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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 994/2007

of 28 August 2007

imposing a provisional anti-dumping duty on imports of ferro-silicon originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

1.1. **Initiation**

(1) On 30 November 2006, the Commission announced, by a notice (notice of initiation) published in the *Official Journal of the European Union* [2], the initiation of an anti-dumping proceeding with regard to imports into the Community of ferro-silicon (FeSi) originating in the People's Republic of China (PRC), Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (countries concerned).

(2) The proceeding was initiated as a result of a complaint lodged on 16 October 2006 by Comité de liaison des industries Ferro-Alliages (Euroalliages) (the complainant), on behalf of producers representing a major proportion, in this case more than 90 % of the total Community production of FeSi. The complaint contained prima facie evidence of dumping of the said product and of material injury suffered by the Community industry resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

1.2. **Parties concerned by the proceeding**

(3) The Commission officially advised the complainant, Community producers, the exporting producers, importers, suppliers and users known to be concerned, and representatives of the countries concerned and the EU-former Yugoslav Republic of Macedonia Stabilisation and Association Council of the initiation of the proceeding. Interested parties were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(4) The complainant, a producer who supported the complaint, exporting producers, importers, raw material producers, users and user associations made their views known. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.

(5) In the notice of initiation, the Commission indicated that in view of the apparent large number of importers sampling may be applied in this investigation. However, given the lower than expected number of importers in the Community which indicated their willingness to cooperate, it was decided that sampling was not necessary.

(6) In order to allow exporting producers in the PRC and in Kazakhstan to submit a claim for market economy treatment (MET) or individual treatment (IT), if they so wished, the Commission sent claim forms to the exporting producers known to be concerned and the authorities of the two countries.

(7) The Commission sent questionnaires to all parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation.

(8) Replies were received from the five complainant Community producers, one Community producer who supported the complaint and cooperated fully, seven unrelated importers, three raw material suppliers, eight users, and one association of users.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).
[2] OJ C 291, 30.11.2006, p. 34.

(9) With regard to the countries concerned by this investigation the Commission received replies from three exporters in the PRC, two exporters in Egypt, one exporter in Kazakhstan, one exporter in the former Yugoslav Republic of Macedonia and two exporters in Russia.

(10) The Kazakh exporter subsequently did not allow an on-the-spot verification of its MET claim and questionnaire reply. Due to this non-cooperation in the meaning of Article 18(1) of the basic Regulation, its data could not be verified and had to be disregarded. The company was informed accordingly.

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

(a) Producers located in the Community:

— Ferroatlantica, Cee, Dumbria and Madrid, Spain

— Ferropem, Laudun and Chambéry, France

— Vargön Alloys, Vargön, Sweden

— OFZ, Istebné, Slovakia

— Huta Laziska, Laziska Gorne, Poland

— TDR Metalurgija, Ruse, Slovenia.

(b) Community user:

— Thyssen Krupp Steel AG, Germany.

(c) Exporting producers and related companies in the exporting countries:

PRC

— Dragon Northwest Ferroalloy Co., Ltd, Liangchen Town,

— Lanzhou Good Land Ferroalloy Factory Co., Ltd, Xicha Town, and Rich Trading Co. Ltd. (related exporter), Lanzhou City,

— Erdos Xijin Kuangye Co., Ltd, Qipanjing Town, and Inner Mongolia Erdos International Trade Co., Ltd (related exporter), Dangshen Town.

Egypt

— The Egyptian Ferroalloys Company, Cairo,

— Egyptian Chemical Industries KIMA, Cairo and Aswan.

The former Yugoslav Republic of Macedonia

— SILMAK DOOEL Export Import, Jegunovce.

Russia

— Chemk Group (Chelyabinsk Electrometallurgical Integrated Plant and Kuznetsk Ferroalloy Works), Novokuznetsk,

— ICT Group of Companies (Bratsk Ferroalloy Plant and its related trading companies: TD North West Ferro Alloy Company and Bakersfield Marketing Ltd), Bratsk and Saint Petersburg.

(d) Related importer in the Community:

— Interalloys RFA Limited, Limassol.

1.3. **Investigation period**

(12) The investigation of dumping and injury covered the period from 1 October 2005 to 30 September 2006 (IP). The examination of trends relevant for the assessment of injury covered the period from January 2003 to the end of the IP (period considered).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. **Product concerned**

(13) FeSi is a ferro-alloy containing by weight more than 8 % and less than 95 % silicon and at least 4 % iron. Production of FeSi takes place in electric arc furnaces by means of reducing quartz using carbon-bearing products. The product is essentially used as a deoxidiser and as an alloying component in the iron and steel industry. FeSi is sold in the form of lumps, grains or powder and exists in various qualities depending on the silicon and the impurity content (e.g. aluminium). FeSi with a silicon content of 70 % and higher was considered as high purity, with a silicon content of more than 55 % and less than 70 % as medium purity, and with a silicon content of less than 55 % as low purity FeSi.

(14) FeSi exported to the EC and originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia (the product concerned) is normally declared within CN codes 7202 21 00, 7202 29 10 and 7202 29 90.

(15) In the course of the investigation it was alleged by several exporters that slag, which often contains significantly less then 45 % silicon, should be excluded from the scope of the investigation, because of an alleged lack of the same basic physical characteristic and the same basic uses.

(16) However, this issue needs to be clarified further. In this context interested parties are invited to submit information as to whether the basic physical characteristics and usages of low purity FeSi (i.e. slag) differ substantially from other types of FeSi and to which extent the exclusion of slag could significantly increase the risk of circumvention of measures. However, on the basis of information received so far, it is provisionally determined that low purity FeSi should be considered as product concerned.

2.2. **Like product**

(17) No differences were found between the product concerned and the FeSi produced and sold on the domestic market in the countries concerned, to the extent domestic sales were verified, and in Norway, which served as an analogue country for the purpose of establishing the normal value with respect to imports from the PRC and Kazakhstan. Indeed, FeSi has the same basic physical and chemical characteristics and uses compared with that exported from the countries concerned to the Community. Likewise, no differences were found between the product concerned and the FeSi produced by the Community industry and sold on the Community market. It is therefore provisionally concluded that all types of FeSi are considered to be alike within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. **Market economy treatment (MET)**

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports inter alia originating in the PRC and in Kazakhstan, normal value shall be determined in accordance with paragraphs 1 to 6 of the said Article for those exporting producers which were found to meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is shown that market economy conditions prevail in respect of the manufacture and sale of the like product. Briefly, and for ease of reference only, these criteria are set out in a summarised form below:

1. business decisions and costs are made in response to market conditions, and without significant State interference;

2. accounting records are independently audited, in line with International Accounting Standards (IAS) and applied for all purposes;

3. there are no significant distortions carried over from the former non-market economy system;

4. legal certainty and stability is provided by bankruptcy and property laws;

5. currency exchanges are carried out at the market rate.

(19) Three Chinese and one Kazakh exporting producers requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form within the given deadlines.

(20) One Chinese producer demonstrated during an on-the-spot verification visit that it meets all five MET criteria. Consequently its MET claim was accepted and the dumping and injury analysis were based on its data.

(21) For the other two Chinese exporting producers, it was established during the verification visit that MET was not warranted.

(22) The verification established that one Chinese exporting producer did not meet criteria one to three. Firstly, it did not demonstrate to be free from State interference, inter alia because the Communist party, which was not a shareholder, interfered in basic company decisions and the organisational responsibility for profit distribution decisions remained unclear (criterion one). Secondly, it did not substantiate that it had one clear set of basic accounting records which were prepared and audited in compliance with IAS, because its depreciation technique was neither in line with IAS nor Chinese accounting principles and led to the overstating of costs.

Furthermore, as the above breaches of IAS were not mentioned in the audit report, the company did not demonstrate that its records were audited in line with the international accounting standards, (criterion two). Finally, it did not demonstrate to be free from significant distortions carried over from the former non-market economy, in particular because it obtained from the State land use rights without payment and its assets evaluation during the foundation process of the company remained unclear (criterion three).

(23) Another Chinese exporting producer was unable to demonstrate that it had one clear set of basic accounting records which were prepared and audited in line with IAS: it changed its estimates regarding the useful lives of its assets between two financial years without clear notice, which led to the understating of costs, a practice which is neither in compliance with IAS nor Chinese accounting principles. Moreover, it failed to disclose in its financial statements, and for any class of its assets, the depreciation methods used and the useful lives of the assets or the depreciation rates used. Finally, as this incompliance of IAS was not mentioned in the audit report, it did not demonstrate that its records were audited in line with the international accounting standards (criterion two).

(24) Consequently, it was concluded that both Chinese exporting producers did not fulfil the conditions set out in Article 2(7)(c) of the basic Regulation.

(25) The Kazakh exporter did not allow an on-the-spot verification visit to verify its MET claim. Consequently its MET claim had to be disregarded. In this regard, it is noted that even if the exporting producer in Kazakhstan would appear to meet the MET criteria in an anti-dumping proceeding regarding other alloy products, in the absence of cooperation and in particular in view of the lack of information concerning the decisions of the company regarding prices, costs and inputs, including raw materials, the Commission is not in a position to transpose the MET determination of the other investigation to this proceeding.

(26) Comments were received from all three companies that were not granted MET. One Chinese exporting producer and the Kazakh exporting producer did not provide any new evidence that would change the findings regarding their MET determination. The other Chinese exporting producer claimed that the effect of the change in the estimated useful life of its assets was immaterial (around 1 %) when expressed as a percentage of turnover and was therefore not noted in its financial statements nor in the audit report. However, the investigation showed that indeed the materiality of the change was significant when compared to the operating or the net profit of the company (over 20 %). Moreover the company provided contradicting information as regards to materiality thresholds allegedly used by the various audit firms. On this basis the claim of the company was rejected.

3.2. **Individual treatment (IT)**

(27) Pursuant to Article 2(7)(a) of the basic Regulation, a countrywide duty, if any, is established for countries falling under that Article, except in those cases where companies are able to demonstrate that they meet all criteria set out in Article 9(5) of the basic Regulation.

(28) As far as the PRC is concerned, both exporting producers which did not meet the MET criteria had also claimed IT in the event that they were not granted MET.

(29) On the basis of information available it was found that one of these Chinese exporting producers did not meet all the requirements for IT as set forth in Article 9(5) of the basic Regulation, specifically it did not demonstrate to be sufficiently free from State interference. It was therefore concluded that IT should not be granted to this exporting producers in the PRC.

(30) The other Chinese exporter which did not meet the MET criteria, however, demonstrated that it met all the requirements for IT as set forth in Article 9(5) of the basic Regulation.

(31) As far as Kazakhstan is concerned, the exporting producer who requested MET also claimed IT in the event that it was not granted MET. However, this company did not allow an on-the-spot verification of its IT request, which therefore had to be rejected.

3.3. **Normal value**

3.3.1. *Analogue country*

(32) According to Article 2(7)(a) of the basic Regulation, in economies in transition normal value for exporting producers not granted MET has to be established on the basis of the price or constructed value in a market economy third country (analogue country).

(33) In the notice of initiation Norway was proposed as an appropriate analogue country for the purpose of establishing normal value for the PRC and Kazakhstan. The Commission invited all interested parties to comment on this proposal.

(34) Only one interested party submitted comments proposing as alternative analogue countries Brazil, South Africa or, but conditional on not making energy price adjustments to the normal value, Russia. The Commission contacted known companies in Brazil and South Africa. However, no questionnaire replies or any meaningful comments were received from producers in Brazil or South Africa. With regard to Russia, it is noted that in one case an energy price adjustment turned out to be necessary in accordance with Article 2(5) of the basic Regulation. Moreover, in line with consistent practice a country engaged in injurious dumping is not taken as an analogue country. Therefore, the suggested alternatives to Norway have not been pursued further.

(35) In any event, Norway is worldwide one of the biggest FeSi producers with a competitive market and the three Norwegian major FeSi producers fully cooperated, apply state-of-the-art production techniques and have good access to input materials.

(36) In view of the above, it is concluded that Norway constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.

3.3.2. *Methodology applied for the determination of normal value*

3.3.2.1. Global representativeness

(37) In accordance with Article 2(2) of the basic Regulation, the Commission first examined in each of the countries concerned whether the domestic sales of the like product to independent customers by each cooperating exporting producer (with the exception of the two Chinese and one Kazakh exporter which did not demonstrate to meet the MET criteria) were representative, i.e. whether the total volume of such sales was equal to at least 5 % of the total volume of the corresponding export sales to the Community.

3.3.2.2. Product type comparability

(38) The Commission subsequently identified those product types sold domestically by the companies having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community. The criteria used are the following: silicon content, granular size, impurities (aluminium, titanium, magnesium and raw earth) and packing.

3.3.2.3. Product type specific representativeness

(39) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.

3.3.2.4. Ordinary course of trade test

(40) The Commission subsequently examined whether the domestic sales of cooperating exporting producers in the countries concerned and of the producers in analogue country could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(41) This was done by establishing the proportion of domestic sales to independent customers, of each exported product type, sold at a loss on the domestic market during the investigation period:

(a) For those product types where more than 80 % by volume of sales on the domestic market were not below unit costs and where the weighted average sales price was equal to or higher than the weighted average production cost, normal value, by product type, was calculated as the weighted average of all domestic sales prices of the type in question.

(b) For those product types where at least 10 %, but no more than 80 %, by volume of sales on the domestic market were not below unit costs, normal value, by product type, was calculated as the weighted average of domestic sales prices which were found equal to or above unit costs only, of the type in question.

(c) For those product types where less than 10 %, by volume, was sold on the domestic market at a price not below unit costs, it was considered that the product type concerned was not sold in the ordinary course of trade and therefore, normal value was constructed.

3.3.2.5. Normal value based on actual domestic price

(42) For the types sold for export to the Community by the investigated companies where the requirements set out in Sections 3.3.2.3 to 3.3.2.4(a) and (b) above were met, normal value was based for the corresponding product types on the actual prices paid or payable, by independent customers in the domestic market of the country under investigation, during the IP, as set out in Article 2(1) of the basic Regulation.

3.3.2.6. Normal value based on constructed value

(43) For product types falling under Section 3.3.2.4(c) above, as well as for the product types which were not sold by the exporting producer in representative quantities on the domestic market of the countries under investigation, as mentioned in Section 3.3.2.3 above, normal value had to be constructed.

(44) To construct normal value pursuant to Article 2(6) of the basic Regulation, the selling, general and administrative (SG&A) expenses incurred and weighted average profit realised by the cooperating exporting producers concerned on domestic sales of the like product, in the ordinary course of trade, during the IP, was added to their own average cost of manufacturing during the IP.

(45) In the case where an exporting producer did not have domestic sales of the like product in the ordinary course of trade during the IP, normal value was constructed. This was the case for the exporting producer of the former Yugoslav Republic of Macedonia. Normal value was constructed by using the cost of manufacturing of the said exporting producer concerned. To this cost of manufacturing it was provisionally considered appropriate to add the weighted average SG&A expenses incurred by the Egyptian producers, because of their comparable production and sales structures, and a profit margin of 5 % which was considered a reasonable profit for this type of commodity market, pursuant to Article 2(6)(c) of the basic Regulation.

3.3.2.7. Economies in transition

(46) Pursuant to Article 2(7)(a) of the basic Regulation, but for one Chinese exporting producer which was granted MET, normal value for the PRC and Kazakhstan was established on the basis of verified information received from the producers in the analogue country, i.e. on the basis of prices paid or payable on the domestic market of Norway for comparable product types, where these were found to be made in the ordinary course of trade, or on constructed normal values, where no domestic sales in the ordinary course of trade for comparable product types were found.

(47) As a result, normal value was established as the weighted average domestic sales price to unrelated customers or constructed value per type by the three cooperating producers in Norway.

3.3.3. *Determination of normal value*

3.3.3.1. PRC

(48) For the two Chinese exporting producers which did not obtain MET, normal value for the PRC was established as set out in recitals 46 to 47 above.

(49) For the one Chinese exporting producer which was granted MET normal value was established as set out in recital 42, i.e. based on actual prices paid or payable by independent customers in the domestic market. However, in view of the fact that this company was purchasing electricity from a related supplier, its energy costs associated with the production of the product under investigation will be investigated further before a final determination is made.

3.3.3.2. Egypt

(50) For the two Egyptian exporting producers it was found that for some product types no representative domestic sales in the ordinary course of trade for the like product existed. Therefore, in these case normal value had to be constructed in accordance with the provisions set in recitals 43 and 44 above. For those product types where representative domestic sales in the ordinary course of trade existed normal value was established in accordance with the provisions set in recital 42, i.e. based on the actual prices paid or payable by independent customers in the domestic market.

3.3.3.3. Kazakhstan

(51) Since no MET was granted, normal value for Kazakhstan was established as set out in recitals 46 to 47 above.

3.3.3.4. The former Yugoslav Republic of Macedonia

(52) For the sole Macedonian exporting producer it was established that no representative domestic sales in the ordinary course of trade of the like product existed. Therefore, normal value had to be constructed in accordance with the provisions set in recital 45 above.

3.3.3.5. Russia

(53) For the two Russian exporting producers it was found that for some product types no representative domestic sales in the ordinary course of trade for the like product existed. Therefore, in these cases normal value had to be constructed in accordance with the provisions set in recitals 43 and 44 above. For those product types where representative domestic sales in the ordinary course of trade existed normal value was established in accordance with the provisions set in recital 42, i.e. based on the actual prices paid or payable by independent customers in the domestic market.

(54) In the case of one Russian exporting producer it was found that the energy costs associated with the production of the product concerned were not reasonably reflected in the records, because it paid on weighted average significantly less (50 %) for energy than its competitor, despite both being located in Siberia. Although the energy supplier in question produces hydropower, this by itself cannot explain the low electricity prices. In fact, even when compared to other suppliers of electricity generated by hydroelectric power stations e.g. in Norway, the prices are very low. Moreover, in this regard, all available data provisionally indicate that domestic electricity prices in Russia were regulated prices. It was found that the Russian authorities set maximum tariffs for energy in different regions of Siberia, which appears to be the major reason for the huge price discrepancy ([1]). As already noted by the OECD in 2002 energy price regulations are used in Russia as cross-subsidies between regions, charging poorer regions less for energy than richer regions ([2]). Consequently, in accordance with Article 2(5) of the basic Regulation its energy prices were provisionally adjusted on the basis of the costs of the other Russian exporter, which encompasses two producers, situated in two different other Siberian regions. Indeed, in the silicon AD case in 2003 a similar adjustment in accordance with Article 2(5) of the basic Regulation was made with regard to energy specifically provided by the same energy supplier ([3]).

([1]) Russian Federal Tariffs Service Order of 7.9.2004, No 69-3/4 about limiting tariff levels for electric and heat energy for the years 2005 to 2006.

([2]) OECD Economic Surveys, Russian Federation, Volume 2002/5, p. 122.

([3]) Council Regulation (EC) No 2229/2003 of 22 December 2003 (OJ L 339, 24.12.2003, p. 3, recital 27).

3.4. **Export price**

3.4.1. *PRC*

(55) All three Chinese exporting producers, made export sales to the Community directly to independent customers. Therefore, the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

(56) With regard to all other Chinese exporters, the Commission first established the level of cooperation. A comparison was made between the total export quantities indicated in the questionnaire replies of the three cooperating exporting producers and total dumped imports from the PRC, calculated as explained in recital 66. The percentage found was 18 %. On this basis, the level of cooperation was deemed to be low. As a consequence, export prices were provisionally established on the basis of the transactions with the highest dumping and injury margin made by one of the two cooperating Chinese exporting producers that were granted MET or IT in accordance with Article 18(1) of the basic Regulation and the export prices of the third cooperating Chinese exporting producer that did not receive MET or IT.

3.4.2. *Egypt*

(57) The two Egyptian exporting producers made export sales to the Community directly to independent customers. Therefore, provisionally the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

3.4.3. *Kazakhstan*

(58) Due to non-cooperation, i.e. the refusal of the exporting producer of an on-the-spot verification of submitted data, export prices had to be established in accordance with Article 18(1) of the basic Regulation. This exporter had been made aware of the consequences of non-cooperation. A weighted average import price for Kazakhstan on the basis of Euro stat import data for the IP was provisionally found to be appropriate.

3.4.4. *The former Yugoslav Republic of Macedonia*

(59) The exporting producer made export sales to the Community directly to independent customers. Therefore, provisionally the export prices were established on the basis of the prices actually paid or payable for the product concerned in accordance with Article 2(8) of the basic Regulation.

3.4.5. *Russia*

(60) Both Russian exporting producers made their imports via related parties. The export price was therefore constructed on the basis of the prices at which the imported products were first resold to independent buyers. In accordance with Article 2(9) of the basic Regulation adjustments for all costs incurred between importation and resale and for profits accrued were made.

3.5. **Comparison**

(61) The comparison between normal value and export price was made on an ex-works basis.

(62) 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 prices and price comparability in accordance with Article 2(10) of the basic Regulation. For all investigated exporting producers allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, packing costs, credit costs, warranty and guarantee costs, and commissions have been granted where applicable and justified.

(63) In the case of one Russian and one Egyptian exporting producer level of trade adjustments were claimed. These claims had to be rejected because the companies did not demonstrate that such adjustments were warranted, i.e. demonstrating that there were consistent and distinct differences in functions and prices for the different levels of trade in the domestic market of the respective exporting countries as stipulated by Article 2(10)(d) of the basic Regulation.

3.6. **Dumping margins**

3.6.1. *General Methodology*

(64) Pursuant to Articles 2(11) and (12) dumping margins were established on the basis of a comparison of a weighted average normal value by product type with a weighted average export price by product type as established above.

(65) For those exporting producers which neither replied to the Commission's questionnaire nor otherwise made themselves known, the dumping margin was established on the basis of the facts available, in accordance with Article 18(1) of the basic Regulation.

(66) In order to determine the dumping margin for non-cooperating exporting producers the level of non-cooperation was first established. To this end, the volume of exports to the Community reported by the cooperating exporting producers was compared with the equivalent Eurostat import statistics.

(67) Where the level of non-cooperation was high, i.e. more than 20 %, it was considered appropriate to set the dumping margin for the non-cooperating exporting producers at a level higher than the highest dumping margin established for the cooperating exporting producers. Indeed, there is reason to believe that the high level of non-cooperation results from the non-cooperating exporting producers in the investigated country generally having dumped at a higher level than any cooperating exporting producer. In such cases (i.e. the PRC and Russia), the dumping margin was therefore established at a level which corresponds to the weighted average dumping margin of the most representative product type with the highest dumping and injury margin on the basis of an assessment per cooperating exporting producer.

(68) Where the level of cooperation was high (i.e. where non-cooperating exporters represent less than 20 %), it was considered appropriate to set the dumping margin for any non-cooperating exporting producers at the level of the highest dumping and injury margin found for a cooperating exporting producer in the country concerned, since there was no reason to believe that any non-cooperating exporting producer had dumped at a lower level.

3.6.2. *Dumping margins*

3.6.2.1. PRC

(a) *For the cooperating producers granted MET and IT*

(69) For the companies granted MET or IT, the weighted average normal value of each type of the product concerned exported to the Community was compared with the weighted average export price of the corresponding type of the product concerned, as provided for in Article 2(11) and (12) of the basic Regulation.

(70) On this basis, the provisional weighted average dumping margins expressed as a percentage of the cif Community frontier price, duty unpaid, are:

Company	Provisional dumping margin
Erdos Xijin Kuang Co., Ltd.	2,8 %
Lanzhou Good Land Ferroalloy Factory Co., Ltd	57,2 %

(b) *For all other exporting producers*

(71) The countrywide dumping margin was calculated on the basis of a comparison between the export price as set out in recital 56 and the normal value as set out in recitals 46 to 47.

(72) On this basis the countrywide level of dumping was provisionally established at 60,7 % of the cif Community frontier price, duty unpaid.

3.6.2.2. Egypt

(73) There was significant cooperation of exporting producers in Egypt (around 95 %). The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

— The Egyptian Ferroalloys Company, Cairo 20,4 %

— Egyptian Chemical Industries KIMA, Cairo 24,8 %

— All others 20,4 %.

3.6.2.3. Kazakhstan

(74) In the absence of cooperation only a countrywide dumping margin was established. The provisional dumping margin, expressed as a percentage of the cif import price at the Community border duty unpaid, is the following:

— Kazakhstan 37,1 %.

3.6.2.4. The former Yugoslav Republic of Macedonia

(75) As the cooperating exporting producer is virtually the only FeSi producer in the former Yugoslav Republic of Macedonia, cooperation was high. The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

— SILMAK DOOEL Export Import, Jegunovce 5,4 %

— All others 5,4 %.

3.6.2.5. Russia

(76) There was significant non-cooperation of exporting producers in Russia (around 68 %). The provisional dumping margins, expressed as a percentage of the cif import price at the Community border duty unpaid, are the following:

— Chemk Group (Chelyabinsk Electrometallurgical Integrated Plant and Kuznetsk Ferroalloy Works), Chelyabinsk and Novokuznetsk 22,8 %

— ICT Group (Bratsk Ferroalloy Plant, Bratsk 22,2 %

— All others 25,5 %.

4. INJURY

4.1. **Community production**

(77) The investigation established that the like product is manufactured by seven producers in the Community. The complaint was lodged on behalf of five of these producers. After the initiation, a sixth producer decided to support the proceeding by cooperating fully in the investigation. The remaining producer did not take any position and supplied no data.

4.2. **Definition of the Community industry**

(78) The six cooperating Community producers accounted for 95 % of the Community production of FeSi during the IP. They are therefore deemed to constitute the Community industry (CI) within the meaning of Article 4(1) and Article 5(4) of the basic Regulation.

(79) Certain interested parties argued that the five producers supporting the complaint were not at all in similar economic situations and that at least two of them would incur no injury. Therefore these two Community producers should be excluded from the current investigation which would lead to a lack of standing.

(80) In this regard, it is noted that pursuant to Article 4 of the basic Regulation the term 'Community industry' refers to the Community producers whose collective output represents a major proportion of the total Community production. The same Article provides for the circumstances in which certain Community producers may be excluded from the definition of CI. These circumstances do not include the performance of Community producers. Moreover, the exclusion of producers based on performance goes against the very principle of making an objective assessment of the situation of the CI. On the basis of the above, the claim was rejected.

4.3. **Community consumption**

(81) Community consumption was established on the basis of sales volumes of the CI on the Community market plus estimated sales volume of the non cooperating producer in the Community plus imports from the countries concerned and other third countries, based on Eurostat. Community consumption of FeSi remained rather stable during the period considered with the exception of 2003 and 2004 when it increased by 6 % due to the exceptional large demand from the steel industry.

	2003	2004	2005	IP
Community consumption (tonnes)	871 794	922 978	881 930	883 311
Index	100	106	101	101

4.4. **Imports into the Community from the countries concerned**

4.4.1. *Cumulative assessment of the effects of dumped imports*

(82) The Commission considered whether the effects of imports of FeSi originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia should be assessed cumulatively in accordance with Article 3(4) of the basic Regulation.

(83) The dumping margin found for each of the countries concerned was more than *de minimis*, the volume of imports from each of these countries was not negligible and the cumulative assessment was considered appropriate in view of the conditions of competition between the imports from the countries concerned and the like Community product. Similar conditions of competition were evidenced by the fact that the product concerned imported from the countries concerned and the like product produced and sold by the CI within the Community market were alike and distributed via the same trade channels. Moreover all import volumes were substantial and resulted in significant market shares.

(84) On the basis of the above, it was concluded that the conditions justifying the cumulative assessment of imports of FeSi originating in the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia were met.

4.4.2. *Cumulated volume and market share*

(85) Import volumes from the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia, as derived from Eurostat, increased significantly from 134 081 tonnes in 2003 to 452 108 tonnes in the IP. Their combined market share increased continually from 15,4 % to 51,2 % during the same period. This has to be seen against the background of an almost stable consumption — with the exception of 2004 as explained above.

	2003	2004	2005	IP
Import volumes (tonnes)	134 081	198 164	319 265	452 108
Index	100	148	238	337
Market share	15,4 %	21,5 %	36,2 %	51,2 %
Unit selling price (EUR/tonne)	557	580	569	574
Index	100	104	102	103

4.4.3. *Prices*

4.4.3.1. Price evolution

(86) Between 2003 and the IP, the average price of imports of the product concerned originating in the countries concerned increased by 3 %. Specifically, the prices increased by 4 % in 2004 (a year marked with significant increase in demand of steel worldwide), decreased by 2 % the following year 2005 and then increased by around 1 % in the IP.

4.4.3.2. Undercutting

(87) For the determination of price undercutting the Commission analysed data referring to the IP. The CI and the exporting producers concerned were requested to provide information on sales prices of FeSi categorised in models according to the criteria indicated in recital 38 above.

(88) The relevant sales prices of the CI were those to independent customers, adjusted where necessary to an ex-works level, i.e. excluding freight costs in the Community and after deduction of discounts and rebates. These prices were compared with the prices of imports of the cooperating producers concerned. With regard to Kazakhstan, given that there was no cooperation, the weighted average export price was derived from Eurostat. As for the PRC, Egypt, the former Yugoslav Republic of Macedonia and Russia the comparison was made against the export prices charged by the cooperating exporting producers, net of discounts, duly adjusted, where necessary, to cif Community frontier prices and duly adjusted for conventional duties unloading and customs clearance costs.

(89) The comparison showed that during the IP the product concerned sold in the Community market undercut the CI's prices between 4 % and 11 %, depending on the exporting producer concerned, with the exception of a Russian, an Egyptian and the exporting producer in the former Yugoslav Republic of Macedonia, for which no undercutting was found. However, on a type-by-type basis it was found that in several instances the prices practised by the exporting producers concerned were significantly lower than the above average undercutting margins or in the case of exporting producers where no overall undercutting was found, undercutting margins were established for certain product types. Moreover, in view of the significant losses suffered by the CI, the undercutting margins do not show the full effect of dumped imports on prices as there was considerable price depression. Finally, the amount of undercutting found should not be considered insignificant taking into account the nature of the product which is a commodity, sensitive even to minor price variations.

4.5. **Situation of the Community industry**

(90) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the CI included an analysis of all economic factors and indices having a bearing on the state of the industry during the period considered.

4.5.1. *Production, production capacity and capacity utilisation*

(91) Production decreased by 40 % between 2003 and the IP. The evolution of production volumes was as follows:

	2003	2004	2005	IP
Production (tonnes)	272 364	267 149	211 906	163 908
Index	100	98	78	60

(92) The production capacity was established on the basis of the theoretical nominal capacity of the production units of the CI. In this regard production capacity remained stable during the period considered. As a result of the decrease in production volumes, the capacity utilisation decreased at the same ratio as the production during the period considered.

(93) However, in order to take account of the fact that two producers in the Community switched part of their production from FeSi to other Ferroalloys during the period considered, production capacity was adjusted accordingly.

	2003	2004	2005	IP
Production capacity	348 261	348 261	325 601	325 601
Index	100	100	93	93
Capacity utilisation	78 %	77 %	65 %	50 %
Index	100	99	83	64

4.5.2. *Stocks*

(94) Stocks went down by 46 % during the period considered, reflecting the decrease in the production output of the CI.

	2003	2004	2005	IP
Stocks (tonnes)	29 432	30 741	21 525	15 630
Index	100	104	73	53

4.5.3. *Sales volume, market shares and average unit prices in the Community*

(95) Sales of FeSi by the CI to independent customers on the Community market decreased steadily from 250 316 tonnes in 2003 to 156 633 tonnes in the IP, i.e. by 38 %. Hence the CI experienced a loss of market share amounting to 11 percentage points. The market share dropped from 28,7 % in 2003 to 17,7 % in the IP.

	2003	2004	2005	IP
Sales volume in the EC (tonnes)	250 316	244 561	197 782	156 920
Index	100	98	79	63
Market share	28,7 %	26,5 %	22,4 %	17,7 %
Index	100	92	78	62

(96) Average sales prices to unrelated customers in the Community market remained rather stable between 2004 and the IP after an increase of 10 % between 2003 and 2004. Specifically, a slight price decrease occurred between 2004 and 2005, after which prices reached again the level of 2004. The price increase reflected a certain raise in costs and a shift to certain higher value products at the expense of dropping market shares. Current price levels, however, are unsustainable since the CI is forced to sell below full cost in order to stay on the market.

	2003	2004	2005	IP
Weighted average price (EUR/tonne)	623	685	670	686
Index	100	110	107	110

4.5.4. *Profitability and cash flow*

(97) During the period considered profitability of the CI decreased from a low profit of 2,3 % in 2003 to – 12,9 % in the IP. A slight increase can be observed in 2004, which was an exceptionally prosperous year for the steel business and its related industry. However, after this period a significant downwards trend in terms of profitability took place. The main reason for this development is the dramatic decrease in the production output of the CI (– 40 %) and its corresponding decline in capacity utilisation (– 18 percentage points) which led to relatively high increase of the unit fixed costs per produced unit and which did not allow the CI to benefit from the economies in scale which higher capacity utilisations would have entailed. To a lesser extent, profitability was negatively affected by the fact that as of 2004 the CI was not able to increase its sales prices at the level necessary to cover price increases in energy and certain raw materials that incurred as of that year.

	2003	2004	2005	IP
Pre-tax profit margin	2,3 %	2,7 %	– 9,2 %	– 12,9 %

(98) Cash flow also deteriorated over the period considered, reflecting the above negative trend in profitability.

	2003	2004	2005	IP
Cash flow (EUR)	7 834 497	10 029 457	– 10 103 355	– 12 081 451
Index	100	128	– 129	– 154

4.5.5. *Investments, return on investments, and ability to raise capital*

(99) Investments showed a positive trend over the period considered. The investments relate mainly to upgrading of production equipment to conform to environmental requirements.

	2003	2004	2005	IP
Investments (EUR)	1 917 786	3 145 409	9 788 877	5 827 463
Index	100	164	510	304

(100) The return on investment from the production and sales of the like product was negative and decreased substantially during the period considered, reflecting the abovementioned negative trend in profitability.

	2003	2004	2005	IP
Return on investment	18,9 %	19,8 %	– 46,5 %	– 47,3 %
Index	100	105	– 246	– 250

(101) There were no indications that the CI, which consists essentially of medium sized companies also involved in the production of other products, encountered problems to raise capital for its activities and it was therefore concluded that the CI was in a position to raise capital for its activities throughout the period considered.

4.5.6. *Employment, productivity and wages*

(102) The evolution of employment, productivity and wages was as follows:

	2003	2004	2005	IP
Number of employees	1 579	1 155	1 141	1 153
Index	100	73	72	73
Productivity (tonnes/employee)	172	231	186	142
Index	100	134	108	82
Labour costs per employee (EUR)	14 568	19 602	18 107	17 464
Index	100	135	124	120

(103) The number of employees decreased by 27 % during the period considered. As a result of the decreasing production volumes, productivity showed a negative trend since 2004. The average labour costs per employee increased by 20 % over the period considered.

4.5.7. *Growth*

(104) While the Community consumption increased by just 1 % over the period considered, the sales volume of the CI decreased by 37 % and in parallel the import volumes from the countries concerned increased by 35,8 %. This led to the loss of market share by the CI, whereas the imports concerned managed to increase theirs.

4.5.8. *Magnitude of the actual margin of dumping and recovery from past dumping*

(105) The dumping margins for the PRC, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia are specified above in the dumping section. These margins are clearly above *de minimis*. Furthermore, given the volumes and the prices of the dumped imports, the impact of the actual margins of dumping cannot be considered to be negligible.

(106) There is no indication that the CI is recovering from the effects of past dumping or subsidisation. It is noted that imports of the FeSi were not subject to measures since 2001.

4.5.9. *Conclusion on injury*

(107) The analysis of the injury indicators shows that the situation of the CI deteriorated significantly after 2003 and reached its lowest point in the IP, when the industry made a loss of 12,9 %.

(108) In the context of a rather stable consumption during the period considered, the Community production decreased by 40 % and its capacity utilisation by 28 percentage points during the same period. Sales on the Community market decreased by 37 % in terms of volume and 31 % in terms of value. This led to a decrease in market share from 28,7 % in 2003 to 17,7 % in the IP. Average unit prices increased by 10 % during the period considered, but remained stable between 2004 and the IP. However, in view of the dramatic decrease in production output, which was dictated by the fall in sales volumes, the CI lost economies of scale as its unit fixed costs per produced unit increased significantly. Moreover, as of 2004 the CI was not in a position to set its prices to the necessary level in order to compensate certain increases in its input costs. Both these factors resulted in the significant drop in profitability in the IP.

(109) Investments showed a positive trend due the environmental requirements that the CI needs to meet. Stocks also showed a positive trend (decreased in value by 47 % over the period considered) but this was mainly due to the dramatic drop in the level of production. All other injury indicators confirm the negative situation of the CI. Return on investments and cash flow were negative and productivity decreased.

(110) In the light of the foregoing, it can be concluded that the CI suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. **Introduction**

(111) In accordance with Article 3(6) and (7) of the basic Regulation, the Commission has examined whether the dumped imports of FeSi originating in the countries concerned have caused injury to the CI 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 CI, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

5.2. **Effect of the dumped imports**

(112) Between 2003 and the IP, the volume of dumped imports increased significantly by 237 % and their corresponding market share of the Community market increased by 35,8 percentage points. The average price of these imports increased by 3 % between 2003 and the IP, being however significantly lower than those of the CI during the same period. Also, during the IP, the average price of the dumped imports undercut the prices of the CI by 3,7 % to 11 %, depending on the exporting producer, with the exception of three cooperating exporting producers for which no undercutting was found. Moreover, prices of the CI were depressed.

(113) The substantial increase in volume of the imports from the countries concerned at low and dumped prices and their gain in market share over the period considered coincided with the deterioration of the situation of the Community industry during the same period, in particular in terms profitability, sales volumes, market share, production, capacity utilisation, cash flow, return on investments and employment. Moreover, the CI was not able to increase its sales prices up to the necessary level to cover its full costs, as its sales prices were undercut during the IP by the dumped imports.

(114) It is therefore provisionally concluded that the dumped imports had a significant negative impact on the situation of the CI.

5.3. **Effect of other factors**

5.3.1. *Imports from other third countries*

(115) The analysis of imports from all third countries, other than the countries concerned, was based on data from Eurostat. In the case of Norway it was possible to cross-check this data with information provided by the analogue country producers, which confirmed the reliability of Eurostat data.

(116) Overall imports from all other third countries decreased over the period considered by around 45 %, i.e. from around 477 400 tonnes in 2003 to around 264 600 in the IP. The corresponding market share declined from 54,8 % to 30 %. Over the same period, the prices of these imports increased by 7 % (from EUR 609/tonne in 2003 to EUR 653/tonne in the IP). The average price of these imports was above that of the imports originating in the countries concerned throughout the period considered and slightly lower than that of the CI (2,3 % to 5,7 %) over the same period. The main sources of imports from other third countries during the IP were Norway, Iceland and Venezuela.

	2003	2004	2005	IP
Imports from third countries other than the countries concerned (in tonnes)	477 397	470 253	354 883	264 570
Index	100	99	74	55
Market share	54,8 %	50,9 %	40,2 %	30 %
Unit selling price (EUR/tonne)	609	646	659	653
Index	100	106	108	107

5.3.1.1. Norway

(117) The imports from Norway followed to a certain extent a development similar to that of the CI, significantly decreasing in volume and market share. During the IP, the average price of imports from Norway amounted to EUR 686/tonne. This means that Norwegian products were considerably more expensive than imports from the countries concerned and had the same price level as the products sold by the CI. It is therefore concluded that imports from Norway did not contribute to the material injury suffered by the CI.

	2003	2004	2005	IP
Imports from Norway (quantity in tonnes)	186 429	274 130	185 334	90 381
Index	100	147	99	48
Norway unit selling price (EUR/tonne)	669	668	650	686
Index	100	100	97	103
Market share	21 %	30 %	21 %	10 %

5.3.1.2. Iceland

(118) Imports from Iceland increased by 16 % and the market share of these imports increased by 1,2 percentage points over the period considered (IP = 9,3 %). This development can be explained to a certain extend by the fact that one major Norwegian producer transferred part of its production to Iceland where the conditions for the production of FeSi were more favourable. While the average import price from Iceland was below that of the CI during the IP, it was well above the average import price of the countries concerned (12 % higher). Therefore, while it cannot be excluded that the imports from Iceland had a certain effect on the negative situation of the CI, this effect cannot be considered to be of any material significance when compared with to volume and prices of the dumped imports.

	2003	2004	2005	IP
Imports from Iceland (quantity in tonnes)	70 506	86 120	70 607	81 881
Index	100	122	100	116
Iceland unit selling price (EUR/tonne)	645	612	675	643
Index	100	95	105	100
Market share	8,1 %	9,3 %	8,0 %	9,3 %

5.3.1.3. Brazil

(119) The third most important country among third countries not concerned by this investigation in terms of quantities during the IP was Brazil. Imports from Brazil decreased by 11 % in terms of quantity while the market share decreased by 0,4 % during the period considered. During the whole period under consideration the average import price from Brazil was significantly above that of the CI. It is therefore concluded that imports from Brazil did not contribute to the material injury suffered by the CI.

	2003	2004	2005	IP
Imports from Brazil (quantity in tonnes)	29 902	25 028	24 117	26 491
Index	100	84	81	89
Brazil unit selling price (EUR/tonne)	686	732	756	732
Index	100	107	110	107
Market share	3,4 %	2,7 %	2,7 %	3,0 %

5.3.1.4. Venezuela

(120) Imports from Venezuela increased by 140 % and the market share of these imports increased by 1,3 percentage points over the period considered reaching to a market share of 2,2 % during the IP. They appeared in significant levels only during the IP since in the other years of the period considered their market share was below 1 %. Overall, however, Venezuela remained a very small player on the Community market. While the average import price from Venezuela was below that of the CI during the IP, it was well above the average import price of the countries concerned (9 % higher). While it cannot be excluded that these imports had a certain effect on the negative situation of the CI, this effect cannot be considered to be of any material significance when compared to volume and prices of the dumped imports.

	2003	2004	2005	IP
Imports from Venezuela (quantity in tons)	8 255	0	4 489	19 787
Index	100	0	54	240
Venezuela unit selling price (EUR/ton)	706	0	712	626
Index	100	0	101	89
Market share	0,9 %	0 %	0,5 %	2,2 %

(121) On the basis of the above, it is concluded that imports from other third countries have not materially contributed to the injury suffered by the Community industry.

5.3.2. *Competition from the other Community producer*

(122) As indicated under recital 77 above, one other Community producer did not cooperate with the investigation. Based on information obtained in the course of the investigation from cooperating producers, it is estimated that its sales volume and market share in the Community market were stable throughout the period considered and remained at insignificant levels. Also the other producer did not gain any sales volume and market share at the expense of the Community industry. No information was available concerning the prices of the other Community producer.

(123) Given the above, and given the absence of information to the contrary, it is concluded that the other Community producer has not contributed to the injury suffered by the CI.

5.3.3. *Development of demand*

(124) As to the development of demand, the apparent consumption of FeSi on the Community market with the exception of 2004 was rather stable over the period considered. Therefore, the material injury suffered by the CI cannot be attributed to a contraction in demand on the Community market.

5.3.4. *Export performance of the Community industry*

(125) With regard to the CI's sales made outside the Community, the investigation showed that there was an overall increase of 69 % in terms of volume during the period considered. During the same period, the unit selling price was on average 22 % higher than on the Community market. However, the share of exports as percentage of the total sales volume of the CI remained with at a fairly low level (around 3,1 % in relation to production) over the whole period considered. It is therefore, concluded that the export activity cannot have contributed in any way to the injury suffered by the CI.

5.3.5. *Currency fluctuations*

(126) Some interested parties have claimed that the depreciation of the USD against the euro has favoured imports of FeSi into the European Community. Between 2003 and 2004, the USD did indeed loose 9,7 % of its value against the euro. However, from 2004 onwards until the end of the IP the USD decreased against the euro by only 2,7 %. Neither the price development of the CI nor the import volumes from the countries concerned or from other third countries reflect the rather low depreciation of the USD against the euro.

(127) Therefore the depreciation of the USD against the euro has to be considered as negligible and cannot be considered as a major cause of the loss of the market share of the CI. Consequently, it was provisionally concluded that the appreciation of the euro in respect of the USD was not a factor causing material injury to the CI and the claim was, therefore, rejected.

(128) Moreover, it is recalled that the investigation has to examine whether the dumped imports (in terms of prices and volumes) have caused material injury to the CI or whether such material injury was due to other factors. In this respect, with regard to prices, Article 3(6) of the basic Regulation states that it is necessary to show that the price level of the dumped imports causes injury. It therefore merely refers to a difference between price levels, and there is thus no requirement to analyse the factors affecting the level of those prices.

(129) The above is also confirmed by the wording of Article 3(7) of the basic Regulation, which refers to known factors other than dumped imports. Indeed, the list of the other known factors in this Article does not make

reference to any factor affecting the price level of the dumped imports. To summarise, if the exports are dumped, and even if they benefited from a favourable development of exchange rates, it is difficult to see how the development of such exchange rate could be another factor causing injury.

(130) Thus, the analysis of the factors affecting the level of the prices of the dumped imports, be it differences in prices in exchange rates or something else, cannot be conclusive and such analysis would go beyond the requirements of the basic Regulation. Equally on this basis, the claims concerning the exchange rate fluctuations were provisionally rejected.

5.3.6. *Further factors*

(131) Several users and importers argued that the CI is suffering injury due to the high costs of production, in particular due to the raise in electricity costs experienced especially in Europe.

(132) While it is true that electricity costs constitute a major portion of the costs of production of the product concerned, the investigation also revealed that energy prices all over the world, including in the countries concerned, increased, in some instances to a much higher degree than in Europe.

(133) Against this background the energy issue cannot break the causal link between the dumped imports and the material injury suffered by the CI.

(134) One interested party argued that the CI is suffering from self-inflicted injury by switching from the production of FeSi to other alloys, in particular ferro-manganese and silico-manganese.

(135) The investigation revealed that such a switch is possible provided that the furnaces are technically equipped for such a change in production. The CI has only few such furnaces which limit its possibilities to switch production according to actual market trends. In fact only three CI producers have already such furnaces but even for them a change in production involves high costs due to idle equipment up to 14 days needed for cleaning and adapting to the new production process. An additional factor constraining the switch in production is the difficulty in sourcing of the raw materials required for the production of manganese alloys, as the few world-wide suppliers of such materials are located outside the Community and work on the basis of long-term contracts. Despite these limitations a switch in production happened in 2004 when there was a lack of manganese alloys on the EC market and at the same time sufficient supply of FeSi.

(136) In conclusion, the decision taken by some CI producers to cut back production has not been taken on a voluntary basis, as alleged by the interested party, but was caused by the dumped imports preventing the CI to make profitable sales on the like product. Therefore, the argument of self inflicted injury had to be rejected.

5.4. **Conclusion on causation**

(137) The above analysis demonstrated that there was a substantial increase in volume and market share of the imports originating in the countries concerned during the period considered. Also, during the IP, the dumped imports were undercutting the sales prices of the CI.

(138) The increase in market share of the low-priced imports from the countries concerned coincided with a significant drop in sales volume and market share of the CI. At the same time, the CI was not able to increase its sales prices up to the necessary level to cover its full costs as its sales prices were undercut during the IP by the dumped imports. This resulted, inter alia, in substantial losses for the CI.

(139) On the other hand, the examination of the other factors which could have injured the CI revealed that none of these could have had a significant negative impact on the situation of the CI.

(140) Based on the above analysis which has properly distinguished and separated the effects of all known factors on the situation of the CI from the injurious effects of the dumped imports, it is provisionally concluded that the imports from the countries concerned have caused material injury to the Community within the meaning of Article 3(6) of the basic Regulation.

6. COMMUNITY INTEREST

6.1. **Preliminary remark**

(141) In accordance with Article 21 of the basic Regulation, the Commission examined whether, despite the conclusion on injurious dumping, compelling reasons existed for concluding that it is not in the Community interest to adopt measures in this particular case. The determination of the Community interest was based on an appreciation of all the various interests involved, i.e. those of the CI, the importers, the raw material suppliers and the users of the product concerned.

6.2. **Investigation**

(142) In order to assess the likely impact of the imposition or non-imposition of measures, the Commission requested information from all interested parties. The Commission sent questionnaires to the seven Community producers, three suppliers of raw materials, 72 importers and 31 users of the product concerned. Six Community producers, three suppliers of raw materials, seven importers and eight users replied.

6.3. **Interest of the Community industry**

6.3.1. *Nature and structure of the Community industry*

(143) The CI is essentially composed of medium sized companies located in six Member States (Spain, France, Sweden, Slovenia, Slovakia and Poland). The CI employed 1 153 people in the IP and bought its raw materials from Community suppliers, thus having an impact on the employment levels of raw material suppliers.

6.3.2. *Effects of the imposition or non-imposition of measures on the Community industry*

(144) The injury found has taken the form of a significant decrease in the volume of sales and an insufficient increase in the sales price, which in turn resulted in the CI's losses. It is expected that, following the imposition of anti-dumping duties, the volume of FeSi sold by the CI will increase. To a certain extent, the prices on the Community market will also rise. This would enable the CI to reach an acceptable level of profitability. However, the prices of the CI are unlikely to increase more than by a moderate amount, if any, due to the conditions of competition among Community producers and the presence of other low-priced imports not subject to anti-dumping measures.

(145) It is considered that the imposition of measures will restore fair competition on the market. It should be noted that the CI's losses are to a large extent the result of its difficulty to compete with the dumped, low-priced imports originating in the countries concerned. If measures are taken, the CI will be able to regain at least part of its lost market share with a consequent positive impact on profitability.

(146) As mentioned above, the CI suffered material injury caused by dumped imports originating in the countries concerned. If measures are not imposed, a further deterioration in the situation of the CI is probable. This would entail a further loss of employment and frustrate the investments made in recent years. The price-depressive effect of the dumped imports would continue to foil all efforts by the CI, in particular to regain a profitable level. Not taking measures would jeopardise the long-term presence of the industry and it is almost certain that at least some Community producers might have to shut down as a result of the competition from dumped imports.

(147) In conclusion, it is expected that measures would be effective in giving the CI the opportunity to recover from the injurious dumping found in this investigation.

6.4. **Interest of the other Community producer**

(148) There is only one other producer in the Community in addition to the Community industry. In the absence of cooperation from this producer, and thus of precise data concerning its activity, it is estimated, based on information from cooperating Community producers, that this manufacturer's production is around 6 % to 8 % of that of the CI. Should anti-dumping measures be imposed, the same type of positive developments, as set out in recital 144 for the CI, can be expected for this other Community producer as well.

(149) In conclusion, the other Community producer would certainly benefit from the imposition of anti-dumping measures.

6.5. **Interest of the suppliers of raw materials**

(150) Three questionnaire replies were received from suppliers of raw materials supplying/distributing electricity, quartzite and cokes to the CI.

(151) If measures are imposed and the CI regains lost market share, the suppliers of raw materials will also be able to increase the sales of their products. As the raw materials concerned constitute a major part of the turnover of these companies, this will most likely improve the financial situation of the raw material suppliers.

(152) If measures are not imposed, the sales of the CI will continue to go down and consequently also their demand for raw materials. This will most likely negatively affect the profitability of the raw material suppliers.

6.6. **Interest of the importers**

(153) Seven questionnaire replies were received from importers. The seven cooperating importers represented around 12,7 % of the total Community consumption of FeSi during the IP. They were all against the imposition of measures.

(154) The profit margin of the importers for sales of the product concerned is on a weighted average basis 6 %. Thus, they would be able to bear part of the possible price increases and pass on part of it to their customers. In view of the weighted average level of the duties to be imposed on the companies operating under market economy conditions and the alternative sources available without any duties, the possible price increases are likely to be in any event limited.

(155) This view was supported by a cooperating importer who confirmed that Ukraine, which was a large exporter of the product concerned before, has idle capacity which could be re-established under more favourable market conditions.

(156) The same importer confirmed that its most important supplier located in Europe but outside the EC shut down production in August 2005 but started up again production early 2007 at a rate of 80 % of capacity utilisation. It is expected that this producer will be able to restore full capacity which will make additional 100 000 tons of the product concerned available.

(157) Taking into account the fact that imports of the product concerned from the countries under investigation counts on average for around 12 % of their total turnover, the financial situation of the importers will not be seriously affected by the imposition of a duty.

(158) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on importers.

6.7. **Interest of the users**

(159) Eight questionnaire replies from users and one submission from an association of users were received. One verification visit was carried out at the company purchasing the biggest quantity of FeSi during the IP. The eight cooperating users represented around 24 % of the total Community consumption of FeSi during the IP. All cooperating users have taken position against the imposition of anti-dumping duties for fear of losing a cheap source of supply, which would harm their competitiveness in the downstream market vis-à-vis competitors in third countries.

(160) Users of FeSi are mainly concentrated in the steel making business and in foundries. One metric ton of steel contains approximately 3 to 4 kilograms of FeSi, whereas one metric ton of stainless steel contains approximately 20 kilograms of FeSi. Based on the questionnaire replies, a verification visit at one user and information submitted during hearings, the highest share of FeSi in the total costs of production of steel makers was established to be 0,7 %. However, the average is lower and amounts by way of example to 0,6 % for steel profiles, 0,59 % for steel plates, 0,4 % for wire rod, 0,24 % for cold thin sheets, and 0,14 % for cold rolled steel and galvanised and colour coated steel products, merchant bar and cast blooms.

(161) Some users even confirmed that any anti-dumping measures will have little influence since other suppliers without measures are available.

(162) Others confirmed that for their production purposes at least partly FeSi can be replaced by other ferro-alloys, such as silico-manganese and silicon-metal.

(163) As the profit margin of the users of the product concerned is on a weighted average basis 10,4 %, it is estimated that the effect of even a significant increase of 30 % in the price affecting all FeSi would be to reduce the profitability of steel producers by only around 0,2 %. Given that measures would be on average at a lower rate, the effect of any possible measures on the profitability of the steel industry would be extremely limited and users would have no difficulties whatsoever in bearing the costs of the measures. Moreover, steel producers will,

in any case, have the possibility to pass on the effect of any price increase for the product concerned, which will be limited by the relatively minor significance of FeSi in the overall cost of steel production. The number of employees in these companies directly related to products using FeSi was around 45 000 people.

(164) It was submitted that the CI is not in a position to satisfy the whole demand for FeSi in the Community. In this respect, it has to be recalled that measures are not intended to prevent imports into the Community but to ensure that they are not made at injurious dumped prices. Indeed, the countries concerned can continue to export to the Community, but at non-dumped/non-injurious prices. Although it is possible that, following the imposition of measures, the sales volume and market share of the imports concerned may decrease, imports from other third countries will continue to represent an alternative source of supply. In addition, the return to normal market conditions should make the Community market more attractive to these other sources of supply. Moreover, while the Community industry held a market share of around 18 % during the IP, it is recalled that its capacity utilisation in the same period dropped to an unprecedented level of 50 %, which means that it has room to increase substantially its production volumes before reaching any capacity constraint. Given the above considerations, the imposition of anti-dumping measures is not expected to cause any shortage of supply.

(165) It was also found that users were very much interested in having at their disposal reliable sources of supply, which are not too far away from them. Both conditions which the CI is in a position to fulfil.

(166) On the basis of the above, it was provisionally concluded that the effect of the anti-dumping measures, if any, will most likely not have a material impact on users. However, the Commission will look further and in more detail into the effect of provisional measures on the situation of the users, before any final determination is made.

6.8. **Competition and trade distorting effects**

(167) With respect to the effects of possible measures on competition in the Community, the cooperating exporting producers concerned, given their strong market positions, will probably continue to sell their products, albeit at non-dumped prices. Indeed, the relatively moderate duty rates for the cooperating exporting producers working under market economy conditions should allow them to operate under fair market conditions in the Community. Thus, given the overall range of duties imposed, it is likely that there will still be a sufficient number of major competitors on the Community market, including the producers in the countries concerned, Norway, Iceland, Venezuela and Ukraine. Therefore, users will continue to have the choice of different suppliers of FeSi. If, on the other hand, no measures were to be imposed, the future of the Community producers would be at stake. Its disappearance would not only effectively reduce competition on the Community market, but also reduce reliable sources of supply which, as mentioned above, is of major importance for users.

6.9. **Conclusion on Community interest**

(168) Given the above reasons, it is provisionally concluded that there are no compelling reasons against the imposition of anti-dumping duties in the present case. However, the Commission will investigate further the Community interest aspects of the case before any final determination is made.

7. PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES

7.1. **Injury elimination level**

(169) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional anti-dumping measures should be imposed in order to prevent further injury being caused to the CI by the dumped imports.

(170) In order to establish the level of duty, account has been taken of the level of the dumping margins found and of the amount of duty necessary to eliminate the injury suffered by the CI.

(171) It was found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the CI could have expected to obtain in the absence of injurious dumping, based on past performances of the CI and considered reasonable for guaranteeing the industry productive investment on a long-term basis. The necessary price increase was then determined on the basis of a comparison of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of products sold by the CI on the Community market. The non-injurious price has been obtained by adjusting the sales price of the CI by the actual loss made during the IP and by adding the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

7.2. **Provisional measures**

(172) In the light of the foregoing, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating in the PRC, Russia, Egypt, Kazakhstan and the former Yugoslav Republic of Macedonia at the level of the lower of the dumping and the injury margins, in accordance with the lesser duty rule.

(173) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to these companies. These duty rates (as opposed to the countrywide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the countries concerned and produced by the companies and thus by the specific legal entities 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 those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(174) The proposed anti-dumping duties are the following:

Country	Company	Injury elimination margin	Dumping margin	Anti-dumping duty rate
China	Erdos Xijin Kuang Co., Ltd.	21,4 %	2,8 %	2,8 %
	Lanzhou Good Land Ferroalloy Factory Co., Ltd.	33,7 %	57,2 %	33,7 %
	All other companies	35,5 %	60,7 %	35,5 %
Russia	Chelyabinsk Electrometallurgical Integrated Plant, Chelyabinsk and Kuznetsk Ferroalloy Works, Novokuznetsk	31,1 %	22,8 %	22,8 %
	Bratsk Ferroalloy Plant, Bratsk	18,8 %	22,2 %	18,8 %
	all other companies	36,6 %	25,5 %	25,5 %
Egypt	The Egyptian Ferroalloys Company	24,4 %	20,4 %	20,4 %
	Egyptian Chemical Industries KIMA	18,0 %	24,8 %	18,0 %
	all other companies	24,4 %	20,4 %	20,4 %
Kazakhstan	All companies	33,9 %	37,1 %	33,9 %
The former Yugoslav Republic of Macedonia	All companies	19,0 %	5,4 %	5,4 %

7.3. **Undertakings**

(175) The exporting producer in the former Yugoslav Republic of Macedonia has offered a price undertaking in accordance with Article 8(1) of the basic Regulation. By doing so, it has agreed to sell the product concerned at or above price levels which eliminate the injurious effects of dumping. The company will also provide the Commission with regular and detailed information concerning its exports to the Community, meaning that the undertaking can be monitored effectively by the Commission. In addition, the nature of the product, the structure of the company and its sales patterns is such that the risk of circumvention of the undertaking is also minimised.

(176) To further enable the Commission and the customs authorities to effectively monitor the compliance of the company concerned with the undertaking, when the request for release for free circulation is presented to the relevant customs authority, exemption from the anti-dumping duty is to be conditional on (i) the presentation of an undertaking invoice, which is a commercial invoice containing at least the elements listed and the declaration stipulated in the Annex; (ii) the fact that imported goods are manufactured, shipped and invoiced directly by the said company to the first independent customer in the Community; and (iii) the fact that the goods declared and presented to customs correspond precisely to the description on the undertaking invoice. Where the above conditions are not met the appropriate anti-dumping duty shall be incurred at the time of acceptance of the declaration for release into free circulation.

(177) Whenever the Commission withdraws, pursuant to Article 8(9) of the basic Regulation, its acceptance of the undertaking following a breach by referring to particular transactions and declares the relevant undertaking invoices as invalid, a customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation of these transactions.

(178) Importers should be aware that a customs debt may be incurred, as a normal trade risk, at the time of acceptance of the declaration for release into free circulation even if an undertaking offered by the manufacturer from whom they were buying, directly or indirectly, had been accepted by the Commission.

(179) Pursuant to Article 14(7) of the basic Regulation, customs authorities should inform the Commission immediately whenever indications of a violation of the undertaking are found.

(180) For the reasons stated above, the offer of the price undertaking is considered acceptable and the company concerned has been informed of the essential facts, considerations and obligations upon which acceptance is based.

(181) In the event of a breach or withdrawal of the undertakings, or in case of withdrawal of acceptance of undertaking by the Commission, the anti-dumping duty which has been imposed by the Council, in accordance of Article 9(4) shall automatically apply by means of Article 8(9) of the basic Regulation.

8. DISCLOSURE

(182) Above provisional findings will be disclosed to all interested parties which will be invited to make their views known in writing and request a hearing. Their comments will be analysed and taken into consideration where warranted before any definitive determinations are made. The provisional findings may have to be reconsidered for the purposes of any definitive findings,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of ferro-silicon falling within CN codes 7202 21 00, 7202 29 10 and 7202 29 90, and originating in the People's Republic of China, Egypt, Kazakhstan, the former Yugoslav Republic of Macedonia and Russia.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products manufactured by the companies below shall be:

Country	Company	AD duty rate (%)	TARIC additional code
People's Republic of China	Erdos Xijin Kuangye Co., Ltd, Qipanjing Industry Park,	2,8	A829
	Lanzhou Good Land Ferroalloy Factory Co., Ltd Xicha Village	33,7	A830
	All other companies	35,5	A999
Egypt	The Egyptian Ferroalloys Company, Cairo	20,4	A831
	Egyptian Chemical Industries KIMA, Cairo	18,0	A832
	All other companies	20,4	A999
Kazakhstan	All companies	33,9	
The former Yugoslav Republic of Macedonia	Silmak Dooel Export Import, Jegunovce	5,4	A833
	All other companies	5,4	A999
Russia	Chelyabinsk Electrometallurgical Integrated Plant, Chelyabinsk and Kuznetsk Ferroalloy Works, Novokuznetsk	22,8	A834
	Bratsk Ferroalloy Plant, Bratsk	18,8	A835
	All other companies	25,5	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 in force concerning customs duties shall apply.

Article 2

1. The undertaking offered by Silmak Dooel Export Import is hereby accepted.

2. Imports declared for release into free circulation which are invoiced by Silmak Dooel Export Import, shall be exempt from the provisional anti-dumping duty imposed by Article 1, on condition that:

— they are manufactured, shipped and invoiced directly by the said company to the first independent customer in the Community, and

— such imports are accompanied by an undertaking invoice which is a commercial invoice containing at least the elements and the declaration stipulated in the Annex of this Regulation, and

— the goods declared and presented to customs correspond precisely to the description on the undertaking invoice.

3. A customs debt shall be incurred at the time of acceptance of the declaration for release into free circulation:

— whenever it is established, in respect of imports described in paragraph 2, that one or more of the conditions listed in that paragraph are not fulfilled, or

— when the Commission withdraws its acceptance of the undertaking pursuant to Article 8(9) of the basic Regulation in a Regulation or Decision which refers to particular transactions and declares the relevant undertaking invoices as invalid.

Article 3

1. Without prejudice to Article 20 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, make their views known in writing and apply to be heard orally by the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Council Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 4

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

2. 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, 28 August 2007.

For the Commission
Peter MANDELSON
Member of the Commission

ANNEX

The following elements shall be indicated in the commercial invoice accompanying the company's sales to the Community of goods which are subject to the undertaking:

1. The heading 'COMMERCIAL INVOICE ACCOMPANYING GOODS SUBJECT TO AN UNDERTAKING'.

2. The name of the company issuing the commercial invoice.

3. The commercial invoice number.

4. The date of issue of the commercial invoice.

5. The TARIC additional code under which the goods on the invoice are to be customs-cleared at the Community frontier.

6. The exact description of the goods, including:

   — the product code number (PCN) used for the purpose of the undertaking,

   — plain language description of the goods corresponding to the PCN concerned,

   — the company product code number (CPC),

   — TARIC code,

   — quantity (to be given in tonnes).

7. The description of the terms of the sale, including:

   — price per tonne,

   — the applicable payment terms,

   — the applicable delivery terms,

   — total discounts and rebates.

8. Name of the company acting as an importer in the Community to which the commercial invoice accompanying goods subject to an undertaking is issued directly by the company.

9. The name of the official of the company that has issued the commercial invoice and the following signed declaration:

   'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [COMPANY], and accepted by the European Commission through Regulation (EC) No 994/2007. I declare that the information provided in this invoice is complete and correct.'