

COUNCIL REGULATION (EC) No 1420/2007**of 4 December 2007****imposing a definitive anti-dumping duty on imports of silico-manganese originating in the People's Republic of China and Kazakhstan and terminating the proceeding on imports of silico-manganese originating in Ukraine**

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 9 thereof,

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

Whereas:

A. PROCEDURE**1. Initiation**

- (1) On 6 September 2006, pursuant to Article 5 of the basic Regulation, 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 silico-manganese (including ferro-silico-manganese) (SiMn) originating in the People's Republic of China (PRC), Kazakhstan and Ukraine (the countries concerned).
- (2) The proceeding was initiated following a complaint lodged on 24 July 2006 by the Comité de Liaison des Industries de Ferro-Alliages (EUROALLIAGES) (the complainant) on behalf of producers representing a

major proportion, in this case more than 50 % of the total Community production of SiMn (the complainant producers). The complaint contained prima facie evidence of dumping of SiMn originating in the countries concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

- (3) One interested party claimed that the Commission should have initiated this proceeding also against imports originating in India. At the time of the initiation of the current proceeding, however, the Commission did not have sufficient evidence of injurious dumping at its disposal that would have justified the initiation of a proceeding against imports originating in India in line with the requirements of Article 5(2) of the basic Regulation.

2. Parties concerned by the proceeding

- (4) The Commission officially advised the complainant, the complainant producers and other known Community producers, exporting producers in the countries concerned, importers/traders and their associations, suppliers and users known to be concerned and the representatives of the exporting countries concerned, of the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (5) 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 as well as to the authorities of the PRC and Kazakhstan. Four exporting producer groups in the PRC and one exporting producer in Kazakhstan claimed MET pursuant to Article 2(7) of the basic Regulation, or IT should the investigation establish that they did not meet the conditions for MET.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Council Regulation (EC) No 2117/2005 (OJ L 340, 23.12.2005, p. 17).

⁽²⁾ OJ C 214, 6.9.2006, p. 14.

- (6) In view of the apparent large number of exporting producers in the PRC and importers in the Community, sampling was envisaged in the notice of initiation for the determination of dumping and injury, in accordance with Article 17 of the basic Regulation.
- (7) In order to enable the Commission to decide whether sampling would be necessary and, if so, to select a sample, all exporting producers in the PRC and Community importers were requested to make themselves known to the Commission and to provide, as specified in the notice of initiation, basic information on their activities related to the product concerned during the period of 1 July 2005 to 30 June 2006.
- (8) As far as the exporting producers in the PRC are concerned, given that only four groups of companies having export sales of SiMn to the Community during the IP indicated their willingness to be included in the sample, it was decided that sampling was not necessary.
- (9) With regard to importers into the European Community, only two unrelated importers made themselves known and provided the requested information in due time. Therefore, it was decided that sampling was not necessary.
- (10) The Commission sent questionnaires to all parties known to be concerned and to all other companies that made themselves known within the deadlines set out in the notice of initiation. Questionnaire replies were received from four Community producers, four exporting producer groups in the PRC, the sole Kazakh exporting producer, three Ukrainian exporting producers, two unrelated importers and nine unrelated users in the Community. In addition, two users submitted comments without replying to the questionnaire.
- (11) One of the exporting producer groups in the PRC, however, subsequently did not agree to an envisaged on-the-spot verification of the information provided in their MET/IT claims and questionnaire replies. Consequently, after having advised the companies concerned of the consequences of non-cooperation as stipulated in Article 18(1) of the basic Regulation, the Commission has in accordance with the provisions of Article 18 considered the said companies as not cooperating in the proceeding and all submissions made by them have been disregarded.
- (12) The Commission sought and verified all the information it deemed necessary for the purpose of MET/IT, in the case of the PRC and Kazakhstan, and for the determination of dumping, resulting injury and Community interest for all countries concerned. Verification visits were carried out at the premises of the following companies:
- (a) *Community producers*
- Eramet Comilog Manganese, Paris, France
 - Ferroatlantica S.L., Madrid, Spain
 - Huta Łaziska SA, Łaziska Górne, Poland
 - OFZ, a.s., Istebne, Slovakia.
- (b) *Users in the Community*
- Compañía Española de Laminación, S.L., Castellbisbal, Spain
 - Mittal Steel Poland SA (Arcelor SA), Kraków, Poland.
- (c) *Unrelated importers*
- Metalleghe S.P.A., Brescia, Italy.
- (d) *Exporting producers in the PRC*
- Minmetals Group
 - Minmetals (Guizhou) Ferro-Alloys Co., Ltd, Guiyang
 - Guiyang Huaxi Minmetals Ferro-Alloys Co., Ltd, Qingzhen
 - China Minmetals Shenzhen Co., Ltd, Shenzhen

- Minmetals Shanghai Pudong Trading Co., Ltd, Shanghai
 - China National Minerals Co., Ltd, Beijing
 - Minmetals Orient Import & Export Trading Co., Ltd, Beijing.
 - Jilin Group
 - Jilin Ferroalloys Co., Ltd, Jilin City
 - Jilin Ferroalloy Imp & Exp Co., Ltd, Jilin City.
 - Shanxi Jinneng Group
 - Shanghai Jinneng International Trade Co. Ltd, Shanghai
 - Datong Jinneng Jinli Ferroalloy Co. Ltd, Datong
 - Shanxi Jinneng Group Jinguang Ferroalloy, Datong
 - Datong Jinneng Industrial Silicon Co. Ltd, Datong.
- (e) *Exporting producer in Kazakhstan*
- OJSC Kazchrome (Kazchrome), Aktyubinsk and Aksu.
- (f) *Exporting producers in Ukraine*
- PJSC Nikopol Ferroalloys Plant (NFP), Nikopol and its related traders
 - SPIG 'Interpipe' Corporation, Dnipropetrovsk
 - Nikopolskie Ferrosplavy LLC, Dnipropetrovsk
- JSC Stakhanov Ferroalloys Plant (Stakhanov), Stakhanov
 - OJSC Zaporozhye Ferroalloys Plant (Zaporozhye), Zaporozhye.
- (g) *Related traders in Switzerland*
- Steelex SA, Lugano, related to PJSC Nikopol Ferroalloys Plant
 - ENRC, Kloten, related to OJSC Kazchrome.
- (13) In light of the need to establish a normal value for the exporting producers in the PRC and Kazakhstan to which MET might not be granted, a verification to establish normal value on the basis of data from an analogue country took place at the premises of the following producer and its related sales company in the United States of America (USA):
- Eramet Marietta, Inc., Marietta, Ohio (producer)
 - Eramet North America, Inc., Coraopolis, Pennsylvania (related sales company).
- ### 3. Investigation period
- (14) The investigation of dumping and injury covered the period from 1 July 2005 to 30 June 2006 (the investigation period or IP). The examination of trends relevant for the assessment of injury covered the period from 1 January 2002 to the end of the investigation period (period considered).
- ## B. PRODUCT CONCERNED AND LIKE PRODUCT
- ### 1. Product concerned
- (15) The product concerned is silico-manganese (including ferro-silico-manganese) (SiMn) originating in the PRC, Kazakhstan and Ukraine (the product concerned), normally declared under CN codes 7202 30 00 and ex 8111 00 11.
- (16) The product concerned is used in the steel industry for deoxidization and as an alloy. It is mainly produced from manganese ore and silicon which are mixed together and brought to fusion temperatures in a furnace.

(17) SiMn exists in different qualities and it can have different contents of iron (Fe), manganese (Mn), silicon (Si) and carbon (C). As far as the carbon content is concerned, a distinction can be made between SiMn with a very low content of carbon, which is of a higher quality (and attracts a higher price), and SiMn with higher carbon content, which can be considered as the normal quality. SiMn is sold in different powder, grain or lump sizes. Despite these differences, all qualities and sizes have been considered as a single product since they share the same main chemical and physical characteristics and main uses.

2. Like product

(18) The investigation showed that SiMn produced and sold in the Community by the Community industry, SiMn produced and sold on the domestic markets of PRC, Kazakhstan and Ukraine, and on the domestic market of the USA, which finally served as an analogue country, and SiMn imported into the Community from the PRC, Kazakhstan and Ukraine, have essentially the same basic chemical and physical characteristics and the same basic uses. They are therefore considered to be alike within the meaning of Article 1(4) of the basic Regulation.

(19) One exporting producer claimed that unwrought manganese, normally declared under CN code 8111 00 11, should not be covered by the investigation. In this regard, it is confirmed that the product concerned is silico-manganese, as stated at recital 15 and not unwrought manganese, but it also includes unwrought silico-manganese. While SiMn is generally declared under CN code 7202 30 00, it may also, depending on the iron content, be declared as unwrought silico-manganese or silico-manganese powders under CN code 8111 00 11.

C. DUMPING

1. Market Economy Treatment (MET)

(20) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports 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 producers which have shown that they meet the criteria laid down in Article 2(7)(c) of the basic Regulation, i.e. where it is demonstrated by such exporting producers 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 summarised form below:

(1) business decisions are made in response to market signals, without significant State interference, and costs reflect market values;

(2) firms have one clear set of basic accounting records, which are independently audited in line with international accounting standards and are applied for all purposes;

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

(4) bankruptcy and property laws guarantee stability and legal certainty;

(5) exchange rate conversions are carried out at market rates.

(21) Four groups of Chinese exporting producers initially requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines. However, one of these groups decided subsequently not to cooperate with the investigation (as mentioned in recital 11 above). Thus, only the MET claims of the remaining three cooperating Chinese exporting producer groups listed in recital 12 were considered. All of these groups included both producers of the product concerned and companies related to the producers and involved in the sales of the product concerned. Indeed, it is the Commission's consistent practice to examine whether a group of related companies as a whole fulfils the conditions for MET.

(22) The sole Kazakh exporting producer requested MET pursuant to Article 2(7)(b) of the basic Regulation and replied to the MET claim form for exporting producers within the given deadlines.

(23) For the cooperating exporting producers the Commission sought all information deemed necessary and verified the information submitted in the MET claim at the premises of the companies in question as deemed necessary.

- 1.1. *MET determination regarding exporting producers in the PRC*
- (24) The investigation revealed that MET could not be granted to any of the Chinese exporting producers listed in recital 12 as none of these groups met criterion 1 set out in Article 2(7)(c) of the basic Regulation and, in addition, one of them failed to meet criterion 2 and another one failed to meet criterion 3. Furthermore, for the group not meeting criteria 1 and 2 strong doubts remained with regard to criterion 3 and this group, in any case, failed to submit a complete set of MET claim forms and questionnaire replies of its related companies involved in the production and/or trading of the product concerned.
- (25) As far as criterion 1 is concerned, none of the Chinese groups of companies concerned has demonstrated to fulfil this criterion. All of the groups of companies were found to be ultimately State owned and failed to present evidence that could be considered sufficient to remove doubts of significant State interference in management decisions. Therefore, it could not be excluded that the companies were under significant State control and interference.
- (26) For one group of companies, in addition to the non-compliance with criterion 1, it was established that it could not demonstrate that there are no distortions carried over from the former non-market-economy system (criterion 3), given certain uncompensated loan benefits one company in the group had received from its State-owned mother company.
- (27) Furthermore, for another group of companies, in addition to the non-compliance with criterion 1, it was established that it could not demonstrate that there are no distortions carried over from the former non-market-economy system, in particular in view of the existence of barter trade during the investigation period. This group also failed to demonstrate that the accounts of several of its verified entities were independently audited in accordance with international accounting standards, as the application of sound and basic accounting principles, in particular with regard to depreciation of fixed assets, had been overruled by the parent company and this infringement had been accepted by the companies' auditors.
- (28) Moreover, within the same group at least one company which appeared to be involved in trading of the product concerned had submitted neither a MET claim form nor a questionnaire reply, putting in doubt the reliability of the information provided.
- (29) The interested parties were given an opportunity to comment on the above findings. The comments received from two Chinese exporting producer groups did not provide any new evidence that would change the findings regarding the MET determination.
- (30) On the basis of the above, none of the Chinese exporting producer groups of companies have shown that they fulfil all the criteria set out in Article 2(7)(c) of the basic Regulation and, thus, could not be granted MET.
- 1.2. *MET determination regarding the sole exporting producer in Kazakhstan*
- (31) The sole Kazakh exporting producer showed that it fulfilled all five criteria set out in Article 2(7)(c) of the basic Regulation and was therefore granted MET. The exporting producer and the Community industry (see recital 91) were given an opportunity to comment on the MET findings. The comments received from the Community industry did not provide any new evidence that would change the findings regarding the MET determination.
- 2. Individual treatment (IT)**
- (32) 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.
- (33) As far as the PRC is concerned, all exporting producers who requested MET also claimed IT in the event that they would not be granted MET.
- (34) On the basis of the information available, it was found that all of the groups of companies concerned failed to demonstrate that they cumulatively met all the requirements for IT as set forth in Article 9(5) of the basic Regulation. Namely, it was established that the companies failed to meet the criterion stipulated in Article 9(5)(c) of the basic Regulation that the majority of the shares belong to private persons, since as explained in recital 25, all the companies were found to be ultimately majority State owned. Consequently, their claims had to be rejected.

3. Normal Value

3.1. General methodology

(i) Global representativeness

- (35) As far as the determination of normal value is concerned, the Commission first established, in accordance with Article 2(2) of the basic Regulation, for each exporting producer concerned in Kazakhstan and in Ukraine, whether its domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales represented at least 5 % of its total export sales volume of the product concerned to the Community.

(ii) Comparison of product types

- (36) The Commission subsequently identified those product types sold domestically by the exporting producers having overall representative domestic sales, which were identical or directly comparable with the types sold for export to the Community.

(iii) Product type specific representativeness

- (37) For each product type sold by the exporting producers on their domestic markets and found to be directly comparable with the product 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 product type were considered sufficiently representative when the total volume of that product type sold on the domestic market to independent customers during the IP represented at least 5 % of the total sales volume of the comparable product type exported to the Community.

(iv) Ordinary course of trade test

- (38) The Commission subsequently examined for each exporting producer concerned in Kazakhstan and in Ukraine whether the domestic sales of each product type sold domestically in representative quantities could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for each exported product type the proportion of profitable domestic sales to independent customers during the IP.

- (39) 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.

- (40) Where the volume of profitable sales of a product type represented 80 % or less of the total sales volume of that type, or where the weighted average price of that type was below the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales of that type only, provided that these sales represented 10 % or more of the total sales volume of that type.

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

- (42) Wherever domestic prices of a particular product type sold by an exporting producer could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation, the Commission instead calculated a constructed normal value, as follows.

- (43) Normal value was constructed by adding to each exporter's manufacturing costs of the exported types, adjusted where necessary, a reasonable amount for selling, general and administrative expenses (SG&A) and a reasonable margin of profit.

- (44) In all cases SG&A and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A incurred and the profit realised by each of the exporting producers concerned on the domestic market constituted reliable data.

3.2. *Analogue country*

- (45) 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) or the price from such a third country to other countries, or where those are not possible, on any other reasonable basis.
- (46) In the notice of initiation, it was envisaged to use Brazil as an appropriate analogue country for the purpose of establishing normal value for the PRC and Kazakhstan, where necessary, and interested parties were invited to comment on this. No interested parties objected to this proposal.
- (47) The Commission sought cooperation from known producers in Brazil and subsequently also from producers in other potential analogue countries, i.e. India, Japan, Norway, South Africa and the USA. Offers of cooperation were, however, obtained only from producers in Norway and in the USA. On the basis of information obtained from three Norwegian companies, it was concluded that the domestic market of SiMn in Norway was very small. Therefore, the Norwegian market was not deemed sufficiently representative for the determination of normal value for the PRC and Kazakhstan.
- (48) As for the sole known USA producer, a questionnaire was sent to that producer and the data submitted in its reply were verified on the spot. The domestic sales volume of the producer in question in the USA was found to be significant and sufficiently representative in comparison to the volume of Chinese and Kazakh exports of the product concerned to the Community. Moreover, the USA market can be considered an open market, given that the import duty level is low (MFN duty of 3,9 % of fob price). The investigation showed that there were substantial imports of SiMn into the USA market. Therefore, the USA market was deemed a competitive market and sufficiently representative for the determination of normal value for the PRC and Kazakhstan.
- (49) Interested parties were invited to comment on this and comments were received from three interested parties objecting to the choice of the USA as an analogue country. One Chinese exporting producer group argued firstly that there is insufficient competition on the USA market since (i) the cooperating producer is the only producer on the domestic market and (ii) the volume of imports into the USA market is allegedly limited due to the existence of anti-dumping measures in the USA on imports of silico-manganese from main producing countries in the world. Secondly, it claimed that the fact that the cooperating USA producer is a related company to one of the complainant producers casts doubts on the reliability and representativity of its cost and price information. Thirdly, it was claimed that account should be taken of the fact that access to raw materials is allegedly different in the USA, where there are no domestic supplies of the main raw material, manganese ore, and the PRC, where domestic supplies are available. Fourthly, it was claimed that a country with a level of economic development more similar to that of the PRC would constitute a more appropriate analogue country than the USA.
- (50) The Chinese exporting producer claimed that India or, secondarily, Ukraine, would be more appropriate choices for analogue country, mainly because competition and market conditions in these countries would be more comparable with the situation in the PRC. As a third option, it was proposed that normal value for the PRC be established on the basis of the data submitted by those Chinese producers that qualify for MET. Ultimately, should the USA be retained as an analogue country, it was claimed that adjustments to the normal value should be made to account for differences in the access to raw materials and differences in production costs due to higher labour and environmental costs in the USA.
- (51) The comments made by two other interested parties did not add in substance to the above mentioned comments made by the Chinese exporting producer.
- (52) With respect to India, the Commission had sought cooperation from several Indian producers, but despite initial positive indications, no cooperation was finally obtained. Consequently, India could not be retained as an analogue country. As for Ukraine, high levels of dumping were found in the investigation for that country (see recital 87). In line with consistent practice, a country engaged in such dumping is not considered an appropriate analogue country. As for the third proposal, i.e. to establish the normal value for the PRC on the basis of the data submitted by Chinese producers qualifying for MET, it suffices to note that Article 2(7)(a) of the basic Regulation specifically sets out that a 'market economy third country' shall be used and in addition none of the cooperating Chinese producers was found to qualify for MET.

- (53) In addition, as regards the specific objections made to the appropriateness of the USA as an analogue country, the following should be noted: firstly, as regards the alleged lack of competition on the local market, as already mentioned in recital 48, the investigation showed that, albeit the cooperating USA producer is the sole local producer, there were substantial imports of silico-manganese to the USA. Indeed, the imports during the IP were manifold in comparison to the domestic sales volume of the cooperating USA producer. In this connection, it is also noted that the existence of trade defence measures in force for the product in question does not preclude the choice of a particular country as an analogue country, as the purpose of anti-dumping measures is precisely to restore fair competition on the market in question.
- (54) Regarding the allegation that the relationship between the USA cooperating company and a European producer could affect the reliability of the data provided, these allegations did not coincide with the findings of the investigation. No indication was found that the relationship would have had any distorting impact on the prices, costs of production and profitability of the United States producer, and the Commission satisfied itself on the accuracy and reliability of the information provided for the purposes of this investigation.
- (55) Finally, the arguments concerning access to raw materials and the difference in costs were also considered. The price of the main raw material (manganese ore) used in the production of silico-manganese by the cooperating USA company was compared to the prices paid by the Chinese companies for manganese ore and no significant differences were found. In addition, it is noted that the Chinese cooperating producers also imported part of their manganese ore requirements. The argument, as well as the claim for adjustment, was therefore rejected.
- (56) As regards other factors invoked, such as the level of economic development or the labour and environmental costs, the interested party failed to substantiate its claim sufficiently, and these factors were not deemed relevant for determining whether the USA is an appropriate analogue country nor to warrant an adjustment to the normal value. It is also noted that as costs and prices are in general not considered as a viable basis for determining normal value in countries falling under Article 2(7) of the basic Regulation, such comparison in fact defeats the purpose of resorting to the methods set out in Article 2(7)(a) of the basic Regulation.
- (57) In view of the above, it is concluded that the USA constitutes an appropriate analogue country in accordance with Article 2(7)(a) of the basic Regulation.
- ### 3.3. People's Republic of China
- (58) Following the choice of the USA as an analogue country and pursuant to Article 2(7)(a) of the basic Regulation, normal value for Chinese exporting producers, none of whom has been granted MET, was established on the basis of verified information received from the sole cooperating USA producer.
- (59) The general methodology described in recitals 35 to 44 has been applied to the cooperating producer in the analogue country. Given that domestic sales of SiMn by the cooperating USA producer did not occur in the ordinary course of trade during the IP, normal value has been constructed pursuant to Article 2(3) of the basic Regulation. The profit margin used to construct normal value has been determined pursuant to Article 2(6)(b) of the basic Regulation on the basis of the profit margin applicable to the same general category of products for the USA producer. Sales, general and administrative costs incurred by the cooperating USA producer on all domestic sales during the IP have been used.
- ### 3.4. Kazakhstan
- (60) The general methodology described in recitals 35 to 44 has been applied to the sole exporting producer in Kazakhstan, which was granted MET. In view of limited domestic sales, normal value had to be constructed pursuant to Article 2(3) of the basic Regulation. In this respect, it was found that the domestic sales of the like product by Kazchrome were not representative and that this producer's domestic sales of the same general category of products were not in the ordinary course of trade. Therefore, the amounts for SG&A and for profit used to construct normal value were initially based, pursuant to Article 2(6) of the basic Regulation,

on the weighted average of these amounts attained by the cooperating Ukrainian producers on their domestic sales of the like product. Subsequent to definitive disclosure, the exporting producer argued that the methodology used to determine the SG&A and profit was not appropriate in view of the fact that significant dumping was found for the cooperating Ukrainian exporting producers. Alternatively, the Kazakh exporting producer claimed that the amounts for SG&A and profit established in the analogue country should be used. Following these comments, it was indeed considered not appropriate to use profits from the Ukrainian producers in these circumstances. It was thus re-examined pursuant to Article 2(6) of the basic Regulation on which basis the amounts for SG&A and profit could be established. In this regard, it was assessed whether any of the company's SG&A and profit data relating to SiMn could be used to establish the relevant amount. As the company is deemed to operate under market conditions and in order to reflect as precise as possible the domestic market situation of the Kazakh company, it was decided that the weighted average SG&A and profit obtained on its domestic sales of SiMn to unrelated and related customers should be used under the chapeau of Article 2(6) of the basic Regulation. In this respect, it should be noted that the SG&A and profit realised on its domestic sales to unrelated and related customers were at almost identical levels, thus indicating that neither the SG&A nor the profit realised in the sales to domestic related customers are affected by the relationship. Moreover, the domestic sales were found to be made in the ordinary course of trade and at a reasonably significant level (2,8 % of the volume of exports to the Community of SiMn). Given that chapeau of Article 2(6) of the basic Regulation prioritises the use of a company's own SG&A and profit realised on the domestic sales in the ordinary course of trade, the claim to resort to data obtained from the producer in the analogue country was thus rejected.

3.5. Ukraine

- (61) The general methodology described in recitals 35 to 44 above has been applied to all three exporting producers in Ukraine. For most of the sales, normal value had to be constructed in view of the absence of sufficient domestic sales of comparable models. Pursuant to Article 2(6)(b) of the basic Regulation, the amounts for selling, general and administrative costs and for profits used to construct normal value have been based on the companies' actual data pertaining to the production and sales, in the ordinary course of trade, of the same general category of products.

4. Export price

- (62) The exporting producers made export sales to the Community either directly to independent customers or through related or unrelated trading companies located outside the Community.

- (63) Where export sales to the Community were made either directly to independent customers in the Community or through unrelated trading companies located outside the Community, 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.

- (64) Where export sales to the Community were made through related trading companies located in a third country, export prices were established on the basis of the first resale prices of these related traders to independent customers in the Community.

4.1. People's Republic of China

- (65) Since none of the cooperating Chinese exporting producers were granted MET/IT, the data on their export sales was not used to establish individual dumping margins but only in the calculation of the countrywide duty, as elaborated in recital 79 below.

- (66) All three cooperating exporting producer groups in the PRC made all export sales to the Community directly to independent customers in the Community. Export prices were therefore established on the basis of the prices actually paid or payable.

4.2. Kazakhstan

- (67) The sole cooperating exporting producer made exports of the product concerned to the Community via a related trading company located in a third country. The export price of this company was therefore established on the basis of the resale prices of this trader to the first independent customer in the Community.

4.3. Ukraine

- (68) Two exporting producers in Ukraine made exports to the Community exclusively via unrelated trading companies located in a third country outside the Community and the third Ukrainian exporting producer made some of its sales of the product concerned to the Community to an independent trading company in Ukraine for export to the Community. In both cases, the export price was established on the basis of the prices actually paid or payable for the product when sold to the trading company for export to the Community.
- (69) Some of the sales of the third exporting producer were made via a chain of related companies and ultimately by a related trader in a third country. In these cases, the export price was established on the basis of this related trading company's resale prices to independent customers in the Community.

5. Comparison

- (70) The normal value and export prices were compared on an ex-works basis and at the same level of trade. For the purpose of ensuring a fair comparison between the normal value and export prices, 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.
- (71) On this basis, for all investigated Kazakh and Ukrainian exporting producers, allowances for differences in level of trade, transport and insurance costs, handling, loading and ancillary costs, packing costs, credit costs and after sales costs (warranty/guarantee) were made where applicable and justified.
- (72) The SG&A used to construct normal value for the Kazakh exporting producer pursuant to the methodology set out in recital 60 above, included costs for domestic freight and insurance. Therefore, albeit no claim had been made in this regard, an ex officio adjustments to the normal value pursuant to Article 2(10)(e) was made to reduce the SG&A by the amount of the costs incurred on domestic freight and insurance.
- (73) The sole cooperating exporting producer in Kazakhstan, Kazchrome, submitted that, together with its related

trader located in Switzerland, ENRC, it formed what it called a 'single economic entity'. It claimed that therefore, whilst the trader's sales price should be used for establishing the export price, no adjustments had to be made for transport costs, SG&A expenses and trader profit.

- (74) The claim was duly investigated. It was found that ENRC and Kazchrome, although related parties, were separate legal entities. Furthermore, these two entities were acting on the basis of a buyer-seller relationship. Consequently, it was concluded that, in Kazchrome's sales flow to the Community, ENRC had functions similar to those of an agent working on a commission basis. In addition, it was established that, whereas all Community sales of Kazchrome were done via ENRC, this trader was not a party in the domestic sales channel of Kazchrome. Furthermore, it was concluded that the adjustment of the export price should also cover transport costs from the plant onwards, taking into account different terms of sales, in order to ensure a fair comparison between export price and normal value at ex-works level.
- (75) Therefore, the claim had to be dismissed and adjustments to the export price for a commission in accordance with Article 2(10)(i) of the basic Regulation and for transport in accordance with Article 2(10)(e) of the basic Regulation were made. The level of the commission was calculated based on direct evidence pointing to the existence of such functions. In this context, in the calculation of the commission, the SG&A expenses incurred by ENRC to sell the product concerned produced by Kazchrome were taken into account, as well as a profit margin for ENRC, based, in this case, on that reported by an unrelated importer cooperating in the investigation.
- (76) For the Ukrainian producer ultimately selling via a related trader in a third country (see recital 69), an adjustment to the export price for a commission was made in accordance with Article 2(10)(i) of the basic Regulation, in the cases where sales were made through this related trader, as this trader had functions similar to those of an agent working on a commission basis. The company concerned, NFP, and the related trader in question, Steelex SA, were found to be separate legal entities and, directly or indirectly, to work on the basis of a buyer-seller relationship. Moreover, for export sales to the Community via Steelex SA a commission was paid. The level of the commission calculated by the Community institutions was based on direct evidence pointing to the existence of such functions. In this context, the SG&A expenses incurred by Steelex SA to sell the product concerned produced by NFP were taken into account, as well as a profit margin reported by an unrelated importer cooperating in the investigation.

Furthermore, NFP made part of its sales to the Community by Stelex SA through an unrelated trader located in another third country. For these sales, in addition to the commission for Stelex SA, it was found reasonable to make an adjustment for a commission for the unrelated trader in accordance with Article 2(10)(i) of the basic Regulation as this trader also had functions similar to those of an agent working on a commission basis. This commission was established on the basis of its calculated mark-up on the sales in question.

- (77) One Ukrainian exporting producer claimed an adjustment for currency conversions, pursuant to Article 2(10)(j) of the basic Regulation. This claim was based on the fluctuation between the exchange rate on the date of invoice and the exchange rate on the date of payment. In this respect, it is important to underline that the date of invoice is, in accordance with Article 2(10)(j) of the basic Regulation, considered to be the date of sale and the exchange rate to be applied should, thus, be the exchange rate prevailing at the date of sale. Therefore, this claim had to be rejected.

6. Dumping margins

6.1. People's Republic of China

- (78) In the absence of MET or IT being granted to any of the cooperating Chinese exporting producers, a countrywide dumping margin was calculated for the whole of the PRC using a weighting factor for the cif value of each group of exporters, i.e. cooperators and non-cooperators.

- (79) To this end, the dumping margin was firstly calculated for the cooperating Chinese exporting producers pursuant to Article 2(11) and (12) of the basic Regulation, on the basis of a comparison of a weighted average normal value of the analogue country by product type with a weighted average export price by product type as established above.

- (80) It should be noted that the imports from the PRC consisted both of SiMn with normal carbon content and low-carbon SiMn. However, the cooperating producer in the analogue country produced only the normal carbon content SiMn. Therefore, only data concerning this common product type was used in the comparison.

- (81) Secondly, the dumping margin was established for all non-cooperating exporting producers on the basis of

the facts available, in accordance with Article 18(1) of the basic Regulation.

- (82) 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 Chinese exporting producers was compared with the total volume of imports originating in the PRC, as based on Eurostat import statistics. This comparison indicated that the level of cooperation was low, since the exports by the cooperating producers represented less than 29 % of total Community imports from the PRC during the IP.

- (83) Therefore, the level of dumping for the export volumes of non-cooperating Chinese exporting producers was determined on the basis of the highest dumping margin established for the cooperating exporting producers for the normal carbon content SiMn. This approach was deemed appropriate since there were no indications that any non-cooperating producer was dumping at a lower level than the cooperating exporting producers. Therefore, a countrywide average dumping margin was calculated using as a weighting factor the cif value of each group of exporters, i.e. cooperating exporters and non-cooperating exporters. On this basis, the countrywide dumping margin, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, is 60,1 %.

6.2. Kazakhstan

- (84) Based on the complaint, the information available from the exporting producer which came forward and other statistical data it appeared that OJSC Kazchrome is the sole Kazakh exporting producer of silico-manganese. As no indications were found that any exporting producer deliberately abstained from cooperating it was considered appropriate to set the residual dumping margin at the same level as the level established for OJSC Kazchrome.

- (85) The dumping margins established, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, are therefore the following:

— OJSC Kazchrome: 6,5 %,

— All other companies: 6,5 %.

6.3. Ukraine

- (86) Based on the complaint, the information available from the exporting producers which came forward and other statistical data, it was concluded that the level of cooperation was above 80 % in the case of Ukraine. Therefore, it was considered appropriate to set the residual dumping margin at the level of the highest dumping margin established for a cooperating exporting producer in the country concerned.
- (87) On this basis, the dumping margins, expressed as a percentage of the cif import price at the Community frontier, duty unpaid, are the following:
- PJSC Nikopol Ferroalloys Plant: 39,1 %,
 - JSC Stakhanov Ferroalloys Plant: 53,4 %,
 - OJSC Zaporozhye Ferroalloys Plant: 56,7 %,
 - All other companies: 56,7 %.

D. INJURY

1. General

- (88) In 1998, anti-dumping measures were imposed on imports of SiMn originating in the PRC and in Ukraine (Regulation (EC) No 495/98⁽¹⁾). Those measures expired in early March 2003. Therefore, during the early part of the period considered there were measures in place on imports from two of the countries concerned. This fact was taken into consideration when conducting the injury analysis. As indicated in recital 118 below, the evolution in respect of profitability clearly indicates that the removal of the anti-dumping measures in March 2003 did not influence significantly the situation of the Community industry during the following period. It is therefore concluded that, contrary to the claim by some interested parties, the year 2002 can be considered as the basis for the calculation of the indices mentioned in recitals 93 to 141.
- (89) SiMn is a key raw material used for the production of steel. There was a significant increase in demand for steel worldwide, but primarily in Asia, which began towards the end of 2003 and continued during the first half of

2004. This, combined with production shortages of SiMn in Asia resulted in increased worldwide demand for SiMn, and led to an unprecedented increase in price during 2004. In carrying out the injury analysis, account has been taken of these unusual circumstances, in order to ensure that they do not unduly affect the injury picture.

2. Community production and Community industry

- (90) Within the Community, the like product is manufactured by five producers. The output of these five Community producers is therefore deemed to constitute the Community production within the meaning of Article 4(1) of the basic Regulation.
- (91) Of these five producers, a total of four, being members of the complaining association, declared their interest in cooperating in the proceeding within the time limit set out in the notice of initiation and properly cooperated with the investigation. These four producers were found to account for a major proportion, in this case around 88 %, of the total Community production of the like product. The four cooperating producers therefore constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will be hereafter referred to as the 'Community industry'. The remaining Community producer will be hereafter referred to as the 'other Community producer'. This other Community producer did not oppose the complaint.

3. Community consumption

- (92) Community consumption was established on the basis of the volumes of the Community industry's own production taking into account changes in stock levels, the import and export volumes data for the Community market obtained from Eurostat and, concerning the other Community producer, from estimations made by the Community industry producers.
- (93) In the IP, the Community market for the product concerned and the like product was approximately 9 % higher than in 2002, i.e. around 914 000 tonnes. During the period considered consumption increased to a peak in 2004, when it was 14 % higher than in 2002, but fell in the following two years.

	2002	2003	2004	2005	IP
Total EC consumption (tonnes)	835 419	882 607	953 692	921 654	914 240
Index (2002=100)	100	106	114	110	109

⁽¹⁾ OJ L 62, 3.3.1998, p. 1. Regulation as amended by Regulation (EC) No 154/2003 (OJ L 25, 30.1.2003, p. 25).

4. Imports from the countries concerned

(a) Cumulative assessment of the effects of the imports concerned

- (94) The Commission considered whether imports from the countries concerned should be assessed cumulatively on the basis of the criteria set out in Article 3(4) of the basic Regulation.
- (95) 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 could be considered appropriate in view of the conditions of competition between the imports from the countries concerned and the like Community product. These 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 Community industry 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. However, in view of the absence of undercutting by imports from Ukraine as stated at recital 104, it is considered that the effect of imports from Ukraine should be assessed separately.
- (96) The exporting producer in Kazakhstan maintained that Kazakhstan should not be cumulated with the PRC for the purpose of the injury assessment, because of its diametrically different market behaviour. This exporting producer argued *inter alia* that the evolution of Kazakh import volumes, values and market share for the Community was different from the other countries

concerned and that there was a difference in product mix. In respect of this, it is acknowledged that there was during the period considered an overall decrease in the volume of imports and in market share in respect of Kazakhstan (the latter was 5,8 % in 2002 and 4,6 % during the IP). However, both the volume and market share of Kazakh imports during the period considered were relatively stable and were at levels which cannot be considered as insignificant. In addition, the investigation has shown that the evolution of prices for Kazakh imports is not significantly different from that for imports from the other countries concerned. Therefore, also in light of the considerations in recitals 73 to 75 it cannot be concluded that there is a diametrically different market behaviour between imports from the PRC and Kazakhstan and consequently the claim should be rejected.

- (97) In the light of the above, it was considered that all the criteria set out in Article 3(4) of the basic Regulation were met in respect of the PRC and Kazakhstan. The imports from those two countries concerned were therefore examined cumulatively, while imports from Ukraine were assessed separately.

(b) Volume

- (98) The volume of imports of the product concerned from the PRC and Kazakhstan into the Community increased steadily from around 48 000 tonnes during 2002 to around 162 000 tonnes during 2004, before decreasing to around 96 000 tonnes during the IP. Between 2002 and the IP, the volume of imports from these countries increased by 99 %.

	2002	2003	2004	2005	IP
Volume of imports from the PRC and Kazakhstan (tonnes)	48 091	66 509	162 227	142 993	95 491
Index (2002=100)	100	138	337	297	199
Market share of imports from the PRC and Kazakhstan	5,8 %	7,5 %	17,0 %	15,5 %	10,4 %
Price of imports from the PRC and Kazakhstan (EUR/tonne)	462	464	829	689	564
Index (2002=100)	100	101	179	149	122

- (99) The volume of imports of the product concerned from Ukraine into the Community decreased slightly from around 154 000 tonnes during 2002 to around 138 000 tonnes during 2003 and 2004, before

increasing to around 180 000 tonnes during 2005 and to around 210 000 tonnes during the IP. Between 2002 and the IP, the volume of imports from these countries increased by 36 %.

	2002	2003	2004	2005	IP
Volume of imports from Ukraine (tonnes)	154 391	137 683	137 514	179 993	210 302
Index (2002=100)	100	89	89	117	136
Market share of imports from Ukraine	18,5 %	15,6 %	14,4 %	19,5 %	23,0 %
Price of imports from Ukraine (EUR/tonne)	508	490	912	602	550
Index (2002=100)	100	97	180	118	108

(c) *Market share*

(100) The market share held by imports from the PRC and Kazakhstan stood at 5,8 % during 2002. This increased in 2003 and again in 2004, reaching 17,0 % in that year. During 2005 the market share decreased slightly to 15,5 % and decreased again during the IP to 10,4 %. Overall, between 2002 and the IP, the market share increased by 4,6 percentage points to almost double the market share in 2002.

(101) The market share held by imports from Ukraine stood at 18,5 % during 2002. This decreased in 2003 and again in 2004, reaching 14,4 % in that year. During 2005 the market share increased to 19,5 % and increased again during the IP to 23,0 %. Overall, between 2002 and the IP, the market share increased by 4,5 percentage points.

(d) *Prices*(i) *Price evolution*

(102) During 2004, prices for the SiMn increased worldwide to exceptional levels due to a situation of unusually high demand and low supply, as explained in recital 89. This is reflected in the prices of imports from the countries concerned for that year and part of 2005. This, however, did not affect prices during the IP. Overall, the average price of imports of the product concerned originating in the PRC and Kazakhstan increased by 22 % between 2002 and the IP, while the average price of imports of the product concerned originating in Ukraine increased by 8 % over the same period.

(ii) *Price undercutting*

(103) A model-to-model price comparison was made between the exporting producer and the Community industry's average selling prices in the Community. To this end, Community industry's prices to unrelated customers have been compared with the prices of cooperating exporting producers of the countries concerned. Adjustments were applied where necessary to take

account of differences in the level of trade and in the quality of products.

(104) The comparison showed that during the IP, SiMn originating in the PRC and Kazakhstan sold in the Community each undercut the Community industry's prices by 4,5 %, and consequently by 4,5 % overall on a weighted average basis. Prices of imports from Ukraine were at comparable levels to those of the Community industry (i.e. no undercutting).

(105) With a view to ensure that in the undercutting calculation prices are compared at the same level of trade, ex-works prices of the Community industry were compared with prices of the imported goods as they enter the physical territory of the Community, duly adjusted for the unloading and customs clearance costs. One interested party contested the methodology used with regard to the Kazakh company, claiming that the basis for calculation of the price of imports should be the cif price at the point of customs clearance at the EU ports, and not the price of the imported goods as they enter the physical territory of the Community (in this case the land border in Lithuania). No convincing argument was presented that would support the need to apply a different method of calculation for this company. On the contrary, it should be noted that the cif prices at the point of customs clearance of the Kazakh imports include a significant amount of transportation costs after the goods have passed the Community border in Lithuania and comparing them with the ex-works prices of the Community industry would be discriminatory for the latter, as the ex-work prices do not include any transportation cost. Therefore, it is concluded that the methodology applied is the most appropriate and consequently the claim is rejected.

5. Situation of the Community industry

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

(a) *Production*

- (107) From a level of around 241 000 tonnes in 2002, the Community industry's production increased to a peak during 2004 of around 255 000 tonnes, due to exceptional demand as explained in recital 89, before decreasing in 2005 and increasing slightly in the IP. Overall, production decreased over the period considered by 6 % to around 226 000 tonnes during the IP. It should be noted that one Community producer stopped production of SiMn during 2003 and for much of the IP.

	2002	2003	2004	2005	IP
Production (tonnes)	241 784	220 073	255 671	221 402	226 142
Index (2002=100)	100	91	106	92	94

(b) *Capacity and capacity utilisation rates*

- (108) The production capacity of the Community industry remained stable, at a level of around 325 000 tonnes, throughout the period considered.

	2002	2003	2004	2005	IP
Production capacity (tonnes)	325 226	325 537	325 254	326 068	326 696
Index (2002=100)	100	100	100	100	100
Capacity utilisation	74 %	68 %	79 %	68 %	69 %
Index (2002=100)	100	91	106	91	93

- (109) Capacity utilisation was 74 % in 2002. It declined to 68 % in 2003, increased again to 79 % in 2004, before declining to 69 % in the IP. This reflects the variations in production volumes as described in recital 107.

(c) *Stocks*

- (110) The level of closing stocks of the Community industry decreased by 45 % in 2003, but returned in 2004 to almost the same level as in 2002. The steep decrease in stocks at the end of 2003 was due to the reaction to the exceptional increase in demand referred to in recital 89. Closing stocks then increased in 2005 by 22 % before decreasing significantly in the IP to a level 30 % below 2002 levels. This overall decrease in closing stocks accounts for the fact that the Community industry's EC sales volume remained stable overall (see recital 111), despite the decrease in production as described in recital 107.

	2002	2003	2004	2005	IP
Closing stock (tonnes)	21 017	11 561	20 983	25 682	14 618
Index (2002=100)	100	55	100	122	70

(d) *Sales volume*

- (111) The sales volume by the Community industry of its own production to unrelated customers on the Community market during the IP was around 227 000 tonnes, the same as in 2002. However, the 2003 and 2005 sales volumes were 6 % and 8 % lower, respectively. In 2004, sales volume was higher at 104 % of the 2002 and IP level for the reasons already explained in recital 89.

	2002	2003	2004	2005	IP
EC Sales volume to customers (tonnes)	227 571	213 778	236 494	208 687	227 690
Index (2002=100)	100	94	104	92	100

(e) *Market share*

- (112) The market share held by the Community industry decreased from 27,2 % in 2002 to 24,2 % in 2003, before recovering to 24,8 % in 2004. In 2005, market share decreased again to 22,6 %. During the IP, it recovered somewhat to 24,9 %. Over the period considered, the Community industry lost 2,3 percentage points of market share.

	2002	2003	2004	2005	IP
Market share of the Community industry	27,2 %	24,2 %	24,8 %	22,6 %	24,9 %
Index (2002=100)	100	89	91	83	91

(f) *Growth*

- (113) Between 2002 and the IP, when the Community consumption increased by 9 percentage points, the volume of sales by the Community industry on the Community market did not increase and the Community industry's market share decreased by 2,3 percentage points. On the other hand, the sales volume and market share of the PRC and Ukraine increased over the same period. It is thus concluded that the Community industry could not benefit from any growth on the Community market.

(g) *Employment*

- (114) The employment level of the Community industry first decreased by 32 % between 2002 and 2003, increased by 27 percentage points in 2004, before decreasing by 13 percentage points in 2005 and a further 26 percentage points in the IP. During the period considered, production volume remained relatively stable, varying between 91 % and 106 % of the 2002 level. However, for one producer who stopped production of SiMn in the IP, as referred to in recital 107, the variation in production volumes during the period considered was more pronounced and the variation in employment reflects this. Overall, employment of the Community industry declined by 44 % between 2002 and the IP, i.e. from around 700 persons to around 400 persons. This shows that the Community industry improved efficiency since, at the same time, production volumes only decreased by 6 %.

	2002	2003	2004	2005	IP
Employment (persons)	702	475	668	577	391
Index (2002=100)	100	68	95	82	56

(h) *Productivity*

- (115) Productivity of the Community industry's workforce, measured as output (tonnes) per person employed per year, starting from a level of 344 tonnes per employee, increased over the period considered, apart from 2004, and finished during the IP at a level 68 % up on 2002. This reflects the fact that employment fell by 44 % over the period considered while production only decreased by 6 %. The increase in productivity is partly due to the fact that job reductions were higher for those Community producers where productivity was initially relatively low.

	2002	2003	2004	2005	IP
Productivity (tonne per employee)	344	463	383	384	578
Index (2002=100)	100	135	111	111	168

(i) *Wages*

- (116) The average wage per employee increased by 26 % between 2002 and 2003, remained at a similar level during 2004 before increasing again in 2005 and the IP to finish 77 % higher than in 2002. The increase in average wage costs is partly due to the fact that job reductions were higher for those Community producers where average wages were initially relatively low.

	2002	2003	2004	2005	IP
Annual labour cost per employee (EUR)	17 602	22 102	21 636	22 459	31 092
Index (2002=100)	100	126	123	128	177

(j) *Factors affecting sales prices*

- (117) Unit prices for Community industry's sales to unrelated customers increased overall by 14 % between 2002 and the IP. In 2004 prices were exceptionally high due to the worldwide situation of unusually high demand and low supply referred to in recital 89. The effect of this situation carried over partly into 2005 when prices returned to more normal levels, but finished during the IP 14 % higher than in 2002.

	2002	2003	2004	2005	IP
Unit price EC market (EUR/tonne)	521	526	928	640	593
Index (2002=100)	100	101	178	123	114

(k) *Profitability and return on investments*

- (118) During the period considered, the profitability of the Community industry's sales of the like product, expressed as a percentage of net sales, increased from 0,8 % in 2002 to 3,1 % in 2003, increased exceptionally to 37,2 % in 2004 due to the situation described at recital 89, returned to 7,0 % in 2005 and to 2,5 % in the IP. Profitability therefore increased by 1,7 percentage points between 2002 and the IP.

	2002	2003	2004	2005	IP
Profitability of EC sales to unrelated (% of net sales)	0,8 %	3,1 %	37,2 %	7,0 %	2,5 %
	100	385	4 668	884	313
ROI (profit in % of net book value of investments)	3,6 %	11,0 %	410,2 %	24,4 %	10,4 %
	100	303	11 252	668	284

- (119) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the profitability trend. It increased from a level of 3,6 % in 2002 to 11 % in 2003, increased exceptionally to 410 % in 2004, returned to 24 % in 2005, before reaching finally a level of 10,4 % in the IP, thus increasing by 6,8 percentage points over the period considered.

(l) *Cash flow and ability to raise capital*

- (120) The net cash flow from operating activities was almost zero in 2002. It increased to around EUR 9 million in 2003, to 83 million EUR in 2004, before returning to around EUR 16 million in 2005 and EUR 17 million in the IP. There were no indications that the Community industry encountered difficulties in raising capital.

	2002	2003	2004	2005	IP
Cash flow (EUR)	132	9 551	83 701	16 445	17 092
Index (2002=100)	100	7 214	63 220	12 421	12 910

(m) *Investments*

- (121) The Community industry's annual investments in the production of the like product increased fivefold between 2002 and 2003 before returning in 2004 to around 2002 levels. Investments increased again by around eightfold between 2004 and 2005 before declining slightly in the IP. Overall, investments increased by around 900 % between 2002 and the IP. The Community industry's investments can be attributed mainly to one Community producer and it was established that they were for the maintenance and renewal of existing equipment, and not for capacity increase purposes.

	2002	2003	2004	2005	IP
Net investments (1 000 EUR)	1 528	8 376	2 351	17 365	15 333
Index (2002=100)	100	548	154	1 136	1 003

(n) *Magnitude of dumping margin*

- (122) Given the volume, the market share and the prices of the imports from the countries concerned, the impact on the Community industry of the magnitude of the actual margins of dumping cannot be considered to be negligible.

(o) *Recovery from past dumping*

- (123) As indicated in recital 88, the evolution in respect of profitability clearly indicates that the removal of the anti-dumping measures on SiMn in March 2003 did not influence significantly the situation of the Community industry during the following period.

6. Conclusion on injury

- (124) In a context of growing consumption, the Community industry's market share declined by 2,3 percentage points to 24,9 % during the period considered. At the same time, production decreased by 6 % and the capacity utilisation also decreased by 5 percentage points. Moreover, the Community industry had to release a number of employees. On the other hand, some injury indicators indicate a positive trend during the period considered, such as profitability, cash flow, return on investments and sales price which increased by 14 %. A more thorough analysis of that data nevertheless shows that, given the nature of the business, a profit margin of 2,5 % is not considered as sufficient as it cannot guarantee the continuation of the industry in the long term. As regards the price increase, it was enough to cover the increase in raw material prices, but not to raise the profit margin to a sustainable level. Therefore, while a number of indicators show positive trends, the Community industry could not benefit at all from the overall increase in consumption on the Community market, as evidenced by its loss of market share, drop in production and by its poor profitability.

- (125) As one Community producer did not manufacture the like product continuously throughout the period considered, stopping production altogether during 2003 and for most of the IP, as referred to in recital 107, the impact of this intermittence was further examined. The analysis has shown, however, that due to the relatively small overall output of this producer its intermittent production pattern had only limited impact on the overall injury picture and did not inflate the injury indicators to a significant extent. This is evidenced by the fact that excluding this producer from the analysis would result in only slightly better performance figures. In particular, the profitability of the Community industry would still be far from satisfactory at 3,2 % in the IP, while production and capacity utilisation would still be showing negative trends. Thus, it is concluded that the injury suffered by the Community industry cannot be attributed solely to this Community producer.

- (126) In the light of the foregoing, it is concluded that the Community industry has suffered material injury within the meaning of Article 3(5) of the basic Regulation.

E. CAUSATION**1. Introduction**

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

2. Effect of the dumped imports

- (128) Between 2002 and the IP, the volume of the dumped imports of the product concerned originating in the PRC and Kazakhstan increased by 99 % and their share of the Community market increased by around 4,6 percentage points. The average price of these imports increased by 22 % between 2002 and the IP, but prices were generally lower than those of the Community industry during the period considered. Over the same period, the volume of the dumped imports of the product concerned originating in Ukraine increased by 36 % and their share of the Community market increased by around 4,5 percentage points. The average price of these imports increased by 8 % between 2002 and the IP, but prices were generally at levels close to those of the Community industry during the period considered.
- (129) As indicated in recital 104 above, price undercutting of imports from the PRC and Kazakhstan was 4,5 % overall on a weighted average basis, while there was no undercutting by imports from Ukraine.
- (130) In view of the undercutting of Community industry's prices by imports from the PRC and Kazakhstan, it is considered that these dumped imports exerted a downward pressure on the prices, preventing the Community industry from increasing its sales prices to a level that would have been necessary to realise a sustainable profit. Therefore, there is a clear causal link between those imports and the Community industry's injury. On the other hand, in view of the absence of undercutting by imports from the Ukraine and the fact that the injury margin for Ukraine is at a *de minimis* level (see recitals 168 and 169), it is considered that there is no clear causal link between imports from Ukraine and the injury to the Community industry.

3. Effect of other factors

(a) Export performance of the Community industry

- (131) As can be seen from the table below, the volume of export sales decreased by 40 % during the period considered. The unit price of these sales remained relatively stable, with the exception of those during 2004.

	2002	2003	2004	2005	IP
Export sales volume (tonnes)	12 056	16 445	10 524	9 713	7 191
Index (2002=100)	100	136	87	81	60
Export sales price (EUR/tonne)	598	522	787	592	578
Index (2002=100)	100	87	132	99	97

- (132) It should be noted, however, that the level of export sales is not significant in the context of the Community industry's overall sales, representing only around 3 % to 7 % of total sales during the period considered. It is therefore considered that the export activity cannot have contributed in any way to the material injury suffered by the Community industry.

(b) Imports from third countries

- (133) The analysis of imports from third countries is based on data from Eurostat. For a number of countries it was possible to cross-check this data with verified information provided by interested parties, which confirmed the reliability of Eurostat data.
- (134) Overall imports from all countries, other than the countries concerned, decreased over the period considered by around 6 %, i.e. from around 377 000 tonnes in 2002 to around 354 000 tonnes in the IP. The corresponding market share declined from around 45 % to around 39 %. The main sources of imports from third countries are Norway, India, South Africa and Brazil.

	2002	2003	2004	2005	IP
Volume from all other third countries (tonnes)	376 919	437 205	393 857	364 250	353 802
Index (2002=100)	100	116	104	97	94
Market share of all other third countries	45,1 %	49,5 %	41,3 %	39,5 %	38,7 %
Price from all other third countries (EUR/tonne)	523	528	823	691	597
Index (2002=100)	100	101	157	132	114

Source: Eurostat.

- (135) Imports from Norway decreased by around 11 %, and the market share of those imports decreased by 4,9 percentage points (IP = 21,9 %), during the period considered. Overall, the average price of imports from Norway was above that of the Community industry throughout the period considered. While the price of low-carbon imports from Norway may undercut Community industry prices to some extent, given that this quality of product only represents a small part (roughly 5 %) of the total production of the Community industry, and in view of the absence of overall undercutting and the

decrease in both import volumes and market share, it was considered that imports from Norway did not contribute to the material injury suffered by the Community industry.

Norway	2002	2003	2004	2005	IP
Volume of imports (tonnes)	224 253	213 838	178 639	200 310	200 272
Index (2002=100)	100	95	80	89	89
Market share of imports	26,8 %	24,2 %	18,7 %	21,7 %	21,9 %
Price of imports (EUR/tonne)	574	604	956	765	656
Index (2002=100)	100	105	167	133	114

Source: Eurostat.

- (136) Imports from India increased by over 300 %, and the market share of those imports increased by 7,3 percentage points (IP = 9,7 %), during the period considered. At the same time the average price of imports from India was slightly higher than those of the Community industry (i.e. no undercutting). In view of the absence of undercutting by imports from India, it is considered that there is no clear evidence that imports from India contributed to the injury suffered by the Community industry.

India	2002	2003	2004	2005	IP
Volume of imports (tonnes)	19 954	33 497	31 593	48 123	89 017
Index (2002=100)	100	168	158	241	446
Market share of imports	2,4 %	3,8 %	3,3 %	5,2 %	9,7 %
Price of imports (EUR/tonne)	479	449	804	591	521
Index (2002=100)	100	94	168	123	109

Source: Eurostat.

- (137) Imports from South Africa decreased by around 38 %, and the market share of those imports decreased by 2,5 percentage points (IP = 3,2 %) during the period considered. The average price of imports from South Africa was below that of the Community industry and similar to that practiced by the countries concerned. It is therefore considered that imports from South Africa may have contributed to the injury suffered by the Community industry. However, given the significant overall decrease in imports from South Africa and their small market share, it is considered not sufficient to break the causal link between the material injury suffered by the Community industry and dumped imports from the PRC and Kazakhstan.

South Africa	2002	2003	2004	2005	IP
Volume of imports from S Africa (tonnes)	47 808	81 330	58 753	52 640	29 531
Index (2002=100)	100	170	123	110	62
Market share of imports from S Africa	5,7 %	9,2 %	6,2 %	5,7 %	3,2 %
Price of imports from S Africa (EUR/tonne)	417	429	660	611	501
Index (2002=100)	100	103	158	147	120

Source: Eurostat.

- (138) Imports from other third countries, including Brazil, decreased by around 59 %, and the market share of those imports decreased by around 6,4 percentage points (IP = 3,8 %), during the period considered. At the same time, the average price of imports from other third countries was higher than that of the Community industry (i.e. no undercutting). In view of the absence of undercutting by those imports and their decreasing trend, it is considered that they did not contribute to the material injury suffered by the Community industry.

Other third countries (including Brazil)	2002	2003	2004	2005	IP
Volume of imports (tonnes)	84 904	108 539	124 872	63 178	34 982
Index (2002=100)	100	128	147	74	41
Market share of imports	10,2 %	12,3 %	13,1 %	6,9 %	3,8 %
Price of imports (EUR/tonne)	460	476	713	598	528
Index (2002=100)	100	104	155	130	115

Source: Eurostat.

(c) *Competition from the other Community producer*

- (139) As indicated in recital 91 above, one Community producer did not cooperate with the investigation. Based on information obtained in the course of the investigation from cooperating Community producers, it is estimated that its sales volume in the Community was around 30 000 tonnes throughout the period considered. Similarly, the corresponding market share was stable throughout the period considered at around 3 %. The other Community producer therefore did not gain any sales volume and market share at the expense of the Community industry. No information was available concerning the prices of this Community producer.

	2002	2003	2004	2005	IP
EC Sales volume of the other Community producers (tonnes)	30 000	30 000	30 000	30 000	30 000
Index (2002=100)	100	100	100	100	100
Market share of the other Community producers	3,6 %	3,4 %	3,1 %	3,3 %	3,3 %
Index (2002=100)	100	95	88	91	91

Source: Investigation, complaint.

- (140) 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 Community industry.

(d) *Cost of production (raw materials)*

- (141) The main elements in the total cost of production are raw materials (around 45 % to 55 %) and electricity (around 20 % to 30 %). Direct labour accounts for around 5 % of costs. The cost of production of the Community industry increased by 12 % between 2002 and the IP.

	2002	2003	2004	2005	IP
Unit cost of production (EUR/tonne)	517	510	583	595	578
Index (2002=100)	100	99	113	115	112

(142) Some interested parties claimed that the injury suffered by the Community industry was attributable to the increases in the cost of production. In respect of raw material costs, since these are generally commodity products which, in principle, are traded on the international market, it is considered that the price increase has affected all producers of SiMn, which would normally be forced to increase their sales prices across the board. The injury was thus not caused by the general increase in raw material prices as such but by the fact that, due to the dumped imports which were undercutting the Community industry's prices, the Community industry was unable to sell at a level that would have allowed it to realise a sufficient profit margin. As for labour costs, as indicated in recital 115 above, data concerning productivity show that, overall, the Community industry has managed to offset increases in costs with increases in efficiency and productivity. Some parties referred to electricity costs as the main reason why Community industry would have suffered injury. In this respect, it was established that the electricity prices for the industrial users in the countries where the Community industry is based were in line with the prices in other major markets in the world and consequently may not be considered as a source of a self-inflicted injury. The electricity costs may have had some impact on the overall performance, but only in the case of one Community producer that experienced shortages of the electricity supply due to important increases in the electricity prices and the related dispute with the energy supplier. It is concluded that, overall, increases in the cost of production have not contributed to the injury suffered by the Community industry.

(e) *Self-inflicted injury*

(143) As the investment of one Community producer increased significantly between 2004 and the 2005 (see recital 121), it was examined if the injury was self-inflicted. This investment had a direct impact on the cost of production and therefore the profitability of the Community industry. However, the analysis has shown that due to limited weight of this investment in the total cost of production, the impact on the profitability was marginal. Therefore, it is concluded that the investment of one Community producer may have contributed to the injury suffered by the Community industry but not to an extent to break the causal link.

(f) *Downturn in the market for silico-manganese due to the cycle in steel production*

(144) Some parties claimed that the drop in the demand for steel, and the consequent drop in demand for SiMn,

which occurred during the second half of 2004 and the first half of 2005, following the unprecedented increase in demand described in recital 89, contributed to the bad state of the Community industry. However, the investigation has shown that over the full period considered Community consumption increased overall by 9 %. In view of this, the argument is rejected.

4. Conclusion on causation

(145) The coincidence in time between, on the one hand, the increase in dumped imports from the PRC and Kazakhstan, the increase in market shares and the undercutting found and, on the other hand, the deterioration in the situation of the Community industry, leads to the conclusion that the dumped imports caused the material injury suffered by the Community industry within the meaning of Article 3(6) of the basic Regulation.

(146) Other factors were analysed but were found not to be a determining reason for the injury suffered. As concerns Ukraine, which represents 23 % of market share, since there is no undercutting overall, it is considered that its imports did not contribute to the injury of the Community industry. Imports from South Africa may have contributed to the injury suffered by the Community industry, but given their small market share and declining volumes not to an extent sufficient to break the causal link established with the imports from the PRC and Kazakhstan. Due to the lack of undercutting, the import volumes and trend figures, there is also no evidence that imports from India or other third countries (including Brazil) have contributed to the injury suffered by the Community industry. The investment of one Community producer may have contributed to the injury suffered by the Community industry; however, due to limited weight of this investment, not to an extent to break the causal link. Moreover, no other known factor, i.e. the export performance of the Community industry, competition from the other Community producer, the increase in cost of production or the market cycle for steel, has contributed to the injury of the Community industry.

(147) Based on the above analysis, which has properly distinguished and separated the effects of all known factors having an effect on the situation of the Community industry from the injurious effect of the dumped imports, it is concluded that the imports from the PRC and Kazakhstan have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Regulation.

F. COMMUNITY INTEREST

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

1. Interest of the Community industry

(149) In the light of the foregoing, measures would be imposed on imports from the PRC and Kazakhstan. It is expected that the imposition of these measures would lead to an increase in prices for SiMn from those countries and would provide the Community industry with an opportunity to improve its situation through increased prices and possibly through increased sales volumes and market share. In the absence of measures, it is expected that imports would continue at low prices from the PRC and Kazakhstan and that the Community industry would not have the opportunity to improve its situation.

(150) As for the low-carbon product, this represents only 5 % of the production of the Community industry and is imported mainly from Norway, but also from the PRC. While it is considered that, should measures be imposed, the quantities presently coming from the PRC could be to some extent substituted by imports from Norway, the measures would provide the Community industry with the opportunity to increase its own production and sales of low-carbon product in order to meet demand.

2. Interest of the other Community producers

(151) 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 10 % to 15 % of that of the Community industry. Should anti-dumping measures be imposed, the same type of developments, as set out in recitals 149 and 150 for the Community industry, can be expected for this other Community producer as well.

3. Interest of unrelated importers in the Community

(152) Two independent importers of the product concerned cooperated in the proceeding by completing and submitting questionnaires.

(153) These importers expressed concern, should measures be imposed, regarding (i) the negative impact on the supply situation within the Community, given that the total production capacity within the Community amounted to only approximately one third of the consumption, and (ii) the adverse effect any measures would have on the cost of the product concerned, which, as a fundamental raw material for the production of steel, would affect overall Community steel production.

(154) As concerns the supply situation within the Community, it is true that consumption is around three times the current Community production capacity and that the Community industry only supplied around 25 % of Community demand during the IP. However, the Community industry was operating at around 70 % capacity utilisation during the IP, and at between 70 % and 80 % capacity utilisation over the period considered. It is therefore in a position to significantly increase its current production. Also, given the relatively limited quantities of imports which will be subject to measures (as indicated at recitals 149 and 150 above) and that the possible reduction of imports from the countries concerned could be compensated by exports from other countries, it is considered that the imposition of duties would not have any sizeable impact on the availability of supplies for importers. Also, in addition to supplies from Community producers and from the countries concerned by the investigation, the Community market is also supplied, to the extent of almost 40 % of consumption, by imports from other countries, notably Norway, India, South Africa and Brazil. Those countries have cumulatively in the past supplied higher quantities to the Community.

(155) It is recognised that if measures were introduced, there may be some short-term disruption due to possible delays with increasing Community production and if it proves necessary for some users to arrange new or alternative supplies.

(156) As far as importers are concerned, even if the Community industry were to increase its production, sales and market share within the Community, given that the Community industry can only supply around 30 % of the market, and that Community consumption is growing, there would still remain a need for substantial import activity. While it is recognised that importers generally operate on a relatively low profit margin and that any short-term disruption resulting from users seeking to arrange new or alternative supplies could negatively affect their margins, it is considered that importers are in a position to safeguard their margins by passing on any increased costs to users.

4. Interest of the users

- (157) Ten users of the product concerned in the metal industry cooperated in the proceeding by completing and submitting questionnaires or making submissions. A submission was also received from the European Confederation of Iron and Steel Industries (EUROFER).
- (158) Users expressed similar concerns regarding sufficient supply and increased costs for end-users, as did importers, as stated in recital 153 above. For the reasons set out in recital 154, it is considered that the imposition of measures would not have a serious detrimental mid-term effect on the supply situation in the Community.
- (159) The direct effect of an increase in the price of SiMn on steel production costs would be limited, given that the SiMn represents at most 1 % of the production cost of carbon steel, and even less in the case of stainless steel. On the basis of information supplied by the user industry association (EUROFER) concerning the total annual cost for their usage of SiMn, it is estimated that the effect of even a significant increase of 20 % in the price affecting all SiMn would be to reduce the profitability of steel producers (currently achieving profit levels of between 10 % to 40 %) by only around 0,2 %. Given that measures would be at a significantly lower rate, and would only affect a maximum of 10 % of the Community consumption (in case that no imports subject to measures would be substituted by imports from other origins), the effect of any possible measures on the profitability of the steel industry would be extremely limited.
- (160) It has been claimed that the market for the SiMn is a global one and that global demand is increasing in line with increasing demand for steel. When demand increases over supply, this can lead to significant price increases, as happened in 2004. Should a temporary disruption of supply and demand in the Community develop, as described in recital 155, this could lead to price increases in the short-term in excess of the level of any duties imposed. However, in view of the fact that the market for the SiMn is a global one, it is considered that the price level within the Community is set by the interplay of global supply and demand and that Community prices should not go out of line with world prices to any great degree for any extended period due to the significant presence of imports from other origins on the market. In addition, steel producers, who are currently operating at satisfactory profit levels (10 % to 40 %), 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 SiMn in the overall cost of steel production.
- (161) Users also questioned the effectiveness of imposing measures, arguing that the imposition and removal of previous measures had little effect on the profitability of the Community industry. In this regard, although the purpose of imposing anti-dumping measures is to restore fair market conditions with a view to providing the opportunity for a Community industry, which was materially injured through dumping, to recover, the fact that such recovery may not have realised in the past should not be a reason against considering the appropriateness of imposing anti-dumping measures where this is now warranted.
- (162) Some users pointed out that over the past 10 years or so the Community steel industry has suffered from increased costs from anti-dumping measures which had been placed on a variety of raw materials used solely or mainly for steel production. They also pointed out that, in addition to the present proceeding, there were a number of other proceedings currently open concerning raw materials used in steel production. The overall effect, they argued, was to place the Community steel producers at a disadvantage internationally. As regards previous measures, it should be noted that the majority of the previous measures have now expired. As concerns the cumulative effect of measures on a number of raw materials, it should be borne in mind that the purpose of anti-dumping measures is to eliminate the impact of distorted market conditions arising from the presence of dumped imports. As such, the effect of anti-dumping measures, even when imposed on a number of raw materials affecting the same industry, should not have a distorting effect. In any event, the impact of the imposition of any measures in this case on the steel industry would be negligible, as explained in recital 159 above.
- (163) Following disclosure, EUROFER reiterated its argument that the imposition of measures would not be in the overall Community interest since they would lead to increased costs for users and have little effect in improving the situation of the Community industry. No new information was provided in this respect and therefore the reasoning provided above (recitals 157 to 162) is confirmed and on this basis it is considered that any impact from the imposition of an anti-dumping duty on the financial situation of users is likely to be negligible overall.

5. Conclusion on Community interest

(164) To conclude, it is expected that the imposition of measures on imports from the PRC and Kazakhstan would, despite the availability of limited and decreasing quantities of SiMn on the market from other countries (i.e. South Africa and Norway in case of low-carbon SiMn) and from suppliers not subject to measures at prices similar to those practiced by the PRC and Kazakhstan prior to the imposition of any duties, provide an opportunity for the Community industry, as well as the other Community producer, to improve its situation through increased sales volumes, sales prices and market share. While some negative effects may occur in the form of cost increases for users arising out of the possible need to arrange new or alternative supplies, it is considered that the overall effect on users of the imposition of measures on the PRC and Kazakhstan would be negligible. In light of the above, it is concluded that no compelling reasons exist for not imposing measures in the present case and that the application of such measures would be in the interest of the Community.

G. DEFINITIVE MEASURES

Estimated injury elimination level

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

(166) The Community industry claimed that a profit margin of 8 % of turnover should be regarded as an appropriate level that it could be expected to obtain in the absence of injurious dumping. This was examined and it was found that the claimed profit margin would result in the recovery of capital investment over a relatively short time period. In addition, the investigation showed that the Community industry itself generally depreciated its capital investments over a longer time frame. On this basis, it is considered that a profit margin of 5 %, which is in line with the margin that was used in the investigation which led to the previous anti-dumping measures, is an appropriate level that the Community industry could be expected to obtain in the absence of injurious dumping.

(167) The necessary price increase was then determined on the basis of a comparison, per product type, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value. In the absence of MET or IT being granted to any of the cooperating Chinese exporting producers, a countrywide injury margin was calculated for the whole of the PRC on the basis of prices from Comext.

(168) The above mentioned price comparison showed the following injury margins:

Ukraine: all companies	1,6 %
OJSC Kazchrome	7,3 %
PRC	8,2 %

(169) In the light of the foregoing and pursuant to Article 9(4) of the basic Regulation, it is considered that a definitive anti-dumping duty should be imposed in respect of imports of SiMn originating in Kazakhstan and in the PRC at the level of the lower of the dumping and injury margins, in accordance with the lesser duty rule. By analogy with Article 9(3) of the basic Regulation, given that the injury margin for Ukraine is below a *de minimis* level, the investigation in respect of this country should be terminated.

(170) Consequently, and for the reasons already mentioned at recitals 165 to 169, the anti-dumping duties should be as follows:

Country	Company	Rate of duty
Kazakhstan	All companies	6,5 %
PRC	All companies	8,2 %

H. UNDERTAKINGS

(171) Following the disclosure of essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive anti-dumping duties, the exporting producer in Kazakhstan offered a price undertaking in accordance with Article 8(1) of the basic Regulation. The product concerned has shown in the last years a considerable volatility in prices and therefore it is not suitable for a fixed price undertaking. In order to overcome this problem the exporting producer offered to index the minimum import price to the price of the main raw material, namely manganese ore. However, the fluctuation in the price of the product concerned cannot be explained by the fluctuation in the price of the main raw material, and thus it is not possible to index the minimum import prices to the price of the raw material. As an alternative approach the exporting producer also offered to index the minimum import price on the basis of its own cost of production as it is shown in its audited accounts. However this approach cannot be accepted as the evolution of its cost do not necessarily correspond to the evolution of its prices. Moreover, such an undertaking is considered as unworkable since it would be very difficult for the Commission to constantly monitor the evolution of costs. On the basis of the above it was concluded that the undertaking offered by the exporter cannot be accepted,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on

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

Done at Brussels, 4 December 2007.

imports of silico-manganese (including ferro-silico-manganese) falling within CN codes 7202 30 00 and ex 8111 00 11 (TARIC code 8111 00 11 10), originating in the People's Republic of China and Kazakhstan.

2. The rate of anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, of the products described in paragraph 1 and produced by the companies below shall be as follows:

Country	Manufacturer	Rate of duty
Kazakhstan	All companies	6,5 %
PRC	All companies	8,2 %

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

Article 2

The proceeding concerning imports of silico-manganese originating in Ukraine is hereby terminated.

Article 3

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

For the Council

The President

F. TEIXEIRA DOS SANTOS