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*(Acts whose publication is obligatory)***COUNCIL REGULATION (EC) No 2320/97****of 17 November 1997**

imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic, repealing Regulation (EEC) No 1189/93 and terminating the proceeding in respect of such imports originating in the Republic of Croatia

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⁾, and in particular Article 9 (4) thereof,

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

Whereas:

A. PROCEDURE

- (1) By Regulation (EEC) No 1189/93⁽²⁾, the Council imposed definitive anti-dumping duties on imports of certain seamless pipes and tubes, of iron or non-alloy steel, originating in Hungary, Poland and the Republic of Croatia. The rate of the duty was 21,7 % for Hungary, 10,8 % for Poland and 17,4 % for the Republic of Croatia. In addition, the Commission accepted undertakings⁽³⁾ offered by the Hungarian, Polish and Croatian exporters.
- (2) On 31 August 1996, the Commission announced, by a notice published in the Official Journal of the European Communities⁽⁴⁾, the initiation of an interim review of Regulation (EEC) No 1189/93 in respect of imports of certain seamless pipes and tubes of iron or non-alloy steel originating in Hungary, Poland and the Republic of Croatia and

commenced an investigation pursuant to Article 11 (3) of Regulation (EC) No 384/96 (hereinafter referred to as 'the basic Regulation').

- (3) This interim review investigation was initiated in parallel with an investigation opened on the same date⁽⁵⁾ in respect of such imports originating in Russia, the Czech Republic, Romania and the Slovak Republic following a complaint lodged by the Defence Committee of the Seamless Steel Tube Industry of the European Union.
- (4) By Regulation (EC) No 981/97⁽⁶⁾ (hereinafter referred to as the 'provisional Regulation'), the Commission imposed a provisional anti-dumping duty on imports into the Community of the product in question originating in Russia, the Czech Republic, Romania and the Slovak Republic.

- (5) Following the imposition of the provisional anti-dumping measures, certain interested parties submitted comments in writing.

Those parties who so requested were granted an opportunity to be heard by the Commission.

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

- (6) On 22 May 1997, the Association Councils established under the Agreements between the European Communities and their Member States, of the one part, and the Czech Republic, Romanian and the Slovak Republic, respectively, of the other part, were informed by letter of the Commission's intention to impose provisional measures.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as amended by Regulation (EC) No 2331/96 (OJ L 317, 6. 12. 1996, p. 1.)

⁽²⁾ OJ L 120, 15. 5. 1993, p. 34.

⁽³⁾ OJ L 120, 15. 5. 1993, p. 42.

⁽⁴⁾ OJ C 253, 31. 8. 1996, p. 25.

⁽⁵⁾ OJ C 253, 31. 8. 1996, p. 26.

⁽⁶⁾ OJ L 141, 31. 5. 1997, p. 36.

The Czech, Romanian and Slovak authorities all objected that the Commission had acted in breach of the Europe Agreement (and in particular Article 34 (2) thereof) by failing to hold consultations before the proceeding was initiated, immediately after the initiation, or prior to the imposition of provisional duties.

It should be recalled that, when a complaint is received, the Commission has to investigate the allegations contained therein. If the Commission is satisfied that the complainant has provided sufficient evidence to warrant an investigation, it is obliged, under the provisions of its own anti-dumping legislation, to open a proceeding. Regarding the Community's legal obligations under the Europe Agreements, it is considered that these have been met in full. The Agreements state that the Association Councils have to be informed of any dumping case as soon as the authorities of the importing country have initiated an investigation. This requirement was met by the Commission.

Furthermore, the Europe Agreements state that if no satisfactory solution is reached within 30 days of the matter being referred to an Association Council, the importing party may adopt the appropriate measures. Since no solution was found within the required time, the Commission was entitled to take measures, as appropriate; this it did on 31 May 1997. The actual decision to impose provisional duties was not taken until 21 May, only shortly before the statutory deadline expired. Nonetheless, the Commission immediately informed the Association Council and provided it with the data on the basis of which the decision had been made. Consultations, first with the country authorities and then with the exporters/producers themselves were started within a matter of days and were pursued throughout the investigation with a view to reaching a mutually acceptable solution. Therefore, the Community has fully complied with the requirements of the Europe Agreements, and in particular with Article 34 (2) and 34 (3) (b) thereof.

- (7) In the interim review investigation, the Commission officially advised the Hungarian, Polish and Croatian producers/exporters, and the importers known to be concerned, the representatives of the exporting countries and the complainant, and gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing. The interested parties who so requested were granted an opportunity to be heard by the Commission. They also made written submissions, making known their views on the findings.

- (8) The Commission sent questionnaires to all parties known to be concerned and received replies from the complaining Community producers, from five companies in the Czech Republic, from seven in Romania, from one in the Slovak Republic, from six in Russia, from one in Hungary, from six in Poland and from one in the Republic of Croatia. The Commission also received replies from four unrelated importers in the Community, from a Community importer related to one Czech company and from two importers related to the Slovak producer, one of which was located in the Community and the other in Switzerland.

Verification visits, with regard to both investigations, were carried out at the following companies:

Community producers

- Voest Alpine, Kindberg, Austria,
- Vallourec Industries, Boulogne-Billancourt, France,
- Benteler AG, Paderborn, Germany,
- Mannesmannröhren-Werke AG, Mülheim an der Ruhr, Germany,
- Dalmine S.p.A., Dalmine, Italy,
- Productos Tubulares S.A., Valle de Trapaga, Spain,
- Tubos Reunidos S.A., Amurrio, Spain,
- Ovako Steel AB Tube Division, Hofors, Sweden,
- ESW Röhrenwerke GmbH, Eschweiler, Germany,
- Rohrwerk Neue Maxhütte GmbH, Sulzbach-Rosenberg, Germany.

Importers not related to exporters

- Jannone ARM S.p.A., Naples, Italy,
- Geminvest S.R.L., Limbiate, Italy,
- Starval, Marly La Ville, France,
- Voest Alpine Stahlhandel AG, Linz, Austria.

Exporters and importers/trading companies subject to the new investigation

Importer related to two Czech producers:

- Topham Eisen und Stahlhandelges.m.b.H., Vienna, Austria.

Importers related to the Slovak producer:

- Pipex International AG, Nidau, Switzerland,
- Pipex Italia S.p.A., Milan, Italy (a subsidiary of the above).

Exporters in the Czech Republic

- Vitkovice a.s. and Vitkovice Export a.s., Ostrava,
- Nová Hut a.s., Ostrava,
- Válcovny trub Dioss and Dioss Trading, Chomutov a.s.,
- Ferromet Long Products Ltd, Prague (trading company related to Nová Hut),
- Incos s.r.o., Prague (unrelated trading company).

Exporters in Romania

- Artrom SA,
- Silcotub SA,
- Petrotub SA,
- Republica SA,
- Intertube Ltd., Bucharest (trader related to SC Republica SA),
- SC Metalexportimport SA, Bucharest (unrelated exporter/trader),
- Sota Company, Bucharest (unrelated exporter/trader).

Exporters in the Slovak Republic

- Železiarne Podbrezová a.s., Podbrezová.

Exporters subject to the review investigation*Exporter in Hungary*

- Csepel Tubes Co. Ltd, Budapest.

Exporters in Poland

- Huta Andrzej SA, Zawadzkie,
- Huta Batory SA, Chorzów,
- Stalexport SA (related trader), Katowice.

Exporter in the Republic of Croatia

- Zeljezara Sisak, Sisak Steel Pipe Works, Sisak.

In the course of the investigation, the Croatian exporter informed the Commission that the company had changed its name to Zeljezara Sisak — Sisak Tubemills Ltd. The Commission concluded that the change in name in no way affected the findings established in the investigation.

- (9) For both investigations, dumping was examined for the period from 1 September 1995 to 31 August 1996, 'the investigation period'. The examination of injury, and of the likelihood of continuation or recurrence of injury, covered the period

from January 1992 to the end of the investigation period.

- (10) All parties concerned were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive measures or the amendment of existing definitive measures. They were also granted a period within which to make representations and/or to offer undertakings subsequent to these disclosures.

B. PRODUCT UNDER INVESTIGATION**1. Product concerned**

- (11) The product subject to both investigations is:
- (a) seamless pipes, of iron or non-alloy steel, of a kind used for oil or gas pipelines, of an external diameter not exceeding 406,4 mm;
 - (b) seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes; and
 - (c) other tubes of circular cross-section, of iron or non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm

currently classifiable under CN codes 7304 10 10, 7304 10 30, 7304 31 99, 7304 39 91 and 7304 39 93.

In line with the position adopted by the Council in Regulation (EEC) No 1189/93, and as confirmed in recital (10) of the provisional Regulation, all seamless pipes and tubes falling within the abovementioned CN codes are considered as one product (hereinafter referred to as the 'product concerned') for the purpose of both the new investigation and the review investigation.

2. Like product

- (12) All seamless pipes and tubes subject to both investigations were found to be alike in their essential physical and technical characteristics and in their end uses, irrespective of whether they are manufactured in the Community or in the countries subject to the investigations.

Some exporters argued that their products should not be considered as like products with those of the Community producers or those of other exporting producers on the grounds that there were quality and technical differences, as well as differences in the distribution channels, use and perception by the market.

It was found, however, that the product concerned is distributed through similar channels. Basic application and overall use are similar. There is a high degree of interchangeability, and consequently of competition, between all imported products subject to both investigations and those manufactured by the Community producers. It was also established that the basic technical and physical characteristics of all these imported products, despite minor differences, were identical to, or closely resembled, those of the products manufactured by Community producers.

In conclusion, the products originating in the various countries covered by the investigation and those produced and sold in the Community are considered like products within the meaning of Article 1 (4) of the basic Regulation.

C. DUMPING

ANTI-DUMPING INVESTIGATION

1. Czech Republic

(a) Cooperation

- (13) The company ruled to be non-cooperating subsequently wrote to the Commission to object to this treatment, claiming that the provisions of Article 18 of the basic Regulation were not applicable to it. It stressed that there had been no intention to mislead and argued that the company had acted to the best of its ability; this meant that even though the domestic and export sales listings, credit note listings, customer turnover figures and cost of production information were admitted to be far from ideal, the Commission was duty bound not to disregard them. It also criticised the Commission for not taking sufficiently into account the privatization difficulties experienced by the company and the special problems of the Czech Republic in its transition to market economy status. Finally, it argued that, since the company had changed ownership in April 1997 (having ceased production the previous month), it would be unfair to impose sanctions on the new owner.

The reasons which led the Commission to consider one of the Czech companies as not cooperating with the investigation are set out in recital 14 of the provisional Regulation. It is worth recalling here that the listings submitted to the Commission in the company's reply to the questionnaire were found on verification to contain several hundred domestic and export transactions which had never taken place. This was not only highly misleading

but meant that the Commission was unable to establish, with any degree of certainty, either a reliable normal value or a reliable export price. Whatever the reasons for this (and at this point the Commission would point out that the explanation originally provided by the company was totally unsatisfactory and completely different from the one it submitted later in writing), it cannot be said to be in accordance with generally accepted accounting principles. In the circumstances, the Commission had no choice other than to reject the reply and to apply Article 18 of the basic Regulation, not least because to have acted otherwise would have been to discriminate against other, fully cooperating, companies in the investigation.

As regards the matter of the change of ownership, since this took place after the end of the investigation period, it is not a factor which can be considered relevant to this proceeding (see Article 6 (1) of the basic Regulation).

(b) Normal value

- (14) One of the Czech producers questioned the methodology employed by the Commission to determine normal value for one product group (see recital (16) of the provisional Regulation); in particular, it claimed that there was nothing in the basic Regulation which justified the Commission calculating normal value on the basis of the average of profitable sales only, instead of on the basis of the average of all sales in the group. The same producer objected to the Commission's use, in constructing normal value for certain groups, of a profit margin achieved on profitable domestic sales in other product groups.

This request could not be accepted, since it runs counter to both the basic Regulation and the Community institutions' consistent practice. With regard to the first point, where the volume of domestic sales below unit cost represents more than 20 % of sales, normal value is based on the profitable sales only, in accordance with the third subparagraph of Article 2 (4) of the basic Regulation. With regard to the second point, the Commission acted in accordance with Article 2 (6) of the basic Regulation by applying the profit margin on sales 'in the ordinary course of trade, of the like product, by the exporter or producer under investigation'.

One producer also objected to the substitution of its own selling, general and administrative (hereinafter referred to as SG&A) expenses by those of its related company (see recital (16) of the provisional Regulation) on the grounds that such expenses should be based on 'actual data' relating to the producer under investigation, in accordance

with Article 2 (6) of the basic Regulation. The Commission considered that the relevant accounting documents submitted by the producer insufficiently supported the figures submitted in its reply to the questionnaire. After being notified of the Commission's intentions, the company provided further explanations and tables but, since these constituted additional information which was not verifiable, the information could not be taken into account.

Both cooperating producers queried the removal from the transaction listings of sales made to each other on the grounds that they were not related and that, even if they were, the Commission had failed to show that the prices were affected by the relationship.

This could not be accepted. Since both companies have a common shareholder (see recital (22) of the provisional Regulation and recital (17) below), they are related. Furthermore, Article 2 (1) of the basic Regulation clearly states that 'prices between parties which appear to be associated (...) may not be considered to be in the ordinary course of trade (...) unless it is determined that they are unaffected by the relationship'. Since it was not established that this was the case, the disputed transactions were not reinstated.

No further comments were received in respect of normal value and the Council therefore confirms the findings as set out in the provisional Regulation.

(c) *Export price*

- (15) No comments were received concerning the determination of the export price. Nonetheless, a small adjustment to the profit margin deduction was made in respect of the related Austrian importer (see recital (18) of the provisional Regulation) after reviewing the profit margins achieved by unrelated importers during the course of the investigation.

(d) *Comparison*

- (16) No comments were received under this heading and the Commission's findings are therefore confirmed.

(e) *Dumping margin*

- (17) The cooperating companies objected to the Commission's decision to establish the dumping margin on the basis of a comparison of weighted average normal values with individual export prices (rather than weighted average export prices), arguing that the Commission had failed to provide

sufficient justification for its approach at recital (21) of the provisional Regulation.

In that Regulation, the Commission stated that its approach was justified by the need to reflect the full degree of dumping being practised and because there was a pattern of export prices which differed significantly between Member States and between time periods. The Commission has reviewed its calculations and concluded that the variations in export prices between countries did not display a sufficiently clear pattern. However, the Commission stands by its finding that there was a pattern of export prices between time periods which led to a significant increase in dumping (constituting a clear pattern) after the expiry of quantitative restrictions on 31 December 1995, and the approach adopted in the provisional Regulation is therefore confirmed.

The Commission's decision to treat both cooperating producers as being related, and the consequent establishment of a single dumping margin for them, was strongly objected to on the grounds that both companies were managed independently of each other and had different cost and pricing structures. It was further argued that the majority shareholder (the National Property Fund) acted merely as a trustee and had no influence over the commercial management of the companies.

The Commission takes the view that in a market economy country it is up to the majority shareholder to decide in which legal form it organizes its business interests in the exporting country. Its control, or potential control, over such interests is normally the same if they are part of one legal entity or if they are organized in different legal entities. More specifically, to establish different dumping margins for related companies entails the risk that exports may be channelled through the company with the lowest dumping margin. For this reason it was concluded that different producers in the exporting country must nevertheless be treated as one single entity for the purposes of this proceeding, where control of all those companies lies in the hands of the same shareholder.

- (18) On the basis of the Commission's provisional findings, described in recitals (14)-(23) of the provisional Regulation, and taking into account the adjustment described at recital (15) above, the definitive dumping margins expressed as a percentage of the CIF free Community frontier value of imports established for the two cooperating companies are:

| | |
|------------------|-------|
| — Nová Hut a.s. | 5,1 % |
| — Vítkovice a.s. | 5,1 % |

The calculation of the residual dumping margin was revised. Instead of taking the highest normal values found for the two Czech producers, weighted average normal values have been used in the final determination. On this basis, the residual dumping margin expressed as a percentage of the CIF free Community frontier value of imports established for the two cooperating companies is now 28,6 %.

2. Romania

(a) *Normal value*

- (19) One company claimed that cost provisions included in the SG&A costs of the company should be removed in view of the fact that unused provisions were cancelled at the end of the year. Where provisions were indeed cancelled and no other cost had then replaced such provisions, and insofar as it could be clearly seen from information contained in the response to the questionnaire or provided during the on-spot verification that provisions did not represent a real cost, the calculation of SG&A costs was adjusted.

One company made a claim that cost of production should be adjusted to reflect the absence of selling costs, principally for packing, incurred for sales made on the domestic market. It was argued that with regard to such selling costs, included in the calculation of normal value by the Commission, the company had in fact been reimbursed by its customers. The Commission accepted this and an appropriate revision has therefore been made to the cost of production calculation for this company.

One company claimed that when the Commission establishes normal value, it should use all sales including those not made in the ordinary course of trade, i.e. sales made at a loss. The Commission, in view of Article 2 (4) of the basic Regulation, considered that sales made at a loss have to be excluded from the establishment of normal value where such sales constitute more than 20 % of all domestic sales. The claim by this company could therefore not be accepted, given the terms of the basic Regulation and the institutions' consistent practice in the establishment of normal value.

Two companies argued that in order to respect the Europe Agreement, the Commission should in establishing normal values always choose the method most favourable to the companies, citing Article 34 (2) of the Agreement. This argument was rejected, on the grounds that Article 34 (2) of the Agreement refers only to the choice of measures to

be imposed by the Commission once dumping, injury, causality and Community interest have been established, and not to the actual calculation methodologies used in the determination.

One company claimed only at a very late stage in the proceeding (at the hearing for comments on provisional disclosure) that sales from stock should be excluded from the calculation of normal value as not possessing quality certificates and therefore not constituting the like product, and that all sales made using compensation as means of payment should likewise be excluded as not being in the ordinary course of trade. These claims were not made in an opportune manner, having been made neither in the response to the questionnaire, nor on-the-spot, nor at any subsequent stage of the proceeding when the company was invited to make comments. In no document submitted by the company was the Commission able to differentiate between sales made from stock or otherwise, or between sales made with or without quality certificates. In addition, during the course of the investigation, it was found that sales made using compensation were indeed made in the ordinary course of trade. Consequently, both claims were rejected.

No further comments were received. Taking into account the changes referred to above, the findings with regard to normal value as disclosed in the provisional Regulation are confirmed.

(b) *Export price*

- (20) No changes were made to the methodology used to calculate export prices. The findings with regard to export prices as disclosed in the provisional Regulation are therefore confirmed.

(c) *Comparison*

- (21) For the provisional findings, the Commission rejected a request by two Romanian companies for an adjustment to the normal value for credit terms. The two companies reiterated their request. However, it was established during the investigation that, in the vast majority of cases in Romania, no actual cash changed hands in the settlement of transactions. In fact, payment was usually effected by 'compensation', consisting either of barter trade or the exchange of trade bills. Article 2 (10) (g) of the basic Regulation specifies that an adjustment shall be made for credit, provided that it is a factor taken into account in the determination of the prices charged. The investigation showed that such costs were not a factor taken into account in the determination of prices charged. In fact, where

compensation was the means of payment, no money changed hands and there was therefore no impact on the financial situation of the companies. In addition, the investigation showed that for all means of payment, dates of settlement were normally not respected. The claims for a credit adjustment were therefore rejected again.

One company claimed that for export sales made to certain customers in the Community, no commission had been paid and that no adjustment to the export prices charged to those customers should be made. The Commission revised its calculations accordingly.

One company claimed an adjustment to normal value for differences in level of trade. As such a claim was not made at any point in the investigation prior to the company's comments on the provisional findings of the Commission, it could not be considered valid. It was, furthermore, not substantiated by any evidence and was in contradiction with information the company had reported in its reply to the questionnaire and provided during the on-the-spot verification.

No further comments were received with respect to comparison. The provisional findings are therefore confirmed.

(d) *Dumping margin*

- (22) One company claimed that the calculation of the dumping margin should not be made on the basis of a comparison of weighted average normal values with the adjusted export price of each corresponding group on a transaction-by-transaction basis, but on a weighted average to weighted average basis.

This claim was rejected after the methodology used for all Romanian companies was reconsidered and it was found that:

- for one company, there was no difference in dumping margin between both methods as all export transactions were made at dumped prices;
- for three companies, a pattern of export prices which differed significantly by destination or time period was found.

In view of the above, and in accordance with Article 2 (11) of the basic Regulation, the method comparing the weighted average normal value by time period to individual adjusted export prices on a transaction-by-transaction basis was retained for the purposes of the definitive determination.

All cooperating Romanian producers/exporters contested the fact that the Commission had — on the grounds of a common majority shareholding — imposed a single dumping margin, and they accordingly claimed individual treatment. For the reasons set out in recital (17), this request could not be accepted.

Two companies argued that the Commission should have disclosed to them all elements of the dumping calculations for all companies, since these had been used to establish the global dumping margin; by failing to do so, the Commission would have infringed their rights of defence. The Commission has, in accordance with Article 20 (1) of the basic Regulation, explained in detail to each company the essential facts and considerations on which it calculated that company's individual dumping margin and furthermore explained the methodology used to establish the single dumping margin. As all companies have the same majority shareholder, they can easily exchange all information via that common shareholder and thus fully exercise their rights of defence.

No further comments were received. The findings as disclosed in the provisional Regulation are therefore confirmed.

- (23) The weighted average dumping margins definitively established for the four cooperating producers expressed as a percentage of the CIF free Community frontier value of imports are:

| | |
|----------------------------------|--------|
| — SC Artrom SA: | 9,8 % |
| — SC Petrotub SA: | 9,8 % |
| — SC Republica SA Trade Company: | 9,8 % |
| — SC Silcotub SA: | 9,8 %. |

The residual dumping margin expressed as a percentage of the CIF free Community frontier value of imports remains unchanged at 38,2 %.

3. Slovak Republic

(a) *Normal value*

- (24) The Slovak producer questioned the methodology employed by the Commission to determine normal value for two product groups (see recital (31) of the provisional Regulation); in particular, it claimed that the Commission was wrong to have calculated normal value on the basis of the average of profitable sales only, and that it should have taken the average of all sales in the groups instead. The reason it gave was that the groups were profitable overall and therefore all costs were recovered over the investigation period on a weighted average

basis. In addition, it was argued, citing Article 34 (2) of the Europe Agreement, that the Commission should have used its discretion to adopt a method which 'least disturb[s] the functioning of [that Agreement]'.

Both these arguments were rejected for the same reasons given at recital (19) above.

No further comments with respect to normal value were received and the Commission's findings as disclosed in the provisional Regulation are therefore confirmed.

(b) *Export price*

- (25) The company objected to the Commission's construction of the export price (see recital (32) of the provisional Regulation), and in particular to its decision to deduct a 4 % profit margin from the prices charged by its Italian subsidiary. It argued that this margin was excessive and that the Commission should have used the Italian company's own figures. It also claimed that the Commission had misinterpreted the SG&A figures submitted by the company, and that the effect of this had been to increase its SG&A rate and consequently the dumping margin. It also suggested that a more correct approach would have been to consolidate both companies' SG&A expenses and apply a single rate.

The Commission based the margin of 4 % on the average of the profit margins achieved by the four unrelated importers listed at recital (6) (c) of the provisional Regulation. However, it has reviewed the figures and concluded that, for the purposes of the definitive determination, an adjusted figure of 3,8 % should be applied. Although it was objected that two of the four importers were in fact related to Community producers, the Commission satisfied itself that the profit margins found for these companies reflected the profit on their sales to independent customers in the Community. With regard to the SG&A rate, the Commission reviewed the figures and concluded not only that the expenses had indeed been overstated, but also that it would have been more appropriate to consolidate the Swiss and Italian trading companies' figures, given that they had a similar relationship with the Slovak exporter and operated mostly out of the same premises. A global SG&A rate has accordingly been applied.

(c) *Comparison*

- (26) The company had claimed a 'distribution channel allowance' which the Commission, it said, had

failed to take account of in its provisional determination. It argued that such an allowance was justified in order to reflect the fact that the company sold directly to stockists on its domestic market whereas it sold through its related Italian and Swiss companies on the Community market; it also argued that the allowance was necessary to ensure a fair comparison with the constructed export sales price.

This claim is covered under the discounts and quantities allowance already granted to the company. Article 2 (10) of the basic Regulation explicitly states that 'any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade'. Since the normal value has already been adjusted downwards to reflect the fact that sales in the Community were mainly to large customers, there is no justification for granting a further allowance.

No further comments were received, and the Commission's findings are therefore confirmed.

(d) *Dumping margin*

- (27) The company objected to the Commission's decision to establish the dumping margin on the basis of a comparison of weighted average adjusted normal values with adjusted individual export prices (rather than weighted average export prices), arguing that the Commission had failed to provide sufficient justification for its approach at recital (34) of the provisional Regulation.

Whilst the Commission stands by its reasoning set out in the said recital (34), the modifications it has since made to the figures used to calculate the dumping margin have resulted in the difference between the two methods no longer being of such a magnitude as to justify its original approach. It has therefore decided, for the purposes of the definitive determination, to revert to the method of comparing the weighted average normal value with the weighted average export price. The provisional findings have been amended accordingly.

- (28) On the basis of the Commission's previous findings, described in recitals (31)-(35) of the provisional Regulation, and taking into account the changes referred to above, the dumping margin expressed as a percentage of the CIF free Community frontier value of imports established for the cooperating producer is:

— Železiarne Podbrezová a.s.: 7,5 %.

The residual dumping margin is set at the same level.

4. Russia

(a) Cooperation

- (29) Five of the six Russian companies wrote to the Commission to object to its decision to treat them as non-cooperating. The reasons for the Commission's decision are set out in recital (36) of the provisional Regulation. The companies argued that, despite any deficiencies the replies may have contained, they themselves had been willing to cooperate with the investigation and had been ready to supply any additional information the Commission might have required. Certain companies requested individual treatment, or offered to subscribe to an individual undertaking, or asked for their comparative advantages to be taken into consideration.

The Commission, however, remains of the view that, by failing to provide information which was accurate, complete, and in the form requested, the Russian companies have forfeited their right to be considered as cooperating parties in the investigation. Although it is not disputed that some replies were more detailed than others, they were all deficient in one, overriding respect: they did not allow the Commission to arrive at an accurate determination either of normal value or of the export price because of the way in which individual products and transactions had been grouped together. Some companies submitted further information subsequent to the Commission informing them of its decision to apply Article 18 of the basic Regulation, and some continued to submit new or revamped information even after the publication of the provisional Regulation. The fact remains, though, that the information in the Commission's possession at the time of the deadline for submitting replies was deemed insufficient in respect of all six companies. It would be discriminatory to other interested parties cooperating with the investigation if information were taken into account which was submitted days, weeks and sometimes months after the deadline for submitting it has passed.

The Commission's findings are therefore confirmed.

(b) Dumping margin

- (30) The Commission recalculated the Russian dumping margin using the same normal values as were used in revising the Czech residual margin (see recital (18)). On this basis a dumping margin

expressed as a percentage of the CIF free Community frontier value of imports of 26,8 % was established.

REVIEW INVESTIGATION

1. General

- (31) The producers/exporters in Poland and Hungary failed to provide detailed information on individual products as requested by the Commission in the product description table included in all questionnaires sent, but presented it split into product groups, covering a range of products, classified together by reference to certain criteria, e.g. wall thicknesses. In some cases, therefore, the groups contained products classified under different CN codes. For this reason, and because of the impossibility of collecting more detailed information on-the-spot, the Commission could only base its calculations on product groups, rather than on individual products.

2. Hungary

(a) Normal value

- (32) During the investigation period, the sole Hungarian producer/exporter sold four product groups in the European Community. Groups 1, 2 and 3 fell entirely under CN code 7304 39 91, whereas group 4 included a mix of models partly falling under CN code 7304 39 91, and partly under CN code 7304 39 93. The technical information provided and verified was not detailed enough to enable the Commission to split product group 4 into the two CN codes. Taking into account that Eurostat statistics showed considerable imported quantities falling under CN code 7304 39 93 for the investigation period, and that only one Hungarian producer/exporter had sold the product concerned to the Community during the same period, the Commission considered product group 4 as falling entirely under CN code 7304 39 93.

It was found on the spot that the detailed export figures provided by the company were unreliable as one Community customer, accounting for 7 % of the reported sales to the Community of the product concerned, had been omitted and the computer file of export transactions was also found to be incorrect in other respects, a deficiency the company could not correct. The 5 % global representativity test was then performed by comparing the quantities sold domestically with Eurostat import statis-

tics from Hungary, which the Commission selected as an independent source of information, in accordance with Article 18 (5) of the basic Regulation. On this basis it was determined that in all cases the domestic sales could be considered representative for the establishment of normal value, both globally and at product group level, in accordance with Article 2 (2) of the basic Regulation.

For each of the four groups mentioned above, it was then determined whether domestic sales could be considered to have been made in the ordinary course of trade. For groups 2 and 3, profitable sales constituted less than 10 % of the domestic sales of these product groups. Therefore, for these groups, normal value had to be constructed in accordance with Article 2 (3) of the basic Regulation. This was done on the basis of the cost of manufacture plus an amount for SG&A costs and profit. For this purpose, the producer/exporter's actual data pertaining to production and sales in the ordinary course of trade were taken into account. As far as product groups 1 and 4 were concerned, between 10 % and 80 % of domestic sales were profitable. Accordingly, for these two groups, normal values were established on the basis of profitable sales only, in accordance with Article 2 (4) of the basic Regulation. As the four product groups defined by the company corresponded to CN codes 7304 39 91 and 7304 39 93, the Commission decided to determine one normal value per CN code. Since the export transaction listing was found to be unreliable and could not be used as a basis to weight the first three product groups, it was impossible to determine the weighted average of the normal values found for the three groups. Therefore, the arithmetical average of the normal values calculated for the three corresponding product groups was taken into account in order to establish normal value for CN code 7304 39 91. As explained above, the Commission considered CN code 7304 39 93 as corresponding to product group 4. Accordingly, the normal value for CN code 7304 39 93 was that determined for product group 4.

(b) *Export price*

- (33) As explained in the preceding recital, in the course of the verification visit at the premises of the sole Hungarian exporter concerned, it became apparent that the data submitted in the questionnaire reply concerning exports showed significant divergences from the company's internal records.

Further to the verification visit, the company was informed in writing that, due to the substantial anomalies found on the spot and the impossibility of properly establishing the real export figures, it

was impossible to use the information submitted for the determination of the export price to the Community and that findings concerning the export price would have to be based on the facts available in accordance with Article 18 of the basic Regulation. The company was, at the same time, given an opportunity to submit comments. At that point, a completely new file was submitted, which was allegedly the correct version of the export transaction listing. This file was rejected by the Commission, as the new information could not be verified.

In order to establish Hungarian export prices, the Commission selected as an independent source of information the official import statistics published by Eurostat, in accordance with Article 18 (5) of the basic Regulation. However, only the quantities reported therein for the two CN codes which were exported by this producer to the European Community were taken into account.

(c) *Comparison*

- (34) For the purpose of a fair comparison between the normal value and the export price at ex-works level, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. The adjustments were made, in accordance with Article 2 (10) of the basic Regulation, in respect of transport, insurance, handling and ancillary costs and credit costs.

As far as requests for adjustments for

- Import charges and indirect taxes,
- Discounts, rebates and quantities,
- Level of trade,
- Currency conversion

are concerned, the following should be noted:

Import charges and indirect taxes

The company claimed an allowance of 8 % for extra customs duties paid on raw materials imported, in accordance with Article 2 (10) (b) of the basic Regulation. However, in the course of the on-the-spot verification, the Commission officials found that no duties were refunded for the exported products. Therefore, the claim was considered to be unfounded.

Discounts, rebates and quantities

The company requested an adjustment of 4 % for differences in volumes bought by domestic and Community customers in accordance with Article 2

(10) (c) of the basic Regulation, claiming that lower prices were paid for larger orders. Since no evidence was produced in support of this claim, it was rejected.

Level of trade

The company claimed an allowance of 12 % for differences in distribution channels between the Community and the domestic markets in accordance with Article 2 (10) (d) of the basic Regulation. It was alleged that all Community customers were independent traders, whereas 49 % of domestic customers were end-users. This figure, reported in the table describing the distribution channels in the domestic sales section of the questionnaire, was not consistent with the data contained in the domestic customer list, where all domestic customers were listed as 'independent traders', a situation equivalent to that prevailing on the Community market. The exporter claimed that this inconsistency was due to a 'language error'. Whether or not this was indeed a 'language error' is irrelevant since, in addition to this inconsistency in the company's reply, the Commission officials also found that the domestic prices applied by the company were subject to the same pricing policy/price list, regardless of the type of customer. This claim could, therefore, not be taken into account.

Currency conversion

As far as the conversion of export price is concerned, the exporter argued that monthly exchange rates should have been used, rather than a yearly rate. However, it should be recalled that the determination of export price was based on Eurostat data since the transaction-by-transaction listing submitted by the exporter could not be used. Since Eurostat data do not focus on the date of sale, but on the date of the importer's customs declaration, the use of monthly data would not have more appropriately reflected the terms of sale. The claim made by the exporter could not, therefore, be accepted.

(d) Dumping margin

- (35) The comparison, on a CN code basis, of weighted average normal values and weighted average export prices, revealed the existence of dumping, the dumping margin corresponding to the amount by which the normal value exceeded the export price.

Expressed as a percentage of the CIF free at Community frontier value of imports, the dumping margin for the sole Hungarian producer/exporter is:

— Csepel Tubes Co. Ltd: 36,5 %.

Since the sole known producer accounted for almost all Hungarian exports of the product concerned to the Community, the residual dumping margin was set at the same level.

3. Poland

(a) Cooperation

- (36) Replies to the Commission's questionnaire were received from six companies, three of which (submitted by two producer/exporters and one related trading company) were judged to be insufficient. It was therefore concluded that these three companies had failed to provide, within the time limits set, the information deemed necessary to the investigation and the companies were informed of the Commission's intention to apply Article 18 (1) of the basic Regulation and to base its findings on the facts available.

The three other companies, whose replies were considered sufficient (two producers/exporters and one trading company related to a producer/exporter), were subsequently verified on the spot. Of the two producers/exporters, one refused, however, to provide the Commission officials with copies of basic documents such as the domestic sales, customer and price listings, original domestic sales invoices, and the list of export customers corresponding to the codes in their export sales listing. The verification also showed that the company had failed to report in its reply its sales to the Community during the investigation period effected via a related company. In view of these deficiencies and the impossibility of verifying essential parts of the information provided by the company, the Commission was unable to use the information submitted for the determination of the normal value and the export price to the Community. Accordingly, the company was subsequently informed that, as a result of its non-cooperation, the Commission would base its findings on the facts available in accordance with Article 18 of the basic Regulation.

(b) Normal value

Cooperating parties

- (37) As mentioned in recital (36), only one Polish producer/exporter and one Polish trading company could be considered as cooperating parties in the present review investigation. As no individual dumping calculation is meaningful in the case of a trading company, one normal value for the single cooperating producer/exporter was established.

During the investigation period, the single cooperating producer/exporter sold six product groups on both the domestic market and in the Community. The global representativity test showed that, during the same period, the total quantity of the product concerned sold domestically was more than twice as great as the quantity exported to the Community. The 5 % test was then performed on a product group basis, from which it resulted that all six product groups were sold in sufficient quantities on the domestic market, and could thus be considered representative for the determination of normal value, in accordance with Article 2 (2) of the basic Regulation.

The profitability test showed that of six product groups, the domestic prices paid in the ordinary course of trade could be used as a basis for normal value for five of them, in accordance with Article 2 (4) of the basic Regulation. The remaining product group had insufficient profitable sales and normal value was constructed on the basis of the cost of manufacture plus an amount for SG&A costs and profit, in accordance with Article 2 (3) of the basic Regulation. For this purpose, the producer/exporter's actual data pertaining to production and sales of the like product on the domestic market and in the ordinary course of trade, were taken into account.

Non-cooperating parties

For the four non-cooperating parties, in accordance with Article 18 (6) of the basic Regulation, normal value was determined on the basis of the cooperating producer's product group which corresponded to the highest normal value, since any other choice would have rewarded non-cooperation. However, this was mitigated by the fact that all products sold by the cooperating producer on its domestic market belong to the larger diameter product groups covered by this investigation, which are relatively cheaper than the smaller diameter product groups, exported exclusively by the non-cooperating parties.

(c) *Export price*

Cooperating parties

- (38) During the investigation period, the cooperating producer sold the product concerned in the Community both directly and via a related Polish intermediary. The export price was determined by taking into account the direct transactions as well

as the transactions concluded via one of the related trading companies. For transactions effected via the trading company, the export price was established by reference to the prices actually paid or payable to it. As the related trader's functions can be considered similar to those of a trader acting on a commission basis, a commission was estimated on the basis of the trading company's mark-up verified at its premises. This mark-up was deducted from the prices charged by the related company to independent customers in the Community.

Non-cooperating parties

In accordance with Article 18 (5) of the basic Regulation, the Commission selected as an independent source of information the Eurostat import statistics for the CN codes concerned for the three non-cooperating producer/exporters. The export price was then established on this basis, after deducting from the total imports the quantity and value of goods sold by the cooperating producer in the Community both directly and via the cooperating related trading company.

(d) *Comparison*

- (39) For the purpose of a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences which were claimed and demonstrated to affect price comparability. The adjustments were made, in accordance with Article 2 (10) of the basic Regulation, in respect of physical characteristics, transport, insurance, handling and ancillary costs, commissions and credit costs.

(e) *Dumping margin*

- (40) The dumping margin for the cooperating producer was established, on a product group basis, by comparing the weighted average normal value with the weighted average export price, in accordance with Article 2 (11) of the basic Regulation. Expressed as a percentage of the total CIF Community frontier value of imports, the dumping margin for the sole cooperating producer is:

— Huta Batory SA: 7,1 %.

For non-cooperating parties a residual dumping margin was calculated by comparing the normal value as established in the last paragraph of recital (37) with the export price as determined in the last paragraph of recital (38). The residual margin, expressed as a percentage of the CIF Community frontier value of imports is 33,2 %.

4. Republic of Croatia

- (41) In view of the findings on injury with regard to the Republic of Croatia (see recitals (51) and (69)), it was not considered necessary to pursue the investigation into dumping.

D. COMMUNITY INDUSTRY

- (42) The same Community producers cooperated in the two investigations (see recital (8)). These companies represented more than 90 % of the total Community production of the product subject to the investigation, and constituted, therefore, a major proportion of the total production of the product concerned in the Community.
- (43) A number of exporters alleged that their products were purchased and imported by certain complainant Community producers. They claimed that these producers should be excluded from the determination of the Community industry for the purpose of the injury assessment pursuant to Article 4 (1) (a) of the basic Regulation.

No substantiating evidence to support this assertion was provided. In addition, the investigation carried out by the Commission has shown that none of the Community producers imported the products concerned and that certain importers, related to such Community producers, imported small quantities of the products concerned during the investigation period. These imports were resold in the Community market exclusively by these related importers, which were found to have acted independently and even to have operated in competition with the sale departments of their related producers. In any event, the examination of the facts revealed that the volume of these imports accounted for less than 3 % of the total sales volume of these products on the Community market for each of the Community producers.

It is, therefore, considered that such a low level of imports could not have led to any injury to the Community producers and consequently there are no grounds for excluding these producers.

Consequently the producers mentioned in recital (8) will be referred to hereinafter as the 'Community industry' within the meaning of Article 4 (1) of the basic Regulation.

E. INJURY

1. Preliminary remark

- (44) It should be mentioned that the anti-dumping measures presently in force in respect of Hungary, Poland and the Republic of Croatia are under-

takings, combining quantitative ceilings and certain pricing commitments, with residual *ad valorem* duties.

Further, it should be noted that imports of all seamless pipes and tubes (including therefore the product concerned), originating in the Czech Republic and the Slovak Republic were, between 1993 and 1995, subject to a tariff quota system, i.e. duty free within the limits of a quantitative ceiling; as soon as the ceiling was reached, a duty of 30 % was levied. This system lapsed at the end of 1995.

- (45) It should also be recalled that the present Regulation combines the result of two investigations, one of which has led to the publication of a provisional Regulation. All findings regarding injury, causation and Community interest should be read in conjunction with the findings described in the provisional Regulation.

2. Consumption

- (46) In recital (48) of the provisional Regulation, it was stated that Community consumption in tonnes per month amounted to 89 900 tonnes in 1992, 69 700 in 1993, 84 070 in 1994, 92 730 in 1995 and 92 130 during the investigation period. These findings were not contested and are confirmed.

3. Dumped imports

(a) Cumulation

- (47) In the provisional Regulation, the Commission concluded that the dumped imports from Russia, the Czech Republic, Romania and the Slovak Republic should be assessed cumulatively for the purpose of injury analysis, on the grounds that the products concerned were imported from each exporting country in substantial quantities, held a significant market share and competed with each other and with those manufactured by the Community industry.
- (48) Some exporters claimed that due to differences in volume and rates of growth of imports, as well as in conditions of competition, the impact of these exports to the Community should be examined on an individual basis.
- (49) In this respect, the Commission recalls that the criteria set out in Article 3 (4) of the basic Regulation were found to be met in order to cumulate the imports from all four countries concerned, namely:
- the margin of dumping established and relating to each country was more than *de minimis* (i.e. between 5,1 % and 38,2 %);
 - the volume of imports from each country was not negligible; none of the exporting countries held a *de minimis* market share, namely below 1 %, since their market shares ranged from 3 % to 8,3 %;

- with regard to the conditions of competition both between imported products and products sold by the Community industry, the imported products were found to be interchangeable, to be following similar price trends, to have similar channels of distribution and similar low-price policy resulting in a high level of price undercutting (i.e. between 17,5 % and 43,2 %), to be simultaneously present in the same geographical areas and to compete therefore with each other and with those manufactured by the Community industry.

The fact that imports of the product concerned originating in the Czech Republic and the Slovak Republic were subject to a tariff-quota system applying until 31 December 1995 does not alter the conclusion that these imports fulfil the criteria laid down in Article 3 (4) of the basic Regulation. It should be noted, in any case, that, after the expiry of this system, the market shares of the imports concerned increased from 6,7 % in 1995 to 9,6 % during the first eight months of 1996 for Czech imports and from 2,1 % to 3,4 % over the same period for Slovak imports.

For all the above reasons, it is concluded that the conclusions reached in recital (49) of the provisional Regulation should be maintained.

- (50) Taking into account the two simultaneous investigations, it was also examined whether effects of imports from Hungary, Poland and Croatia should be assessed cumulatively with those of the new investigation.
- (51) With regard to imports from Croatia, it was established that its share held in the Community market declined from 1,8 % in 1992 to 0,7 % in the investigation period. Given the low and sharply decreasing level of these imports, a situation contrary to the one found for the other imports, it was not considered appropriate that these imports should be analysed cumulatively. In the light of the fact that imports from Croatia are subject to anti-dumping measures, this conclusion is reached also taking into account the findings in recital (70) below on the absence of likelihood of recurrence of injury.
- (52) With respect to imports from Hungary and Poland, it was found that, as with the imports of the new investigation, quantities imported and dumping margins were significant.

It has been claimed that imports originating in Hungary are negligible and should therefore be disregarded for cumulation purposes in accordance with Article 3 (4) of the basic Regulation. However,

the investigation did not show that these imports were actually negligible.

In addition, for both investigations, the conditions of competition found between the imported products and between the imported products and the Community products were similar, in particular, because all the products were considered as like products and were sold at prices substantially undercutting those of the Community industry (i.e. from 17 % to 21,3 % for Poland, 25,4 % for Hungary). The fact that these imports were subject to quantitative undertakings during the period considered has no bearing on the conclusion that they can be cumulated with the other imports under investigation for injury examination purposes. Indeed, even if there were limitations to the quantities exported to the Community and a certain increase in their price level as compared with the prices of the exporters in the countries subject to the new investigation, imports originating in Hungary and Poland have, nevertheless, continued to be made at dumped prices undercutting quite significantly those of Community producers.

- (53) The above considerations on cumulation led, therefore, to the conclusion that a cumulative assessment of the effect of the dumped imports from the countries subject to both investigations, with the exception of Croatia, was warranted (hereinafter the 'exporting countries').

(b) *Cumulated volume and market share of dumped imports*

- (54) The provisional findings according to which, on a cumulated basis, imports decreased from 201 920 tonnes in 1992 to 96 080 tonnes in 1993, and then increased to 195 220 tonnes in 1994, 230 810 tonnes in 1995 and 268 670 tonnes in the investigation period were not contested and are therefore confirmed.

The same applies to the corresponding market shares amounting to 18,7 % in 1992, 11,5 % in 1993, 19,4 % in 1994, 20,7 % in 1995 and 24,3 % in the investigation period.

(c) *Prices of dumped imports*

- (55) For the determination of price undercutting regarding the exporting countries, the data analysed referred to the investigation period. For this purpose, comparison was made between weighted average selling prices of the exporting countries concerned and weighted average sales prices of Community producers for the seamless steel tubes concerned. Price comparison was made on the basis of sales to the first independent customer in the Community. In order to ensure comparability, the prices of Community producers and those of the imported products were, where appropriate,

adjusted in terms of transparent cost to ex-works or CIF Community frontier level. In addition, the import prices were adjusted by an importer's margin, including customs clearance, handling charges, commission, financing cost and profit based on information available.

The results of the comparison showed margins of undercutting for all countries and exporters concerned. The weighted average price undercutting margins expressed as a percentage of Community producers' prices were as follows:

| | |
|--------------------|-----------------------|
| — Czech Republic: | from 21,2 % to 43,2 % |
| — Hungary: | 25,7 % |
| — Poland: | from 17 % to 21,3 % |
| — Romania: | 25,8 % |
| — Russia: | 41,5 % |
| — Slovak Republic: | 17,5 %. |

4. Situation of the Community industry

- (56) For ease of reference, the results already presented in the provisional Regulation on the situation of the Community industry are once again shown below and confirmed for the purpose of the definitive determination since they were not disputed by the parties.

(a) Capacity, production and utilization rate

- (57) Between 1992 and the investigation period, eleven production plants and facilities ceased production, representing a reduction of about one fourth of the total production capacity of seamless steel tubes existing in the Community at the beginning of the period.

Production of the Community industry fell from 1 136 640 tonnes in 1992 to 996 036 tonnes in 1995 and to 938 184 tonnes during the investigation period. In line with the substantial reduction of capacity, the corresponding rates of capacity utilization rose from 63,5 % to 75,9 %, and fell back to 71,3 % over the same period.

(b) Sales volume and market share

- (58) Sales of Community producers declined from 781 770 tonnes in 1992 to 775 721 tonnes in 1995 and to 722 042 tonnes during the investigation period.

The market share held by the Community industry decreased from 75,2 % in 1992 to 72,1 % in 1995, and dropped by a further 4,8 % to 67,3 % during the investigation period.

(c) Sales prices

- (59) On average, unit prices of the product concerned sold by the Community producers on the Community market, expressed in ecu per tonne, were 576 in 1992, 578 in 1995 and 593 during the investigation period, corresponding to an overall increase of 3 %.

(d) Profitability

- (60) The Community industry incurred financial losses on its sales of the like product during the period under consideration. Between 1992 and 1994, these losses averaged 8 %. There followed an improvement in return on sales in 1995 (-2,1 %), and in the investigation period without reaching breakeven. Profitability percentage levels were as follows:

| 1992 | 1993 | 1994 | 1995 | Investigation period |
|-------|--------|-------|-------|----------------------|
| - 7,0 | - 12,2 | - 7,9 | - 2,2 | - 0,7 |

This reduction in losses was to a considerable extent possible because of the anti-dumping measures in force in this sector. In the absence of these measures, there would have been even less, if any, reduction in financial losses. Furthermore, the slight recovery took place during a period when substantial restructuring efforts were made, leading, *inter alia*, to the abovementioned closure of plants. These developments were, however, not sufficient to generate the level of earnings that would be required by the Community industry to cover its increasing production costs and the high investment in restructuring, make a reasonable profit, recover from previous years' losses and ensure its long term viability.

(e) Employment

- (61) Employment in the Community industry declined continuously by around 35 % between 1992 and the end of the investigation period, amounting in absolute terms to a loss of about 2 800 jobs.

5. Final conclusion on injury

- (62) The examination of the economic performance of the Community industry during the period under consideration showed that, between 1992 and August 1996, there was a decline in production, sales volume and market share as well as a reduction in employment, despite considerable restructuring efforts intended to reduce costs of production.

These restructuring efforts and the measures in place enabled the Community industry to increase capacity utilization and improve its financial results, which, however, remained negative during

the investigation period (-0,7 %), i.e. under the break-even point, and were insufficient to enable the Community industry to ensure its long term viability.

It is therefore concluded that during the period under consideration, the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation, in the form of decreased sales and loss of market share, reduced employment and financial losses.

F. CAUSATION

1. Effect of dumped imports

(a) *Cumulated effect of imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic*

- (63) While consumption in the Community remained relatively stable, imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic increased their total market share by around 5,6 percentage points, from 18,7 % in 1992 to 24,3 % in the investigation period. By contrast, the Community industry lost market share by about 7,9 percentage points from 75,2 % to 67,3 % over the same period. Bearing in mind that significant price undercutting was found for each exporting country, and considering that the increase of market share held by the dumped imports concerned coincided with the deterioration in the Community industry's situation, it is concluded that, taken together, imports from the six countries concerned had a negative impact on the situation of the Community industry.

(b) *Effects of imports originating in Croatia*

Considered in isolation, the imports originating in Croatia cannot be considered as having significantly caused material injury to the Community industry due to their declining volume and market share.

2. Effect of other factors

(a) *Other imports*

- (64) Certain exporters claimed that imports from other countries, for example Argentina, had been made in quantities and at prices that were injurious to the Community industry. The examination revealed that imports from other third countries, not covered by the two investigations, increased their market share from 4,3 % in 1992 to 6,5 % in 1995 and to 7,7 % during the investigation period. Although they were increasing in volume, the prices of these imports were found, on the basis of

the statistical data available, to be distinctly higher than those of the dumped imports, and there was no indication that imports from third countries not subject to the two investigations had been dumped. It is, therefore, concluded that the other imports in question had little, if any, impact on the situation of the Community industry.

(b) *General economic situation*

- (65) As stated in the provisional Regulation, Community consumption declined in 1993 due to the world economic recession, which affected in particular the users of the product concerned (car industry, construction, etc.). In that year, the volume of imports, and the corresponding market share held by the exporting countries concerned, also reached a low level, and the Community industry experienced its poorest results in terms of sales on the Community market, prices and profitability.

On this basis, it is evident that the deterioration of the market in 1993 had a negative effect on the situation of the Community industry.

However, save in the exceptional situation of 1993, consumption remained generally stable during the other years of the period considered (1992, and 1994 to the investigation period). This stability, however, was mainly to the benefit of the dumped imports from the countries concerned whose market share increased while the Community industry's market share declined continuously. The general economic situation cannot, therefore, be considered as a factor continuously responsible for the precarious situation still faced by the Community industry. Indeed, given the considerable efforts of rationalization and restructuring made by Community producers, and the trade defence measures in force during this period, the Community industry should clearly have recovered to a greater extent and obtained more satisfactory results in 1995 and 1996.

(c) *Restructuring of the Community industry*

- (66) It was alleged by certain exporters that the unsatisfactory performances of the Community industry in the period examined was due not to the effect of dumped imports but to the restructuring carried out by the industry at that time.

Without doubt, the restructuring process undergone by the Community industry in the face of excess capacities would have been responsible for some of the decrease in production, sales and employment. However, given the volume and market share of the dumped imports from the countries concerned and the margin of undercutting established, it is clear that the dumped imports in isolation played a significant role in the material injury suffered by the Community industry.

3. Conclusion

- (67) Although the world economic recession of 1993, as well as the restructuring of the Community industry, may have had some negative impact on the performance of the Community industry during the period considered, it must be concluded, on the basis of the above considerations, that the cumulative effect of the dumped imports from the Czech Republic, Hungary, Poland, Romania, Russia and the Slovak Republic, considered in isolation, has, through substantial price undercutting and significant quantities of dumped imports, caused material injury to the Community industry, and that the existing anti-dumping measures under review have not fully achieved their intended effect. Imports originating in Croatia, considered separately, cannot be considered to have caused material injury to the Community industry.

It is worthwhile noting that the injury caused by the dumping suffered by the Community industry could only become worse if the measures which apply to certain cumulated imports were to be repealed. Indeed, in Hungary and Poland high volumes of capacity are available for export to the Community, taking into account that internal consumption or exports to third countries could not absorb any additional output. Furthermore, it should be noted that capacity in Poland increased subsequent to the investigation period by around 15 %.

G. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF INJURY — CROATIA

- (68) The investigation with regard to Hungary, Poland and the Republic of Croatia was an interim review which was initiated in parallel with the new investigation in order to examine globally the situation with regard to all imports of seamless pipes and tubes into the Community. Actual injury, caused by dumped imports which were assessed cumulatively for the purpose of examining their effect, was established. There was therefore no need to further examine whether there is a likelihood of continuation or recurrence of material injury if the existing anti-dumping measures concerning imports originating in Hungary and Poland were removed or altered.

However, in the case of imports of Croatian origin, which were not cumulated with other imports under investigation, such an examination must be made.

- (69) Following the imposition of anti-dumping measures, imports from Croatia fell sharply from

19 201 tonnes in 1992 to 8 077 tonnes during the investigation period, representing a decline in market share from 1,8 % to 0,7 % as stated in recital 51.

During the period under consideration, exports of the Croatian producer to the Community remained far below the level of the quantitative undertaking accepted in 1993. Because of the war-like situation in Croatia in the last few years, production facilities of seamless tubes were partially damaged and the work force was considerably reduced. As a result, only one quarter, approximately 35 000 tonnes per year of the theoretical production capacity was operational. The output of the product concerned dropped from around 34 000 in 1992 to 10 515 tonnes during the investigation period, thus reducing capacity utilisation from 97 % to 37 %. Domestic sales declined from 8 000 tonnes to 2 100 tonnes over the same period, while exports to non-Community countries were negligible.

No sizeable increase of export volumes to the Community is expected, and any price undercutting should have a limited effect on price depression or prevention of price increases for Community producers. Moreover, growing reconstruction activities in former Yugoslavia should increase domestic sales and concentrate Croatian exports on the markets in this area.

Should the measures in force for Croatia be repealed, there appears to be no clearly foreseeable threat of increasing import volumes from Croatia. There is consequently no likelihood of recurrence of material injury.

Conclusion

- (70) With regard to Croatia, it is considered that recurrence of injury, should the existing anti-dumping measures be repealed, is unlikely and that, in the circumstances as established, these measures are therefore no longer necessary.

H. COMMUNITY INTEREST

1. Introduction

- (71) Considering that both the new anti-dumping investigation and the interim review referred to the same market, i.e. the Community market of the seamless pipes and tubes in question, the examination of the Community interest issue was made jointly for both investigations. The purpose of this analysis was to determine the possible impact of measures and the consequences of not taking measures for all parties involved in both proceedings.

(72) It should be recalled in this respect that recitals (68) *et seq.* of the provisional Regulation contained an appreciation of all the various interests, including those of the Community industry, of the importers/traders and of the downstream user industries. On the basis of the information available at the time of the provisional Regulation, the Commission concluded that there was no compelling reason not to remedy the trade distorting effects of injurious dumping.

(73) After publication of the provisional Regulation, none of the parties concerned made comments on the Commission's provisional conclusions on the Community interest issue.

However, although no user industry had cooperated in the course of the provisional examination, the Commission pursued its investigation in order to complete its analysis on the possible effect of measures on those industries. It approached in this respect the complainant, importers and a federation of different processing industries using, *inter alia*, the product concerned. On the basis of these sources, seven industrial users were identified and *ad hoc* questionnaires were sent to each of them. Meaningful comments or replies were received from only four user companies.

On the basis of the additional information obtained from these replies, and taking into account the absence of comment on the findings contained in the provisional Regulation, the following conclusion can be reached.

2. Impact on the Community industry

(a) *Likely effect of the imposition of anti-dumping measures*

(74) Following the adoption of anti-dumping measures, the prices of the imported product can be expected to rise. This would be reflected in a fall in the volumes imported and a reduction in market supply, allowing the Community industry to increase output and sales.

The Community industry's prices would probably increase to some extent, but certainly not by anything like the level of the duty, given the overcapacity described above and the transparency of the market.

The increase of the Community industry's production volume would result in a higher utilization

rate of capacity and thus a reduction of unit costs of the product concerned which, as a result, would enable the Community industry to achieve a more satisfactory financial situation.

(b) *Likely effect of non-imposition of measures*

(75) Although the situation of the Community industry has improved somewhat during the period under consideration, it remains unsatisfactory. In these circumstances, if anti-dumping measures are not adopted or maintained, the situation could be expected to deteriorate again in terms of depressed production levels and capacity utilization rates, loss of market share, financial losses and reduction in employment. This would further threaten its capacity to produce the whole range of products at competitive costs.

As noted in recital (73) of the provisional Regulation, the sector in question is dependent on a reasonable capacity utilization rate. This can be achieved only by a satisfactory level of production of standardized commercial, or oil, tubes which are in direct competition with the dumped products. A decrease in the production of these standard pipes would jeopardise the production of higher quality product categories and, therefore, the viability of the whole seamless tube sector.

3. Impact of measures on importers/traders

(76) In recital (74) of the provisional Regulation, the Commission concluded that, because Community importers are known in general to handle all steel products and only a small percentage of their turnover consists of the seamless tubes in question, the measures can be expected to have no more than a minimal effect on their overall situation, given the wide diversity of the products they trade.

Having received no further comments in this respect, it is reasonable to conclude that anti-dumping measures will indeed have only a minimal effect, if any, on the situation of importers/traders of the product concerned.

4. Impact on downstream industrial users

(77) As stated in recital (71) of the provisional Regulation, there are several downstream user industries of the product concerned, i.e. the machinery industry, transport of fluids (oil, gas, water, etc.), the chemical and petro-chemical industries, power stations (including nuclear), the automobile and construction industries.

From the analysis of the comments or replies received as mentioned above (recital (73)), it is concluded that the impact on the costs of downstream user industries of any price increases resulting from adoption or continuation of anti-dumping measures would be insignificant.

Furthermore, it should be noted that at least 85 % of the dumped imports from the countries subject to both the new anti-dumping investigation and the interim review are sold to large traders, who appear to have been taking advantage of the dumped prices to improve profit margins. Insofar as traders adjust margins to take account of some or all of the effects of the measures, they could not be reflected at all in their sales prices.

In the light of the above, it is concluded that any price effect resulting from anti-dumping measures will be negligible with respect to downstream industrial users.

5. Conclusion

- (78) On the basis of the above elements, it is concluded that there is no compelling reason not to remedy the trade-distorting effects of injurious dumping and that the respective adoption and continuation of protective measures are in the interest of the Community.

I. DEFINITIVE DUTY

1. Countries under the new investigation

- (79) It should be recalled from recital (78) *et seq.* of the provisional Regulation that, in order to prevent further injury being caused by the dumped imports concerned before the end of the proceeding, the Commission decided to adopt anti-dumping measures, in the form of provisional duties.

(a) Injury margins

- (80) For the purpose of determining what level of duty would be adequate to remove the injury to the Community industry caused by dumping, it was considered that a price level based on the Community producers' cost of production plus a reasonable profit margin should be calculated. A profit margin of 5 % was regarded as an appropriate minimum, taking into account the need for long term investment and the return which the

Community industry could reasonably expect in the absence of injurious dumping.

The injury elimination level was calculated by comparing the weighted average CIF import prices, duly adjusted for an independent importer's margin, to the non-injurious price of the Community producers, established as above at the same level of trade. The amounts resulting from this calculation were expressed as a percentage of the weighted average, free-at-Community-frontiers, value of the imported goods. The injury margins calculated on that basis are set out below.

| | |
|--------------------|--------------------------|
| — Czech Republic: | from 37,4 % to 97,9 % |
| — Romania: | 48,3 % |
| — Russia: | 87,8 % |
| — Slovak Republic: | 31 %. |

Having received no further comments in this respect, the above determination of the injury elimination level is confirmed.

(b) Definitive duty

- (81) As the injury elimination margins found above are higher than the dumping margins that have been calculated, definitive anti-dumping duties should be set at the level of the latter, in accordance with Article 9 (4) of the basic Regulation. These duties, expressed as a percentage of free-at-Community frontier prices, amount to:

| | |
|--------------------------------|---------|
| — Czech Republic: | |
| Vítkovice a.s.: | 5,1 % |
| Nová Hut a.s.: | 5,1 % |
| Other imports: | 28,6 % |
| — Romania: | |
| SC Artrom SA: | 9,8 % |
| SC Silcotub SA: | 9,8 % |
| SC Petrotub SA: | 9,8 % |
| SC Republica SA Trade Company: | 9,8 % |
| Other imports: | 38,2 % |
| — Slovak Republic: | |
| Železiarne Podbrezová a.s.: | 7,5 % |
| Other imports: | 7,5 % |
| — Russia: | |
| All imports: | 26,8 %. |

2. Countries under the review investigation

(a) Hungary and Poland

- (82) As a result of the findings concerning Hungary and Poland, confirming that, despite the existing measures, dumping has caused injury, and considering that it is in the Community's interest that anti-dumping measures with regard to these two countries be maintained, a determination of a revised duty has been made.

The injury margins required to remove the injury caused by imports of Hungarian and Polish origin and calculated on the basis of the same methodology as that used for the countries under the new investigation, as explained above in recital (80), are:

| | |
|--|---------|
| — for Hungary: | |
| (Csepel Tubes Co. Ltd., sole Hungarian producer) | 45,9 % |
| — for Poland: | |
| Huta Batory SA: | 37,2 % |
| Others: | 30,1 %. |

In accordance with Article 9 (4) of the basic Regulation, the rates of duty should be based on the lower of either the injury elimination margin or the dumping margin established. The dumping margins with regard to the Polish producer Huta Batory and the sole Hungarian producer being below the injury margin found, the duty should be based on this lower level. For the other Polish producers, the duty is limited to the injury margin established.

- (83) On this basis, the existing anti-dumping duties which amount to 10,8 % for Poland and 21,7 % for Hungary should be replaced by the following duties:

| | |
|------------------------|---------|
| — Hungary: | |
| Csepel Tubes Co. Ltd.: | 36,5 % |
| Others: | 36,5 % |
| — Poland: | |
| Huta Batory SA: | 7,1 % |
| Others: | 30,1 %. |

(b) Republic of Croatia

- (84) Based on the conclusions reached in recital (51) and taking into account that there is no clearly foreseeable threat of increasing import volumes from the Republic of Croatia (see recital (69)) and that, under these circumstances, the recurrence of material injury is not imminent, no determination

of a definitive duty has been made in respect of the Republic of Croatia.

J. DEFINITIVE MEASURES

- (85) The conclusions reached above as to dumping, injury, causation and Community interest call for definitive measures, both for the countries under the new investigation and for those under the review investigation, with the exception of Croatia, for which the anti-dumping proceeding should be terminated. These measures should be in the form of *ad valorem* duties, the rates of which have been fixed individually for cooperating companies. Non-cooperating companies, on the other hand, should be subject to the residual duties.
- (86) However, as regards Hungary, Poland, the Czech Republic, Romania and the Slovak Republic, it has been found appropriate, taking into account the specific history of previous anti-dumping proceedings concerning this product, in which those countries were subject either to quantitative restrictions or tariff quotas, to accept price undertakings which have been offered up to a certain quantity threshold on a company by company basis. In other words, the elimination of the injury is achieved by two means: first, a price undertaking up to an annual volume threshold exempt from the duty, and then an *ad valorem* duty for the remainder.

To ensure that the quantity of imports exempted from the *ad valorem* duty does not exceed the quantity in respect of which the undertaking has been offered, the exemption should be conditional on the presentation to Member States' customs services of a valid production certificate clearly identifying the producer, the product concerned and the details listed in the Annex. In cases of doubt, the Commission should make a determination as to the certificate's validity, and take measures as appropriate.

- (87) As regards Russia, the Commission has examined an offer of a joint undertaking from three of the six companies which made themselves known during the investigation, and has considered the possibility of these Russian producers benefiting from a similar form of undertaking to that of the producers in the associated countries. However, this offer was not acceptable as it did not contain the necessary guarantees on the part of the Russian authorities to allow adequate monitoring, particularly with regard to the duty-free threshold. In these circumstances an *ad valorem* duty should be imposed at the level definitively established.

The Council notes, however, that the measure in respect of Russia could be modified, if ever there were a change in circumstances such that the conditions for the acceptance of an undertaking were met.

K. COLLECTION OF PROVISIONAL DUTY WITH REGARD TO COUNTRIES UNDER THE NEW INVESTIGATION

- (88) In view of the circumstances of the present investigation, i.e. the change in the form and nature of the definitive measures, as compared with the provisional *ad valorem* duties imposed on imports from the Czech Republic, Romania and the Slovak Republic, and with the existing undertakings in respect of imports from Hungary, Poland and the Republic of Croatia, the Council considers that it is not appropriate to collect the provisional duties.

The Council has therefore decided, in accordance with Article 10 (2) of the basic Regulation, that the amounts secured by way of the provisional duty imposed pursuant to Commission Regulation (EC) No 981/97 on imports of the product concerned originating in Russia, the Czech Republic, Romania and the Slovak Republic should be released.

L. FINAL PROVISION

- (89) The Commission consulted the Advisory Committee on the acceptance of these undertakings and, since some objections were raised, sent a report on these consultations to the Council. The Council not having decided against the acceptance of the undertakings, the undertakings offered were accepted in accordance with Article 8 (5) of the basic Regulation by Commission Decision 97/790/EC⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. Definitive anti-dumping duties are hereby imposed on the following imports originating in Hungary, Poland, Russia, the Czech Republic, Romania and the Slovak Republic.

- (a) seamless pipes, of iron or non-alloy steel, of a kind used for oil and gas pipelines, of an external diameter not exceeding 406,4 mm (currently falling within CN codes 7304 10 10 and 7304 10 30);
- (b) seamless tubes of circular cross-section, of iron or non-alloy steel, cold-drawn or cold-rolled, other than precision tubes (currently falling within CN code 7304 31 99);
- (c) other tubes of circular cross-section, of iron or non-alloy steel, other than threaded or threadable, of an external diameter not exceeding 406,4 mm (currently falling within CN codes 7304 39 91 and 7304 39 93).

2. The rate of definitive anti-dumping duties applicable to the net free-at-Community-frontier prices before duty, shall be as follows:

| Country | Manufacturer | Rate of duty (%) | Taric additional Code |
|----------------|--|------------------|-----------------------|
| Hungary | Csepel Tubes Co. Ltd (in liquidation) | 36,5 % | 8717 |
| | Others | 36,5 % | 8900 |
| Poland | Huta Batory SA | 7,1 % | 8476 |
| | Huta Andrzej SA | 30,1 % | 8719 |
| | Huta Czestochowa | 30,1 % | 8482 |
| | Huta Jednosc SA | 30,1 % | 8493 |
| | Others | 30,1 % | 8900 |
| Russia | All companies | 26,8 % | |
| Czech Republic | Vitkovice a.s. | 5,1 % | 8058 |
| | Nová Hut a.s. | 5,1 % | 8463 |
| | Válcovny trub Chomutov a.s. | 28,6 % | 8464 |
| | Others | 28,6 % | 8900 |

(¹) See page 63 of this Official Journal.

| Country | Manufacturer | Rate of duty (%) | Taric additional Code |
|-----------------|----------------------------|------------------|-----------------------|
| Romania | Artrom SA | 9,8 % | 8059 |
| | Silcotub SA | 9,8 % | 8467 |
| | Petrotub SA | 9,8 % | 8468 |
| | Republica SA | 9,8 % | 8469 |
| | Others | 38,2 % | 8900 |
| Slovak Republic | Železiarne Podbrezová a.s. | 7,5 % | 8060 |
| | Others | 7,5 % | 8900 |

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

Article 2

1. Imports shall be exempt from the anti-dumping duties imposed by Article 1 (1) provided that they are produced and sold for export to the Community by the companies listed in paragraph 4 which have offered undertakings accepted by the Commission and provided that the conditions of paragraphs 2, 3 and 4 are met.

2. When the declaration for release for free circulation is presented, exemption from the duty shall be conditional upon presentation to the competent Member States' customs services of a valid, original production certificate issued by one of the companies listed in paragraph 4. The production certificate shall conform with the requirements for such certificates set out in the undertaking accepted by the Commission, the essential elements of which are listed in the Annex.

3. The production certificate referred to in paragraph 2 must be presented within three months of its date of issue. The quantities presented to the Member States' customs services for import into the Community free of the anti-dumping duty shall not exceed those stipulated on the certificate. When quantities stipulated on the certificate are exceeded, the excess shall be subject to the duty, and be declared under the relevant Taric additional code of Article 1 (2).

4. Imports accompanied by a production certificate shall be declared under the following Taric additional codes:

| Country | Product manufacturer | Taric additional Code |
|-----------------|--|-----------------------|
| Hungary | Csepel Tubes Co. Ltd (in liquidation) | 8521 |
| Poland | Huta Batory SA | 8517 |
| | Huta Andrzej SA | 8518 |
| | Huta Czystochowa | 8519 |
| | Huta Jednosc SA | 8520 |
| Czech Republic | Válcovny trub Chomutov a.s. | 8507 |
| Romania | Artrom SA | 8508 |
| | Silcotub SA | 8509 |
| | Petrotub SA | 8514 |
| | Republica SA | 8515 |
| Slovak Republic | Železiarne Podbrezová a.s. | 8516 |

Article 3

Member States' reports to the Commission pursuant to Article 14 (6) of Regulation (EC) No 384/96, shall indicate for each release for free circulation, the year and month of import, the CN, Taric and Taric additional codes, the type of measure, the country of origin, the quantity, the value, the anti-dumping duty, the Member State of import and, where appropriate, the serial number of the production certificate.

Article 4

Regulation (EEC) No 1189/93 is hereby repealed.

Article 5

The anti-dumping proceeding against imports of the product concerned originating in Croatia is hereby terminated.

Article 6

The amounts secured by way of provisional anti-dumping duties imposed pursuant to Regulation (EC) No 981/97 on imports of the product concerned originating in Russia, the Czech Republic, Romania and the Slovak Republic shall be released.

Article 7

This Regulation shall enter into force on the day following that of 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, 17 November 1997.

For the Council

The President

J.-C. JUNCKER

ANNEX

Main elements of the production certificate⁽¹⁾ referred to in Article 2 (2)

- (a) The number of the certificate.
- (b) Identification showing whether the certificate is an original.
- (c) The date of expiry of the certificate.
- (d) The following text:

'Production certificate issued by (the Company) pursuant to Article 2 (2) of Council Regulation (EC) No 2320/97 for the export to the European Community within Taric additional Code xxxx of certain seamless steel pipes and tubes.'
- (e) The name and full address of the Company, and possible identification number such as national registration number for incorporated companies.
- (f) The name and full address of the customer of the Company in the Community importing the goods *or* the name and full address of the unrelated trader outside the Community exporting the goods.
- (g) The number of the Company invoice to which the production certificate relates.
- (h) The exact description of the goods, including:
 - a product description sufficient to identify the products, which will be identical to the product description on the invoice,
 - CN code,
 - quantity (in metric tonnes).
- (i) The name of the official of the Company responsible for the issue of the certificate and the following signed declaration:

'I, the undersigned, certify that the sale for export to the European Community of the goods covered by this certificate is being made within the scope and under the terms of the undertaking by (the Company), and within the permitted volume for anti-dumping duty-free imports into the Community set out in the undertaking accepted by the Commission pursuant to Decision 97/790/EC. I declare that the information provided in this certificate is complete and correct.'
- (j) Space for use by the competent authorities of the Community.

⁽¹⁾ Under the undertaking offered and accepted by the Commission, each box on the certificate will be in four languages, the language of the country of the producer, English, French and German.