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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2450/98

of 13 November 1998

imposing a definitive countervailing duty on imports of stainless steel bars originating in India and collecting definitively the provisional duty imposed

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], and in particular Article 15 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

(1) By Commission Regulation (EC) No 1556/98 [2] (hereinafter referred to as 'the provisional duty Regulation') provisional countervailing duties were imposed on imports into the Community of stainless steel bars (hereinafter referred to as 'SSB' or 'the product concerned') falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 originating in India. The measures took the form of *ad valorem* duties varying between 0 and 25,0 % with a residual duty of 25,0 %.

(2) Pursuant to Article 12(1) of Regulation (EC) No 2026/97 (hereinafter referred to as the 'basic Regulation'), provisional anti-dumping duties originally imposed by Commission Regulation (EC) No 1084/98 [3] were reduced by the provisional duty Regulation. This amendment of the anti-dumping duties was necessary in order to avoid that the product would be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

B. SUBSEQUENT PROCEDURE

(3) Following the adoption of the Regulation imposing provisional duties, several interested parties submitted comments in writing. The parties who so requested were granted an opportunity to be heard by the Commission.

(4) The Commission continued to seek and verify all information it deemed necessary for its definitive findings.

(5) Parties were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty and the definitive collection of amounts secured by way of the provisional duty. They were also granted a period to make representations subsequent to this disclosure.

(6) The oral and written comments submitted by the interested parties were considered, and, where appropriate, definitive findings were changed accordingly.

C. PRODUCT UNDER CONSIDERATION AND LIKE PRODUCT

(7) The product concerned by the investigation is stainless steel bars and rods, not further worked than cold-formed or cold-finished, containing by weight 2,5 % or more of nickel, of circular cross-section as well as of other cross sections.

(8) Following the adoption of the Regulation imposing provisional duties, some Indian exporting producers argued that the products exported to the Community and those sold on the domestic market in India were not comparable, for instance in terms of chemical characteristics, and consequently could not be considered to be a like product.

[1] OJ L 288, 21. 10. 1997, p. 1.
[2] OJ L 202, 18. 7. 1998, p. 40.
[3] OJ L 155, 29. 5. 1998, p. 3.

(9) This claim could not be accepted since it was found that SSB produced and sold domestically in India as well as Indian SSB sold on the Community market had the same basic physical, technical and chemical characteristics and uses.

(10) One exporting producer claimed that products corresponding to the standard DIN 1013 fell within the scope of the current anti-subsidy proceeding and should therefore be taken into consideration. It was found, however, that these products were hot rolled bars and therefore not covered by the scope of the investigation as set out in the notice of initiation [1] and the provisional duty Regulation. In addition, it was noted that they do not fall within the relevant CN codes subject to measures. Consequently, this claim was not accepted.

(11) As no other arguments were presented, the findings set out in recitals 8 to 11 of the provisional duty Regulation are confirmed.

D. SUBSIDIES

1. Passbook scheme (PBS)

(12) The Government of India (GOI) claimed that this scheme, which is described in recitals 16 to 24 of the provisional duty Regulation, was not countervailable since it was a permitted drawback system within the meaning of Annex I(i) and Annexes II and III to the basic Regulation. Furthermore, it alleged that there was no requirement under Annex I(i) that imported inputs are used for export production.

However, Annex I(i) clearly states that imported inputs must either be consumed in the production of the exported product (i.e. a drawback scheme as provided for within the meaning of Annex II) or the imported inputs must have the same quantity and the same quality and characteristics as home market inputs (i.e. a substitution drawback scheme as provided for within the meaning of Annex III). The PBS in fact allows the importation of goods free of duty which are not inputs used in producing goods for export or inputs having the same quantity and the same quality and characteristics as home market inputs actually incorporated in the exported product. It is therefore considered that the PBS is not a permitted drawback or substitution drawback scheme under the provisions of the basic Regulation.

(13) Four Indian exporting producers have argued that the scheme operates in practice as a legitimate duty drawback scheme, and that this is proved by the fact that adjustments to normal value have been granted in respect of the PBS in the parallel anti-dumping proceeding. However, such an allowance is not relevant in the assessment of the countervailability of the PBS, which has been established on the basis of the provisions of the basic Regulation, for the reasons stated in recital 12. Once such a countervailable subsidy is found to exist, the benefit to the recipient is the full amount of import duty not paid by the exporting producer on all import transactions. In this regard, it is not adequate to reconstruct the PBS in order to determine which products are physically incorporated and which are not.

(14) The GOI further referred to the existence of a verification procedure, based on 'Standard input/output norms' as described in recital 19 of the provisional duty Regulation. These norms were issued for exported products and set out quantities of normally imported raw materials required to produce one unit of the finished product. The GOI argued that the system was in place to ensure that there was no excess drawback of import duties as required by Annex I(i) and Annexes II and III to the basic Regulation and that, furthermore, the Commission had the opportunity to verify all actual transactions to determine whether there was an excess drawback.

This argument cannot be accepted as the issue of excess remission only arises in the context of assessing properly constituted drawback/substitution drawback schemes and it has been established that the PBS is not such a drawback or substitution drawback scheme within the meaning of Annex I(i) and Annexes II and III to the basic Regulation.

(15) The GOI argued that the element of minimum value addition (MVA) in the Standard input/output norms does not render the PBS an import substitution subsidy since there was no minimum prescribed domestic input requirement and the MVA could also be achieved by the use of, for example, imported inputs.

As the PBS is already considered countervailable on the basis that it is contingent upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, it is not necessary to make a further finding on the issue of an import substitution subsidy.

[1] OJ C 264, 30. 8. 1997, p. 2.

(16) The GOI claimed that the benefits under the PBS should not be countervailed since the PBS had been abolished as from 31 March 1997 and only a limited number of companies could continue to avail themselves of credits previously granted. The GOI made reference to Article 17 of the basic Regulation, which provides that a countervailing measure remains in force only as long as, and to the extent that, it is necessary to counteract the countervailable subsidies which are causing injury, and also referred to previous Community practice. Four Indian exporting producers claimed that it is highly questionable that a scheme which is no longer in force may be deemed countervailable.

In response to this point, it should be noted that even though the PBS has been abolished, companies can still claim credits under this scheme for export transactions made up to 31 March 1997, and during the investigation it was established that they may use these credits up to 31 March 2000. Substantial benefits under this scheme could, therefore, continue to be granted until that time and they constitute countervailable subsidies. With regard to the continuing countervailability of benefits, it is considered that the principle stated in Article 5 of the basic Regulation applies, i.e. that the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient in the investigation period. During the investigation period, the PBS was, as stated by the GOI, abolished and replaced by its successor, the Duty Entitlement Passbook Scheme (DEPBS), which is also considered countervailable (see recital 34 of the provisional duty Regulation). Since benefits will continue to be granted in the future under the DEPBS it is considered necessary to impose measures based on the total benefits received during the investigation period under both the PBS and the DEPBS because, as prescribed by Article 17 of the basic Regulation, it will still be necessary to counteract the countervailable subsidies which are causing injury.

(17) Subsequent to the above claim, the GOI provided information that, following an instruction in July 1998 from the Ministry of Commerce, Indian producers had only until 30 September 1998 at the latest to claim passbook credits, and not 31 March 2000 as previously provided for (see recital 16). The GOI asked, therefore, that this development be taken into consideration in making a final determination.

It should first be noted that since it was presented very late in this investigation, it is not possible to verify the practical application of this instruction. Furthermore, as explained above, as the PBS has been replaced by a successor scheme, the DEPBS (which is also considered to be a countervailable subsidy), and that benefits will continue to be granted in future under the DEPBS, it is not appropriate to disregard benefits which accrued to exporters under the PBS during the investigation period. Therefore, measures should be imposed on benefits received during the investigation period under both the PBS and the DEPBS. Any other approach would enable subsidising governments to escape from countervailing measures simply by changing the name of a scheme during the investigation period.

(18) Four Indian exporting producers claimed that the credits received on the export turnover for the period of investigation for the products concerned should have been used for calculating the subsidy, instead of the debits made from the passbook. They argued that basing the amount of benefit on the debits had led in this case to an exaggerated amount of subsidy in relation to the actual volume of exports to the European Community, which was brought about by the timing of the use of the benefit.

It should be noted that the subsidy amount is determined on the basis of the benefit to the recipient company during the period of investigation. It is only when the debit is made in the passbook that the credit obtained on the basis of previous export volume is actually used; consequently it is only at this moment that the recipient receives a benefit in terms of a relief from import duty which should otherwise have been paid.

(19) Four Indian exporting producers alleged that double counting had occurred when the provisional dumping margins and amounts of subsidisation were established. In particular, they alleged that the part of the PBS benefits for which no allowance was granted in the anti-dumping proceeding had been double-counted with the subsidy amount and that the dumping margin should have been reduced.

In reply to this point, it should first be noted that the question of allowances in an anti-dumping proceeding and the extent of countervailability in an anti-subsidy proceeding require different analysis, since each procedure is based on separate

basic Regulations. Article 2(1)(a)(ii) of the basic Regulation provides that the exemption of an exported product from duties/charges shall not be deemed to be a subsidy provided that it is granted in accordance with the provisions of Annexes I to III to the basic Regulation. The PBS is considered countervailable for the reasons explained in recital 25 in the provisional duty Regulation, and the countervailable benefit to the exporters has been calculated on the basis of the amount of customs duty normally due on all imports made during the investigation period but which remained unpaid under the PBS. Consequently, the establishment of the subsidy amount and the dumping margin is the product of two separate exercises.

In addition, it should be recalled that, since all of the investigated schemes were found to constitute export subsidies within the meaning of Article 3(4)(a) of the basic Regulation, the provisional anti-dumping duties were reduced by the amount of countervailing duty.

(20) Finally, the GOI claimed that the inclusion of an amount for interest in arriving at the total benefit to companies which availed themselves of this scheme is not provided for under the Agreement on subsidies and countervailing measures (ASCM) of the World Trade Organisation (WTO). The GOI also claimed that it was not the Community's normal practice to include such an amount in calculating the amount of benefit to companies availing themselves of such subsidy schemes.

With regard to this claim, the interest element is added in order to reflect the benefit to the recipient obtained by the subsidised firm by not having to raise an equivalent amount of money from commercial sources. Indeed, Article 6 of the basic Regulation (which reproduces Article 14 of the ASCM) makes it clear that the benchmark for the calculation of the subsidy is the equivalent cost of funds on the commercial market. The Community's established practice in this area since the entry into force of the WTO Agreement is to add an amount for interest in calculating the total benefit; this has been done in a number of recent cases. This claim is therefore rejected.

2. **Export Promotion Capital Goods Scheme (EPCGS)**

(21) The GOI has made a number of claims regarding the Export Promotion Capital Goods Scheme (EPCGS), which is described in recitals 36 to 39 of the provisional duty Regulation. These concern the qualification of the scheme as a subsidy and the calculation of the subsidy amount.

(22) It was argued that there is no requirement under the law that capital goods purchased under this scheme should be exclusively used for the manufacture of export goods and that, consequently, the exemption from import charges of goods imported under this scheme cannot be considered as a countervailable subsidy.

In regard to this claim, the investigation has shown that to avail itself of the EPCGS, a company must make a commitment to export a certain value of goods within a certain time period. This scheme is therefore contingent in law upon export performance i.e. the benefit cannot be obtained without a commitment to export goods. As such, it is deemed to be specific under the provisions of Article 3(4)(a) of the basic Regulation and, therefore, countervailable. In the light of these facts, the question of whether capital goods are used exclusively or not for the manufacture of goods for export is of no relevance.

(23) It is further argued that the scope of the term 'input' under paragraph (i) of Annex I (the illustrative list of export subsidies) of the basic Regulation also covers capital goods and that, under this paragraph, the remission of any duty cannot *per se* be considered as a subsidy unless there is an excess remission.

However, it is considered that capital goods do not constitute 'inputs' within the meaning of the basic Regulation because they are not physically incorporated into the exported products.

(24) The GOI contested the fact that, for calculating the subsidy amount per unit, in the provisional findings, benefits from the scheme had been allocated only over export turnover. It claimed that as capital goods imported under the EPCGS are used for producing goods for both the export and domestic markets, benefits under the scheme should be spread over total turnover.

In reply to this, it has been determined that this scheme is contingent solely upon export performance (see recital 22). In conformity with Article 7(2) of the basic Regulation, it is considered appropriate that the benefit for this scheme should be spread over export turnover only since the subsidy is granted by reference to a certain value of exports of goods within a certain time period. The claim, therefore, that benefits under the scheme should be allocated over total turnover is rejected.

(25) One Indian exporting producer submitted that the depreciation period used in the provisional findings (i.e. 15,5 years as mentioned in recital 42 of the provisional Regulation) is incorrect, and that a depreciation period of 21 years, corresponding to the period the company uses to write off its fixed assets, should have been used.

In reply to this claim, it should be noted that in the provisional findings, the normal depreciation period of capital goods in the stainless steel industry concerned was used i.e. 15,5 years, which is an average based on information provided by the cooperating Indian exporting producers. This is in accordance with the requirements of Article 7(3) of the basic Regulation which states that where a subsidy can be linked to the acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. In view of this provision, it is not appropriate to use the company's specific depreciation periods. The claim is therefore rejected.

(26) One Indian exporting producer claimed that the benefit on some machinery should not have been counted, since it had not been commissioned during the period of investigation. Having further examined this matter, it is clear that the company has in fact obtained a benefit under this scheme, in the form of an exemption from import duty which would normally have been payable during the period of investigation. The fact that the machinery may not have been fully operational during the period of investigation does not affect this conclusion.

(27) Finally, the GOI claimed that the inclusion of an amount for interest in arriving at the total benefit to companies which availed themselves of this scheme is not provided for under the ASCM of the WTO. The GOI also claimed that it is not the Community's practice to include such an amount in calculating the amount of benefit to companies availing themselves of such subsidy schemes.

This argument is rejected for the reasons explained in recital 20.

3. **Income tax exemption scheme**

(28) The rate of corporate income tax in India, which is described in recitals 44 to 48 of the provisional duty Regulation, has been reduced since the 1996/97 tax year (i.e. the period on which the Commission made its provisional findings for this scheme). It is considered that account should now be taken of the reduced rate in calculating any benefit to the Indian exporting producers concerned.

In this regard, it is noted that Article 5 of the basic Regulation provides that the amount of countervailable subsidies shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidisation. As stated above, in the case of the provisional findings, the Commission calculated the benefit on the basis of the tax year 1996/97 (i.e. 1 April 1996 to 31 March 1997) which corresponded most closely to the investigation period. During this tax year, the rate of corporate tax applied was 43 %. For the subsequent tax year (i.e. from 1 April 1997 to 31 March 1998), the rate of tax to be applied was reduced to 35 %. It is considered that, as part of this latter tax year falls within the investigation period of this proceeding, it is appropriate to make the calculation of the amount of countervailable subsidies on the basis of a *pro rata* of the two tax rates which applied in the investigation period. Appropriate adjustments have accordingly been made to the amount of subsidy for the companies which availed of this scheme.

(29) The GOI has claimed that, in the provisional findings, the addition of an amount for interest in arriving at the total benefit to companies which availed of this scheme was in violation of previous Community practice as well as both the ASCM and the basic Regulation.

In response to this argument, it is considered that the amount of tax which remained unpaid by a company in the tax year corresponding most closely to the investigation period was the most reasonable indicator on which to base the benefit to a company under this scheme. This amount is considered to equate to a one-time grant which is available to a company during the investigation period. An amount is added to this grant for interest for the reasons set out in recital 20 and the GOI claim has accordingly to be rejected.

4. **Amount of countervailable subsidies**

(30) Taking account of the definitive findings relating to the various schemes as set out above, the amount of countervailable subsidies for each of the investigated exporting producers is as follows:

	Passbook	DEPB	EPCGS	Income tax	Total
Bhansali Bright Bars	13,7 %			0,7 %	14,4 %
Facor (Ferro Alloys Corp.)	84,5 %		1,1 %		85,6 %
Grand Foundry	84,5 %				84,5 %
Isibars	38,7 %		1,1 %	1,2 %	41,0 %
Mukand	18,1 %		0,1 %	1,4 %	19,6 %
Parekh				0,4 %	0,4 %
Panchmahal Steel	0,2 %		0,7 %		0,9 %
Raajratna Metal Industries	44,2 %			2,7 %	46,9 %
Venus Wire Industries	22,9 %			1,8 %	24,7 %
Viraj Impoexpo	25,6 %			1,4 %	27,0 %

(31) The subsidy amount definitively established for Indian companies other than those cooperating in this investigation, expressed as a percentage of the net, free-at-Community-frontier price, is 88,3 %, which is the sum of the highest amount granted to any cooperating exporter under each scheme.

(32) One exporting producer, Chandan Steel Ltd, co-operated in the anti-dumping proceeding, where an individual dumping margin and an individual injury margin was provisionally established, but did not cooperate fully in the anti-subsidy proceeding. In the context of this proceeding, Article 28 of the basic Regulation is applicable for the determination of the subsidy amount, which for this company, expressed as a percentage of the net, free-at-Community-frontier price, is 88,3 %. However, it is considered that account should be taken of the cooperation of this company in the anti-dumping proceeding, and that the definitive countervailing duty should be based on the injury elimination level established for this company's exports of the product concerned to the Community during the period of investigation in the anti-dumping proceeding, since it is lower than the subsidy amount.

(33) For the exporter mentioned in recital 6 of the provisional anti-dumping duty Regulation (Sindia Steel Ltd), it was considered appropriate that the weighted average subsidy amount found for the cooperating Indian companies should apply for this company. The subsidy amount definitively established for this company, expressed as a percentage of the net, free-at-Community-frontier price, is 34,5 %.

E. INJURY

1. Community industry

(34) After additional verification it was found that the cumulated production volume of the Community industry of SSB does not account for 45 % of total Community production, as erroneously set out in the provisional duty Regulation, but for 38 % of total Community production. This percentage suffices to comply with the conditions in Articles 9(1) and 10(8) of the basic Regulation.

2. Consumption in the Community, market shares and import volumes from India

(35) Following the disclosure, no comments were received as regards consumption of SSB in the Community, the market shares and the volume of imports from India. Consequently, the findings made in recitals 53 to 56 of the provisional duty Regulation are confirmed.

3. Prices of subsidised imports from India and undercutting

(a) *Calculation of the undercutting margins*

(36) As explained in the provisional duty Regulation (recitals 57 to 65), a detailed undercutting analysis was carried out for each of the Indian producers concerned showing significant undercutting margins. The undercutting margins were calculated by comparing per product type, the weighted

average export prices at Community frontier level with the weighted average ex-factory sales prices of the Community industry to unrelated parties. Indian product types for which no matching Community product type was found were excluded from the calculation after it had been established that the remaining transactions were sufficiently representative. If exports were made through related companies the export prices were duly adjusted for costs between importation and resale to the first independent customer in the Community as well as for profits accruing. An adjustment was made to the Community industry's sales prices for transport costs within the Community. Whereas the Indian exporters sold exclusively to traders, the Community industry sold to end-users and traders. Consequently, the Community industry's sales to end-users were adjusted to a trader level. In addition, the Indian export prices were adjusted for handling charges at Community border level.

(37) Several Indian producers reiterated their requests for an adjustment concerning differences in Indian and Community lead times between order and delivery and concerning differences in reliability of delivery time. They claimed in particular that they regularly had to issue credit notes to their customers due to late deliveries. However, credit notes for late deliveries do not indicate that longer Indian lead times or unreliability of delivery times affected the sales price when the price negotiations took place. Consequently, the claim for this adjustment cannot be granted. In this respect, it was also taken into account that the contractual delivery times of the Indian producers often varied between four and six months without this having an effect on the agreed sales price.

(38) All Indian producers also repeated their request for an adjustment for quality differences. In particular, they alleged that SSB produced by the Community producers had a higher machinability which would reduce cycle times in further transformation processes of the SSB. In this respect, it was noted that some Community producers did indeed sell a certain proportion of products under a trade mark indicating higher machinability. However, it was found that there was no consistent price pattern indicating that the products with higher machinability were sold at higher prices and would thus have a higher market value. Consequently, an adjustment could not be granted, since an effect on prices and price comparability was not established. In addition, it was noted that all Indian producers had made an identical claim for an adjustment, disregarding potential quality differences amongst their products.

(39) One Indian company claimed that the sales price of the Community industry consisted of a base price and a so-called 'alloy surcharge', i.e. a price element for alloys contained in SSB. The company requested that the alloy surcharge be excluded from the Community sales prices for the purpose of the undercutting and underselling calculations. This request could not be granted since the alloy surcharge was part of the sales price that was paid by the customers. In this respect, it was noted that the Indian sales prices also contained an alloy element, even if this was not expressly referred to in the invoice.

(40) Taking into account the corrections described above, the undercutting margins amount to:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 14,5 %
— Chandan Steel Ltd, Umbergaon: 14,9 %
— Facor (Ferro Alloys Corp. Ltd), Nagpur: 13,0 %
— Grand Foundry Ltd, Mumbai: 13,2 %
— Isibars Ltd, Mumbai: 19,4 %
— Mukand Ltd, Mumbai: 17,8 %
— Panchmahal Steel Ltd, Baroda: 13,9 %
— Parekh Bright Bars Pvt Ltd, Thane: 5,8 %
— Raajratna Metal Industries Ltd, Ahmedabad: 15,8 %
— Venus Wire Industries Ltd, Mumbai: 12,8 %
— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 15,7 %

(41) The weighted average undercutting margin calculated for Sindia Steel Ltd (see recital 33) amounted to 16,8 %. It was concluded that these undercutting margins were significant.

(b) *Allegation of anti-competitive behaviour*

(42) In their comments following the disclosure, the Indian companies continued to argue that the calculation of undercutting margins as well as the findings on other injury factors, causality and Community interest would be meaningless in the context of this investigation in view of the Commission Decision ([1]) in the competition case IV/35.814, 'Alloy Surcharge'. This Decision stated that Community producers of stainless steel flat products had modified 'in a concerted fashion the reference values used to calculate the alloy surcharge, a practice having the object and effect of restricting and distorting competition within the common market'.

([1]) OJ L 100, 1. 4. 1998, p. 55.

(43) In this respect it is recalled that the Decision related to stainless steel 'flat products' as opposed to stainless steel bars which belong to the category of long products. Moreover, the producers of flat products and the producers of SSB are, to a large extent, not identical and the number of SSB producers is significantly higher than that of the flat steel producers.

(44) The Indian producers have, however, repeated their allegation that a concerted practice existed for SSB. Some of these companies have also lodged a formal complaint with the Commission, pursuant to Article 3 of Regulation (EEC) No 17/62 [1], concerning SSB. In order to support their allegation, the Indian companies submitted that one of the national steel associations in the Community circulated to all of its members on a monthly basis a list of the alloy surcharges applied by the most important producer in this country. In addition, they submitted that this producer applied the same coefficient (so-called yield factor) in order to calculate the alloy surcharge for SSB on the basis of the alloy surcharge for flat products as a trader in a different Member State. They alleged that the information provided conclusive evidence of a concerted practice in the SSB market.

(45) In this respect it is important to note that the application of an alloy surcharge system as such including the use of a yield factor is not illegal. The alloy surcharge system allows a stainless steel producer — in a legal manner — to reflect the price variations of the market prices for alloy elements in the sales prices to its customers and thus to protect itself against the risk of significant fluctuations in the cost of production. It was also noted that the use of an alloy surcharge is common to other steel markets outside the Community and has, with a short interruption, been applied in the Community for many years. In addition, for ECSC-products, Article 60 of the ECSC Treaty and the implementing Community legislation requires the Community producers to inform the Commission and anyone interested of the applicable surcharge (Article 6(b) of Decision No 37/54 [2]).

(46) Consequently and in accordance with the Commission Decision in Case IV/35.814, the application of an alloy surcharge system could only be illegal if the alloy surcharge system were applied in a concerted, i.e. anti-competitive, manner. However, no conclusive evidence of this was found in the course of the investigation.

(47) In addition, it was found that the price of the Community producers for identical products to comparable customers in identical periods varied, resulting in different levels of profitability for the Community industry.

(48) In the light of the above it was concluded that the findings on injury and Community interest, including the calculation of undercutting margins, were not meaningless as alleged by the Indian companies. Consequently, the Indian request that the investigation be terminated forthwith could not be granted. Similarly, it was not possible to suspend the anti-dumping investigation until the Commission had concluded its investigation relating to the alleged anti-competitive behaviour because anti-dumping investigations have to be concluded within a maximum of 13 months from initiation according to Article 11(9) of the basic Regulation.

(49) However, it was noted that the Commission is continuing its investigation regarding the alleged anti-competitive behaviour. Should the Commission find that a concerted practice existed, the conditions to initiate a review *ex officio* would be fulfilled. Such a review would be carried out expeditiously, i.e. within maximum 12 months, in order to investigate whether and to what extent the relevant findings on injury, causation and Community interest are affected by such an anti-competitive practice.

4. **Situation of the Community industry**

(50) Following the adoption of the Regulation imposing provisional duties no comments were received as regards the situation of the Community industry in respect of production volume, capacity and capacity utilisation, sales volume, market share, sales prices, profitability, employment and stocks. Consequently, the findings as laid down in recitals 67 to 78 of the provisional duty Regulation are confirmed.

However, the Government of India questioned the conclusions drawn from these findings, in particular it was alleged that the drop in the Community production figures cannot be blamed on the decreasing Indian imports. This argument concerns causality which is dealt with below. Finally, the Government of India claimed that the Community industry increased their sales to related parties from 1994 to the IP12 (see recital 52 of the provisional duty Regulation). This does, however, not invalidate the findings and conclusions on total sales (in particular a negative development of the market share since 1994) and on sales to unrelated parties which are also used for the purpose of price undercutting calculations.

[1] OJ 13, 21. 2. 1962, p. 204/62.
[2] OJ 18, 1. 8. 1954, p. 470/54.

5. **Conclusions**

(51) On the basis of the above it was concluded that the Community industry is suffering material injury as set out in recital 79 of the provisional duty Regulation.

F. CAUSATION

(52) Following the adoption of the Regulation imposing provisional duties, some Indian companies questioned whether the injury suffered by the Community industry was caused by the subsidised imports from India. In particular, it was alleged that the injury was caused by other factors, namely low priced imports from other countries. In addition, it was alleged that other Community producers had not followed the same trend as the Community industry.

(53) In this respect, it is worth noting that Indian imports were present in significant volumes throughout the period considered and peaked at a level of 9,1 % market share in 1996. It has also been established that these imports were made at prices significantly undercutting the Community industry's prices. Account was further taken of the fact that a number of traders buy SSB both from Indian and Community sources, which leads to the market being transparent and price sensitive.

It was noted that the above trends established for the Indian imports coincided with the deterioration of the Community industry's situation, in particular its loss of market share and the depression of its prices since 1995. In the presence of subsidised imports of SSB originating in India during the investigation period, the Community industry had to lower its prices significantly, regardless of the consequences for profitability. Consequently, a causal link between subsidised imports and material injury suffered by the industry was found to exist.

(54) It was also investigated whether factors other than the subsidised imports could have contributed to the injury suffered by the Community industry. In this respect, it was noted that imports from other countries were made either in quantities below or close to the thresholds set out in Article 14(4) of the basic Regulation and/or at higher prices than Indian imports. Consequently these imports cannot have broken the causal link between the subsidised imports from India and injury suffered by the Community industry.

(55) In addition, the allegation by some Indian producers that the situation of other Community producers was significantly better than that of the Community industry was investigated. In this respect, it should be recalled that detailed and verified data is only available for the Community industry. Taking into account the transparency and the price sensitivity of the SSB market in the Community, it seemed however, not unreasonable to conclude that other Community producers are likely to have followed a trend similar to that of the Community industry, in particular as regards prices.

(56) Finally, it was argued that the decrease in the SSB sales prices of the Community industry since 1995 was the result of a decrease in alloy prices. In this respect, it was however noted that any change in the world market prices for the alloys applies equally to the Indian producers and consequently has no influence on the undercutting found. In addition, it was noted that the Community industry had also significantly lowered its base prices.

(57) In the light of the above, the findings set out in the provisional duty Regulation (recitals 80 to 88) are confirmed, i.e. that the low priced subsidised imports from India have, when taken in isolation, caused material injury to the Community industry.

G. COMMUNITY INTEREST

(58) Following the adoption of the Regulation imposing provisional duties, no substantiated comments were received as regards the Community interest analysis set out in recitals 89 to 94 of the provisional duty Regulation.

(59) Consequently, it is concluded that the imposition of measures will lead to a reinstatement of effective competition that will enable the Community industry to regain the lost market share and improve its profitability.

(60) In the absence of a reaction from the users and importers, it was assumed that the impact of any expected price increase would be limited, also taking into account the level of the duty proposed. As regards the upstream industry, it was concluded that a reinstatement of fair trade would lead to an improvement in its competitiveness.

(61) Summarising, it was concluded that the findings set out in recitals 89 to 93 of the provisional duty Regulation can be confirmed. In particular, there are no compelling reasons to suppose that it would be not in the interest of the Community to impose measures.

H. COUNTERVAILING MEASURES

(62) Based on the above conclusions on subsidisation, injury, causal link and Community interest, it was considered what form and level the definitive countervailing measures would have to take in order to remove the trade-distorting effects of injurious subsidies and to restore effective competitive conditions on the Community SSB market.

(63) Accordingly, as explained in recitals 96 to 98 of the provisional duty Regulation a non-injurious level of prices was calculated which would allow the Community industry to cover its cost of production and obtain a reasonable return for sales of the product concerned.

(64) One Indian company argued that the calculation of the non-injurious price level was incorrect since the profit margin for all product types was identical. It should be noted that the non-injurious price level was calculated on the basis of the average sales prices per product type minus the actual weighted average profit margin of the Community industry plus a reasonable profit, as explained above. This approach was deemed to be the most appropriate for the purpose of this investigation.

(65) The comparison of the non-injurious price levels with the export prices of the Indian producers led to the following injury margins, expressed in relation to the free-at-Community-frontier price level:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 18,4 %

— Chandan Steel Ltd, Umbergaon: 19,0 %

— Facor (Ferro Alloys Corp. Ltd), Nagpur: 16,5 %

— Grand Foundry Ltd, Mumbai: 16,6 %

— Isibars Ltd, Mumbai: 25,5 %

— Mukand Ltd, Mumbai: 25,3 %

— Panchmahal Steel Ltd, Baroda: 17,6 %

— Parekh Bright Bars Pvt Ltd, Thane: 7,5 %

— Raajratna Metal Industries Ltd, Ahmedabad: 19,8 %

— Venus Wire Industries Ltd, Mumbai: 16,1 %

— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 20,2 %

(66) For Sindia Steels Ltd the weighted average of the injury margins of the cooperating Indian companies is applied. This resulted in an injury margin of 22,1 %.

(67) In accordance with Article 15(1) of the basic Regulation, the duty rate should correspond to the subsidy amount, unless the injury margin is lower. This led to the following rates of duty for the cooperating producers:

— Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai: 14,4 %

— Chandan Steel Ltd, Umbergaon: 19,0 %

— Facor (Ferro Alloys Corp. Ltd), Nagpur: 16,5 %

— Grand Foundry Ltd, Mumbai: 16,6 %

— Isibars Ltd, Mumbai: 25,5 %

— Mukand Ltd, Mumbai: 19,6 %

— Panchmahal Steel Ltd, Baroda: 0,0 %

— Parekh Bright Bars Pvt Ltd, Thane: 0,0 %

— Raajratna Metal Industries Ltd, Ahmedabad: 19,8 %

— Venus Wire Industries Ltd, Mumbai: 16,1 %

— Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai: 20,2 %

(68) For Sindia Steels Ltd the duty rate should be 22,1 %.

(69) In order to avoid granting a bonus for non-cooperation and to ensure that no circumvention of the countervailing measures takes place, it was considered appropriate to establish the duty rate for the non-cooperating companies at the level of the highest duty rate imposed, i.e. 25,5 % since there was a high level of cooperation from Indian exporting producers.

I. UNDERTAKINGS

(70) At a late stage of the investigation several Indian companies offered undertakings. The companies offered not to avail themselves in the future of the export subsidies found to be countervailable as regards their exports to the Community. According to the companies, the undertaking would have the effect that export prices would rise significantly.

This offer could not be accepted. In the first place these companies would continue to receive countervailable subsidies based on exports to countries other than the Community and concerning imports of raw materials and capital goods used in the production of products other than SSB. Thus, there would appear to be insurmountable difficulties to monitor such an undertaking leaving open the likelihood that circumvention would occur.

Secondly, the undertaking did not provide for any measure of price discipline and thus it is considered that the injurious effects of the subsidised imports would not be removed by the acceptance of such an undertaking.

After expiry of the deadline to submit proposals for undertakings another exporting producer submitted a proposal for an undertaking. This company offered to respect certain minimum prices. This offer was examined and it was found that due to the large variety of the product types concerned and the significant price fluctuations for the product concerned it would be difficult to set prices which would eliminate the injurious effects of subsidised imports. Consequently, the offer for this undertaking could also not be accepted.

J. COLLECTION OF THE PROVISIONAL DUTIES

(71) In view of the magnitude of the countervailable subsidies found for the exporting producers and in light of the seriousness of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of provisional countervailing duty pursuant to Regulation (EC) No 1556/98 be definitively collected to the extent of the amount of definitive duties imposed, unless the provisional duty rates are lower in which case the provisional duty rate should prevail,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of stainless steel bars falling within CN codes 7222 20 11, 7222 20 21, 7222 20 31 and 7222 20 81 originating in India.

2. Products manufactured by the companies listed below shall be subject to the following rates of duty applicable to the net, free-at-Community-frontier price:

Manufacturer	Rate of duty (%)	Taric additional code
Bhansali Bright Bars Pvt Ltd/Bhansali Ferromet Pvt Ltd, Mumbai	14,4	8226
Chandan Steel Ltd, Umbergaon	19,0	8593
Facor (Ferro Alloys Corp. Ltd), Nagpur	16,5	8400
Grand Foundry Ltd, Mumbai	16,6	8401
Isibars Ltd, Mumbai	25,5	8402
Mukand Ltd, Mumbai	19,6	8403
Panchmahal Steel Ltd, Baroda	0	8404
Parekh Bright Bars Pvt Ltd, Thane	0	8594
Raajratna Metal Industries Ltd, Ahmedabad	19,8	8405
Sindia Steels Ltd, Nashik	22,1	8406
Venus Wire Industries Ltd, Mumbai	16,1	8407
Viraj Alloys Ltd/Viraj Impoexpo Ltd, Mumbai	20,2	8410
All other companies	25,5	8900

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

Article 2

The amount secured by way of provisional countervailing duty pursuant to Regulation (EC) No 1556/98 shall be definitively collected at the rate of the provisional duty if this is lower than the definitive rate. In all other cases it shall be collected at the duty rate definitively imposed. Amounts secured in excess of the definitive duty rate shall be released.

Article 3

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

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

Done at Brussels, 13 November 1998.

For the Council

The President

J. FARNLEITNER