*+ 14 %*	*+ 12 %*	*+ 5 %*	*– 2 %*

Source: verified questionnaire replies of the Community industry.

(50) Production capacity increased each year, except for the IP when there was a small fall. In all, capacity increased by a total of 30 % over the period under consideration as a result of investment decisions made in 1998.

TABLE 7

Capacity utilisation

	1998	1999	2000	2001	IP
% age utilised	85,8	90,9	90,7	89,3	88,8
Index	*100*	*106*	*106*	*104*	*103*

Source: verified questionnaire replies of the Community industry.

(51) The above table shows that during the period under consideration capacity utilisation increased by three percentage points.

(c) *Sales volume and sales prices*

TABLE 8

Sales volume

	1998	1999	2000	2001	IP
Tonnes	86 718	114 587	133 568	128 219	136 421
Index	*100*	*132*	*154*	*148*	*157*
Y/Y trend		*+ 32 %*	*+ 17 %*	*– 7 %*	*+ 6 %*

Source: verified questionnaire replies of the Community industry.

(52) The Community industry's sales to unrelated customers in the Community increased by 57 % between 1998 and the IP. In 2001 the Community industry lost sales volumes in an attempt to maintain prices in the face of falling prices of silicon from Russia. During the IP this trend was reversed as the Community industry was forced to react to price pressures in order to maintain sales volumes.

(53) Sales to related companies remained stable and represented less than 6 % of all sales of silicon during the period under consideration.

TABLE 9

Community industry sales prices of silicon

	1998	1999	2000	2001	IP
Euro/Tonne	1 415	1 184	1 231	1 271	1 185
Index	*100*	*84*	*87*	*90*	*84*
Y/Y trend		*– 16 %*	*+ 4 %*	*+ 3 %*	*– 7 %*

Source: verified questionnaire replies of the Community industry.

(54) In the period 1998 to the IP, the average sales prices of silicon charged by the Community industry on the Community market saw significant falls of 16 %. The year on year trend was similar to that seen for the prices of imports from Russia, except for 2001 when Russian prices fell but the Community industry's prices rose slightly. Average prices fell sharply in 1999 to reach a low of EUR 1 184 per tonne, before recovering to EUR 1 271 per tonne by 2001. Prices then fell by 7 % during the IP, to finish at an equivalent level to that seen in 1999.

(d) *Market share*

TABLE 10

Market share

	1998	1999	2000	2001	IP
% age of market	29,8	35,2	34,3	34,3	36,7
Index	*100*	*118*	*115*	*115*	*123*

Source: verified questionnaire replies of the Community industry.

(55) The market share held by the Community industry increased from 29,8 % in 1998 to 36,7 % in the IP in line with their increased production and sales volumes. A large increase took place between 1998 and 1999 (+5,4 % of the market) with the introduction of new EU manufacturing facilities. A smaller rise (+2,4 percentage points) took place between 2001 and the IP.

(e) *Stocks*

TABLE 11

Stocks

	1998	1999	2000	2001	IP
Tonnes	32 768	33 140	27 803	33 186	23 118
Index	*100*	*101*	*85*	*101*	*71*
Y/Y trend		*+ 1 %*	*– 16 %*	*+ 19 %*	*– 30 %*

Source: verified questionnaire replies of the Community industry.

(56) The above table shows that during the period under consideration stocks were reduced by 29 %. Apart from the year 2000, stocks were at around 33 thousand tonnes, until the IP when they fell to just over 23 thousand tonnes.

(57) Stocks, which had represented around 38 % of the Community industry's EU sales volume in 1998, fell to below 17 % of EU sales during the IP. Part of this fall is explained by the fact that stocks usually built up at the end of each calendar year to allow for reduced production volumes during the winter months when energy costs peak. The IP ended in September, i.e. before the full effect of stock build up is felt.

(f) *Profitability and cash flow*

(58) During the period under consideration profitability expressed as a percentage of net sales value developed as follows:

TABLE 12

Profitability

	1998	1999	2000	2001	IP
% age profit	12,6	1,8	5,0	1,7	– 2,1
Y/Y trend		*– 10,8 %*	*+ 3,2 %*	*– 3,3 %*	*– 3,8 %*

Source: verified questionnaire replies of the Community industry.

(59) Save for the year 2000, profitability deteriorated continuously over the whole period from a profit of 12,6 % in 1998 to a loss of 2,1 % in the IP. In 2000 increased sales prices, plus lower production costs due to increased investments allowed for an improved return on sales. In 2001 profits fell due to rising production costs, particularly in energy and consumable prices, not being reflected by a comparable increase in sales prices which saw only a small rise. In fact average costs rose by EUR 80 per tonne that year, whilst only EUR 40 per tonne could be passed on to their customers. During the IP prices fell, sending the Community industry into a loss-making situation despite a slight decrease in average cost of production.

TABLE 13

Cash flow

	1998	1999	2000	2001	IP
EUR '000	17 005	8 962	15 028	5 876	6 070
Index	*100*	*53*	*88*	*35*	*36*
Y/Y trend		*– 47 %*	*+ 68 %*	*– 61 %*	*+ 3 %*

Source: verified questionnaire replies of the Community industry.

(60) Cash flow deteriorated by 64 % during the period under consideration, and followed a similar trend as that for profitability.

(g) *Investments, return on investments and ability to raise capital*

TABLE 14

Investments

	1998	1999	2000	2001	IP
EUR '000	32 750	15 539	15 625	8 559	7 072
Index	*100*	*47*	*48*	*26*	*22*
Y/Y trend		*– 53 %*	*+ 1 %*	*– 45 %*	*– 17 %*

Source: verified questionnaire replies of the Community industry.

(61) The significant investments during the period 1998 to 2000 were primarily aimed at increasing production capacity on the back of the favourable conditions in 1998 and on a positive development of the Community silicon which the Community industry had expected at that time. Indeed these expected improvements can be seen in the trend for Community consumption which increased by 34 % in this period (1998 to 2000).

(62) The investigation showed that the operating return on investments, including cumulated depreciation, during the period under consideration deteriorated in line with the development of profitability.

TABLE 15

Return on investments and ability to raise capital

	1998	1999	2000	2001	IP
% age return	39,1	14,7	20,4	9,1	– 5,7
Y/Y trend		*– 24 %*	*+ 6 %*	*– 11 %*	*– 15 %*

Source: verified questionnaire replies of the Community industry.

(63) The companies which make up the Community industry are all part of larger groups. As such their ability to raise capital is determined by the financial situation of these groups as a whole. These larger groups reported no problems with raising capital during the period under consideration. However, problems were reported with receiving funding for new projects in the silicon sector. This is supported by verified data as seen in recital 61, where investments in the IP were only 22 % of their level in 1998.

(h) *Employment, productivity and wages*

TABLE 16

Employment

	1998	1999	2000	2001	IP
Employees	588	634	673	682	685
Index	*100*	*108*	*114*	*116*	*116*
Y/Y trend		*+ 8 %*	*+ 6 %*	*+ 2 %*	*+ 0 %*

Source: verified questionnaire replies of the Community industry.

(64) The above table shows that employment increased by 16 % during the period under consideration, due to the increased production capabilities, but did not grow further during the IP.

(65) Given that the percentage increase in production was greater than the percentage increase in employment, productivity increased by 15 % over the same period, as shown in the table below:

TABLE 17

Productivity

	1998	1999	2000	2001	IP
Tonnes	182	204	213	217	210
Index	*100*	*112*	*117*	*119*	*115*
Y/Y trend		*+ 12 %*	*+ 5 %*	*+ 2 %*	*– 4 %*

Source: verified questionnaire replies of the Community industry.

(66) During the period under consideration the average wages of the employees of the Community industry increased by less than 1 % per annum i.e. by less than the rate of inflation.

TABLE 18

Wages

	1998	1999	2000	2001	IP
EUR/Employee	32 537	30 610	33 162	35 048	33 740
Index	*100*	*94*	*102*	*108*	*104*
Y/Y trend		*– 6 %*	*+ 8 %*	*+ 6 %*	*– 4 %*

2.4. Magnitude of dumping margins

(67) The impact on the Community industry of the magnitude of the actual margin of dumping cannot be considered to be negligible given the volume and the prices of the imports concerned. Indeed, the investigation showed that overall the imports originating in Russia were sold at appreciably dumped prices on the Community market during the IP. Price pressure on Community prices would obviously have been lower or even non-existent without dumping.

2.5. Growth

(68) Between 1998 and the IP the growth of the Community market was largely positive. The Community industry increased both sales volume and market share between 1998 and the IP. However, as explained above, the increase was mainly the result of a strategic decision to source more silicon from the Community rather than via third country. At the same time the imports from Russia significantly increased by around 8 200 MT and the increased market share of the low-priced dumped imports was 1,1 percentage points. Between 1999 and the IP, Russia increased its imports by 11 700 MT and its market share by 2,9 percentage points. Between 2000 and the IP, in a shrinking market, whilst Russian imports and market share continued to grow import price fell by 18 %.

2.6. Recovery from past dumping

(69) There is no evidence of any dumping activity on the Community market in the period prior to the period under consideration. Therefore, recovery from past dumping is not considered to be a relevant factor in the injury suffered by the Community industry.

2.7. Conclusion on injury

(70) Improvements occurred in respect of production volumes (+34 %), capacity (+30 %), utilisation of capacity (+3 percentage points), Community sales volume (+57 %), market share (+6,9 percentage points), stocks (-29 %), employment (+16 %), and productivity (+15 %). Conversely, sales prices fell (-16 %), profitability collapsed (-14,7 percentage points), cash flow was reduced (-64 %), investments dried up (-78 %), return on investment became negative (-44,8 percentage points), and average wages grew at less than the rate of inflation (<1 % per annum).

(71) However, on closer examination it can be seen that the main positive developments for the Community industry took place between 1998 and 2000. From 2000 onwards, real improvements were seen solely for stocks (-14 %). All other indicators either rose only slightly, remained stagnant, or indeed fell over this period. It is during this period that the Commission considers that the material injury suffered by the Community industry is mostly apparent.

(72) The improvements seen between 1998 and 2000 can be directly attributed to decisions taken by the Community industry in 1998 to invest in additional Community production facilities (between 1998 and 2000 EU production capacity increased by 26 % from 125 000 tonnes to 158 000 tonnes). At that time, anti-dumping measures had been recently extended for a further five years on imports of silicon from the People's Republic of China, following an expiry review ([1]). The Community industry was also making good profits on its EU sales of silicon (see recital 58).

(73) In light of the foregoing, in particular the decrease in profitability and sales prices suffered by the Community industry over the whole period under consideration, and the trend for other injury indicators from 2000 to the IP, it was provisionally concluded that the Community industry suffered material injury within the meaning of Article 3 of the basic Regulation.

E. **CAUSATION**

1. **Introduction**

(74) In order to reach its provisional conclusion as to whether there is a causal link between the dumped imports and the injury suffered by the Community industry, the Commission first examined the impact of the dumped imports from the country concerned on the situation in that industry.

(75) Secondly, known factors other than dumped imports, such as increased production costs of the Community industry, there alleged absence of competition between silicon originating in the EU and that coming from Russia, the fact that the Community industry itself was alleged to import silicon from Russia, the increased export activity of the Community industry, a decline in EU consumption for silicon from 2001 onwards, alleged circumvention of Chinese anti-dumping measures either via Russia or other third countries, and the imports into the Community from other third countries, which could at the same time be injuring the Community industry, were also analysed in order to ensure that possible injury caused by other factors was not attributed to the dumped imports.

2. **Effect of the dumped imports from the country concerned**

(76) During the period under consideration, the volume of dumped imports of Russian silicon into the Community increased by 67 % and their market share rose by 1,1 percentage points. Between 2000 and the IP, when the injury suffered by the Community industry was more acute, imports increased by 27 %. At the same time Russian imports increased their market shares in each year, by 1,7 percentage points in 2000, 0,9 percentage points in 2001, and 2,4 percentage points in the IP (see recital 39. The comparable figures for the Community industry are -0,9 percentage points in 2000, 0,0 percentage points in 2001, and 0.3 percentage points in the IP (see recital 55). Therefore between 2000 and the IP, Russian imports increased their share of the market by 1,2 percentage points, whilst the Community industry gained 2,4 percentage points.

(77) Russian prices decreased overall by 11 % between 1998 and the IP. However between 1998 and 2000 the price of Russian imports actually rose by 8 %, due to increasing Community demand for silicon. Again, it can be seen that the real problems came between 2000 and the IP, when Russian prices slumped 18 % to finish at their lowest level seen over the whole period under consideration. This development of prices should be seen in light of the nature of the product under investigation. Silicon is a commodity product with transparent prices, where users are well aware of market developments, and where even small volumes of low-priced product can have a significant impact on the whole market. In line with Russian prices, Community industry prices over the same period fell by 16 %, although they were on average 27 % more expensive than Russian prices. The price pressure is further evidenced by the price undercutting practised by the Russian exporting producers and the prices of the Community industry, which were depressed to a considerable extent during the IP.

([1]) Council Regulation (EC) No 2496/97 (OJ L 345, 16.12.1997, p. 1).

(78) The above developments coincided with the significant declining trend of the main economic indicators pertaining to the Community industry, particularly sales prices which decreased by 4 %, and profitability which decreased considerably from a profit of 5 % to a loss of 2,1 %.

(79) Finally, it should be noted that the exporting producers alleged that silicon produced in Russia and exported to the EU is sold to different customers and in different markets to that produced and sold by the Community industry. It was claimed that Russian silicon is sold predominantly to aluminium producers, whilst it is chemical users which are of particular importance to the Community industry. One exporting producer even claimed that Russian silicon is sold exclusively to secondary aluminium producers.

(80) This claim was not supported by the facts. It was found that Russian silicon was sold to all user groups, i.e. to chemical users as well as to primary and secondary aluminium producers, and that the Community industry does face competition in all market segments.

(81) It is therefore provisionally concluded that there is competition between silicon produced and exported by Russian producers and that produced by the Community industry; that these Russian imports were made at dumped prices, and that they caused injury to the Community industry. It is provisionally concluded that this argument is therefore unfounded.

3. **Effect of other factors**

3.1. Increased production costs of the Community industry

(82) The investigation showed that the average cost of production for silicon produced by the Community industry developed as follows:

TABLE 19

Average cost of production

	1998	1999	2000	2001	IP
EUR/Tonne	1 236	1 163	1 170	1 250	1 210
Index	*100*	*94*	*95*	*101*	*98*
Y/Y trend		*– 6 %*	*+ 1 %*	*+ 7 %*	*– 3 %*

Source: verified questionnaire replies of the Community industry.

(83) During the period under consideration the average cost of production for the Community industry actually fell 2 % in real terms. The average cost fell from the EUR 1 250 per tonne level in 1998 to the EUR 1 160 to EUR 1 170 level in 1999 and 2000 due to economies of scale resulting from the increased capacity. This rose again to the EUR 1 200 to EUR 1 210 per tonne level in 2001 and the IP due to increasing input costs particularly for energy as well as for consumables. However, had sales prices merely remained at the level for the year 2000 (at EUR 1 231 per tonne), the Community industry would have enjoyed a profit margin of 1,7 %. In reality this margin could be expected to be even higher in a normal market had sales prices been able to respond to the dual pressures of increasing input costs and normal inflation.

(84) It is therefore provisionally considered that the development of average cost of production did not contribute in any significant way to the material injury suffered by the Community industry.

3.2. Community industry imports of Russian silicon

(85) Contrary to the claims made, no evidence of the Community industry having purchased and imported Russian origin silicon was found. There were examples of companies related to the Community industry buying Russian product for their own consumption. However, these purchases were not in any way under the control or influence of the Community industry.

(86) It is therefore provisionally considered that the material injury suffered by the Community industry is not self-inflicted.

3.3. Community industry export activity

(87) The investigation showed that the export activity of the Community industry developed as follows:

TABLE 20

Community industry exports

	1998	1999	2000	2001	IP
Tonnes	6 446	6 776	5 803	6 285	3 209
Index	*100*	*105*	*90*	*98*	*50*
Y/Y trend		*+ 5 %*	*– 14 %*	*+ 8 %*	*– 49 %*

Source: verified questionnaire replies of the Community industry.

(88) It is relevant to consider the export performance of the Community industry, as certain injury indicators can be influenced by this indicator, e.g. production and capacity utilisation.

(89) Community industry exports of silicon fell by half over the period under consideration, mainly in the IP. This is a fall from less than 4,8 % of all sales in 2001 to less than 2,4 % during the IP. Whilst reduced export sales may have had some effect on the overall impact on the economic situation of the Community industry, the restricted volumes will make any influence equally restricted. It should also be emphasised that the current assessment of injury focussed exclusively on the situation of the Community industry on the Community market.

(90) It is therefore provisionally considered that the material injury suffered by the Community industry is not, in any significant way, a result of the export performance of the Community industry.

3.4. Decline in EU consumption

(91) Consumption actually increased by 81 000 tonnes (28 %) over the whole period under consideration, although between 2000 and the IP there was a slight decrease of 17 000 tonnes (6 %). As the injury suffered by the Community industry is particularly evidenced in terms of sales prices and profitability resulting from low priced dumped imports from Russia, such a trend is not considered to be a significant causal factor in the injury suffered by the Community industry.

3.5. Circumvention of Chinese measures

(92) It is alleged that injury to the Community industry is being caused by circumvention of the anti-dumping measures currently in force against silicon originating in China. This circumvention is said to occur by declaring Chinese product as originating in either Russia or other third countries in order to evade anti-dumping duties.

(93) As far as Russia is concerned, no basis for the allegation was found. The sales volumes of Russian origin silicon in the IP as declared by the cooperating exporters closely match, and indeed slightly exceed, the tonnage as reported by Eurostat. Accordingly, there appears to be no silicon imported from Russia that cannot be directly attributed to the cooperating exporters, which covered 100 % of production during the IP.

(94) It was found on the basis of the information available, that these imports were either at lower volumes, at higher average prices, or at lower volumes and higher average prices than were Russian imports during the IP.

(95) It is therefore provisionally considered that the material injury suffered by the Community industry is not a result of the circumvention, if any, of the anti-dumping measures currently in force against silicon originating in China.

3.6. Imports into the Community from other third countries

(96) Import volumes of silicon into the Community from countries other than Russia, together with their average prices, developed as follows:

TABLE 21

Imports into the Community from other third countries (volume)

Tonnes

	1998	1999	2000	2001	IP
Brazil	43 536	56 709	67 663	50 849	52 089
China	4 168	3 560	5 969	9 709	14 454
Norway	92 200	115 385	124 790	122 677	114 254
South Africa	12 234	6 225	5 539	6 203	2 674
Other third countries	41 029	22 495	37 236	39 385	33 643
Total	193 167	204 375	241 198	228 824	217 113

Source: Eurostat.

TABLE 22

Imports into the Community from other third countries (average price)

EUR/Tonne

	1998	1999	2000	2001	IP
Brazil	1 173	1 040	1 158	1 231	1 098
China	1 044	953	964	1 142	1 158
Norway	1 341	1 207	1 197	1 201	1 199
South Africa	1 198	1 161	1 241	1 149	1 149
Other third countries	1 273	1 205	1 165	1 210	1 156
Total	1 273	1 155	1 176	1 205	1 165

Source: Eurostat.

(97) It has been argued that injury to the Community industry was caused by imports into the Community from other third countries, in particular from Norway and Brazil, given their larger volumes and market shares compared with imports from Russia.

(98) It is true that, over the period under consideration imports from both countries were several times the level of Russian imports. However, between 2000 and the IP, the period when particular injury was suffered by the Community industry, the imports from these countries actually declined. More importantly, the average price of these imports was also significantly above the Russian prices (+29 % for Norway and +18 % for Brazil). Whilst imports from a number of other third countries, with the exception of Norway, undercut Community industry prices during the IP, these price differences are of a relatively minor nature and represent a normal premium that EU produced silicon would expect to achieve in comparison with imported material.

(99) It was further claimed that imports from South Africa and China also contributed to the injury suffered. However, the data clearly shows that imports form these countries were at lower volumes and at higher prices than Russian imports.

(100) It is therefore considered that imports into the Community from other third countries did not in any significant way contribute to the material injury suffered by the Community industry.

4. **Conclusion on causation**

(101) The dumped imports which increased during the period under consideration, especially between 2000 and the IP, as well as the price undercutting and the price depression found, had significant negative consequences on the situation of the Community industry, notably in terms of sales prices and profitability. The impact of the dumped imports on the situation of the Community industry, in an open market with transparent prices, is such that they caused material injury.

(102) Given the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the Community industry from the injurious effects of the dumped imports, it is provisionally confirmed that these other factors do not break the causal link between the dumped imports and the injury suffered by the Community industry.

F. **COMMUNITY INTEREST**

1. **Preliminary remarks**

(103) In accordance with Article 21 of the basic Regulation, it was provisionally examined whether the imposition of anti-dumping measures would be against the interest of the Community as a whole. The determination of the Community interest was based on an appreciation of all the interests involved, i.e. those of the Community industry, the unrelated importers/traders and the users of the product concerned to the extent that the relevant parties submitted the information requested in this respect.

(104) In order to assess the likely impact of the imposition of measures, the Commission requested information from all known interested parties. In particular questionnaires were sent to the Community industry, as well as to importers and users of the product concerned and to their associations.

(105) On this basis it was examined whether, despite the conclusions on dumping, injury and causation, compelling reasons exist which would lead to the conclusion that it is not in the Community interest to impose anti-dumping measures in this particular case.

2. **Interest of the Community industry**

(106) The Community industry has been suffering as a result of low priced dumped imports of silicon from Russia. In view of the nature of the injury suffered by the Community industry, which has lead, *inter alia*, to an important decrease of their sales prices and affected their profitability, the Commission considers that, in the absence of anti-dumping measures, a further deterioration in the situation of the Community industry is unavoidable. This will most likely entail further injury and in the medium term, potentially the retraction of that industry, bearing in mind the scale of profit deterioration during the period under consideration.

(107) If, however, anti-dumping measures are taken, this would reinstate fair trading conditions. Under these conditions the Community industry will be able to remain a viable silicon producer. This ability, together with the commitment of the Community industry to the EU market, was amply demonstrated in the years after 1997 by making investments in production facilities and reducing reliance on imports. At that time the Council had taken action to maintain fair market conditions by renewing the anti-dumping measures against silicon from the PRC. As a consequence the Community industry was able to make good profits and was willing to invest in the EU by installing new production facilities.

(108) The adoption of anti-dumping measures would therefore be in the interest of the Community industry.

3. **Interest of unrelated importers and users and possible impact on consumers**

(109) The Commission sent questionnaires to two known unrelated importers and 12 users of silicon in the Community, as well as one users' organisation. Neither unrelated importer cooperated with the proceeding.

(110) Only five of the unrelated users and the users' association submitted replies. The information provided by the five users represented 23 % of Community imports and 16 % of Community consumption of silicon during the IP. However, the information provided in the replies was of poor quality and did not allow a full evaluation of the impact of silicon on their costs.

3.1. Possible impact on importers

(111) In light of the complete absence of cooperation from unrelated importers, it is provisionally concluded that any negative impact from the proposed measures on importers is likely to be minimal.

3.2. Possible impact on users

(112) Users of the product under consideration are principally manufacturers of either silicon products or aluminium. Of the five users which cooperated, one was a manufacturer of silicones, whilst the other four were aluminium producers. A submission was also received from an association of aluminium producers in the Community.

(113) From the sketchy information provided by the cooperating users, an extrapolation suggests that silicon costs represented on average 10 % (varying between 8 % and 12 %) of their total turnover during the IP. Little information was provided for the average profit margin achieved by these users. However, it cannot be excluded that measures will have a negative impact on users. In the worst case, i.e. were duties to be passed on in full and result in a similar price rise across the whole market, the impact of the proposed measures on the costs of users could be in the order of 2,5 %. However, limited reliance should be placed on this figure given the paucity of information available.

(114) In view of the limited cooperation received from users, and bearing in mind the level of the measures proposed, it is concluded that the possible negative effects on users cannot be considered such as to outweigh the expected benefits for the Community industry.

3.3. Possible impact on consumers

(115) As the product concerned is an industrial commodity product, it appears unlikely that the proposed measures will have any impact on individual consumers.

4. **Competition and trade distorting effects**

(116) Some parties have alleged that the measures would reduce users' choice, and restrict availability of silicon on the Community market. It is true that the Community industry is unable to supply Community demand on its own. However, measures are designed to re-establish fair and effective competition on the Community market by correcting the distorting effects of the injurious dumping practised by the Russian exporting producers. Silicon originating in Russia will most likely still be available on the Community market. Important volumes, which are imported from other third countries, will also continue to be available. Thus users will continue to exercise choice between the competing products, albeit at non-dumped/non-injurious prices. Conversely, such freedom of choice would most likely be affected if the Community industry continued to suffer further injury as a result of non-imposition of anti-dumping measures and thus eventually vanish as a supplier of the product concerned.

(117) Not imposing measures in the present case would maintain and amplify the distortion of competition, resulting in a further deterioration of the situation of the Community industry. A contraction of the Community industry would lead to reduced competition and reduced choice for users on the Community market.

5. **Conclusion on Community interest**

(118) On the basis of the above facts and considerations it is provisionally concluded that there are no compelling reasons against the imposition of measures on imports of silicon originating in Russia.

G. **PROVISIONAL MEASURES**

1. **Provisional injury elimination level**

(119) Having established that the dumped imports under consideration have caused material injury to the Community industry and that there are no compelling reasons against the imposition of measures, the proposed duties should be imposed at a level sufficient to eliminate the injury caused without exceeding the dumping margins found.

(120) 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 of production and to obtain an overall pre-tax profit that could be achieved in the absence of dumped imports on the sales of the like product in the Community. In assessing this likely profit, the Commission looked at the profits earned by the Community industry between 1998 and 2000, before the full impact of Russian imports had been felt.

(121) On this basis it was provisionally found that a profit margin of 6,5 % on total turnover could be regarded as an appropriate minimum which the Community industry could reasonably expect to obtain in the absence of injurious dumping.

(122) It was argued that such a profit margin would be too high and that a margin of 2 % to 3 % would be more appropriate for companies operating in this sector, based on average profits achieved in recent years by companies operating in the chemical sector. It is noted that in 1998, prior to the effect of the injuriously dumped imports from Russia, the Community industry managed to achieve a healthy profit margin of 12,6 %. This suggests that silicon manufacturers are able to outperform other companies in the chemical sector. However, in light of changes to the Community market for silicon between 1998 and the IP, it is considered that the Community industry would not have been able to achieve this level of profit even in the absence of dumped imports. However, a 6,5 % profit margin is deemed to be reasonable in view of the development of profitability during the period under consideration. This profit margin would also allow the Community industry to make the necessary long-term investments.

(123) Accordingly, injury elimination levels were determined as the difference between the cost of production of the Community industry, increased by the abovementioned profit margin on the one hand, and the adjusted actual net sales price of the imported silicon on the other hand. This difference was then expressed as a percentage of the cif import price at the Community frontier customs duty unpaid. As a result of these calculations, injury margins of 25,6 % and 25,2 % were found.

2. **Proposed provisional anti-dumping duty**

(124) In light of the foregoing, and in accordance with the lesser duty rule set out in Article 7(2) of the basic Regulation, the provisional anti-dumping duty should be set at the level of the injury elimination level or of the dumping margin found, whichever is the lower. On this basis the following duties should be imposed:

OJSC 'Bratsk Aluminium Plant' (RUSAL group)	24,0 %
SKU LLC, Sual-Kremny-Ural and ZAO Kremny (SUAL group)	25,2 %

H. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of silicon with a silicon content less than 99,99 % by weight, falling within CN code 2804 69 00, originating in Russia.

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

Manufacturer	Rate of duty %	TARIC additional code
OJSC Bratsk Aluminium Plant, Bratsk, Irkutsk Region, Russia (belonging to the RUSAL Holding Group)	24,0	A464
SKU LLC, Sual-Kremny-Ural, Kamensk, Ural Region, Russia and ZAO Kremny, Irkutsk, Irkutsk Region, Russia, both belonging to the SUAL Holding Group	25,2	A465
All others	25,2	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 provisions of a security equivalent to the amount of the provisional duty.

Article 2

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

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month 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 Union*.

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, 10 July 2003.

For the Commission

Pascal LAMY

Member of the Commission