# COUNCIL REGULATION (EC) No 990/2004

## of 17 May 2004

## amending Regulation (EC) No 151/2003 imposing a definitive anti-dumping duty on imports of certain grain oriented electrical sheets originating in Russia

THE COUNCIL OF THE EUROPEAN UNION,

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'), and in particular Article 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

### A. PROCEDURE

### 1. Previous investigations and measures in force

(1) The Commission, by Decision No 303/96/ECSC [2], imposed a definitive anti-dumping duty on imports of certain grain-oriented electrical sheets originating in Russia ('the original investigation'). The rate of the anti-dumping duty imposed was 40,1 %. An undertaking offered in connection with such imports was accepted by the same Commission Decision.

(2) Further to a request lodged by the European Confederation of Iron and Steel Industries (Eurofer) on behalf of the Community industry of grain oriented electrical sheets, the Commission initiated an expiry review in accordance with Article 11(2) of Commission Decision No 2277/96/ECSC [3] (the 'basic Decision'). At the same time, the Commission also initiated on its own initiative an investigation in accordance with Article 11(3) of the basic Decision in order to examine the appropriateness of the form of the measures [4].

(3) In view of the expiry of the Treaty establishing the European Coal and Steel Community on 23 July 2002, the Council, by Regulation (EC) No 963/2002 [5], decided that anti-dumping proceedings initiated pursuant to the basic Decision and still in force were to be continued and be governed by the provisions of the basic Regulation with effect from 24 July 2002. Likewise, any anti-dumping measures resulting from pending anti-dumping investigations were to be governed by the provisions of the basic Regulation from 24 July 2002.

(4) As a result of the expiry review mentioned in recital (2), the Council, in January 2003, by Regulation (EC) No 151/2003 [6], confirmed the definitive anti-dumping duty imposed by Commission Decision No 303/96/ECSC. However, the interim review limited to the form of the measures remained open at the conclusion of the expiry review.

### 2. Grounds for the reviews

#### 2.1. Interim reviews limited to dumping

(5) The Commission received two requests for a partial interim review pursuant to Article 11(3) of the basic Decision which, pursuant to Article 1(3) of Council Regulation (EC) No 963/2002 were treated according to Article 11(3) of the basic Regulation.

(6) The requests were lodged by OOO VIZ — STAL (VIZ STAL), and Novolipetsk Iron and Steel Corporation ('NLMK') (VIZ STAL and NLMK are hereinafter referred to as 'the applicants'), both exporting producers from Russia. Both requests were based on the grounds that the applicants fulfilled the requirements to be granted market economy status and that their dumping margins had decreased substantially. Accordingly, they alleged that the continued imposition of the measure at its current level was no longer necessary to offset dumping.

(7) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an interim review, the Commission, by notice, initiated, in August 2002, an investigation pursuant to Article 11(3) of the basic Regulation, with respect to VIZ STAL [7] (and subsequently, in October 2002, an investigation pursuant to Article 11(3) of the basic Regulation with respect to NLMK [8]. Both reviews were limited to the examination of dumping.

(8) The Commission officially advised the applicants as well as the representatives of the exporting country of the initiation of the interim reviews, and gave all interested parties the opportunity to make their views known in writing and to request hearings within the time limits set out in the notices of initiation.

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[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 42, 20.2.1996, p. 7.
[3] OJ L 308, 29.11.1996, p. 11. Decision as last amended by Decision No 1000/99/ECSC (OJ L 122, 12.5.1999, p. 35).
[4] OJ C 53, 20.2.2001, p. 13.
[5] OJ L 149, 7.6.2002, p. 3. Regulation as last amended by Regulation (EC) No 1310/2002 (OJ L 192, 20.7.2002, p. 9).
[6] OJ L 25, 30.1.2003, p. 7.
[7] OJ C 186, 6.8.2002, p. 15.
[8] OJ C 242, 8.10.2002, p. 16.

(9) The applicants made their views known in writing. All parties who so requested were granted the opportunity to be heard.

(10) The Commission sent a questionnaire to the applicants and to one related importer in the Community, to which they replied within the time limits set in the notices of initiation.

(11) Furthermore, the Commission sent a claim form for market economy status pursuant to Article 2(7) of the basic Regulation to both applicants.

(12) The Commission sought and verified all the information it deemed necessary for the determination of dumping. Verification visits were carried out at the premises of the following companies:

Exporting producers in Russia:

— VIZ STAL, Yekaterinburg

— NLMK, Lipetsk

Related importer (of VIZ STAL)

— Duferco Commerciale S.p.A., Genoa

The investigation of dumping covered the period of 1 July 2001 to 30 June 2002 ('investigation period' or 'IP').

### 2.2. Interim review limited to the form of the measures

(13) As mentioned above in recital (2), the Commission decided on its own initiative to initiate an interim review in order to examine the appropriateness of the form of the measures in force (the 'ex-officio review'). In this respect, it was considered that enforcement problems have been encountered in the monitoring of the undertaking, with consequences on the remedial effect of the measures. The initiation of this proceeding and part of the investigation concerning this review was carried out simultaneously to the expiry review which concluded with the imposition of the existing measures by Council Regulation (EC) No 151/2003. The Commission officially advised the Community industry, the importers, the suppliers and the users known to be concerned, as well as the representatives of the exporting country, of the initiation of both investigations and gave interested parties the opportunity to make their views known in writing and to request a hearing within the time limits set out in the notice of initiation.

(14) As mentioned in recital (6) of Regulation (EC) No 151/2003, during the course of the abovementioned investigations, the Commission received two requests from the exporting producers concerned, namely VIZ STAL and NLMK, for the initiation of the interim reviews limited to the aspects of dumping, as explained in recital (6) of this Regulation. Since in both reviews, the aspects of dumping had to be investigated, which could eventually affect the level of the measures subject to the ex-officio review, it was considered appropriate to conclude this review together with the interim reviews limited to dumping in order to be able to take into account the eventually changed economic circumstances of the exporting producers concerned.

### 2.3. Joint conclusions

(15) Due to the fact that the three reviews concerned the same anti-dumping measure, it was considered appropriate, for reasons of sound administration, to conclude them simultaneously.

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

(16) The product concerned is the same as in the original investigation, i.e. grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia ('GOES' or 'the product concerned'), falling within CN codes 7225 11 00 and ex 7226 11 00 (new CN-code since 1.1.2004). This product is used for electromagnetic appliances and in installations such as power and distribution transformers.

(17) In the rather complex manufacturing process of GOES, grain structures are oriented uniformly in the direction of the rolling of the sheet or of the strip in order to allow it to conduct a magnetic field with a high degree of efficiency. The product in question has to comply with specifications concerning the magnetic induction, the pile factor, as well as the highest admissible level of re-magnetisation losses. In general, both sides of the product are covered with a thin isolating coating.

### 2. Like product

(18) It was established that GOES produced and sold in Russia had the same basic physical and technical characteristics as GOES produced in Russia and exported to the Community. Therefore, they were considered to be like products within the meaning of Article 1(4) of the basic Regulation.

C. **INTERIM REVIEWS LIMITED TO DUMPING**

1. **Preliminary remarks**

(19) The Council, by Regulation (EC) No 1972/2002 [1], recognised that it is appropriate to allow normal value for Russian exporters and producers to be established in accordance with the provisions of Article 2(1) to (6) of the basic Regulation and amended the basic Regulation accordingly. However, in accordance with Article 2 of Regulation (EC) 1972/2002, this amendment should only apply to investigations initiated after its entry into force, i.e. from 8 November 2002. Consequently, since both interim reviews requested by the applicants were initiated prior to this date, the said amendment is not applicable to the present investigations. In this regard, all further references to the basic Regulation are to the version in force prior to the abovementioned amendment.

(20) Pursuant to Article 2(7)(b) of the basic Regulation, normal value can be determined in accordance with paragraphs 1 to 6 of the said Article only if the applicants show that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. that market economy conditions prevail for them in respect of the manufacture and sale of the like product concerned.

2. **Market economy status ('MES')**

(21) Claim forms for market economy status were submitted within the deadline set out in the notices of initiation by both applicants.

(22) It was found that for both applicants the decisions regarding prices, costs and inputs were made in response to market signals without significant state interference and the costs of major inputs reflected market values. The companies had one clear set of basic accounting records which were independently audited in line with international accounting standards and applied for all purposes. The production costs and the financial situation of the applicants were not subject to significant distortions carried over from the former non-market-economy system. Both companies were subject to bankruptcy and property laws which guaranteed legal certainty and stability for the operation of the firms. Finally, exchange-rate conversions were carried out at the market rate. On the basis of the foregoing, it was concluded that the criteria set forth in Article 2(7)(c) of the basic Regulation were met.

(23) The Commission informed the applicants and the Community industry of the above determinations and granted them a possibility to comment. No comments were received from the interested parties. In view of the above, it was concluded that market economy status should be granted to both applicants.

3. **NLMK**

(24) Although this applicant requested the initiation of the current interim review, it did not subsequently provide the Commission with the information essential for the calculation of the dumping margin. In particular, during the on-spot investigation, costs of production could not be verified. Moreover, the information provided in the questionnaire reply was not supported by sufficient evidence and access to essential information was denied. In some instances, misleading information was provided. For example, as admitted by NLMK, the costs of production had been understated by some 50 % in the questionnaire reply for the financial year 2001 which overlapped with the investigation period by six months. The company actually failed to substantiate and demonstrate the veracity of its cost of production, as reported in the questionnaire reply. Under these circumstances, a proper verification of the questionnaire reply could not be carried out and the figures reported were considered unreliable.

(25) NLMK was informed that the information submitted was not verifiable and could therefore not be used. The applicant was granted the opportunity to provide further explanations. Furthermore, it was given the possibility to be heard in this matter. NLMK did, however, not come forward with any satisfactory explanation within the specified time limit.

(26) NLMK thus admitted the problems regarding, in particular, the verification of costs, but claimed that in order to determine its cost of production, data collected during another investigation concerning a similar product should be used. NLMK referred to the anti-dumping investigation initiated in May 2002 [2] against imports of certain grain oriented electrical sheets and strips (flat-rolled products) of a width not exceeding 500 mm originating in, inter alia, Russia ('small GOES'). NLMK was subject to this investigation and had submitted a questionnaire reply. Therefore, it argued that the information on the cost of production submitted in the framework of that proceeding should be used to determine costs in the present review. NLMK claimed that due to the similarity of both products, i.e. small GOES and the product concerned, costs would be practically identical.

[1] OJ L 305, 7.11.2002, p. 1.

[2] OJ C 111, 8.5.2002, p. 5.

(27) However, the investigation concerning small GOES and the present interim review covered different products and were subject to different IPs. Nevertheless, even if the costs of production of these two products would be practically identical in both investigations — which has not been established — it should be underlined that costs and prices related to different periods are not necessarily comparable. Moreover, the investigation concerning small GOES was terminated in February 2003 due to the withdrawal of the complaint by the Community industry [1]. Therefore, no final conclusions or findings have been made which could have been used in the present review. Therefore, it was concluded that the information collected during the investigation related to small GOES would not be an appropriate basis to determine normal value in the present proceeding. NLMK's claim had therefore to be rejected.

(28) Subsequent to the disclosure, NLMK claimed that it had been discriminated against vis-à-vis VIZ STAL and that its costs should have been established on the basis of alternative sources rather than rejecting its request for a review as a whole. NLMK suggested that costs of VIZ STAL or the Community industry should have been used.

(29) This argument was unfounded. Unlike NLMK's case, VIZ STAL's questionnaire reply could be fully verified and corrections were done on the basis of VIZ STAL's own verified figures (see recitals (40) and (56)). Where VIZ STAL's figures were replaced by other sources of information, this was not a consequence of unverified figures, but of the reasons set out in recitals (41) to (49) and (57) to (60).

(30) It should also be noted that the purpose of the present interim review was to determine whether the individual circumstances of the exporting producer concerned had significantly changed. The interim review was initiated upon NLMK's request. In this context, it must be noted that it is contradictory to first claim that individual circumstances have changed and subsequently, when this cannot be shown, to claim that such determination should be made on the basis of data of other companies. The determination of costs and normal value is an essential element in determining a company's individual situation with regard to dumping and fully replacing these data would lead to meaningless results under these circumstances.

(31) As a result of the above, the company could not provide evidence that circumstances with regard to the dumping margin established in the original investigation have changed in the way it was alleged. Therefore, the interim review with regard to NLMK had to be terminated and the anti-dumping margin found during the original investigation, i.e. 40,1 % should be maintained.

(32) On this basis, the dumping margin, expressed as a percentage of the CIF import price at the Community border, is:

NLMK, Lipetsk: 40,1 %

## 4. **VIZ STAL**

### 4.1. Dumping

(a) *Normal value*

(33) With regard to VIZ STAL, it was first established whether its total domestic sales of the like product were representative in comparison with its total export sales of the product concerned to the Community. In accordance with Article 2(2) of the basic Regulation, and since the total domestic sales volume of VIZ STAL exceeded 5 % of its total export sales volume to the Community, the domestic sales of the like product were found to be representative.

(34) Subsequently, those types of GOES sold domestically by the applicant that were identical or directly comparable with the types sold for export to the Community were identified.

(35) For each type sold by the applicant on its domestic market 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 GOES 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 GOES exported to the Community.

[1] OJ L 33, 8.2.2003, p. 41.

(36) An examination was also made as to whether the domestic sales of each product type could be regarded as having been made in the ordinary course of trade, in accordance with Article 2(3) and 2(4) of the basic Regulation, by establishing a proportion of the profitable sales to independent customers of the type in question. Domestic sales were considered profitable when the net sales value was equal to or above the calculated cost of production of each type concerned ('profitable sales'). In cases where the sales volume of a product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of that type and in cases where the weighted average price of that type was equal to or above the unit 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 of that type during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of a product type represented 80 % or less, but 10 % or more of the total sales volume of that type, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

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

(38) On this basis, it was found that overall domestic sales of the product concerned were not made in the ordinary course of trade within the meaning of Article 2(1) of the basic Regulation.

(39) Whenever domestic prices of a particular type could not be used in order to establish normal value, a normal value had to be constructed. It was therefore examined whether the cost of production in the country of origin, or the domestic prices of other producers in the country of origin could be used as a basis for the construction of a normal value in accordance with Articles 2(1) and 2(3) of the basic Regulation.

(40) As far as the costs of production of the product concerned reported by VIZ STAL are concerned, they had to be corrected taking into account different costs of manufacturing for different types of the product concerned. It was found that certain product features had indeed an impact on costs and prices of a certain product type. Therefore, data submitted by VIZ STAL on cost of production could not be used as such and findings on the basis of facts available had to be made. In the absence of any other more reasonable method, it was considered that the difference in the cost of production of the various types of GOES should bear the same ratio as the difference in sales prices of these types. Therefore, costs for each type of GOES produced were assessed on the basis of the difference between average domestic sales prices of a specific type of GOES in comparison to the overall average domestic sales price of all types.

(41) Furthermore, it is noted that VIZ STAL concluded a long term agreement with its raw material supplier, which was in force during the IP. The raw material purchased from this supplier was hot rolled band ('HRB'). In accordance with this agreement, the supplier had an exclusive right to supply raw material for this exporting producer during the IP. The supplier produced tailor-made HRB according to the exporting producer's specifications. The exporting producer was bound to purchase the entire production of HRB of its supplier, even if the required standards were not met. Purchase prices were fixed in advance at a certain level and guaranteed regardless the quality of the raw material delivered. It was furthermore found that technicians employed by the exporting producer concerned carried out regular quality checks at the premises of the supplier.

(42) Although the investigation did not bring into light any direct shareholding or controlling rights between these two companies, it had to be concluded, on the basis of the information collected during the investigation that the relationship between the exporting producer concerned and its supplier was particularly strong. Thus, the link between VIZ STAL and its supplier was not limited to the sale as such, but extended beyond a simple sales transaction. In particular, VIZ STAL had control over the production of HRB at its supplier's production site, which showed that these companies were also linked at the stage of the production process of HRB. Therefore, the relationship between VIZ STAL and its supplier was both, a sales relationship and a manufacturing relationship, i.e. it went largely beyond a mere buyer/seller relationship.

(43) On the basis of the abovementioned agreement, it was furthermore concluded that VIZ STAL was not free to source raw material from other suppliers during the IP, but was dependent on only one supplier. Thus, VIZ STAL also had to purchase HRB of a lower quality even if the raw material did not meet the required standards for the production of the product concerned. On the other hand, HRB prices could not be adapted in line with the quality of the product delivered, due to the fact that they were fixed in advance. Moreover, VIZ STAL's supplier was not free to provide other customers with HRB because it was bound to produce exclusively for VIZ STAL at a specific quality set by VIZ STAL.

(44) It was subsequently examined whether the prices between these parties could be considered reliable. In this respect, it was considered that purchase prices between VIZ STAL and its supplier, as a consequence of the long term agreement concluded between them, were set at an artificial level during the IP. The investigation revealed moreover that HRB prices followed an unusual development and remained at the same level throughout the IP, regardless of the quality of the product purchased or other market conditions, such as fluctuations of energy prices, one of the most important components used for the production of HRB. It was also considered that as set out in recitals (42) and (43), VIZ STAL and its supplier had a relationship which went beyond a mere buyer/seller relationship. Therefore, the Commission considered that the costs associated with the purchase price of HRB were not reasonably reflected in VIZ STAL's accounts within the meaning of Article 2(5) of the basic Regulation and had therefore to be adjusted.

(45) Subsequent to the disclosure, VIZ STAL claimed that it was completely independent from its HRB supplier and that both parties were in fact free to choose their business partners with regard to HRB. However, this statement contradicted the information provided during the investigation and had therefore to be rejected. VIZ STAL also argued that similar contractual arrangements were common in this type of industry. This argument was not supported by any evidence and could not be confirmed by the findings of the present investigation. In any case, the existence of such arrangements was considered irrelevant in this context. Furthermore, such arrangements and their impact on costs and prices related to the product concerned would have to be examined on a case by case basis.

(46) VIZ STAL objected to the Commission's conclusion that HRB purchase prices did not follow market typical fluctuations, by claiming that the product purchased was of a specific quality and subject to particular market conditions as compared to other HRB types. It was also argued that the price development of HRB used for the production of GOES in the Community would show a similar pattern than in Russia. VIZ STAL claimed further that a comparison of HRB prices with energy prices, in particular natural gas, would be inappropriate because the main raw material used by the VIZ STAL's supplier would be coal. On a general basis, VIZ STAL contested any link between the evolution of energy prices and prices of steel products.

(47) The information provided regarding the differences in quality and market conditions between various HRB types was neither submitted in the reply to the questionnaire, nor during the on-spot verification, although a detailed product description concerning the HRB type purchased during the IP was specifically requested prior to the on-spot verification. The information submitted by VIZ STAL after the on-spot verification, i.e. largely outside the deadline set in the notice of initiation, could not be verified anymore and had therefore to be rejected. In any case, it is noted that HRB prices in the Community were subject to significant fluctuations during the IP and that there were also significant price fluctuations of other HRB types on the world market. These developments indicated that the fixed price for HRB on the Russian domestic market did not follow market typical fluctuations, but was influenced by the relationship between VIZ STAL and its supplier.

(48) With regard to energy prices, it should be noted that VIZ STAL's supplier did not submit a questionnaire reply and was as such not investigated during this investigation. Neither did VIZ STAL provide any evidence supporting its claim. Therefore, the current investigation could not confirm that VIZ STAL's supplier indeed used coal as a major input for the production of HRB. Likewise, VIZ STAL did not provide any evidence that fluctuations in energy and steel prices would not be linked to each other. Therefore, it can be reasonably expected that fluctuations in energy prices should, under normal conditions in a free market, have an impact on HRB prices.

(49) Given the above, the reported HRB prices were not considered reliable. HRB costs had therefore to be adjusted. Consequently, the Commission had to establish HRB prices with regard to this applicant on the basis of the costs of other producers or exporters in the same country or, where such information was not available or could not be used, on any other reasonable basis. As mentioned in recitals (24) to (31), costs, including HRB costs of the other known producer of HRB in Russia could not be determined. Since no other producer of the product concerned or any producers of HRB in Russia were known to the Commission, HRB costs with regard to VIZ STAL had to be established on the basis of any other reasonable information. In the absence of any other more reliable information, the cost of manufacturing for the applicant could only be established on the basis of the prices of HRB in the Community.

(50) Subsequent to the disclosure, VIZ STAL claimed further that the HRB prices in the Community should be adjusted for differences in physical characteristics, production process, transport cost and conditions of sale.

(51) As far as differences in physical characteristics are concerned, they were taken into account by excluding high quality HRB types not produced in Russia when establishing the average HRB price in the Community. No further adjustment was therefore warranted.

(52) With regard to the different production processes used in Russia and in the Community, VIZ STAL argued that the technology used in the Community required a higher energy input, generated more waste and had a higher production yield. However, although the production process mainly used in the Community indeed required a higher energy input, it was found that it generated significantly lower waste rates. Therefore, the overall efficiency of the different processes was considered to be equal and invoked similar production costs. Consequently, no adjustment was warranted.

(53) As for differences in sales conditions, VIZ STAL argued that prices in the Community would be at a 'monopolistic' level, while it did not explain to what extent this had an effect on price or price comparison. It was furthermore established that the conditions of sale were similar on both markets, i.e. there was only one HRB producer selling the product on both domestic markets. In Russia, however, the prices were moreover influenced by the relationship between the exporting producer concerned and its supplier. Consequently, no adjustment was warranted.

(54) As to transport costs for HRB purchases, no adjustment was warranted because the Community industry prices were calculated on an ex-works basis, i.e. excluding transport costs.

(55) Subsequent to the disclosure, the Community industry claimed that energy prices (in particular gas) on the Russian domestic market would not be the result of the interplay of free market forces, which should be taken into consideration when establishing costs of production of VIZ STAL. In this context, it is noted that the Commission provided the Community industry with the possibility to submit comments on granting MES to the two Russian exporting producers. The Community industry did not draw attention to the need to, in particular, examine the effects of Russian gas prices when subsequently determining normal value (see recital (23)). While gas prices in Russia may not be uniform across regions and customers, it was not possible at this late stage of the proceeding to investigate the matter of energy prices in more detail. In any case, the investigation revealed that VIZ STAL's direct energy input for the production of GOES was not significant and had therefore only a minor impact on its cost of production. As for its supplier of HRB, and as mentioned in recital (48), this company was not directly investigated in the present interim review and no conclusions were made with regard to the reliability of the supplier's main input cost. In any case, since prices between VIZ STAL and its supplier were found to be unreliable and replaced by prices charged on the Community market, any possible price distortion regarding energy input was already eliminated.

(56) In order to establish the full cost of production of GOES, selling, general and administrative expenses ('SG&A') had to be determined. VIZ STAL claimed that certain expenses occurring prior to the IP, but booked during the IP should be considered as mere accounting costs and deducted from the SG&A. However, no evidence has been provided whether or not such costs occurred de facto prior to the IP. Indeed, the expenses under consideration were considerably higher as compared to the previous years, so that an actual incurrence of these costs during the IP cannot be excluded.

(57) Furthermore, in accordance with Article 2(5) of the basic Regulation, financial expenses had to be added to the reported SG&A. In this context, it was found that a related party granted VIZ STAL non-interest bearing loans on US-Dollar basis. Since SG&A did therefore not fully reflect all costs associated with the production and sale of the product concerned, the amount of financial expenses under normal market conditions was added. In this regard, the interest rate for similar loans under market conditions during the IP was applied to the loans received. In the absence of any more appropriate method, the total amount for interest expenses was allocated to the product concerned on the basis of the turnover in accordance with Article 2(5) of the basic Regulation.

(58) VIZ STAL objected to the adjustment made to the SG&A with regard to financing costs. VIZ STAL argued that the party providing the loan under question was a majority shareholder of VIZ STAL and could also have chosen to increase the share capital instead, where no financial cost would have been incurred. Alternatively, VIZ STAL claimed that reimbursements have occurred during the IP and that the interest rate applied should be the rate which could be obtained on the domestic market of the provider of the loan. Finally, VIZ STAL claimed that part of the interest expenses (the nominal interest rate) was already included in the SG&A and should not be double counted. The amount of the additional financial costs should therefore be reduced accordingly.

(59) The first claim had to be rejected because costs should reflect all costs associated with the production and sale of the product concerned, which has not been the case as explained above in recital (57). Under normal market conditions VIZ STAL would have had to seek finance on the open market and would have been subject to additional finance expenses which should be reflected in its costs. It is also noted that loans and equity shares are not simple substitutes because they have completely different consequences. Thus, while a loan is paid back, this is not the case with share capital.

(60) It was also considered that the most appropriate interest rate would be the one in the domestic market of the borrower, because such rate would most appropriately reflect the costs associated with the production and sale of the product concerned on the Russian domestic market, for which normal value is established. In any case, VIZ STAL did not submit any supporting evidence with regard to the alleged applicable interest rate on the domestic market of the provider of the loan. VIZ STAL submitted some additional information subsequent to the disclosure regarding the reimbursement of the working capital which could not be verified anymore due to the late stage of the proceeding and had therefore to be disregarded. Furthermore, no evidence was submitted that part of the interest expenses would already be included in the SG&A or that interests were in fact paid by VIZ STAL. This claim had therefore to be rejected.

(61) The Community industry claimed that distortions with regard to the evaluation and depreciation of assets should be taken into consideration when calculating SG&A It was also claimed that SG&A expenses would be significantly higher than in the Community due to, in particular, higher aftersales costs, higher R&D costs and higher costs for indispensable communication tools and IT systems.

(62) The Community industry did not submit any supporting evidence with regard to the above claims. These claims were furthermore made at very late stage of the proceeding and could not, therefore, be investigated in full detail. The above claims had therefore to be rejected.

(63) Furthermore, it was examined whether normal value could be established on the basis of domestic prices of other producers in accordance with Article 2(1) of the basic Regulation. Since for the other applicant, NLMK, no reliable information regarding domestic sales prices of the product concerned was available (as explained in recitals (24) and (31) above) and given that there were no other cooperating sellers or producers on the Russian domestic market than the applicants, no information was available to the Commission regarding the domestic sales prices of another producer.

(64) Therefore, in all cases where constructed normal value was used, normal value was constructed by adding to the manufacturing costs of the exported models, adjusted where necessary, a reasonable amount for SG&A and a reasonable margin of profit in accordance with Article 2 (3) of the basic Regulation.

(65) To this end, it was examined whether the SG&A incurred and the profit realised by the applicant on the domestic market, corrected as described above, constituted reliable data. Actual domestic SG&A expenses were considered reliable since domestic sales volume of the like product could be regarded as representative. However with regard to the fact that the overall domestic sales of the product concerned were not made in the ordinary course of trade within the meaning of the basic Regulation (see recital (38)), the domestic profit margin could not be determined in accordance with the first sentence of Article 2(6) of the basic Regulation. Since no information on SG&A and profit margin of other exporters or producers subject to this investigation was available and since VIZ STAL did not produce and sell other products falling within the same general category of products than GOES, the domestic profit margin was established in accordance with Article 2(6)(c) of the basic Regulation, i.e. on the basis of any other reasonable method. In the absence of any other more reliable information, the profit margin on the domestic market was estimated at 10 % of the cost of production. Given that investments in Russia, which is still considered an emerging market economy with more dynamic growth prospects and higher inflation rates than in more developed economies and subsequently higher yield expectations on any capital investment, the profit margin of 10 % as used for the purposes of the present investigation was considered to be a conservative estimate.

(b) *Export price*

(66) VIZ STAL was largely owned and controlled by a related holding/trading company in Switzerland. All export sales during the investigation period were made via the Swiss company to a related importer in the Community, which resold the product concerned to the final customers in the Community. Therefore, export prices were constructed on the basis of resale prices to the first independent customer in the Community in accordance with Article 2(9) of the basic Regulation.

(67) Adjustments were made for all costs incurred between importation and resale by the related importer in the Community, including SG&A costs, and a reasonable profit margin, in accordance with Article 2(9) of the basic Regulation.

(68) In this context, it should be noted that as mentioned in recital (75), an adjustment was made to the export price for the credit cost (i.e. financial cost) for payment terms granted by the related importer to the first independent buyer in the Community under Article 2(10)(g) of the basic Regulation as claimed by VIZ STAL in its reply to the questionnaire. On the other hand, when constructing export prices in line with Article 2(9) of the basic Regulation, adjustments are also to be made for all costs incurred between importation and resale of the product concerned. The items for which adjustment is to be made include, amongst others, a reasonable margin for SG&A of the related importer. However, in some cases, these SG&A expenses might include financial expenses, deriving from the abovementioned payment terms. Therefore, in order to avoid a double deduction of financial costs, namely, (i) the financial costs deriving from the payment terms referred to above and deducted under Article 2(10)(g) of the basic Regulation, and (ii) the financial costs that are part of the SG&A of the related importer, the related importer was given an opportunity to submit confirming evidence that a part of its financial costs was incurred to finance the payment terms granted to its independent customers in the Community. The related importer did not, however, submit any substantiated evidence that this was the case and therefore the related importer's full SG&A costs are to be deducted from the constructed export price in line with Article 2(9) of the basic Regulation.

(69) Subsequent to the disclosure, VIZ STAL claimed that part of the financial costs incurred and deducted from the export price under Article 2(10)(g) of the basic Regulation was included in the related importer's SG&A and that the calculation of the constructed export price should therefore be revised to avoid a double deduction of these costs. It is noted that this claim was made for the first time after disclosure and that even at this point no confirming evidence was provided which could support VIZ STAL's view. Moreover, the verification at the premises of the related importer could not confirm that credit costs granted by VIZ STAL to the independent customer in the Community were indeed borne by the related importer and thus included in its SG&A. Consequently, this claim had to be rejected.

(70) As far as the related importer in the Community is concerned, the investigation revealed that amortisation and depreciation costs incurred by the related importer were not reported. These costs were therefore added to the total SG&A expenses accordingly. SG&A were then deducted from the resale price to the first independent customer in the Community in accordance with Article 2 (9) of the basic Regulation. In this context, the Commission rejected the methodology applied by VIZ STAL in order to calculate allocation ratios used to allocate total SG&A expenses to the product concerned on the one hand, and to 'other products' on the other hand. VIZ STAL argued that its related importer acted as an agent with regard to transactions of certain other products, on commission basis. The related importer's revenue with regard to these transactions consisted only of the commissions received for 'other products'. Therefore, the exporting producer argued that, in order to calculate allocation ratios on the basis of the turnover, a hypothetical higher turnover should be used for sales of 'other products' instead of the lower actual revenue booked in the accounts of its related importer. It was argued that the hypothetical turnover should correspond to the sales price of these 'other products' in the Community. As a result, allocated SG&A expenses would increase for 'other products', while they would decrease for the product concerned. VIZ STAL claimed that this methodology would reflect more appropriately the administration costs linked to operations concerning the product concerned on the one hand and 'other products' on the other hand.

(71) However, it was found that the related importer performed the functions of an agent with regard to 'other products'. The functions of an agent involve, by nature, a lower administrative burden as compared to the functions performed by an importer. Thus, an importer buys and resells the products under its own name, which involves not only a higher administrative burden, but also a higher risk. Moreover, an importer has typically to raise capital for purchasing goods. These factors should normally also be reflected in different SG&A expenses between an importer and an agent. This difference was, however, not reflected in the allocation method used by VIZ STAL, which led to unreasonable results.

(72) Considering the above, it was therefore concluded that the allocation of SG&A expenses on the basis of actual turnover would be the most appropriate method in order to calculate SG&A for the different products involved.

(73) In the absence of any other more reliable information, the reasonable profit margin was estimated at 5 %. This was considered appropriate for this type of business. The same profit margin was also used in the previous investigation, i.e. the expiry review mentioned in recital (2).

(c) *Comparison*

(74) In order to allow a fair comparison between normal value and export price as established above, account was taken of differences in factors, which were found to affect prices and price comparability in accordance with Article 2(10) of the basic Regulation.

(75) Adjustments to the export price were reported by VIZ STAL for inland transport and freight cost, export duty, insurance costs, miscellaneous charges, credit cost, bank charges, import and other charges, stamp fees and slitting charges and granted because they were found to be reasonable, accurate and supported by verified evidence.

(d) *Dumping margin*

(76) As far as VIZ STAL is concerned, the weighted average normal value by product type was compared to the weighted average export price of that type in accordance with Article 2(11) of the basic Regulation.

(77) The comparison showed the existence of dumping. The dumping margin expressed as a percentage of the CIF import price at the Community border is:

VIZ STAL, Yekaterinburg: 14,7 %

4.2. Lasting nature of the changed circumstances

(78) With regard to VIZ STAL, it was also examined whether the changed circumstances with respect to the original investigation could reasonably be considered to be of a lasting nature. In this respect, the possible development of the normal value as well as the export price of the company was analysed. Specific consideration was given to its price levels of GOES on the domestic and the export market, its cost of production of GOES, production capacity and utilisation, as well as its export volume to the Community.

(79) It was first considered that during the original investigation the applicant did not operate under market economy conditions. However, as illustrated in recital (22), during the investigation period of the current interim review the applicant was able to provide evidence that it fulfilled the criteria set out in Article 2 (7)(c) of the basic Regulation, i.e. it was granted MES. As a consequence, normal value of this applicant was determined on the basis of the verified data submitted by this company, instead of the information submitted by producers from an analogue country.

(80) Normal value for VIZ STAL was based on both domestic sales prices and constructed normal value. As to the domestic sales prices of GOES, it could be established that during the investigation period these were relatively stable. This was due to a stable domestic demand and consumption which is not expected to change significantly in the near future, as well as to the limited number of producers and users. Therefore, it is expected that domestic sales prices of GOES will not vary significantly in future.

(81) As far as the cost of production is concerned, it is recalled that costs had to be adjusted due to unreliable input prices (HRB) (see recitals (41) to (49)). VIZ STAL claimed that the nature of the relationship to its supplier has changed after the investigation period, i.e. VIZ STAL plans to source HRB increasingly from other suppliers, including suppliers in the Community. It was considered whether this fact could have an impact on VIZ STAL's input costs and consequently on the cost of manufacturing. However, it was found that any possible price increase of HRB is not very likely to have an effect on the normal value established in this investigation. This is due to the fact that normal value was determined on the basis of adjusted cost of manufacturing, not taking into consideration the unreliable input price. Any real increase in purchase prices of HRB up to a market value is therefore already included in the normal value used for the purpose of the determination of the dumping margin. Consequently, it is reasonable to assume that normal value of this applicant will not change significantly in the near future.

(82) The Commission also examined the possible development of export sales by VIZ STAL as a consequence of the application of a lower duty rate. In this regard, it was considered that in the past, export sales of this company were limited in quantity due to the undertaking in force accepted during the original investigation. As mentioned in recital (96), it was found that this type of undertaking is not appropriate anymore. Consequently, it was examined whether a lower duty rate without quantitative import restrictions would result in a significant increase in exports of GOES by the applicant to the Community at lower export prices than those prevailing in the IP. In this regard, it was considered that the applicant's capacity utilisation rate was over 90 % during the investigation period. Furthermore, the investigation did not reveal any foreseen investments in order to increase the applicant's capacity. Therefore, it could be reasonably assumed that production volume would remain stable and not significantly increase in the near future. Moreover, no reason was found why the applicant should shift more of its current production to the Community market. It was therefore concluded that the export volume of GOES by this company to the Community would not change significantly.

(83) As far as export prices are concerned, it is recalled that the undertaking in force was mainly of a quantitative character which allowed the applicant to set its export prices relatively freely within a determined export volume. Indeed, the co-signers of the undertaking in question were only deemed to follow 'price levels prevailing in the Community market'. The definitive

anti-dumping duty was only applicable once the quantitative ceiling was reached. Notwithstanding the Commission findings as outlined in recitals (94) and (95), the export volume of large GOES from Russia during the IP was considered to fall within the quantitative ceiling of the undertaking. Therefore, the export price during the current investigation period did not contain the anti-dumping duty established during the original investigation. Consequently, it can be concluded that for this company a lower dumping margin would not have an effect such as to lower significantly the current export prices.

### 5. **Conclusions**

(84) According to Article 9(4) of the basic Regulation, the duties should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury of the Community industry. Given the fact that the present interim reviews are limited to the examination of the dumping aspects, the level of duties imposed should not be higher than the injury levels found in the original investigation as confirmed by the expiry review mentioned in recital (2).

(85) As mentioned in recital (29) of Decision No 303/96/ECSC, the original definitive dumping margin was greater than the injury elimination level definitively determined and therefore the definitive anti-dumping duty was based on the lower injury margin, namely 40,1 %. Since the dumping margin found for VIZ STAL in this interim review is lower than that level, the amended anti-dumping duty should be based on this lower dumping margin, namely 14,7 %.

(86) It follows from the above that with regard to VIZ STAL and as provided for by Article 11(3) of the basic Regulation, the anti-dumping duty imposed by Decision No 303/96/ECSC and confirmed by Regulation (EC) No 151/2003 on imports of GOES originating in Russia, should be amended.

(87) As far as NLMK is concerned, the present interim review should be terminated and the definitive anti-dumping duty imposed by Decision No 303/96/ECSC and confirmed by Regulation (EC) No 151/2003 should be maintained.

(88) All parties concerned were informed of the essential facts on the basis of which it was intended to recommend the amendment of the existing measures with regard to VIZ STAL and to terminate the interim review with regard to NLMK and were given the opportunity to comment. Comments were received and taken into consideration where appropriate. All parties concerned were also granted a period to make representations subsequent to disclosure.

### D. **INTERIM REVIEW LIMITED TO THE FORM OF THE MEASURES**

(89) As stated in recital (2), the interim review regarding the form of the measure for imports of GOES originating in Russia was initiated by the Commission on its own initiative in order to examine the appropriateness and effectiveness of the undertaking accepted by Decision No 303/96/ECSC. The investigation was carried out in conjunction with the expiry review concluded by Regulation (EC) No 151/2003 and the interim reviews limited to dumping with regard to the applicants.

(90) In this regard, it is noted that the undertaking originally accepted, was in essence, a quantitative undertaking according to which the companies undertook to ensure that their exports to the Community were made within an overall volume ceiling.

(91) In accordance with Article 8(1) of the basic Regulation, the aim of undertakings is to eliminate the injurious effect of dumped imports. This is achieved through the exporter raising its prices or ceasing exports at dumped price levels. The investigations have shown that the type of undertakings originally accepted, which simply limited the quantity of imports into the Community failed to raise prices to non-injurious levels and thus restore fair trade on the Community market. Therefore, in this case, the undertakings in their present form were not considered as appropriate and effective means to eliminate the injurious effect of the dumping.

(92) The original undertakings were not only signed by the applicants of the current interim reviews, but also by a Russian trader exporting the product concerned during the investigation period of the original investigation and by the Russian authorities in order to guarantee a proper monitoring of the undertaking in question. As was already established during the expiry review mentioned in recital (2), the co-signing trader, namely VO 'Promsyrioimport' (Moscow) ceased its export activities of GOES to the Community after the imposition of the definitive anti-dumping duties, prior to January 2000. This trader was therefore not considered as an interested party in the expiry review which lead to the maintenance of the definitive anti-dumping duties in January 2003. Neither did the said trader come forward and affirm its interest to re-export GOES to the Community or requested to be treated as a potential interested party in the ongoing anti-dumping proceeding.

(93) Furthermore, it was considered that given the changed circumstances in Russia, meanwhile fully recognised as a market economy country, any guarantees of the Russian authorities with regard to a proper monitoring of undertakings offered by Russian exporting producers in the framework of an anti-dumping investigation are neither necessary nor compatible anymore with this new status.

(94) Finally, as mentioned in the notice initiating the interim review limited to the form of the measures, enforcement problems have been encountered with regard to the monitoring of the undertaking, with consequences on the remedial effect of the measures. This was confirmed by the current investigation. Thus, it was found that the sales structure of both exporting producers, as well as the sales channels used did not allow them to identify the final destination of the product concerned. As a consequence, it could not be established whether products were indeed re-exported or released for free circulation in the Community (see also recital (95)). Therefore, it was not possible to determine whether the reports provided by the exporting producers concerned, as required by the undertaking, were complete and correct.

(95) In this context, it should be noted that since the acceptance of the undertaking, two different types of export licenses were introduced, namely type A licences (exports destined for free circulation into the Community) and type B licences (exports destined for import in the Community under other customs regimes). While for goods exported under a type A licence an annual quota ceiling had to be respected, goods exported under a type B licence were not subject to such quantitative limits. The related importers, being unable to identify the final destination of the imported products, could not provide sufficient conclusive evidence on the subsequent re-export of goods which have left Russia with an export licence B. Moreover, it was found in cooperation with the relevant custom's authorities that a number of these imports have been declared for free circulation, therefore jeopardising the effectiveness of the undertaking. The procedures used by the companies proved to be insufficient to correctly apply all conditions which are set out in the undertaking. Thus, the risk of a possible circumvention of the undertaking cannot be excluded.

(96) In the light of the above considerations, it was concluded that the undertaking in its current form was not appropriate anymore, in particular as far as the effective monitoring of this undertaking was concerned. The applicants, as well as the remaining co-signers of the undertaking, namely VO 'Promsyrioimport' (Moscow) and the Russian authorities were informed of the Commission's conclusions and given the opportunity to comment.

(97) One applicant, NLMK, objected to the Commission's findings with regard to the appropriateness of the undertaking. This applicant claimed, in particular, that (i) the licence system in place would exclude any possible circumvention; (ii) the imports under the ceiling set out in the undertaking would be below the injury de minimis level and therefore ensure the elimination of the injurious effects of dumping, and (iii) the change in the number of co-signing parties would not be a sufficient reason to withdraw the acceptance of the undertaking.

(98) The arguments advanced with regard to the enforcement of the current undertaking contradicted the Commission's findings (see recitals (94) and (95)) and were not supported by any evidence. The conclusion that there is a risk of a possible circumvention of the undertaking cannot be excluded either. It follows that the current undertaking does not sufficiently guarantee that the injurious effect of dumping would indeed be eliminated and is consequently considered inappropriate. The change in the number of the co-signing parties should not be singled out, but has to be seen in the context of the overall significantly changed circumstances in Russia since the acceptance of the undertaking. These claims had therefore to be rejected.

(99) Finally, this applicant also claimed that the present interim review limited to the form of the measures should be concluded together with other interim reviews eventually to be initiated further to the enlargement of the European Union on 1 May 2004. It should be noted that the partial interim review of measures on imports of GOES from Russia which was initiated on 20 March 2004 [1] will assess, in the light of the Community interest, whether there is a need to adapt the existing measures to avoid a sudden and excessively negative effect of the enlargement of the European Union on interested parties, including users, distributors and consumers. Accordingly, there is no direct link between the present interim review limited to the form of the current measures and the ongoing partial interim review in the framework of enlargement. This argument was therefore rejected.

(100) It follows from the above that the undertaking in its current form is not appropriate anymore.

### E. **NEW UNDERTAKING OFFERS**

(101) Subsequent to the disclosure of the essential facts and considerations, on the basis of which it was concluded that the level of the existing anti-dumping margin should be amended, where appropriate, and that the quantitative undertaking in its current form is not appropriate anymore, NLMK offered an undertaking in accordance with Article 8(1) of the basic Regulation.

[1] OJ C 70, 20.3.2004, p. 15.

(102) However, the level of cooperation of this company throughout the investigation, and the accuracy and reliability of the data it had provided was unsatisfactory (see recital (24)). Therefore, it is highly unlikely that a price undertaking from this company could be effectively monitored. For this reason, the acceptance of the undertaking offered by NLMK was considered impractical within the meaning of Article 8(3) of the basic Regulation. It was therefore concluded that the undertaking offered subsequent to disclosure should not be accepted.

(103) The interested parties were informed accordingly and the reasons why the undertaking offered could not be accepted disclosed in detail to the applicant concerned. The Advisory Committee was consulted,

HAS ADOPTED THIS REGULATION:

*Article 1*

The review of anti-dumping measures concerning imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia and falling within CN codes 7225 11 00 (sheets of a width of 600 mm or more) and 7226 11 00 (sheets of a width of more than 500 mm but less than 600 mm) with regard to Novolipetsk Iron & Steel Corporation ('NLMK') is hereby terminated.

*Article 2*

In Council Regulation No (EC) 151/2003, Article 1 shall be replaced by the following:

'*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia and falling within CN codes 7225 11 00 (sheets of a width of 600 mm or more) and ex 7226 11 00 (TARIC code 7226 11 00 10) (sheets of a width of more than 500 mm but less than 600 mm).

2. The rate of the definitive anti-dumping duty, applicable to the net, free-at-Community frontier price, before duty, for the product manufactured by the following companies shall be:

| Company | Duty rate | TARIC additional code |
|---|---|---|
| OOO Viz-Stal, 28, Kirov St., 620028 Yekaterinburg GSP-715 | 14,7 % | A516 |
| All other companies | 40,1 % | A999 |

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

*Article 3*

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

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

Done at Brussels, 17 May 2004.

*For the Council*
*The President*
B. COWEN