COMMISSION REGULATION (EC) No 1611/2003

of 15 September 2003

imposing provisional anti-dumping duties on imports of certain stainless steel cold-rolled flat products originating in the United States of America

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 1972/2002 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Present investigation

Initiation

(1) On 4 November 2002 a complaint was lodged by the European Confederation of Iron and Steel Industries (Eurofer), on behalf of producers representing a major proportion, in this case more than 80 %, of the Community production of certain stainless steel cold-rolled flat products. 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.

(2) Consequently, on 17 December 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 certain stainless steel cold-rolled flat products originating in the United States of America (hereinafter, the USA).

Investigation

(3) The Commission officially advised the exporting producers, the importers and the users known to be concerned, as well as the representatives of the exporting country concerned and the complainant Community producers, about 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 out in the notice of initiation.

(4) The Commission sent questionnaires to all Community producers, all exporters/producers, all importers and all users and providers of raw materials known to be concerned, as well as to all parties which made themselves known within the deadline set out in the notice of initiation. Replies to these questionnaires were received from six Community producers, one exporting producer, six related importers and seven users of certain stainless steel cold-rolled flat products. No unrelated importer or provider of raw materials replied to the questionnaire.

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

— Community producers

  — Ugine, SA, France

  — ThyssenKrupp, Acciai Speciali Terni, SpA, Italy

  — ThyssenKrupp Nirosta GmbH, Germany

— exporting producers

  — AK Steel Corporation, Middletown, Ohio, United States of America

— related importers

  — AK Steel Limited, Hertfordshire, United Kingdom.

(6) The investigation of dumping and injury covered the period from 1 January 2002 to 31 December 2002 ('the investigation period' or 'the IP'). As for the trends relevant for the assessment of injury, the Commission analysed the period from 1999 to the end of the investigation period ('the period considered').

(7) Upon initiation, the Commission advised all parties that, since initiation took place just before the end of the calendar year, it was more appropriate to select an investigation period coinciding with the calendar year, rather than the 12 months immediately prior to initiation, thus facilitating both the reporting by companies and the verification by the Commission. No party objected to this decision.

2. Product concerned and like product

General

(8) Cold-rolled flat products of ferritic stainless steels are manufactured in stainless steel plants according to the following process:

— melting of raw materials in electric furnace,

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ C 314, 17.12.2002, p. 3.

— decarburation and adjustment of composition,

— continuous casting in slab form,

— hot rolling, annealing and pickling,

— cold rolling,

— annealing and pickling,

— slitting to width required,

— packing and delivery.

(9) Cold-rolled flat products of ferritic stainless steels are mainly used in silencers and exhaust-gas emission-control systems by the automotive industry. Therefore, the most important use of these products is related to the manufacturing of exhaust-system components. Other important uses of cold-rolled flat products of ferritic stainless steel are household and automotive applications other than the mentioned exhaust systems.

Product concerned

(10) The product concerned by this proceeding is certain stainless steel cold-rolled flat products, i.e. chromium-ferritic steel, containing less than 0,15 % of carbon and 10,5 % or more and 18 % or less of chromium, flat rolled, not further worked than cold rolled, of stainless steel containing by weight less than 2,5 % of nickel in the standardised grades AISI 409/409L (EN 1.4512), AISI 441 (EN 1.4509) and AISI 439 (EN 1.4510), originating in the United States of America. Due to its characteristics, the product concerned is mostly used by the automotive industry for the production of exhaust systems. It falls within CN codes ex 7219 31 00, ex 7219 32 90, ex 7219 33 90, ex 7219 34 90, ex 7219 35 90, ex 7220 20 10, ex 7220 20 39, ex 7220 20 59 and ex 7220 20 99. All product types have the same basic physical, technical and chemical characteristics and are therefore one product.

Like product

(11) It is provisionally determined that the product produced in the United States of America and sold to the first independent customers in the Community has the same basic physical, technical and chemical characteristics as the product sold on both the USA domestic market and that produced by Community producers and sold on the Community market. All these products were therefore provisionally considered to be alike within the meaning of Article 1(4) of the basic Regulation.

B. **DUMPING**

(12) One company, representing more than 80 % of exports to the Community of the product concerned originating in the United States of America, replied to the questionnaire for exporting producers. Six companies in the Community related to this exporting producer also replied to the questionnaire for related companies. Another exporting producer informed the Commission of its willingness to cooperate but did not provide a reply to the questionnaire. It was therefore considered to be non-cooperating.

1. **Normal value**

(13) As far as the determination of normal value is concerned, the Commission first established whether the cooperating exporting producer's total domestic sales of certain stainless steel cold-rolled flat products were representative in comparison with its total export sales to the Community.

(14) The company reported domestic sales of the product concerned made by two business locations (North and South). However, it was found that most sales made by South were not sales of the product concerned. In addition, the company did not supply cost information for products sold by this location. Therefore, the few sales of the product concerned by South which represented less than 0,1 % of total quantities of the product concerned sold domestically were disregarded. Indeed, the remaining domestic sales were largely representative and, given their negligible volume, the inclusion of these sales would not have had any impact on the dumping calculation. Consequently, and in accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative since the total domestic sales volume of the exporting producer was at least 5 % of its total export sales volume to the Community.

(15) The Commission subsequently identified those types of certain stainless steel cold-rolled flat products, sold domestically by the company, that were identical or directly comparable with those types sold for export to the Community.

(16) For each type sold by the exporting producer on its domestic markets and found to be directly comparable with the type 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 certain stainless steel cold-rolled flat products 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 of certain stainless steel cold-rolled flat products exported to the Community.

(17) An examination was also made as to whether the domestic sales of each type could be regarded as having been made in the ordinary course of trade in accordance with Article 2(4) of the basic Regulation, by establishing the proportion of profitable sales to independent customers of the type in question. Where the sales volume of certain stainless steel cold-rolled flat products, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % 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. Where the volume of profitable sales of certain stainless steel cold-rolled flat products represented 80 % or less 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.

(18) In cases where the volume of profitable sales of any type of certain stainless steel cold-rolled flat products 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.

(19) Wherever domestic prices of a particular type could not be used to establish normal value, another method had to be applied. In view of the fact that no other exporting producer decided to cooperate in this proceeding, no information was available to the Commission regarding the domestic prices of another producer. Consequently, and in the absence of any other reasonable method, constructed normal value was used.

(20) 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.

(21) To this end, the Commission examined whether the SG&A incurred and the profit realised by the exporting producer concerned on the domestic market constituted reliable data. Actual domestic SG&A expenses were considered reliable since 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.

2. **Export price**

(22) All export sales of the product concerned to the Community were made via a related importer, which resold the product to both related and unrelated customers. Those related customers, in turn, resold the product concerned to other independent customers. Consequently, pursuant to Article 2(9) of the basic Regulation, the export price was constructed on the basis of the price at which the imported products were first resold to an independent buyer. Adjustments were made for all costs incurred between importation and resale by those importers, including SG&A costs, and assuming a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation. In the absence of any other more reliable information, the reasonable profit margin was provisionally estimated at 5 %. This was considered appropriate for this type of business.

3. **Comparison**

(23) 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.

(24) Adjustments to the normal value were claimed for discounts, rebates, inland freight, credit, after-sales expenses, technical support, customer R&D, indirect selling expenses and differences in variable costs of manufacturing.

(25) Regarding the allowances for technical support, customer R&D and indirect selling expenses, it could not be concluded, on the basis of the information made available, that these factors affected price comparability, in particular the claim that customers consistently paid different prices due to these factors. In addition, it could not be demonstrated that these expenses related exclusively to sales of the product concerned in the domestic market and that they did not benefit other products and/or other markets. On the basis of the above the allowances claimed had to be provisionally rejected, since they did not meet the requirements of Article 2(10).

(26) The company also claimed an allowance for differences in variable costs of manufacturing between domestic and export products. It should be noted that the comparison between domestic and export prices was made on the basis of identical or comparable types, i.e. on the basis of the same product characteristics. Consequently, this allowance was found to be unjustified and is thus provisionally rejected.

(27) Adjustments to the export price were made for ocean freight, inland freight and credit.

4. **Dumping margin**

(28) According to Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price. The provisional dumping margin expressed as a percentage of the cif import price at the Community border is:

— AK Steel Corporation, Middletown, Ohio, United States of America: 69,7 %.

(29) For those producers in the United States of America which neither replied to the Commission's questionnaire nor otherwise made themselves known, a 'residual' dumping margin was determined in accordance with Article 18 of the basic Regulation, on the basis of the facts available.

(30) In this case, since one company deliberately refrained from cooperating, the residual dumping margin was determined on the basis of the highest dumped export sales to the Community made in representative quantities. This approach was considered necessary in order to avoid giving a bonus for non-cooperation. On this basis, the residual provisional dumping margin, expressed as a percentage of the cif import price at the Community border, is 128,7 %.

C. **INJURY**

1. **Introduction**

(31) For the purpose of establishing whether or not the Community industry had suffered injury and for determining consumption and the various economic indicators relating to the situation of the Community industry, it was examined whether, and to what extent, the subsequent use of the Community industry's production of the product concerned had to be taken into account in the analysis.

(32) Indeed, the product concerned is sold by the Community industry to both (a) unrelated entities and (b) to entities in the same group of companies ('related entities'). As concerns related entities, there are two different categories: (i) entities which purchase the product concerned and use it as raw material for manufacturing a different product (mainly tubes), and (ii) entities which purchase the product concerned for its further processing according to the needs of the first independent customer whilst not transforming it into a different product altogether ('service centres').

(33) In this context, sales of the product concerned for use as raw material to manufacture other products for companies in the same group shall be considered as 'captive use', in so far as at least any of the following two conditions occur: (i) sales are not made at market prices or (ii) the customer within the same group of companies does not have a free choice of supplier. On the other hand, sales to unrelated customers are provisionally considered to form the 'free market'. In the course of the investigation it was provisionally found that sales to related entities which purchase the product concerned as raw material for manufacturing a different product had to be considered as captive sales; indeed although sales may be made at arms' length conditions, it was found that pursuant to the commercial policy of the companies, these related entities did not have a free choice of supplier.

(34) This distinction is relevant for the injury analysis, as products destined for captive use were found to be only indirectly affected by imports, as sales to captive customers are not exposed to direct competition with the USA imports. By contrast, in the case of the free market, sales were found to be in direct competition with imports of the product concerned.

(35) In order to provide as complete a picture as possible of the situation of the Community industry, data were obtained and analysed, to the extent possible, for the captive and free market taken together, and it was subsequently determined whether products were destined for captive use or for the free market. Indeed, production, capacity, capacity utilisation rates, investments, prices, profitability, cash flow, return on capital employed, ability to raise capital, stocks, employment, productivity, wages and magnitude of the dumping margin were analysed according to the complete activity regarding the product concerned. On the basis of the investigation, it was provisionally found that the abovementioned economic indicators could best be analysed by reference to both the free and captive markets, as in the present proceeding, the evolution of said indicators will not be affected by the fact that sales are addressed to either the free or the captive market.

(36) However, as regards the other injury indicators relating to the Community industry (i.e. sales, market shares and consumption) it was provisionally found that a meaningful analysis was possible only in respect of the situation on the free market, as these indicators can only be analysed in a meaningful way in a competitive environment.

2. **Definition of the Community industry**

(37) Of the six European Community producers of the product concerned, the following three have supported the complaint:

— Ugine, SA, France (UGINE),

— ThyssenKrupp Acciai Terni, SpA, Italy (TKAST),

— ThyssenKrupp Nirosta GmbH, Germany (TKN).

(38) As these three complainant cooperating Community producers represented 85 % of the Community production of the product concerned, they constitute the Community industry within the meaning of Articles 4(1) and 5(4) of the basic Regulation.

3. **Community consumption**

(39) Community consumption was established by adding together the volumes of sales on the free Community market of the Community industry, the sales volume of the remaining producers on the Community market, as contained in the responses to the questionnaires supplied by said producers and the volume of imports. The volume of imports was determined on the basis of Eurostat figures corresponding to the relevant CN codes in the present proceeding. Taking into account that these CN codes also include products other than the one concerned, in certain instances an apportionment of the import data on the basis of criteria set out in the complaint was made.

(40) Apart from the companies which constitute the Community industry and the other Community producers, the most significant players in the EU market for the product concerned are USA and Japanese companies. Imports from Japan represented 3 % of the free market during the IP.

(41) On this basis, Community consumption has increased from 157 099 tonnes in 1999 to 182 679 tonnes in the IP, i.e. an increase of 16 %.

4. **Imports from the country concerned**

Volume and market share ([1])

(42) Imports of the product concerned originating in the USA significantly increased in volume by 95 % throughout the period concerned. Sharp increases in imports in 2000 and 2001 were registered (85 % for 2000 and 43 % for 2001). In the IP imports decreased by 14 % but still represented more than the double of the 1999 volume. As a result, the share of the free market increased to 12-14 % over the same period.

Table 1

	1999	2000	2001	IP
Market Share USA Imports	4 to 6 %	9 to 11 %	15 to 17 %	12 to 14 %
Index	100	154	251	195

Prices

(43) The weighted average price of imports originating in the USA increased by 19 % between 1999 and the IP.

Undercutting

(44) The Commission examined whether the cooperating exporting producer in the country concerned undercut the prices of the Community industry during the IP.

([1]) For reasons of confidentiality ranges are given.

(45) The comparison between Community industry prices and export prices was made on the basis of sales transactions to the same clients at the same level of trade, i.e. Community industry delivered prices were compared with prices made by importers, related to the USA exporting producer, as indicated above in recital 22, to the first independent customer in the Community, including any custom duties paid, on the basis of the matching product types. This approach was considered justified because of the particular characteristics of the market for this type of product, in particular the fact that customers may easily shift from one supplier to another, the market is very transparent and prices may move downwards quickly. As a consequence, where prices are being undercut by the imports, this would normally only be identifiable for a very short time, since the prices of the Community industry would have to follow the trend in order not to lose a customer. It therefore seems appropriate to focus on the areas where direct competition took place. The only way to achieve this is to focus on clients that buy from both the USA company and the Community industry, so that price offers can be directly compared. In this sense, as developed below, it is highly illustrative that during the period considered, certain users ([1]) increased their purchases from the sole cooperating USA company considerably and reduced their purchases from the Community industry to a negligible level.

(46) Following this approach, it has been possible to make a price comparison based on 8 % of the export volume by the USA company, taking into account the European and AISI standardised grade designation, the thickness, the width, the edges and the finishing of the product concerned.

(47) The undercutting margin provisionally found on this basis, and expressed as a percentage of the Community industry's prices, amounts to 13,2 %.

5. **Situation of the Community industry**

Effects of past dumping or subsidisation

(48) No anti-dumping or countervailing duties were imposed on the product concerned during the period under consideration. Therefore, this indicator is not relevant in the present case.

Production

(49) Production for the total market (i.e. the free market and the captive market) increased from 188 633 tonnes in 1999 to 219 282 tonnes in the IP, i.e. by 16 %, with a dip in the year 2001.

Table 2

	1999	2000	2001	IP
Production	188 633	218 369	194 304	219 282
Index	100	116	103	116

Capacity and capacity utilisation rates

(50) Two of the Community producers used the same production lines for manufacturing the product concerned and for the production of several other stainless steel products. One of these companies is in the process of building new production facilities. The third company, which used one line of production almost exclusively for the product concerned, has registered an increase in its production capacity from an index of 100 during 1999 to 141 during the IP. The capacity utilisation rate for this producer fell from around 75 % in 1999 to around 50 % in the IP. Whilst, on the basis of the information available for the two producers, the capacity could not be allocated clearly to the product concerned, the information contained no evidence which could invalidate the conclusion that capacity utilisation had fallen.

([1]) During the IP these represented 13 % of total consumption and 47 % of exports by the sole cooperating USA company.

Investments

(51) The development of production capacity is mirrored by the development of investments. On this basis, overall investments increased from EUR 55 million to EUR 125 million in 2001 and reached EUR 79 million in the IP. Overall, they increased by 43 % throughout the period considered. Investments concerned mainly fixed assets such as new lines of production and a new mill, all aimed at increasing production efficiency.

Sales and market share

(52) Between 1999 and the IP the Community industry increased its sales to the free market in the Community from 110 115 to 116 768 tonnes, or by 6 %. This increase in percentage is, however, well below that of the increase in total consumption in the Community. Sales during the IP were below the 2000 level. While sales in the free market increased by only 6 %, sales in the captive market increased by 15 %. As captive customers have no choice of supplier, this increase appears to mirror the potential increase in the free market in the absence of dumping.

Table 3

Sales free market

	1999	2000	2001	IP
Sales on Community market (tonnes)	110 115	129 895	105 364	116 768
Index	100	118	96	106

Table 4

Captive sales

	1999	2000	2001	IP
Sales on Community market (tonnes)	60 647	69 555	63 547	69 630
Index	100	115	105	115

(53) The Community industry's share of the free market declined by six percentage points over the period considered, from 70 % to 64 %, which shows that the Community industry could not benefit fully from the positive development of the market. The loss of market shares corresponds to the increase in market shares of the imports originating in the country concerned (see recital 42).

Table 5

	1999	2000	2001	IP
Market share Community industry	70 %	69 %	64 %	64 %

Prices

(54) The Community industry's average sales price to the total market (the free and the captive market) increased by 12 % during the period concerned. While prices increased by 5 % in 2000 and 8 % in 2001, they remained stable and even decreased slightly between 2001 and the IP. Prices to the free market and to the captive market were at the same level (see above, recital 33).

Profitability

(55) The weighted average profitability of the Community industry increased from 4,4 % in 1999 to 7,5 % in the IP.

(56) While the development of profitability looks at first sight to be positive, a closer examination reveals that in fact profitability levels are indeed unsatisfactory. Attention must be paid to the peculiarities of the product concerned. The product concerned belongs to a market where profits are usually substantially higher than those obtained in the general stainless steel industry. The normally higher levels of profitability for the product concerned are the result of the following.

— The market for which the product concerned is destined (mainly the automotive exhaust systems market) is characterised by a largely stable demand and is shielded from the usual fluctuations of the economic cycle. Indeed, the product concerned contains at maximum a very low addition of nickel, which makes it cheaper than other stainless steel grades containing higher additions of said alloy element. The low cost of the product concerned, as compared to other stainless steel grades, makes the former an especially suitable substitution product during downwards periods in the economic cycle. As the total automobile production in the European Union has stagnated during the period considered (from 16 978 400 units produced in 1999 to 16 943 700 units produced in 2002), consumption of the product concerned has increased by 16 %, as indicated in recital 41. This arguably indicates that users of the product concerned, and their subsequent customers, have increased their purchases of the product concerned, hence decreasing the purchases of other more expensive stainless steel grades. This conclusion was confirmed by the Community industry companies in the course of the investigation.

— As already mentioned, contrary to most other stainless steel products, the product concerned contains at maximum a very low addition of nickel, a volatile cost element that fluctuates substantially, potentially leading to lower profit margins.

(57) The different pattern of profitability mentioned above is borne out by the current divergent trends in profitability reported by the Community industry companies for general stainless steel production on the one hand and for the product concerned on the other (see table 6 below).

Table 6

	1999	2000	2001	IP
Average pre-tax profit margin on turnover — total stainless steel production	0,8 %	5,6 %	- 2,1 %	3,4 %
Pre-tax profit margin on turnover (product concerned)	4,4 %	3,2 %	6,4 %	7,5 %

(58) The market for the product concerned is therefore characterised by much more robust profit and price levels.

Cash flow, return on capital employed and ability to raise capital

(59) The information on cash flow and return on investments was provided in respect of the total production of the Community industry companies, as two of them were unable to allocate this data to the product concerned.

(60) On this basis, aggregated net cash flow from operating activities has increased from minus EUR 22 357 710 in 1999 to EUR 188 109 683 in the IP.

Table 7

	1999	2000	2001	IP
Cash flow	- 22 357 710	106 262 747	157 262 838	188 109 683
Index	- 100	475	703	841

(61) This development was in line with the cash flow related to the product concerned that could be isolated for one company. However, it is not possible to arrive at a meaningful conclusion on the cash flow generated by the product concerned only, as two of the companies also use their production lines for the manufacturing of a variety of other stainless steel products and the depreciation cannot be allocated to each individual product. Average return on capital employed for the three companies has increased from 3,6 % in 1999 to 6,9 % in the IP.

Table 8

	1999	2000	2001	IP
Return on capital employed	3,6 %	20,5 %	1,6 %	6,9 %

(62) Finally, with regards to the ability to raise capital, it should be noted that the Community industry companies have been shown to rely on intra-group financing as their main source of debt finance, which suggests that the possibility of raising capital is not directly linked with the yearly performance of the companies and the resulting solvency situation. Therefore, the evolution of this indicator is not relevant for the purposes of the injury analysis. With regard to equity as a source of capitalisation for the company, it must be stated that none of the three companies is quoted on a stock exchange or any other kind of secondary market.

Stocks

(63) The evolution of stocks is not a meaningful injury indicator in the present proceeding. In fact, Community industry companies have declared that they only manufacture the product concerned to order, and thus do not maintain stocks, save for delivery or logistical reasons, and even then only in negligible quantities. Therefore, any evolution in stocks is only for logistical reasons, rather than due to market deterioration causes.

Employment and wages

(64) Employment in the Community industry decreased by 12 % during the period considered. Total wages increased by 5 % during the period concerned.

Productivity

(65) Productivity for the total market has increased by 31 % during the period considered. It increased by 17 % in 2000, remained practically stable in 2001 and increased again by 14 % in the IP, mirroring the substantial investment efforts made by the Community industry (see recital 49).

Growth

(66) Overall, it has to be noted that the Community industry's market shares in the free market fell by 6 %, which shows that its growth lagged significantly behind the growth of the overall market (which grew by 16 %).

Magnitude of the dumping margin

(67) 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 country concerned, this impact cannot be considered negligible.

6. **Conclusion on injury**

(68) Imports from the USA have increased considerably, both in absolute terms and in terms of market share. Indeed, during the period considered, they gained between six and eight percentage points in market share. Moreover, these imports had a depressing effect on prices which is evident, *inter alia*, from the significant price undercutting found in areas where both the USA exporter and the Community industry competed for the same customers.

(69) Whilst many of these economic indicators for injury show a positive trend (i.e. prices, profitability, sales, investment, cash flow, return on investment, capacity, productivity), a more in-depth analysis nevertheless points to a situation of material injury. First of all, the Community industry's position in the market was significantly weakened, which is demonstrated by a substantial loss of market share. Moreover, and as outlined above, the prices of the Community industry decreased between 2001 and the IP which in turn resulted in lower levels of profitability than found in 1997 in the absence of dumping, despite substantial improvements in productivity which were achieved by a reduction in staffing levels and by investments. Furthermore, the substantial dumping margin of 69,7 % shows that in order to eliminate the dumping, the exporting producer would have to increase its export price by 69,7 %, which would result in a significant decrease in its market share. It is reasonable to conclude that the Community industry would be able to fill in most, if not all, of the market share left by the exporting producer. Finally, it should be pointed out that prices to the captive market are likewise affected by dumped imports. Indeed the investigation has shown that prices to captive customers are by contract fixed to reflect market conditions. Being part of the same group as the Community industry, it was found that, in order not to jeopardise overall group competitiveness, the Community industry would charge prices similar to those it charged to independent customers.

(70) Therefore, it is provisionally concluded that the Community industry has suffered material injury.

D. **CAUSATION**

1. **Introduction**

(71) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of the product concerned originating in the country 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. **Effect of the dumped imports**

(72) Imports from the USA have increased considerably during the period concerned, by 127 % in terms of volume, and by between six and eight percentage points in terms of market share. Prices of imports originating in the USA considerably undercut Community industry prices (see above, recital 44 and following) by 13,2 %.

(73) The effects of dumped imports can also be illustrated by the decision of some users, representing 13 % of total consumption during the IP, to switch from the Community industry and purchase from USA producers. Whilst these consumers used to purchase only marginal quantities from USA producers at the beginning of the period considered, they now purchase up to 47 % of the exports to the Community of the sole cooperating USA producer. This underlines the fact that over the period considered, the USA producer increased its market share at the expense of the Community industry.

(74) Overall, between 1999 and the IP, the Community industry's loss of market share of six percentage points corresponds to the increase in market share of USA imports. In particular, in 2001, sales by the Community industry decreased by five percentage points in terms of market share when compared with the previous year, whereas at the same time imports from the USA increased by between six and seven percentage points. Conversely, sales by the Community industry to captive customers have remained stable since 2000.

(75) The loss of market shares and insufficient price levels also coincided with the injurious situation of the Community industry evidenced by the insufficient level of profitability and the unfavourable development of wages and employment.

3. **Effect of other factors**

Imports from other third countries

(76) Import volumes from other third countries increased from 1 425 tonnes in 1999 to 5 893 tonnes in the IP, their market share increasing from 0,9 % in 1999 to 3,2 % in the IP. Most of these imports originated in Japan. However, on the basis of Eurostat data, the average prices of the product concerned as imported from third countries were higher than the corresponding prices of imports originating in the USA and European Union. Therefore, these imports cannot have caused any injury to the Community industry.

Non-complainant Community producers

(77) Non-complainant Community producers of the product concerned held a market share of around 18 % during the IP. During the period concerned, their sales volume decreased by 4 % and their market share fell by four percentage points. In addition, the average prices of non-complainant producers are at the same level as the complainant producers' average prices. All this suggests that they are in a similar situation to the Community industry, i.e. that they have suffered injury from the dumped imports. Therefore, it cannot be concluded that other Community producers caused material injury to the Community industry.

Quality and service advantages of the product concerned imported from the USA

(78) The investigation showed that the product concerned imported from the USA had no substantial quality or technical advantages.

(79) In addition, as shown by the Community industry companies, the fact that the Community industry does not hold stocks for the product concerned, as it manufactures the product concerned to order within very short time, does not imply a slower delivery time, when compared with the USA imports. Therefore, there are no indications that quality or service advantages could have caused material injury.

4. **Conclusion on causation**

(80) The coincidence in time, between the increase in USA export volumes and market shares and the undercutting found on the one hand and the deterioration of the situation of the Community industry on the other, leads to the provisional conclusion that the dumped imports originating in the USA have caused the material injury suffered by the Community industry.

(81) Furthermore, the insufficient development of the free market is not reflected in the captive market. This has caused a subsequent stagnation of prices and a limitation of profitability ratios. Indeed, it is in the free market, where the Community industry is in direct competition with imports of the product concerned, that the injurious situation is evident. Indicators for the captive market, where imports do not compete directly with the Community industry, show a positive trend.

(82) The analysis of the purchases of two important users showed that during the period considered, these companies have replaced their purchases from the Community industry with purchases from the USA company.

(83) It is also provisionally concluded that the non-complainant producers cannot have caused the adverse evolution of the Community industry, as their responses to questions from the Commission suggest that they have suffered injury from dumped imports. Finally, investigations showed that the product concerned imported from the USA had no substantial quality or technical advantages compared with the European product.

(84) No other factors that might explain such a deterioration in the situation of the Community industry were found.

(85) Therefore, as the investigation by the Commission has properly distinguished and analysed all known factors and provisionally found that the effects of none of them were such as to break the causal link between dumping and injury, it is provisionally concluded that the dumped imports from the country concerned caused the material injury suffered by the Community industry.

E. **COMMUNITY INTEREST**

1. **Preliminary remark**

(86) In accordance with Article 21 of the basic Regulation, the Commission considered whether the imposition of anti-dumping measures would be contrary to the interests of the Community as a whole. The determination of the Community interest was based on an examination of all the various interests involved, i.e. those of the Community industry, the importers and traders, and the users of the product concerned.

(87) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties which were either known to be concerned or which made themselves known. On this basis, the Commission sent questionnaires to the Community industry, three other Community producers, seven importers, 10 users and 16 suppliers of raw materials. The three Community industry producers, three other Community producers, six related importers and seven users replied.

(88) On this basis, it was examined whether, despite the conclusions on dumping, on the situation of the Community industry and on causation, compelling reasons existed which would lead to the conclusion that it was not in the Community interest to impose measures in this particular case.

2. **Community industry**

(89) The Community industry has suffered material injury, as set out above in recital 68 and following.

(90) The imposition of anti-dumping measures would allow the Community industry to reach the levels of profitability which it would have been able to achieve in the absence of dumped imports, and to take advantage of developments in the Community market.

(91) However, should no anti-dumping measures be imposed, it is likely that the negative trend of the Community industry will continue: notably market shares would further decline and profitability would remain below that attainable for the product concerned in the absence of dumped imports.

3. **Users**

(92) Users of the product concerned consist principally of producers of exhaust systems for the automotive industry. They are located mainly in the United Kingdom, Italy, Germany, France, the Netherlands and Belgium. The cooperating users represented only 24 % of free market consumption in the IP. Nevertheless, they accounted for 91 % of total imports from the USA during the IP. Thus, whilst information from cooperating users was highly representative for the situation of users sourcing the product from the USA, it did not enable an accurate picture to be obtained in respect of the remaining proportion of users which did not purchase the product from the USA to the same extent. This analysis should therefore be seen in the light of this limitation.

(93) All cooperating users opposed the imposition of anti-dumping measures, by claiming that they would incur losses and suggesting that they might be obliged to relocate their activities outside the EU, in the event of anti-dumping duties being imposed.

(94) The product concerned represents on average 15 % of the total cost of production of exhaust systems. However, as stated in recital 42, imports from the USA during the IP represent a market share of between 12 % and 14 %. Consequently, in a worst-case scenario, if importers passed on the full amount of the duties in the form of a price increase, and taking into account the current market share of the USA imports, the total cost of production of all exhaust systems users would increase by about 0,4 %.

(95) In addition, the imposition of anti-dumping measures would not create a shortage of supply of the product concerned to the users, as the purpose of said measures is not to stop imports of the product concerned from the USA, but to re-establish fair trading conditions. In fact, as already mentioned, the Community industry has increased its investments in plant and machinery related to the product concerned by 43 %. One company in particular (the most representative one in terms of sales volume) increased its production capacity by 41 % during the period considered. Furthermore, even if USA producers decided to stop exporting the product concerned, Community producers are the largest suppliers in the world for the product concerned and have historically generated enough capacity to be able to cover any increase in demand.

4. **Unrelated importers**

(96) Questionnaires were sent to a number of allegedly unrelated importers. None of them replied. Given the absence of cooperation, it is provisionally concluded that unrelated importers would not suffer significant negative effects from the imposition of anti-dumping measures.

5. **Competition and trade distorting effects**

(97) The US company submitted that the Community industry is highly concentrated and had a history of anti-competitive conduct. However, the concentration level would not be modified as a consequence of the imposition of anti-dumping measures. Furthermore, even if a company is holding a strong position in the market, this does not automatically imply an abuse of it.

(98) In addition, it must be underlined that through anti-dumping measures, it is intended to restore fair trade conditions in the EU market, and not to exclude or limit the number of participants in the market.

(99) There are six Community producers of the product concerned in the Community:

— Ugine SA, France,

— Ugine & ALZ, Belgium, NV, Belgium,

— ThyssenKrupp Acciai Speciali Terni, SpA, Italy,

— ThyssenKrupp Nirosta GmbH, Germany,

— Acerinox SA, Spain,

— Avesta Polarit Oyj Abp, United Kingdom.

(100) Of the abovementioned companies, Ugine France, and Ugine ALZ Belgium, on the one hand, and ThyssenKrupp Terni and ThyssenKrupp Nirosta, on the other hand, belong to the same group of companies (Arcelor and Thyssen Krupp Steel, respectively).

(101) However, even assuming that there is no competition among companies integrated within the same group, there is nevertheless a substantial degree of competition in the Community, as there are still four suppliers of the product concerned who remain competitors.

(102) Even in the extreme case that the USA companies decided to stop exporting the product concerned after the imposition of anti-dumping measures, the level of competition among the different Community producers would arguably still be sufficiently high as there would remain a considerable number of sources of supply, and, more importantly, supplies from Japan could increase.

(103) Moreover, no evidence of any anti-competitive behaviour by Community industry companies was submitted during the period considered.

6. **Conclusion on Community interest**

(104) Taking into account all of the above factors, it is provisionally concluded that there are no compelling reasons not to impose anti-dumping measures.

F. PROVISIONAL ANTI-DUMPING MEASURES

1. Injury elimination level

(105) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury caused to the Community industry by the dumped imports without exceeding the dumping margin 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 an overall profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(106) The investigation has shown that the stainless steel industry in the Community has achieved reasonable levels of profitability due to the reduction in costs of production and the increase in productivity ratios during the last five years. In particular, the product concerned offers a profitability ratio that is more stable and higher than the one normally found for the stainless steel sector, as explained in recital 56.

(107) It has been found that for periods where no dumped imports existed (i.e. 1997) a profit margin of 8,35 % for the product concerned was achieved by the Community industry. However, as described in recital 51 above, after 1997 the Community industry made important investments in production technology which have led to substantial cost reductions and a considerable increase in productivity (+ 31 % over the period concerned).

(108) Due to the speciality of the product concerned and the market in which it is used, as stated in recitals 56 and following, profits are usually higher than for other stainless steel products, which are more subject to the economic cycle. In addition, as explained above under recital 69, it is reasonable to conclude that, in the absence of dumping, the Community industry would have benefited from increased sales and therefore increased output, further lowering its costs through economies of scale.

(109) It has been found that for periods where no dumped imports existed (i.e. 1997) a profit margin of 8,35 % for the product concerned was achieved by the Community industry. However, after 1997 the Community industry carried out important investments, incorporating new production mills and lines of production of high technology and achieved reductions in direct manufacturing costs and a considerable increase in productivity as a result. As explained above in recital 65, the increase in productivity amounted to 31 % over the period considered. Therefore, in the absence of dumping a higher profit margin than the 8,35 % achieved in 1997 should be expected.

(110) In view of the above, the Commission provisionally considers that a 9 % profit margin before tax should be taken into account for the product concerned in view of the fact that in the absence of dumping and before the substantial investments the Community industry already managed to achieve 8,35 %.

(111) 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 for the like product sold by the Community industry in the Community market. As was the case for the undercutting calculation, the calculation of the injury margin was made on the basis of comparable types sold to the same clients.

(112) The non-injurious price was obtained by adjusting the sales price of the Community industry to reflect the abovementioned profit margin of 9 %. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

2. Provisional measures

(113) 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 on imports of the product concerned from the USA, at the level of the injury margin found, since it is lower than the dumping margin.

(114) On the basis of the above, the provisional duty rates are as follows:

Company	Basis for ad duty (%)
AK Steel Corporation, Middletown, Ohio, USA	20,6
All other companies	25,0

(115) The individual company anti-dumping duty rate specified in this Regulation was established on the basis of findings of the present investigation. It therefore reflects the situation found during that investigation with respect to this company. This duty rate (as opposed to the country-wide duty applicable to 'all other companies') is thus applicable exclusively to imports of the product originating in the country concerned and produced by the company and thus by the specific legal entity mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to the one specifically mentioned, cannot benefit from this rate and shall be subject to the duty rate applicable to 'all other companies'.

(116) Any claim requesting the application of this individual company anti-dumping duty rate (e.g. following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission [1] forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the Commission will, after consultation of the Advisory Committee, amend the Regulation accordingly by updating the list of companies benefiting from individual duty rates.

G. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of certain flat rolled products of stainless steel, not further worked than cold rolled, containing by weight less than 0,15 % of carbon, 10,5 % or more but not more than 18 % of chromium and less than 2,5 % of nickel, in the standardised grades AISI 409/409L (EN 1.4512), AISI 441 (EN 1.4509) and AISI 439 (EN 1.4510), falling within CN codes ex 7219 31 00 (TARIC code 7219 31 00 10), ex 7219 32 90 (TARIC code 7219 32 90 10), ex 7219 33 90 (TARIC code 7219 33 90 10), ex 7219 34 90 (TARIC code 7219 34 90 10), ex 7219 35 90 (TARIC code 7219 35 90 10), ex 7220 20 10 (TARIC code 7220 20 10 10), ex 7220 20 39 (TARIC code 7220 20 39 10), ex 7220 20 59 (TARIC code 7220 20 59 10) and ex 7220 20 99 (TARIC code 7220 20 99 10), and originating in the United States of America.

[1] European Commission
Directorate-General Trade
J-79 05/16
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

2. The amount of the provisional anti-dumping duty, applicable to the product described in paragraph 1 above, shall be as follows:

Manufacturer	Provisional anti-dumping duty	TARIC additional code
AK Steel Corporation 703 Curtis Street, Middletown, Ohio 45043 United States of America	20,6 %	A470
All other companies	25,0 %	A999

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 of the Community Customs Code and its related legislation shall apply.

Article 2

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

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

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, 15 September 2003.

For the Commission

Pascal LAMY

Member of the Commission