

## COMMISSION DECISION No 284/2000/ECSC

of 4 February 2000

**imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India and Taiwan and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in South Africa**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 1889/98/ECSC of 3 September 1998 on protection against subsidised imports from countries not members of the European Coal and Steel Community<sup>(1)</sup>, and in particular Articles 13, 14 and 15 thereof,

After consulting the Advisory Committee,

Whereas:

#### A. PROCEDURE

##### 1. Initiation

- (1) On 8 January 1999, the Commission announced by means of a notice (hereinafter referred to as the 'Notice of Initiation') published in the *Official Journal of the European Communities*<sup>(2)</sup> the initiation of an anti-subsidy proceeding with regard to imports into the Community of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India, South Africa and Taiwan.
- (2) The proceeding was initiated as a result of a complaint lodged by Eurofer on behalf of Community producers representing a major proportion of the total Community production of the product concerned within the meaning of Articles 9(1) and 10(7) Decision (EC) No 1889/98/ECSC (hereinafter referred to as the 'Basic Decision'). The complaint contained evidence of subsidisation of the product concerned and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

##### 2. Investigation

- (3) The Commission officially advised the exporting producers in the exporting countries (hereinafter referred to as the 'exporting producers') and importers as well as their representative associations known to be concerned, the representatives of the exporting countries and the complaining Community producers of the initiation of

the proceeding. The Commission sent questionnaires to all these parties and to those who made themselves known within the time limit set in the Notice of Initiation. Pursuant to Article 11(5) of the Basic Decision, the Commission also gave the parties directly concerned the opportunity to make their views known in writing and to request a hearing.

- (4) Certain exporting producers, complaining Community producers and importers submitted comments in writing.

All interested parties who requested a hearing within the time limit set and who indicated that they were likely to be affected by the result of the proceeding and that there were particular reasons why they should be heard, were granted such a hearing.

- (5) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend:
  - (i) the imposition of definitive countervailing duties on imports from India and Taiwan,
  - (ii) the acceptance of an undertaking offered by exporting producers in India and
  - (iii) the termination of the proceeding against imports from South Africa.

Parties were also granted a period within which they could make representations subsequent to this disclosure.

- (6) The oral and written comments submitted by the parties were considered and, where appropriate, the definitive findings have been modified accordingly.
- (7) The Commission sought and verified all the information it deemed necessary for the purpose of a definitive determination.

Verification visits were carried out at the premises of the following companies:

- *Complaining Community producers*
  - Aceralia Corporacion Sid., Madrid, Spain
  - British Steel Plc, London, United Kingdom
  - Cockerill Sambre SA, Brussels, Belgium

<sup>(1)</sup> OJ L 245, 4.9.1998, p. 3.

<sup>(2)</sup> OJ C 5, 8.1.1999, p. 2.

- Hoogovens Steel BV, IJmuiden, Netherlands
- ILVA Spa, Genoa, Italy
- Sidmar NV, Gent, Belgium
- Salzgitter AG, Salzgitter, Germany
- Stahlwerke Bremen GmbH, Bremen, Germany
- SOLLAC, Paris, France
- Thyssen Krupp Stahl AG, Duisburg, Germany

— *Exporting producers*

(a) India

- Essar Steel Ltd, Hazira
- Tata Iron & Steel Company Ltd, Calcutta
- Steel Authority of India Ltd, New Delhi

(b) South Africa

- Iscor Ltd, Pretoria
- Highveld Steel & Vanadium Corp. Ltd, Witbank

(c) Taiwan

- China Steel Corp., Kaohsiung
- Yieh Loong Enterprise Co. Ltd, Kaoshiung,

— *Unrelated importer — user company in the Community*  
Marcegaglia SpA, Gazoldo degli Ippoliti, Italy,

— *Importers related to the exporting producers*

- South Africa: Macsteel International UK Ltd, London, United Kingdom
- Macsteel International Belgium NV, Antwerpen, Belgium
- Macsteel International Stahlhandel GmbH, Düsseldorf, Germany.

- (8) The investigation of subsidy covered the period from 1 January 1998 to 31 December 1998 (hereinafter referred to as the 'investigation period' or 'IP'). The examination of injury covered the period from 1 January 1995 up to the end of the subsidy investigation period (hereinafter also referred to as the 'period examined').

## B. PRODUCT CONCERNED AND LIKE PRODUCT

### 1. Product concerned

- (9) The product concerned is certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled (hereinafter 'hot-rolled coils'). This product is currently classifiable within CN codes

7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 10, 7208 37 90 <sup>(1)</sup>, 7208 38 10, 7208 38 90, 7208 39 10, 7208 39 90.

- (10) Hot-rolled coils are generally obtained in steel mills by hot rolling semifinished steel products after the final rolling pass or after pickling or continuous annealing. Hot-rolled coils are wound into a regular coil.

For steel mills, which produce a great range of flat products of steel, hot-rolled coils are used as a pre-material for manufacturing other steel products (wide and narrow strips, all cold-rolled products, tubes, etc.). Hot-rolled coils can be of various grades and dimensions. The vast majority of imports from third countries into the Community consist of 'structural steels' (such as S235 and S275 according to 'Euronorm' EN 10025) and 'mild steels' (such as DD11, DD12, DD13 according to EN 10011 and the 'Deutsche Industrie-Norm' DIN 1614/1). Coils are conventionally between 1,5 and 15 mm thick and from 600 to 2 050 mm wide. Each of the CN codes listed above corresponds to a specific product type as differentiated by width and thickness within the above ranges.

- (11) The product concerned is also classified into two distinct categories according to its finishing: black hot-rolled coils (hereafter referred to as 'black coils') which are the basic product and pickled hot-rolled coils (hereafter referred to as 'pickled coils') which, after being hot-rolled, go through an additional surface treatment called pickling. The distinction between black coils and pickled coils is also reflected in the structure of the Combined Nomenclature as coils classified under the two categories belong to specific and separate CN codes.

- (12) Although imports from the countries concerned are mainly black coils, the investigation showed that imports cover all the CN codes and thus all the different products listed above. Notwithstanding the fact that each CN code corresponds to a distinguishable type of hot-rolled coil, it was found that they all have identical or similar physical and technical characteristics, uses and applications. Accordingly, all types of hot-rolled coils form one single product falling under the CN codes listed in recital 9.

### 2. Like product

- (13) The investigation has shown that the hot-rolled coils imported from the countries concerned are identical to or comparable to the Community-produced products, in particular in terms of the grades and the range of dimensions available.

- (14) Some exporting producers claimed that the product concerned which they produce and sell is not interchangeable and not comparable as such with the Community-produced product. They claimed that the production process of the Community producers was

<sup>(1)</sup> See corrigendum published in OJ C 107, 16.4.1999, p. 6.

more advanced and even used different technology, thus producing a higher quality product. They mentioned that users sometimes had to re-roll the imported products before they could be processed further. They therefore claimed that their product was not a like product to that of the complaining Community producers.

- (15) Obviously, any difference in the production process resulting in surface or chemical defects may lead to a lower market value. However, the investigation showed that, in general both the Community-produced product and the imported product still have the same basic physical characteristics and uses, even though the products are not identical, in particular in terms of quality, across suppliers and across shipments of a given supplier. This, however, cannot lead to the conclusion that hot-rolled coil imported from the countries concerned is not a like product to that produced by the Community industry and sold in the Community.
- (16) The investigation also showed that the grades and dimensions of the product concerned imported from the countries concerned are identical or comparable to the products sold on the domestic market of the countries concerned.
- (17) On this basis, it was concluded that hot-rolled coils produced in the countries concerned, hot-rolled coils exported to the Community from these countries and hot-rolled coils produced and sold by the complaining Community producers on the Community market, are alike within the meaning of Article 1(5) of the Basic Decision.

### C. SUBSIDY

#### 1. INDIA

##### a) Introduction

- (18) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following five schemes, which allegedly involve the granting of export subsidies:
- Passbook Scheme
  - Duty Entitlement Passbook Scheme
  - Export Promotion Capital Goods Scheme
  - Export Processing Zones/Export Oriented Units
  - Income Tax Scheme.
- (19) The first four schemes are based on the Foreign Trade (Development and Regulation) Act 1992 (effective from 7 August 1992) which repealed the Imports and Exports Control Act of 1947. The Foreign Trade Act authorises the Government of India (GOI) to issue notifications

regarding export and import policy. These are summarised in 'Export and Import Policy' documents which are issued every five years and updated every year. Two Export and Import Policy documents are relevant to the investigation period of this case i.e. the five-year plans relating to the years 1992-1997 and 1997-2002.

- (20) The last scheme, the Income Tax Scheme, is based on the Income Tax Act of 1961 which is amended yearly by the Finance Act.

##### b) Passbook Scheme (PBS)

- (21) One instrument under the Export and Import Policy involving export-related assistance is the PBS which entered into force on 30 May 1995.

##### Eligibility

- (22) The PBS is available to certain categories of exporters i.e. those which manufacture in India and subsequently export (Manufacturer-exporters) and exporters, whether manufacturers or only traders, granted an 'Export House/Trading House/Star Trading House/SuperStar Trading House certificate'. The latter category of exporters, which is defined in the Export and Import Policy document, has to provide in particular proof of prior export performance.

##### Practical implementation

- (23) No producer/exporter of the product concerned applied for or made use of the PBS. There is therefore no need for the Commission to assess this part of the scheme in the context of the investigation.

##### c) Duty Entitlement Passbook Scheme (DEPB)

- (24) Another instrument under the Export Import Policy involving export related assistance is the DEPB which became effective on 7 April 1997. The DEPB constitutes the successor to the PBS which was terminated on 31 March 1997. The DEPB is of two types:
- DEPB on pre-export basis
  - DEPB on post-export basis.

##### i) DEPB on pre-export basis

##### Eligibility

- (25) The DEPB scheme on pre-export basis is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders) linked with manufacturers. To be eligible under this scheme, the company must have exported during a three-year period prior to submitting a claim for a licence.

*Practical implementation*

- (26) Any eligible exporter can apply for a licence. The licence, which is issued automatically, grants a credit amount that may be used to offset customs duties due on future imports of goods. The value of the licence is calculated on the basis of 5 % of the average yearly value of all exports, made by the applicant, during the previous three years.
- (27) The licence, which is non-transferable, is valid for a period of 12 months from the date of issue. Once the credit on the licence has been exhausted, a fee is payable to the relevant authority. The company may then apply for a further credit amount, again calculated on the basis of 5 % of the average value of exports during the previous three years.
- (28) The DEPB on pre-export basis allows duty-free imports of inputs required for the production of goods in the factory of the company concerned. Determination of what products may be imported duty free is made by reference to the inputs listed in the Standard Input-Output Norm (SION) <sup>(1)</sup> and varies dependent upon the product to be manufactured. Such duty-free inputs may not themselves then be transferred, loaned, sold, parted with, or disposed of in any manner whatsoever by the company, other than as a constituent part of the finished product.
- (29) The use of the scheme also carries with it an export obligation. When the licence is used for duty-free imports, the holder undertakes to use the goods as inputs for finished products destined for export. Export will attract a benefit based on the type and quantity of finished product. The benefit is calculated by reference to the SION. Once the licence holder has made exports of such a value which will entitle him to a benefit equivalent to the credit already given under DEPB on pre-export basis, his obligation is fulfilled.

*Conclusion on DEPB pre-export basis*

- (30) The GOI asserts that the DEPB pre-export scheme is a permitted remission/drawback or substitution drawback scheme within the provisions of Annex I(i) to the Basic Decision, and, as such, is non-countervailable. Annex II and III to the Basic Decision give guidelines on the determination of whether such schemes are export subsidies.
- (31) The DEPB pre-export is a value based scheme. The SOGN sets notional costings based on what are considered to be the value of inputs that have to be imported to manufacture a particular product. Once the SION rate has been set for a particular finished product, inputs can

be imported duty-free under a DEPB pre-export license. There is no requirement to import all of the inputs on the SION list. The only limits to the quantity of any particular input that may be imported under the scheme is the value of the licence granted and the corresponding commitment to export the finished product.

- (32) A company which can obtain its inputs at a lower price than that set in the SION programme, or which can obtain some of the inputs on the domestic market, would be able to import excess duty-free inputs that could be used in its domestic production. There would appear to be no provision within the SION programme to prevent such a situation arising. Neither was evidence found of any other system or procedure in place to confirm either which duty-free inputs are actually consumed in the production process of the exported finished product or in what quantities.
- (33) Annex II (II)(5) and Annex III (II)(3) of the Basic Decision provide that, where it is determined that the government of the exporting country does not have a verification system in place, a further examination by the exporting country based on actual inputs involved, or actual transactions, respectively, will normally need to be carried out in the context of determining whether an excess payment occurred. The GOI did not carry out such an examination.
- (34) However, the only Indian exporter in this investigation to use the scheme has provided to the Commission proof that they received no excess benefit. The company was able to establish that all benefits under the DEPB pre-export scheme during the POI were offset by the duty normally payable only on inputs consumed in finished exported product. There was therefore no subsidy conferred on this company.

## ii) DEPB on post-export basis

*Eligibility*

- (35) The DEPB on post-export is available to manufacturer-exporters (i.e. every manufacturer in India who exports) or merchant-exporters (i.e. traders).

*Practical implementation of DEPB post-export basis*

- (36) Under this scheme, any eligible exporter can apply for credits which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the products concerned, on the basis of the SION. A licence stating the amount of credit granted is issued automatically.

<sup>(1)</sup> For an explanation of the SION programme please see Commission Regulation (EC) No 1156/98, (OJ L 202, of 18.7.1998, p. 40).

- (37) DEPB on post-export basis allows for the use of such credits for any subsequent imports (e.g. raw materials or capital goods) not on the Negative List of Imports. Such imported goods can be sold on the domestic market (subject to sales tax) or used otherwise.
- (38) DEPB credits are freely transferable. The DEPB licence is valid for a period of 12 months from the date of granting of the licence.
- (39) When all credits have been used, the company has to pay a fee to the relevant authority.

*Conclusion on DEPB on post-export basis*

- (40) This scheme is clearly contingent upon export performance. Credit is automatically calculated on the basis of a formula using SION rates, independent of whether the inputs were imported, whether import duty was paid on them, or whether the inputs were actually used for export production or in what quantities. Indeed a company can claim a licence irrespective of whether it makes any imports or purchases imported goods from other sources. The scheme cannot therefore be considered as a duty drawback or substitution scheme, since the remission of import duties is not limited to that payable on goods consumed in the production process and therefore an excess remission is involved, in accordance with Article 2(1)(a)(ii). It is therefore countervailable under Article 3(4)(a) of the Basic Decision, since it involves revenue foregone and is contingent upon export performance.

*Calculation of the subsidy amount for DEPB post-export basis*

- (41) The benefit to the exporters has been calculated in two separate ways according to the use the company has made of the DEPB licences.
- (42) In the event that the company used the licences to make duty-free imports, the benefit was calculated on the basis of the amount of customs duty normally due on imports made during the investigation period but which remained unpaid under the DEPB.
- (43) In the event the company sold its licences, the benefit was calculated on the basis of the amount of credit granted in the licence regardless of the sales price of the licence. The three exporting producers and the GOI claimed that the benefit should be limited to the effective sales price of the licence which is usually less than the face value of the credits in the licence. However, this claim cannot be granted since the sale of a licence at a price less than the face value is a pure commercial

decision which does not alter the amount of benefit received from the scheme.

- (44) In order to establish the full benefit to the recipient under this scheme, this amount has been adjusted by adding interest during the investigation period. It is normal practice to reflect the benefit to the recipient of one-time grants by adding the annual commercial interest to the nominal amount of the grant, on the assumption that the grant is considered to have been made on the first day of the investigation period. However, in the present case, it is clear that individual grants can be made at any time between the first and the last day of the investigation period. Consequently, instead of adding commercial interest to the whole amount, it is considered appropriate to assume that an average grant would have been received at the mid-point of the investigation period, and therefore the interest should cover a period of six months, equivalent to half of the commercial rate during the IP in India, i.e. 7 %. This amount has been allocated over total exports during the IP.

- (45) The Government of India and three exporters claimed that this scheme was wrongly assessed by the Commission in terms of the extent of subsidy and the amount of countervailable benefit. In particular, they claim that the Commission's assessment of the benefits under these schemes was incorrect since only the excess duty drawback could be considered a subsidy in accordance with Article 2 of the Basic Decision.

- (46) Article 2(1)(a)(ii) provides for an exception for, *inter alia*, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I(i) and Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback).

- (47) As the analysis of the Commission revealed that the DEPB post export scheme is not a properly constituted drawback or a substitution drawback scheme, the question of any excess duty drawback does not arise, and the full benefit is countervailable. As explained in recital 40, excess remission of import duties is inherent in the scheme.

- (48) Three companies benefited from this scheme during the investigation period and obtained subsidies of between 4,1 % and 12,3 %.

**d) Export Promotion Capital Goods Scheme (EPCGS)**

- (49) Another instrument under the Export Import Policy involving export related assistance is the EPCGS introduced on 1 April 1990 and amended on 5 June 1995.

*Eligibility*

- (50) The EPCGS is available to manufacturer/exporters (i.e. every manufacturer in India who exports) or merchant/exporters (i.e. traders). Since 1 April 1997, manufacturers linked with merchant/exporters can also benefit from the scheme.

*Practical implementation*

- (51) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of capital goods which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero rate of duty or a reduced rate. A licence authorising the import at preferential rates is issued automatically.
- (52) In order to meet the export obligation, goods exported must have been produced using the imported capital goods.
- (53) An application fee is payable to obtain a licence.

*Conclusion on EPCGS*

- (54) The EPCGS is a countervailable subsidy as the payment by an exporter of a reduced or zero rate of duty constitutes a financial contribution by the GOI, revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering the duties payable or fully exempting him from paying the import duties.
- (55) The subsidy is contingent in law upon export performance within the meaning of Article 3(4)(a) of the Basic Decision, since it cannot be obtained without a commitment to export goods, and is therefore deemed to be specific.

*Calculation of the subsidy amount*

- (56) The benefit to the exporters has been calculated on the basis of the amount of unpaid customs duty due on imported capital goods by spreading this amount across a period which reflects the normal depreciation of such capital goods in the industry of the product concerned. This period has been established by using the weighted average (on the basis of production volume of the products concerned) of depreciation periods for capital goods actually imported under the EPCGS by each company,

resulting into a normal depreciation period of 15,5 years. The amount so calculated which is attributable to the investigation period has been adjusted by adding interest during the investigation period in order to establish the full benefit to the recipient under this scheme. Given the nature of this subsidy, which is equivalent to a one-time grant, the commercial interest rate during the investigation period in India, i.e. 14 % was considered appropriate. The amount of subsidy has then been allocated over total exports during the investigation period.

- (57) The GOI and three exporters claimed that any benefit should be allocated over total company turnover, on the basis that any machinery imported under the EPCG scheme would be used for both export and domestic production. It is further claimed that the true purpose of the scheme is to assist Indian companies to update their technology and to become more competitive on the international market (as well as to prevent a loss of foreign exchange), and that the scheme should not be considered as an export subsidy. However, this argument is rejected. As outlined above, in order to avail of the scheme, an undertaking to export has to be given. Therefore, the subsidy is deemed to be contingent upon export, and, in accordance with paragraph F(b)(I) of the Calculation Guidelines <sup>(1)</sup>, the benefit has then been allocated over export turnover for the investigation period.
- (58) Two companies availed themselves of this scheme during the investigation period and obtained subsidies of between 0,0 % and 0,8 %.

**e) Export Processing Zones (EPZ)/Export Oriented Units (EOU)**

- (59) Another instrument under the Export Import Policy alleged in the complaint to involve export-related assistance is the EPZ/EOU scheme, which was introduced on 22 June 1994.
- (60) The Commission established that no producer of the product concerned was established in an EPZ or was an EOU. There is therefore no need for the Commission to assess this scheme in the context of the investigation.

**f) Income Tax Exemption Scheme (ITES)**

- (61) The Income Tax Act 1961 is the legal basis under which the ITES operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by Sections 10A, 10B and 80HHC of the Act.
- (62) The Commission established that no producer of the product concerned made a claim under the ITES during the IP. There is therefore no need for the Commission to assess this scheme in the context of the investigation.

<sup>(1)</sup> See OJ C 394, 17.12.1998, p. 6.

g) **Amount of countervailable subsidies**

- (63) In view of the above, the total amount of countervailable subsidies for each of the investigated exporters is as follows.

	DEPB (Pre-Export)	DEPB (Post-Export)	EPCGS	Total
Essar Steel Ltd	0,0	4,1	0,8	4,9
Steel Authority of India Ltd	0,0	12,3	0,0	12,3
Tata Iron and Steel Co. Ltd	0,0	8,7	0,0	8,7

## 2. SOUTH AFRICA

a) **Introduction**

- (64) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission investigated the following alleged subsidy schemes:

- tax holiday for investments in manufacturing
- loans at preferential interest rates
- import duty exemption
- assistance with export marketing
- preferential freight and electricity costs
- price rebates on exported secondary steel products.

- (65) Three programmes, namely the Regional Industrial Development Programme (RIDP), the Simplified Regional Industrial Development Programme (SRIDP), and the General Export Incentive Scheme, were not investigated. At the time of the opening of the proceeding, the Government of South Africa (GOSA) had already provided evidence showing that these programmes were discontinued between November 1996 and July 1997. The Commission, therefore, accepted that the exporters concerned could have received no benefit from them during the investigation period.

b) **Termination**

- (66) For those schemes found to be used by the companies under investigation, it was determined that the cumulative level of benefit varied from 0,10 % to 0,48 %. As this would represent a *de minimis* level of subsidisation in accordance with Article 14(5) of the Basic Decision, the Commission did not need to further analyse the countervailability of each individual scheme. Instead, the Commission decided that this proceeding should be terminated in respect of South Africa without the imposition of duties.

## 3. TAIWAN

a) **Introduction**

- (67) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the Commission services investigated the following alleged subsidy schemes:

- tax credits and exemptions
- accelerated depreciation
- import duty exemption
- matching funds
- tax credit for investment in scant natural resources areas
- loans at preferential interest rates
- subsidies for companies located in industrial parks and export processing zones.

- (68) Further details of these schemes are set out below.

- (69) The first six schemes are based on the Statute for Upgrading Industries. The last scheme is based on the Statute for the Establishment and Administration of Science-based Parks and the Statute for the Establishment and Management of Export Processing Zones.

b) **Tax credits for the purchase of automation and pollution control equipment***Legal basis*

- (70) The basic instrument involving economic development of the Taiwanese industry is the Statute for Upgrading Industries (SUI) which entered into force on 1 January 1991 and was last amended on 27 January 1995. The Statute is supplemented by the Enforcement Rules of the Statute for Upgrading Industries as last amended on 27 January 1995. The tax credits are covered by Article 6 of the SUI. Furthermore, the practical implementation of the scheme is regulated by the Measures Governing the Application of Tax Deductions promulgated on 15 April 1991 by the Executive Yuan which was last amended on 27 February 1995.

*Eligibility*

- (71) The tax credits are available to all manufacturing companies. There is no specific export requirement nor is availability dependent on certain product types or minimum production quantity or turnover.

(72) However, pursuant to Article 6 of the SUI, tax exemptions are only granted for the following limited number of investments:

- investment in equipment for automation of production
- investment in equipment for pollution control.

(73) The SUI states that the investment in the equipment should exceed TWD 600 000 (New Taiwan Dollars). The tax credits for the different types of investment can be cumulated. The amount of tax credit is limited to 50 % of the total amount of tax payable in any current year.

#### *Amount of tax credit*

(74) Any eligible company which invests in the abovementioned equipment types may credit 10 % to 20 % of the purchase amount against the corporate income tax payable for the current year. In case the amount of income tax payable is less than the deductible amount, the benefit may be carried over during the next four years.

(75) The amount of tax credit is determined as follows.

For the purchase of domestically manufactured automated equipment or pollution control equipment, the credit rate is 20 %. For the purchase of foreign made automated or pollution control equipment, the credit rate is 10 %. For the purchase of technology for automation production, the permissible credit is at the rate of 10 %.

#### *Practical implementation*

(76) In order to obtain the tax credits, a company makes an application for the issuance of a tax deduction certificate to the Industrial Development Bureau (IDB) of the Ministry of Economic Affairs within six months of the date of delivery of the equipment or the date of completion of the project. Prior to issuing the tax deduction certificate, the local tax authorities will verify whether the equipment falls within the criteria of Article 6 of the SUI and has effectively been installed. Once the certificate is issued, the tax credit can be deducted in the tax declaration for the current year (item 95 on the tax declaration).

#### *Countervailability*

(77) The tax credits under Article 6 of the SUI constitute countervailable subsidies in the sense of Article 3(4)(b) of the Basic Decision. The tax credits constitute subsidies which are contingent upon the use of domestic over imported goods. Although the programme provides for

a tax credit for imported as well as domestically produced equipment, the subsidy is doubled for the purchase of domestic equipment and therefore, directly provides an incentive for the purchase of Taiwanese made equipment. The verification revealed that the Taiwanese authorities tend to favour the purchase of domestically manufactured equipment over imported machinery by providing for a differentiated level of benefit (20 % for domestic versus 10 % for imported equipment).

(78) The scheme constitutes a subsidy as the financial contribution by the Government of Taiwan (GOT) in the form of tax credits confers a benefit upon exporters. It is a subsidy contingent in law upon the use of domestic over imported goods and is therefore deemed to be specific under Article 3(4)(b) of the Basic Decision.

(79) For the abovementioned reasons, it is considered that the tax credits constitute countervailable subsidies.

#### *Calculation of the benefit*

(80) The amount of subsidy should be calculated on the basis of the amount of tax unpaid during the investigation period (the investigation period in this proceeding corresponds with a tax year in Taiwan i.e. 1 January 1998 to 31 December 1998). The total amount of subsidy should be allocated over total sales since this subsidy benefits both domestic and export sales.

(81) The GOT and one company claim that the Commission should have calculated the benefit from the subsidy to be the difference between the two rates i.e. 20 % tax credit for domestically purchased equipment and 10 % for imported equipment. The Commission countervailed the full amount of tax credits since the tax credit of 20 % for domestically purchased equipment cannot be considered as a deviation from a standard tax credit rate of 10 %. The two tax credit rates should be considered as separate programmes which are both specific for domestically purchased equipment and imported equipment respectively. In the absence of the 20 % tax credit for domestically-produced equipment, a company would have received no tax credit, since the 10 % rate only applies to imported machinery; it is not a general rate. Therefore, the Commission concluded that the amount of the subsidy is the total revenue foregone by the GOT.

(82) One company benefited from this scheme and obtained a benefit of 2,19 %.



c) **Tax credits for investment in certain enterprises***Eligibility*

- (83) Pursuant to Article 8 of the SUI, the tax credit is available to any investor which buys registered stocks issued by an important technology-based enterprise or an important invested enterprise designated by the government (invested company). The investing company should hold the registered stocks for a period of at least two years. There is no precise definition of important technology-based enterprise. An important invested enterprise may be any enterprise with a capital of TWD 2 billion providing it has been designated as such by the GOT.

*Amount of tax credit*

- (84) Any eligible company which invested in the abovementioned enterprises may credit 20 % of the price paid for the acquisition of such stocks against the corporate income tax payable.

*Practical implementation*

- (85) In order to obtain the tax credits, the 'invested' company (i.e. the company in which the investment is made) makes an application for the issuance of a tax deduction certificate to IDB. Prior to issuing the tax certificate, IDB will verify whether the company qualifies as a technology-based enterprise or whether the invested enterprise was designated as an important invested company by the government authorities. Once the certificate is issued to the invested company, the investor may claim the tax credit which can be deducted in the tax declaration for the current year (item 95 on the tax declaration).

*Countervailability*

- (86) The tax credits under Article 8 SUI constitute countervailable subsidies in the sense of Article 3(2)(a) of the Basic Decision. The GOT has limited access to the subsidy to enterprises which make a specific investment. The verification revealed that the Taiwanese authorities in effect favour investment in certain sectors and enterprises.
- (87) The scheme constitutes a subsidy as the financial contribution by the GOT in the form of tax credits confers a benefit to exporters. It is a subsidy which is specific to certain enterprises in Taiwan pursuant to Article 3(2)(a) of the Basic Decision.

- (88) The GOT claims that this programme does not constitute a subsidy since there is no financial contribution to invested companies. This is not correct. As explained above, a company which invests in certain enterprises obtains a tax credit for 20 % of the amount invested. A tax credit clearly constitutes a financial contribution by the GOT, i.e. revenue foregone in the sense of Article 2(1)(a)(ii) of the Basic Decision and a benefit is thereby conferred to the investing company.

- (89) The GOT and one company claim that this programme is generally available and therefore non-specific, as it is open to all companies investing in certain enterprises. The Commission, however, found that the access to this programme is explicitly limited to companies which invest in certain enterprises, since not all investments in stocks are eligible for tax credits. Only investments in a limited number of enterprises, i.e. important technology-based or important invested enterprises will qualify for a tax credit. The Commission agrees with the GOT that the definition of the eligible enterprises, is clear and objective. However, the definition is not neutral or horizontal on application, as required by Article 3(2)(b) of the Basic Decision, since it limits the number of investments which may result in a tax credit, on the basis of the activity of the firms concerned. If the investing enterprise wishes to obtain the subsidy, its freedom of choice is restricted on a sector-specific basis. Article 2 of the Criteria for determining the scope of major technology enterprises with respect to manufacturing industry and technical-service industry limits the tax credit to 11 specific type of investments. Consequently, the access to this programme is dependent upon making investment in certain enterprises; it is not generally available and is therefore countervailable under Article 3(2)(a) of the Basic Decision.

- (90) For the abovementioned reasons, it is considered that the tax credits constitute countervailable subsidies.

*Calculation of the benefit*

- (91) The benefit to the exporters should be calculated on the basis of the tax credit that was effectively granted to the exporters during the investigation period. The amount of benefit should be allocated over the total turnover of the company during the investigation period.
- (92) One company benefited from this scheme and obtained a benefit of 1,34 %.

**d) Tax credits for R & D and personnel training***Countervailability**Legal basis*

- (93) The tax credits for R & D and personnel training are covered by Article 6 of the SUI. Furthermore, the practical implementation of the scheme is regulated by the Measures governing the application of tax deduction for company investment in R & D, personnel training and establishing a world-wide brand image (hereinafter referred to as 'the Measures') promulgated on 15 April 1991 by the Executive Yuan which was last amended on 28 May 1997.

- (99) The tax credits for R & D and personnel training under Article 6 of the SUI do not constitute countervailable subsidies. The tax credits are generally available for all manufacturing, agricultural and service industries investing in R & D and personnel training. Furthermore, the eligible expenses are described in detail in Article 2 (R & D) and Article 3 (personnel training) of the Measures, and the eligible activities are of a type which may be undertaken by firms in all sectors of the industry. There is no discretion for the tax authorities to determine which investment is eligible or not. Finally, the verification revealed that the tax credits have in fact been used by all sectors of industry.

*Eligibility*

- (94) The tax credits are available to all manufacturing industries as well as agriculture and services. There is no specific export requirement nor is availability depending on certain product types or minimum production quantity or turnover.

**e) Other tax credits**

- (100) The following tax credits and exemptions were found to exist but not to have been used by the exporting producers of the product concerned:
- tax credit for the establishment of internationally recognised brands,
  - five year tax exemption for certain designated enterprises under Article 8 of the SUI,
  - five year corporate tax exemption under Articles 15 and 17 of the Statute for the Establishment and Administration of a Science-based park.

*Amount of tax credit*

- (95) As regards investments in R & D, if the total expenditure for R & D reaches TWD 2 000 000 or 2 % of the net business revenue in the same taxable year, 15 % thereof may be deducted from the corporate income tax payable for that year. If the total expenditure reaches TWD 2 000 000 and exceeds 3 % of the net business revenue, 20 % of the exceeding amount may be deducted from the corporate income tax.

- (101) Since it was found that these programmes were not used, the countervailability of the credits has not been examined.

**f) Accelerated depreciation***Eligibility*

- (96) Pursuant to Article 6 of the Measures, if the total expenditure invested by a company in personnel training reaches TWD 600 000 in the tax year, 15 % of the investment may be deducted from the corporate income tax payable.
- (97) For both types of tax credit, if the amount of corporate income tax for the current year is less than the deductible amount, the benefit may be carried over during the next four years.

- (102) Article 5 of the SUI provides for the acceleration of depreciation if a manufacturing company invests in certain types of fixed assets. The eligible fixed assets are equipment for use in R & D, inspection of pilot products, energy saving or alternative energy purposes.

*Practical implementation**Practical implementation*

- (98) In order to obtain the tax credits, a company attaches a special application to the corporate income tax return. The local tax authorities will verify whether the expenses fall within the criteria of Article 6 of the SUI and Articles 2 and 3 of the Measures and will determine the amount which can be deducted. Once the local tax authorities approve the amount, the tax credit can be deducted in the tax declaration for the current fiscal year.

- (103) A company which has invested in eligible equipment has to make an application to IDB or the Energy Commission which includes a description of the machinery and a copy of the catalogue for the machinery. IDB or the Energy Commission verifies whether the machinery is eligible and issues a certificate. When the corporate income tax return is filed with the tax authorities, the company submits the certificate(s) and a list of all items which were approved for accelerated depreciation. The local tax authorities will verify again whether the machinery falls within the criteria of Article 5 of the SUI and whether the accelerated depreciation has been applied correctly.

*Amount of benefit*

- (104) Pursuant to Article 51 of the Tax Code, a company can use three methods to depreciate its assets: the straight-line method, the fixed percentage on diminishing book-value method or the working-hour method. The verification revealed that all exporting producers of the products concerned used the straight-line depreciation method which provides for the depreciation of a fixed amount during the service life of the equipment. According to the Table of Service Life of Fixed Assets, each type of machinery has a fixed service life of between two and fifty years. For the machinery used in the steel industry, the depreciation period is seven years on average.
- (105) The benefit under the accelerated depreciation provisions consists of a reduced depreciation period of two years instead of the normal depreciation period (i.e. seven years on average in the steel industry) established in the Table of Service Life of Fixed Assets.

*Countervailability*

- (106) The accelerated depreciation provisions under Article 5 of the SUI constitute a countervailable subsidy. The verification revealed that despite the apparently objective criteria set out in Article 5 of the SUI, one company used the provisions for accelerated depreciation to depreciate all machinery and equipment in a new production line as well as buildings. This machinery is used for the production of steel products and has no direct effect on R & D, pilot products or energy saving. The Energy Commission and the local tax authorities approved this request. It appears that these investments do not fall within the criteria of Article 5 of the SUI, i.e. equipment used for energy saving, pilot products or investments in R & D. Therefore, it should be concluded that the granting authority has discretion in the decision to grant the benefit of accelerated depreciation, and is able to favour certain enterprises over others.
- (107) After disclosure, the GOT claims that the certificate for accelerated depreciation was granted by the Energy Commission and not IDB. After verification, the Commission services agree with the GOT that the certificate was granted by the Energy Commission for the alleged purchase of energy saving equipment. Nevertheless, the Commission still has to conclude that the subsidy involved is countervailable in the sense of Article 3(2)(a) of the Basic Decision, since the criteria appear not to be adhered to by the granting authority in all cases and access to the subsidy is therefore effectively

limited, by means of discretion, to certain enterprises. The company which made use of this programme accelerated its depreciation on a large number of items which can clearly not be classified as energy savings equipment, such as buildings. Therefore, the Commission concludes that this programme confers a benefit to the product concerned and is countervailable.

- (108) One company submits that although it applied the accelerated depreciation, it did not benefit from the programme since its overall depreciation amount under accelerated depreciation was less during the POI than would have been the case under the normal depreciation method. In establishing whether a benefit was conferred to this company, the Commission, in accordance with its normal methodology, took into account only the tax saving incurred by all items which were still being depreciated during the POI, comparing the amounts depreciated under the normal and accelerated schedules. All items which were, according to the accounts of the company, already fully written off and have under standard accountancy principles no value, were excluded from the calculation of the benefit. Therefore, the company's argument is not founded.
- (109) It is considered therefore, that the benefit of accelerated depreciation constitutes a specific and consequently countervailable subsidy in the sense of Article 3(2)(a) of the Basic Decision.

*Calculation of the benefit*

- (110) As explained above, the benefit to the exporters should be calculated as the difference between the amount of tax that would have been payable in the investigation period if the normal depreciation rate was used and the amount of tax effectively paid under accelerated depreciation. The calculation of the difference was made on the basis of all fixed assets (buildings and machinery) which were still being depreciated in the investigation period. The amount of benefit should be allocated over the total turnover of the company.
- (111) One company made use of this programme and obtained a benefit of 0,60 %.

**g) Import duty exemption***Legal basis*

- (112) Chapters 84, 85 and 90 of the Customs Import Tariff and Classification of Import and Export Commodities of the Republic of China (hereinafter 'the Customs Code').

*Eligibility*

- (113) Pursuant to the abovementioned provisions of the Customs Code, a manufacturing company which imports machinery for the development of new products, quality upgrading, increase of production, achievement of energy conservation, promotion of recycling or improvement of production techniques, which is not yet being manufactured locally, is exempt from import duties.

*Practical implementation*

- (114) A company which intends to import machinery or equipment makes an application to IDB prior to the importation of the machinery. If IDB is satisfied that the machinery is not produced in Taiwan, it will issue a certificate which is sent to the applicant and the customs department. The customs services will verify whether the imported machinery is identical to the machinery described in the IDB certificate. This verification is undertaken on a random basis.

*Amount of duty exemption*

- (115) The amount of subsidy is the amount of import duties which would normally be payable without the benefit of the exemption. The normal duty rate for machinery lies between 2 % and 20 %.

*Conclusion*

- (116) The import duty exemption pursuant to the Customs Code constitutes a countervailable subsidy. Due to the nature of the subsidy, the programme as established will automatically be disproportionately used by certain industry sectors. The industry sectors whose machinery is produced in Taiwan will not be eligible to use this programme. Consequently, eligibility for the import duty exemption is limited to industries which are obliged to import machinery since the machinery is not available on the local market. Industries which import machinery which is also produced in Taiwan cannot obtain the benefit.
- (117) The GOT claims that the import duty exemption for imported machinery does not constitute a subsidy in the sense of Article 2(1)(a) of the Basic Decision. However, for the Commission, it is clear that an exemption from import duties constitutes revenue foregone for the GOT whereby a benefit is conferred to the importer of the machinery. This constitutes a subsidy in the sense of Article 2(1)(a)(ii) of the Basic Decision. The GOT further claims that if the programme was a subsidy, it is not countervailable under Article 3(2)(a) of the Basic Decision. The Commission is of the view that an import duty exemption for certain imported machinery which is not produced domestically provides by definition for a benefit to certain companies which are active in an industry where the machinery is not made in Taiwan. If

the GOT were to decide to abolish the import duty on such machines, this would be a different matter. However, as long as the duty is 'otherwise due' and firms are exempted from it, this is a subsidy under Article 2(1)(a)(ii).

- (118) One company claims that this programme is outside the scope of the investigation since the programme was not specifically mentioned in the complaint which led to the initiation of the investigation. The Commission notes that the complainant listed the import duty exemption for machinery and equipment in the complaint (page 9 Section B.2.2.2). Although the complainant stated that such a programme is available for companies located in tax exempt zones, science-based industrial parks or bonded factories, the Commission considers that this information constitutes sufficient evidence to commence an investigation regarding import duty exemption for machinery. Furthermore, it is the role of the investigating authority to determine the correct legal basis and practical implementation of any programme which is alleged in the complaint. For these reasons, the Commission has included this programme in the investigation and the claim of the exporter cannot be accepted.
- (119) Therefore, it is considered that the import duty exemption on machinery constitutes a countervailable subsidy in the sense of Article 3(2)(a) of the Basic Decision.

*Calculation of the benefit*

- (120) The benefit to the exporters should be calculated as the amount of import duties payable without the benefit of the exemption under this scheme. This amount should be allocated over the normal service life of the machinery in this industry, i.e. seven years.
- (121) Two companies made use of this programme and obtained benefits of 0,27 % and 0,32 %.

**h) Other subsidies**

- (122) The complainant alleged that the exporting producers of the product concerned benefited from a number of other subsidy programmes. The questionnaire response and the verification visits at the GOT and at the exporters revealed that the programmes listed below were not used by the exporting producers.
- (123) Loans at preferential interest rates. During the verification visits, it was established that loans were provided by the Chiao Tung Bank and the Medium Business Bank of Taiwan to one exporter but at normal commercial conditions.
- (124) Benefits for companies in export processing zones (EPZ) and industrial parks. None of the companies under investigation (nor their related companies) were located in an EPZ or industrial park.

(125) Benefits for companies located in areas with slow development or with scant natural resources. The verification revealed that none of the companies was located in an area with slow development or scant natural resources.

(126) No 'matching funds' were provided to the companies concerned.

Import duty exemption for raw materials — It was established that none of the exporters concerned obtained benefits under this programme.

#### i) Total amount of subsidy

(127) The amount of subsidy was calculated according to the methodology set out above. In addition, in order to encompass the full benefit to the companies concerned, interest was added at the average commercial interest rate in Taiwan during the investigation period, i.e. 8 %.

(128) One exporter claims that the addition of an interest amount results in an overestimating of the subsidy amount. In regard to this claim, the interest element is added in order to reflect the benefit to the recipient obtained by not having to raise an equivalent amount of money from commercial sources. Indeed, Article 6 of the Basic Decision makes it clear that the benchmark for the calculation of the subsidy is the equivalent cost of funds on the commercial market. It should also be stated that the ASCM does not preclude the addition of an amount for interest for the purpose of calculating the total amount of benefit to a recipient under a subsidy scheme. Thus, the Community's consistent practice in this area since the adoption of revised legislation following the conclusion of the Uruguay Round, has been to add an amount for interest in calculating the total benefit in such cases. This claim should therefore be rejected.

(129) The following subsidy rates for the cooperating companies were established:

	(%)	
	China Steel Corporation	Yieh Loong Enterprise Co. Ltd
Tax credit (automation and pollution control equipment)	2,19	0
Tax credit (investment in certain enterprises)	1,34	0
Accelerated depreciation	0,60	0
Import duty exemption	0,27	0,32
Total amount of subsidy	4,40	0,32

(130) For information, it should be noted that the weighted average country-wide subsidy margin for the two exporting producers investigated, which account for about half of the exports to the Community originating in Taiwan, expressed as a percentage of the cif price at Community frontier level is 2,77 %. which is significantly above the *de minimis* threshold for Taiwan (i.e. 1 %). In addition, it cannot be excluded that the country-wide margin would be higher taking into account possible benefits received by non-cooperators.

### D. COMMUNITY INDUSTRY

#### 1. Determination of the relevant Community market

(131) For the purposes of establishing whether the Community industry had suffered injury and, in this context, for determining consumption and the various economic indicators related to the situation of the Community industry, it had to be examined whether production of this industry destined for the captive market should be excluded for the purposes of this analysis or whether injury and consumption should be

assessed in relation to the entire production of the Community industry.

(132) There are 16 producers of hot-rolled coils in the Community. Around 70 % of the hot-rolled coils manufactured by these producers are used in a captive market, i.e. they are further transformed by these producers in an integrated process (hereinafter referred to as 'captive market'). These hot-rolled coils follow an internal process of transfers to downstream processing works, for which no invoices are issued since the transfers occur within the same legal entity. The remaining production (hereinafter referred to as 'free market') is sold to both related and unrelated parties.

(133) In this respect, the complainant claimed that two separate markets should be distinguished. It claimed that the hot-rolled coils destined for a captive market were not in direct competition with subsidised imports. Consequently, the imports subject to investigation could not affect this market. In parallel, the complainant has claimed that the remaining production was sold on the free market where competition with subsidised imports

takes place. The main purchasers on the free market are independent cold-rolling mills such as tube makers, steel service centres (hereinafter referred to as 'SSCs'), steel merchants and stockholders. Only the hot-rolled coils sold on the free market are subject to the complaint.

(134) Exporting producers and importers of hot-rolled coils onto the Community market claimed that the definition of the product concerned and the like product covered all hot-rolled coils. They claimed in particular that there was no clear separation between the captive and free markets and that the definition of the free market made by the complainant was arbitrary. They therefore requested that the assessment of the Community market should include the captive market and the free market taken together.

(135) In support of this claim, reference was made to the Gimelec judgment <sup>(1)</sup> of the European Court of Justice. They stated that in the abovementioned ruling, the Court referred to the following factors to rule out the existence of two separate markets:

- the product concerned was sold on the same market and used for the same purposes,
- the Community producers sold the product concerned both to related and unrelated customers and charged more or less the same price,
- companies on the downstream market used to buy the product concerned not only from related Community suppliers but also from importers or other unrelated producers.

(136) Some exporting producers claimed that, in the light of the above judgement, the legal conditions to separate the markets were not met in the present case. They considered that Community producers could choose, depending on market conditions, to sell alternatively to the free and captive markets since Community production of the two categories of hot-rolled coils is alike. It was claimed that the alleged movements between the two segments of the market legally prevented the exclusion of part of Community production from the examination of injury, and in particular from Community consumption.

(137) In this respect the Commission made the following findings:

- (a) given the high level of integration existing in the steel industry in general and in the production of the product concerned in particular, the Community producers of the product concerned merely physically transferred, without invoicing, hot-rolled coils intended for the captive market. No invoices were issued since the parties involved did not have separate legal identities. As a result, there were, within the captive market, no prices for transfers comparable to those in the free market.

(b) the Community industry did not produce for stockpiling hot-rolled coils which could subsequently be delivered either for captive use or sold on the free market. This is because all users of hot-rolled coils, including the integrated processes of the Community industry, have technical constraints for the production of downstream products. As a result, movements, if any, of hot-rolled coils between the two markets are insignificant.

(c) the investigation showed that the Community producers did not purchase the product concerned for the captive market from independent parties inside or outside of the Community. As a result hot-rolled coils intended for the captive market were not in competition with other hot-rolled coils available in the Community. Consequently, the captive market can clearly be distinguished from the free market.

(138) On this basis the Commission considers that the separation between the free and the captive market is fully in line with the requirements of the Basic Decision and the Community institutions' past practice.

(139) For the purposes of establishing the economic indicators relevant for the injury analysis such as development of sales, profitability, etc., the Commission considered whether sales from Community producers to related parties having separate legal entities, should in general be included in the determination of the free market. It was found that such sales were made at prices more or less the same as those charged to independent parties. In addition, in line with claims by certain exporting producers the investigation has confirmed that these related parties are free to source their purchases from either related or unrelated suppliers in or outside the Community. Consequently, it was concluded that sales from Community producers to related parties having separate legal entities were in competition with sales from independent suppliers such as those located in the countries concerned and that these sales should therefore be included in the determination of sales in the free market.

(140) One Community producer claimed, however, that its sales to related parties should be considered as belonging to the captive market. It was argued that the prices invoiced to its related parties were not the market prices and were significantly different from those applied to independent customers. The producer added that the parent company did not allow any related parties to purchase hot-rolled coils from independent parties on the free market. Consequently, hot-rolled coils sold to related parties were not affected by any direct competition from other hot-rolled coils. They should therefore be excluded from the determination of the free market.

<sup>(1)</sup> Case C-315-90 of 27.11.1991.

(141) The investigation confirmed that the policy of that group was not to allow its related parties to purchase hot-rolled coils on the free market. Furthermore, the analysis of sales prices showed that the prices invoiced to these related parties were in many instances significantly different from market prices charged to independent parties. Moreover, all the sales were made to related users who used the products captively without reselling them onwards, as such. Consequently, the Commission concluded that the sales of the hot-rolled coils concerned could not be considered as being sold on the free market and should therefore not be included in the determination of the free market.

(142) In conclusion, hot-rolled coils used by Community producers as pre-material for further transformation in an integrated process within one single legal entity were considered to be part of a captive market. The same applies to sales by the aforementioned Community producer who could demonstrate that its sales to a related customer did indeed belong to a captive market. All other sales of the producers in the Community were considered to be part of the free market. Consequently, the situation of the Community industry in terms of the development of the various economic indicators such as production, sales, market share and profitability was examined with respect to the free market.

(143) It should be noted that the above findings regarding the separation and the determination of the above markets are reflected in the data collected in the framework of the ECSC Treaty, in particular for the surveillance of the steel markets. Indeed, such data differentiates the use of the hot-rolled coils basically along the same lines.

## 2. Definition of the Community industry

### a) Total Community production

(144) Several exporting producers claimed that a number of producers in the Community should be excluded from the definition of Community production given that they had imported hot-rolled coils from the countries concerned.

(145) The Commission found that none of the producers investigated had imported hot-rolled coils from the countries concerned during the period examined. However, certain SSCs and tube producers related to these Community producers had made such imports during that period.

(146) In line with the findings on the definition of the relevant Community markets outlined in recitals 131 to 143, the investigation confirmed, however, that these related parties had acted independently from the producers related to them in their operations on the free market. Consequently, the purchases could not affect the status

of the said companies as Community producers of the product concerned.

(147) Accordingly, it was considered that there were no grounds for excluding any producers from the definition of Community production of hot-rolled coils. In accordance with Article 9(1) of the Basic Decision all 16 producers operating in the Community market represent total Community production.

### b) Community industry

(148) The complaint was lodged on behalf of 11 out of the 16 Community producers of hot-rolled coils while the remaining 5 supported the complaint.

(149) The Commission received 10 replies to questionnaires from the complainant Community producers. One small producer decided not to provide the Commission with a response.

(150) Two of the 10 Community producers that replied to the Commission's questionnaire, were unable to provide all data requested during the investigation in a format which would allow its aggregation with the data available for the other Community producers.

(151) Some exporting producers claimed that at least one Community producer included in the definition of the Community industry set out above received preferential treatment in relation to the requirements imposed on interested parties during anti-subsidy investigations. In particular they argued that the said Community producer did not provide the Commission with a reply to its questionnaire within the statutory deadlines for the imposition of provisional duties. They considered that this constitutes discriminatory treatment and violates Article 11(2) of the Basic Decision.

(152) It should be noted that all the Community producers included in the definition of the Community industry replied to the Commission's questionnaire within the deadlines set forth in the Basic Decision and therefore within the deadline for the imposition of provisional measures. The Commission considers that all interested parties in the present proceeding in similar situation were given equal treatment. Consequently, any claims suggesting an infringement to Article 11(2) of the Basic Decision and discriminatory treatment by the Commission are not founded.

(153) In conclusion, the eight Community producers having fully cooperated in the investigation make up the Community industry for the purposes of this proceeding. They fulfil the requirement of Article 10(7) of the Basic Decision, since during the investigation period they accounted for around 65 % of the total Community production of the product concerned.

(154) These producers are accordingly considered as the Community industry and are referred to as such hereinafter as they represent a major proportion of total Community production within the meaning of Article 9(1) of the Basic Decision.

## E. INJURY

### 1. Apparent consumption

(155) Apparent consumption of hot-rolled coils in the Community was established on the basis of the total sales made by the 16 Community producers on the free market and total imports of the product concerned into the Community as indicated in the Eurostat import statistics and the exporting producers' replies to the questionnaires.

(156) From 1995 up to the investigation period, apparent consumption in the Community increased by 9 %, namely from 18,4 million tonnes to 20,1 million tonnes. In 1995 the free market was characterised by exceptionally high sales prices and good demand, particularly for Community-produced hot-rolled coils. The following year, however, the volume of the market decreased by 11 %.

(157) Between 1996 and the investigation period, apparent consumption increased steadily. The main growth occurred between 1996 and 1997 when the market increased by 22 %. Between 1997 and the investigation period, it increased by only 0,4 %.

### 2. Imports from the countries concerned

#### a) Negligible imports

(158) Based on the provisions of Article 10(10) of the Basic Decision, the assessment of whether or not imports were negligible was made in relation to apparent consumption of the product concerned on the Community market.

(159) On the basis of Eurostat statistics imports from India were slightly above the 1 % threshold foreseen in Article 10(10) of the Basic Decision. Exporting producers in India claimed that their imports were negligible and that they should be excluded from the scope of the investigation. Since India is a developing country, the Commission also examined in accordance with Article 14(4) of the Basic Decision, whether imports from India represented less than 4 % of total imports, the *de minimis* threshold for developing countries. In fact, imports from India represent 5,4 % of total imports.

(160) In this respect it should be noted that the evidence submitted by the Indian exporting producers provided no grounds for considering their imports into the Community as negligible, in particular given the methodology used to determine the relevant Community market set out in recitals (131) to (143). Indeed, the relevant Eurostat information and the replies to the Commission's questionnaire did not show imports below the *de minimis* threshold. Consequently, the imports from India were considered to be above the *de minimis* threshold set out in Articles 10(10) and 14(4) of the Basic Decision.

#### b) Cumulative assessment of imports

(161) The Commission considered whether imports of hot-rolled coils originating in India and Taiwan should be assessed cumulatively in accordance with Article 8(4) of the Basic Decision.

(162) It was therefore examined whether all criteria were met to cumulate imports from the countries concerned. The results of the examination showed that:

- the margin of subsidy relating to each country, as shown above, was more than *de minimis*,
- the volume of imports from each country was not negligible when compared to Community consumption,
- the analysis of the conditions of competition between imported hot-rolled coils and the conditions of competition between imported hot-rolled coils and the like Community product also indicated that imports from the countries concerned should be cumulated. Indeed, the exporting countries concerned mainly sold hot-rolled coils on the free Community market directly to unrelated customers, such as cold rolling mills, tube makers, SSCs and steel merchants. Hot-rolled coils were also imported via related sales companies, which subsequently sold the product concerned to the same categories of customers mentioned above. The investigation showed that the Community industry was selling the like product through the same sales channels and to the same categories of customers. Finally, it was found that a similar pricing policy was followed for all these sales.

(163) Accordingly, contrary to the suggestion made by some exporting producers, the Commission concluded that all conditions justifying the cumulation of the imports from the abovementioned countries were met.



c) **Volume of the imports concerned**

- (164) Based on Eurostat import statistics, between 1995 and the investigation period, the volume of imports into the Community from the countries concerned increased from 8 000 tonnes to 844 000 tonnes. The main increase occurred between 1997 and the investigation period (+ 797 000 tonnes).
- (165) The analysis of the developments during the investigation period indicated that imports from all the countries concerned were made mainly during the first half of the investigation period (551 000 tonnes); they subsequently dropped by 47 % in the second half of the investigation period but were still significantly higher than in the second half of 1997.
- (166) As already mentioned in recital 11, the various types of hot-rolled coils are commonly classified into two distinct categories: black coils and pickled coils. The investigation showed that black coils covered around 90 % of all hot-rolled coils imported from the countries concerned.

d) **Market share of imports**

- (167) The market share held by the exporting producers increased from 0,01 % to 4,2 % between 1995 and the investigation period. The actual increases in import volume thus allowed the countries concerned to gain 4,2 percentage points of the share of the Community market.
- (168) The main increases in market share occurred between 1997 and the investigation period, when the countries concerned gained 4 percentage points market share.

e) **Price undercutting**

- (169) In order to evaluate any possible price undercutting, prices of comparable types of hot-rolled coils were, as far as possible, compared under similar sales conditions on the Community market, in the same Member State and to the same customers. The prices of the exporting producer free-at-Community-frontier were compared with the Community industry's ex-factory prices. Where necessary, exporting countries' sales prices were adjusted to a free at Community-frontier level, customs duty paid and including relevant import costs. Similarly, these prices were also adjusted to ensure comparison at the same level of trade as that of the Community industry. All adjustments were based on the evidence collected and verified by the Commission during the investigation.
- (170) As already mentioned in recital 14 some exporting producers suggested that the hot-rolled coils they produced and sold on the Community market were not of a comparable quality to that of the Community industry.

(171) The Commission found that, in general, a price adjustment for differences in quality was not justified, particularly as such differences were not apparent to users, and as it emerged from the investigation that any alleged difference in quality does not necessarily affect the use of the product concerned.

(172) Accordingly, the results of the price comparison expressed as a percentage of Community industry prices are as follows:

- India: 6,7 %
- ESSAR: 6,1 %
- Tata: 6,1 %
- SAIL: 19,1 %
- Taiwan: 4,3 %
- Yieh Long: 3,9 %
- CSC: 7,5 %

**3. Situation of the Community industry between 1995 and investigation period**

a) **Production**

(173) The investigation showed that Community industry's production peaked at 12,5 million tonnes in 1997. For the remainder of the period examined the Community industry's production remained stable at around 11,4 million tonnes although a fall in consumption was observed in 1996. It should be noted that this production was either sold on the free market or exported to third countries.

(174) As the production capacity of the Community industry is used for hot-rolled coils intended for both the free and the captive market, it was also considered necessary to analyse information on such captive production in order to ascertain that any drop in the production intended for the free market was not due to an increased need for the captive market.

(175) It was found that between 1995 and the investigation period, this production increased by 2 %, or by around 0,6 million tonnes. This indicated a relatively stable captive production. As regards the trends in captive production between 1997 and the investigation period, these were similar to those observed above for the production intended for the free market.

(176) Consequently, the decrease in production intended for the free market is not due to a greater need for captive production.

**b) Capacity and capacity utilisation**

- (177) It is to be noted that production facilities can be used for products destined for both the free and the captive markets, as well as for other products not concerned by this proceeding (including other steel grades and other steel products). Capacity utilisation related to the product concerned has therefore been established on the basis of the capacities officially declared to the Commission within the framework of the ECSC Treaty. These capacities are established according to specific parameters and must not be confused with the gross or nameplate capacity. The gross or nameplate capacity is the highest possible capacity achievable without taking into account factors such as the personnel available, holiday periods, set-up times, maintenance, etc.
- (178) The capacity utilisation rate of the Community industry was 87 % between 1995 and the investigation period, except in 1997 when the Community industry's production was at its peak and the rate reached 93 %. At that time, both the consumption of hot-rolled coils destined for the free market and those destined for the captive market were high.
- (179) The high utilisation rates were found to be normal bearing in mind that in heavy industry, particularly in the steel industry, high capacity utilisation is necessary to reduce the impact of the high fixed costs of production.

**c) Orders received and sales volume**

**i) Orders received**

- (180) In order to complement the analysis on sales, the development of the orders received by the Community industry was examined. For this purpose, the Community industry submitted data which is also available under the framework of the surveillance of the Community steel market under the ECSC Treaty. Although these data do not reflect exactly the situation with respect to the product concerned but encompassed a slightly broader category of products, it was found that this aggregation of data could be considered representative for the situation of the product concerned. These data showed that 1997 was a year where the level of orders was high as compared to the situation found during the investigation period. Contrary to the stable development of the apparent consumption between 1997 and the investigation period shown above, orders received by the Community industry declined by 17 % between 1997 and the investigation period.
- (181) The above finding suggests that the economic activity of the Community industry was more regular and evenly spread throughout the year 1997 when the volume of orders received developed more in line with sales volume. Furthermore, given the existence of a time lag

between orders and deliveries, the reduction in the orders received indicated a reduction of the level of the economic activity, which will be examined below.

**ii) Sales**

- (182) During the period examined, the volume of sales slightly increased from 9,6 million tonnes to 9,7 million tonnes, an increase of 1 %.
- (183) Within that period, the trend in sales volume broadly reflected the evolution of consumption. However, between 1997 and the investigation period, the Community industry's sales decreased by 12 % while consumption increased slightly.
- (184) The Community industry submitted that the injury indicator concerning sales set out above has been established on the basis of transactions delivered and invoiced during the periods specified. In this context, it is important to point out, that the Community industry has organised its production process in such a way that users' orders made on a given date are delivered and invoiced and thus sold to them, with a time lag of at least three months. Therefore, in order to make a meaningful assessment of the development, which occurred during any given period, not only the actual sales but also the orders received during such a period have to be analysed. It is considered that any development observed with respect to these orders is bound to translate into corresponding developments of sales with a time lag thereafter.

**iii) Differentiation of type of sales**

- (185) The Community industry argued that in order to assess the actual injury it suffered, the development of sales for different types of hot-rolled coils under investigation, namely black coils as compared to pickled coils, should be analysed separately. The claim was that given the high share of subsidised imported black coils in total imports, the development of the Community industry's sales volume and sales prices for that type of coils would indicate a particularly injurious situation.
- (186) Investigation of this particular issue showed that from 1995 up to the investigation period (1998), the volume of black coils sold by the Community industry on the free market decreased by 13 %, whereas the volume of pickled coils sold increased by 34 %. In absolute terms, this represents a decrease of around 1 million tonnes in sales of black coils and an increase of around 0,5 million tonnes in sales of pickled coils.
- (187) It also confirmed that the share between the sales of black coils and pickled coils for the Community industry was more balanced than that of the exporting producers. From 1995 up to 1997 the share in sales volume was

70 % of black coils against 30 % of sales of pickled coils. During the investigation period this share became 60 % and 40 % respectively for black and pickled coils. This development in total sales clearly shows that during the investigation period a shift occurred from black to pickled coils, i.e. from a category of products where imports were more present to one where they were less prominent.

#### d) *Price evolution*

(188) During the period examined the Community industry's weighted average sales price decreased by 10 %. In 1995 sales prices were at their highest for ten years. They continued to follow a decreasing trend until 1997 (-17 % and -3 % compared to 1995 and 1996 respectively) but recovered from 1997 up to the end of the investigation period (+9 %).

#### e) *Market share*

(189) From 1995 up to the investigation period, the market share held by the Community industry decreased by 3,7 percentage points, dropping from 52,0 % in 1995 to 48,3 % in the investigation period.

(190) Between 1995 and 1996 and between 1996 and 1997 the market share held by the Community industry increased by 1,1 and 1,8 percentage points respectively.

(191) Between 1997 and the investigation period, however, the Community industry lost all the market share previously gained and fell to a lower level than that in 1995. The losses amounted to 6,6 percentage points. Further analysis of this situation indicated that market share was lost due to a decrease in sales both to related and unrelated customers on the Community free market.

#### f) *Profitability*

(192) The average return on sales made by the Community industry for the product concerned from 1995 up to the investigation period decreased by 39 %. The high profits (20,7 %) achieved in 1995 were the result of high prices on the market at that time. In 1996, despite a downturn in the market and a reduction in sales prices (15 %), the Community industry remained profitable. However, the recovery in sales volume in 1997 did not allow that industry to increase its profit margin since its sales prices again decreased by 3 %.

(193) During the investigation period profitability recovered slightly from its 1997 level. The increase in sales prices during the investigation period (9 % compared to 1997) allowed the Community industry to achieve a profit margin of 12,9 %. The Community industry claimed that this level of profit was reasonable.

(194) Some exporting producers suggested that the Community industry achieved an extremely high level of profitability during the investigation period and that the development of this indicator alone should have warranted immediate termination of the proceeding. They said that such profit was significantly higher than that considered reasonable by the Commission in past cases involving steel products.

(195) In this respect it should be noted that the relevant provisions of the Basic Decision and the WTO Agreement state that the determination of injury shall be based on positive evidence of

(a) the volume of subsidised imports and the effect of subsidised imports on prices on the Community market for like products; and

(b) the consequent impact of those imports on the Community industry. Moreover, they specify that consideration shall be given to whether there has been a significant increase in the volume of subsidised imports, either in absolute terms or relative to consumption in the Community. Furthermore, they also specify that consideration shall be given to whether there has been significant price undercutting by subsidised imports or whether the effect of such imports was to depress prices to a significant degree or to prevent price increases. No one or more of these factors can necessarily give decisive guidance. Finally, they state that the examination of the impact of subsidised imports on the domestic industry shall include an evaluation of all the relevant economic factors and indices having a bearing on the state of the industry, including the magnitude of the actual margins of subsidy, actual and potential decline in sales, profit, output, market share, productivity, utilisation of capacity, factors affecting prices, etc. The Basic Decision specifically states that this list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

(196) In the present case, the investigation has shown that imports of subsidised imports have significantly increased in absolute and relative terms. In addition, low-priced subsidised imports were found to significantly undercut the Community industry's prices. Furthermore, significant margins of subsidy were found to exist for most of the exporting producers concerned. All the above conditions being met, the Commission has evaluated the potential and actual developments of a number of relevant economic factors in its investigation before reaching its definitive conclusions. Accordingly, it is considered that the suggestion by some exporting producers that only the level of profitability should have warranted the termination of the proceeding is clearly against the provisions of the Basic Decision.

- (197) Furthermore, the economic situation of the Community industry during the investigation period, in particular its price and profitability situation, must be seen in the light of the structure of the hot-rolled coils market and the developments that occurred in the economic situation of the Community industry during the investigation period, as set out in point 4 below.
- (198) Finally, it is considered that the comparison of a specific economic indicator pertaining to the Community industry with the same economic indicator worldwide level is not relevant in the context of anti-subsidy proceedings.

**g) Investments and employment**

- (199) The investigation showed that investments were made mainly in the replacement of machinery and equipment. During the investigation period, the level of investment was similar to the 1995 level. Investments were increased by 32 % as compared to 1995, consistent with the high demand in 1997.
- (200) As regards employment, the Community industry manufactures various products on the same site and with the same machinery, notably hot-rolled coils. The investigation showed that during the period examined employment for the production of the product concerned decreased by 4 %.

**h) Summary of the situation of the Community industry between 1995 and the investigation period**

- (201) Interested parties suggested that a determination of injury during the investigation period could not be carried out on the basis of a comparison of the situation of the Community industry established in the years 1995 and 1997. They found that, in particular, price and profitability levels in 1995, production, capacity utilisation, sales volume and market share levels in 1997 were not representative of what their levels should be under conditions of fair competition. They thus argued that on the basis of the other findings over the entire period examined, it could not reasonably be concluded that the Community industry suffered material injury.
- (202) In this respect it should be noted that, in the above claim, interested parties have not stated in which respect some economic indicators established in 1995 and 1997 could not be considered representative. They merely stated that prices and profits in 1995 and production, capacity utilisation, sales volume and market share were not representative. In other words, the above claim suggests that a significant part of the data established during the investigation carried out by the Commission should be disregarded in the present proceeding without any evidence or explanations indicating that the conditions of normal competition were not met in 1995 and 1997. Given that during its investigation the Commis-

sion found no evidence to corroborate the allegation that normal competition was not taking place on the Community market during the years 1995 and 1997, it is considered that there are no grounds to disregard such information.

- (203) The Commission thus examined the developments of the economic situation of the Community industry within the period examined, and its overall economic situation between 1995 and the investigation period, on a yearly basis.
- (204) The investigation showed that between 1997 and the investigation period, with a slight increase in apparent consumption, the Community industry increased its sales prices by 9 % but was not able to maintain its sales volume, which decreased by 12 %. Accordingly, the Community industry lost 6,6 percentage points or 14 % of market share. Furthermore, the Community industry production decreased by 9 %, leading also to a reduced capacity utilisation. Despite these negative developments profitability increased from 6,3 % to 12,9 %.
- (205) The investigation also showed that between 1997 and the investigation period imports from the countries concerned increased significantly in terms of volume (+ 797 000 tonnes), leading to substantial increase of their market share (+ 4 percentage points). Although the countries concerned increased their sales prices by over 10 % they were nevertheless found to be undercutting the prices of the Community industry by around 6 % on average during the investigation period.

**4. Analysis of the situation of the Community industry during the investigation period**

**a) Preliminary remarks**

- (206) The Community industry claimed that prices and thus profits remained at a high level in the first half of the investigation period because apparent consumption and therefore demand was exceptionally high, even though it was not matched by a commensurate actual consumption. This led, in the first half of the investigation period, to an overstocking which was largely fed by the imports concerned, and, in the second half of the investigation period, to a significant de-stocking.
- (207) Furthermore, the Community industry indicated that a more refined analysis of sales by product types and sales channels for which there is head-on competition between the Community industry and imports would be necessary in the present case to show the full extent of the injury suffered. This entails a differentiated analysis of sales of black as opposed to pickled coils, and sales channels where longer-term contracts are concluded as opposed to other sales.

- (208) Finally, the Community industry claimed that a more detailed analysis of the four quarters of the investigation period was necessary given the existence of a time lag between orders placed by purchasers and deliveries made to them. It was claimed that such time lags effectively delayed the negative impact of the imports concerned. The Community industry claimed that it was therefore necessary to further investigate the development of orders received during the investigation period.
- (209) All operators on the steel market agreed that business is mainly carried out on a quarterly basis. Production is organised on the basis of quarterly plans and prices. Both orders and deliveries are negotiated accordingly. Therefore, the suggestion made by some exporting producers that the partitioning of the investigation period, in particular into quarters, did not constitute an objective evaluation of the possible injury suffered by the Community industry was not founded. The above claims of the Community industry have therefore been investigated and analysed as set out below.
- (210) In order to have an overview of the cyclical nature of the activity of the Community industry and to cross-check the quarterly developments of its economic situation, the Commission also collected quarterly data for the period 1996 up to the second quarter of 1999.

#### b) *Cyclical nature of the steel industry*

- (211) According to the complainant, there are seasonal fluctuations on the steel market in that the first two quarters of each calendar year are normally better than the last two quarters. Such seasonal fluctuations could mainly be observed in sales activity. Sales would normally be affected in the third quarter of the year due to the holiday period in the user industries, but they should pick up again in the fourth quarter. Given that some of the above allegations made by the Community industry required a quarterly analysis it was important to ensure that any development observed did not merely reflect normal quarterly fluctuations. This analysis was particularly relevant as the complainant alleged that the trends observed within the investigation period were far beyond the normal cycles.
- (212) For the evaluation of the cyclical nature of the hot-rolled coil business, the Commission found that the trends in production and sales for the Community industry from 1996 up to the investigation period were as follows:

(%)

	1st quarter	2nd quarter	3rd quarter	4th quarter
Production				
— 1996	93	97	95	100
— 1997	97	100	97	97
— IP (1998)	100	94	77	70
Sales volume				
— 1996	87	90	91	100
— 1997	97	100	97	97
— IP (1998)	100	87	68	61
Sales value				
— 1996	100	96	89	94
— 1997	95	100	99	98
— IP (1998)	100	88	63	51

- (213) With regard to production, it was found that the third quarter did not necessarily show the lowest level of activity. In 1996 and 1997, the greatest difference found was 7% between the first and the fourth quarter of 1996 and the trend in production was linear in those years. During the investigation period however the levels of production in the third and in the fourth quarter were far lower when compared to the first quarter, indicating that the fluctuations observed in that period were far beyond the normal seasonal fluctuations.
- (214) Concerning sales volume, the downturn observed in the third and fourth quarters was even more pronounced during the investigation period. Sales activity in the second half of the investigation period was exceptionally low and far beyond the normal seasonal fluctuations.
- (215) The above quarterly analysis covering the years 1996 and 1997 as well as the investigation period, shows that the trends observed during this latter period are far beyond the normal fluctuations linked to the cyclical nature of the hot-rolled coil business.

#### c) *Apparent consumption and overstocking*

- (216) As indicated in recital 155, the development of apparent consumption on a yearly basis was quite stable, in particular between 1997 and the investigation period. It should be underlined that apparent consumption, by definition, does not reflect actual use, i.e. actual

consumption of the product concerned by its users. The difference between apparent consumption and actual consumption is basically the quantity of stocks kept at various levels of the distribution chain, i.e. in the present case by importers, traders, dealers, SSCs and users.

- (217) The examination of this particular issue showed that apparent consumption was significantly higher in the first two quarters of the investigation period than in the last two quarters. In addition, the comparatively steady development in apparent consumption found throughout 1997 did not occur during the investigation period. This difference in trends was particularly obvious when comparing the end of 1997 and the beginning of the investigation period, as there was a considerable increase in apparent consumption between these two time periods. This suggests an increase in stocks, whereas the reverse was true if the fourth quarter of 1997 is compared with the fourth quarter of the investigation period, indicating a significant decrease in stocks in the last two quarters of the investigation period.
- (218) As it has been alleged that these stocks played a particularly important role in the development of the market during the investigation period, it was considered necessary to establish the quarterly apparent consumption not only for the investigation period but also for 1997.
- (219) To confirm these findings, the relevant development should also have been established for actual consumption. However, its determination was hampered by the fact that cooperation of the various relevant interested parties in the distribution chain and at user level was not complete. Nevertheless, the Commission was able to establish the stocks held at trader's level on the basis of Eurostat information gathered in the framework of the ECSC Treaty.
- (220) In line with the above findings on apparent consumption, this information showed that there was a considerable build-up of stock at trader level between the end of 1997 and the beginning of the investigation period. An increase of 29 % between the fourth quarter 1997 and first quarter of the investigation period and a further increase of 11 % between the first quarter of the investigation period and the second quarter of the investigation period were observed.
- (221) This information also confirmed a considerable decrease in stocks towards the end of the investigation period (- 22 %). The use of stocks became clear when comparing the level of stocks at the end of both the first and second semesters of the investigation period. A comparison of the quarterly development of stocks in 1997 with the quarterly development during the investigation period also confirms the above findings.
- (222) This trend of overstocking in the first two quarters of the investigation period was confirmed in a submission received by an exporting producer under investigation and by the information from a major user of the product concerned on the Community market. This user

held stocks which in the middle of the investigation period were more than double those held at the beginning of this period, while there was no indication of a significant difference in the underlying activity between the beginning and the end of the investigation period by this user.

- (223) The investigation thus confirmed the Community industry's claim that considerable overstocking occurred at the beginning of the investigation period. In the first two quarters of the investigation period apparent consumption was significantly higher than actual consumption, while for the third and fourth quarters of the investigation period the difference was reversed.
- (224) In absolute terms, it was found that apparent consumption during the first half of the investigation period exceeded apparent consumption in the first half of 1997 by around 1,5 million tonnes.
- (225) Some interested parties claimed that the Community industry largely contributed to the overstocking observed during the first half of the investigation period. In this respect it should be noted that, as shown below, the Community industry's sales started to decline right from the beginning of the investigation period. This suggests that the Community industry did not play an important role in feeding the overstocking observed.

#### d) *Production and capacity utilisation*

- (226) On a quarterly basis, production decreased by 23 % in the third quarter and by 30 % in the fourth quarter of the investigation period as compared to the first quarter of the investigation period.
- (227) In line with the decrease in production, the rate of capacity utilisation also decreased by 12 % in the third quarter of the investigation period and by 17 % in the fourth quarter as compared to the first quarter of the investigation period.
- (228) Similarly, it was found that production and capacity utilisation were declining when compared with the relevant quarterly activity in 1997. In the third and fourth quarters of the investigation period as compared to the third and fourth quarter of 1997, production decreased by 20 % and 11 % respectively, capacity utilisation by 12 % and 18 %.

#### e) *Sales volume, sales prices and profitability*

##### i) *Sales volume*

- (229) The Community industry sales volume decreased by 32 % in the third quarter of the investigation period and by 39 % in the fourth quarter as compared to the first quarter.

(230) Furthermore, as already mentioned in the year-to-year analysis, the Community industry claimed that a more refined and differentiated analysis of its various types of sales and sales channels should be made, as this would show that the sales competing directly with the imports concerned are more affected than other sales. In addition to the differentiation between sales of black coils and pickled coils, that industry claimed that a proportion of its sales were the result of long-term delivery and sales contracts, concluded, for example, with the automobile industry. These contracts typically cover a period of up to one year, during which delivery quantities and prices are fixed. The exporting producers concerned do basically not supply the customers under such contracts.

(231) In order to carry out a detailed analysis the above mentioned types of sales were grouped and are referred to as 'long-term' sales as compared to 'other' sales. Similarly, the development of sales, sales prices and profitability of black and pickled coils during the investigation period were also analysed.

(232) The sales volume of long-term sales was much more stable throughout the quarters of the investigation period than the rest of the sales activity. Indeed, the decrease in long-term sales was 20 % in the third quarter and 22 % in the fourth quarter as compared to the first quarter of the investigation period. The decrease in other sales was much more pronounced namely 35 % and 43 % in the third and the fourth quarter respectively, as compared to the first quarter of the investigation period.

(233) The same was true when analysing the sales volume of black compared to pickled coils. During the investigation period the volume of pickled coils sold developed in a smoother way than that of black coils. The decrease in the sales volume of black coil was as high as 39 % in the third quarter and 44 % in the fourth quarter as compared to the first quarter of the investigation period whereas the decrease in pickled coils was limited to 21 % and 29 % respectively.

#### ii) Sales prices of the Community industry

(234) During the first two quarters of the investigation period sales prices of hot-rolled coils were by and large stable, namely at a level of ECU 306 and ECU 308 per tonne respectively. Subsequently they fell down to ECU 286 per tonne during the third quarter and to ECU 254 per tonne during the fourth quarter of the investigation period. Overall this represents a decrease of 17 % during the investigation period.

(235) The analysis of prices differentiated by types of sales showed that prices for long-term sales largely remained stable in the first three quarters of the investigation period, only decreasing from ECU 320 per tonne to ECU 312 per tonne, namely a decrease of 2 %. The decrease was limited to 10 % when comparing the first

and the fourth quarter of the investigation period. By contrast, prices for other sales had already decreased by 10 % between the first and the third quarter of the investigation period and by 21 % between the first and the fourth quarter of the investigation period.

(236) The comparison between the development of prices of black coils and pickled coils showed that prices of the former decreased much more than those of the latter. The result of these differing trends was that prices across categories differed significantly more at the end of the investigation period than at the beginning. Indeed, prices for pickled coils, only decreasing from ECU 328 per tonne to ECU 316 per tonne, namely a decrease of 4 %. The decrease was limited to 12 % when comparing the first and the fourth quarter of the investigation period. By contrast, prices for black coils had already decreased by 10 % between the first and the third quarter and by 22 % between the first and the fourth quarter of the investigation period.

#### iii) Profitability

(237) On a quarterly basis, it emerged that profitability was very good during the first half of the investigation period. Given the precipitation of price decreases throughout the subsequent quarters, profitability continued to decrease, namely from 16,8 % during the first quarter of the investigation period to - 2,6 % in the fourth quarter.

(238) The differentiation in sales showed significant decreases in profitability from the very start of the investigation period for the sales of black coils and sales other than the long-term sales.

(239) The investigation showed that profitability for the long term sales was very good in the first half of the investigation period (around 21 %) and remained positive throughout the investigation period, namely 8 % in the fourth quarter of the investigation period. Similarly other sales were also profitable at around 16 % in the first half of the investigation period. In line with the development of demand for hot-rolled coils, it subsequently collapsed in the third and the fourth quarter of the investigation period to become negative (- 7 %) in the fourth quarter of the investigation period.

(240) The same observations were made on profitability differentiated for black coils and pickled coils where profitability for both types was good in the first half of the investigation period. Subsequently, profitability for pickled coils remained positive throughout the investigation period (4,5 % in the fourth quarter) whereas profitability in black coils sales significantly decreased in the third quarter of the investigation period and reached a level of losses as high as - 16,5 % in the fourth quarter of the investigation period.

- (241) In conclusion, overall sales, prices and profitability all fell during the investigation period. This trend was significantly less pronounced for sales made in market segments where fewer subsidised imports were present. In terms of prices and resulting profitability, the situation of the Community industry remained relatively stable during the time in which apparent consumption boomed. The investigation has also shown that the Community industry did not increase its sales volume in line with the increase in the apparent consumption. By contrast, price levels and profitability remained at a high level at a time of strong and increasing demand.
- (242) The investigation also showed that the purchase prices of major cost items in the cost of production decreased during the investigation period. Notably, the price of iron ore decreased by up to 12 % and scrap by up to 40 % and the price of oil dropped to the level of 1970. Accordingly, the cost of raw material decreased limiting the level of the losses incurred, particularly during the investigation period.
- (243) In order to complete the above analysis on sales volume, sales prices and profitability, it was found that these economic indicators were also declining when compared with the relevant quarterly activity in 1997. In the third and fourth quarter of the investigation period as compared to the third and fourth quarter of 1997, sales volume decreased by 24 % and 27 % respectively, sales prices were 6 % and 19 % lower. As regards profitability, it was found that it was 15 percentage points lower in the fourth quarter of the IP as compared to the fourth quarter of 1997.
- (244) As shown in the chapter below, in assessing the developments in sales volume, sales prices and profitability it is important to note that there is a time lag between price negotiation with customers and invoicing and delivery by the Community industry. Thus, when considering in particular the developments in other sales the prices applied during the first quarter of the investigation period were in fact negotiated during the fourth quarter of 1997 and so on.
- f) Time lag between the situation of the Community industry and the market developments**
- (245) As already mentioned in the year to year analysis above, the Community industry alleged that, in assessing its price and profitability development, the existence of a time lag between the sales of the goods and price negotiation with customers related to such sales should be considered. In practice, it was claimed, the negotiations preceded the sales by at least one quarter.
- (246) The investigation has shown that production planning for an effective capacity utilisation resulted in a time lag between the order and the sale. This time lag was indeed found to be at least one quarter. In other words sales in the first quarter of the investigation period are the result of orders negotiated and concluded in the fourth quarter of 1997.
- (247) Given the existence of this time lag, the quarterly trend established in the orders received by the Community industry showed a significant decrease during the investigation period. In line with the claim by the Community industry, this negative trend is pronounced right from the first quarter of the investigation period compared to the trend determined for sales volume and production. The volume of orders received in the second quarter of the investigation period were 17 % lower than those received in the first quarter. Furthermore, it emerged that a relatively high level of orders was received in the fourth quarter of 1997, corresponding to deliveries/sales effected in the first quarter of the investigation period.
- (248) These findings are thus consistent with the claim by the Community industry that the relatively positive economic situation during the first half of the investigation period merely reflects a healthy level of orders received during the last quarter of 1997 and the first quarter of the investigation period, namely when demand was still high.
- g) Conclusion on the situation of the Community industry in the investigation period**
- (249) The quarterly analysis indicated that the economic situation of the Community industry deteriorated significantly during the investigation period, in particular in the second half. This deterioration went far beyond the seasonal fluctuations observed during the previous years on a quarterly basis.
- (250) In particular, it was found that in the third quarter of the investigation period as compared to the average activity of the period, all the injury indicators followed a negative trend: production decreased by 10 %, capacity utilisation by 6 %, sales volume by 14 %, sales prices by 2,4 % and profitability decreased by 2,1 percentage points.
- (251) Furthermore, the developments observed during the fourth quarter of the investigation period indicated that the situation of the Community industry only deteriorated further: as compared to the average activity of the investigation period production decreased by 18 %, capacity utilisation by 10 %, sales volume by 22 %, prices by 13 % profitability became negative (- 2,6 % on net turnover), a decrease of 15,5 percentage points.



## 5. Developments after the investigation period

- (252) As mentioned above, the overstocking which occurred during the first half of the investigation led to a relatively positive market situation reflected in the good level of prices on the Community market during this time period. Accordingly profitability of the Community industry was still good. However, in view of the fact that this situation was not supported by an underlying positive development in the user markets but was likely to lead to negative developments after a certain time lag it was considered necessary also to confirm this scenario by analysing developments after the end of the investigation period.
- (253) As pointed out by some exporting producers it was found that a certain degree of recovery occurred in the volume produced and sold by the Community industry at the beginning of 1999. However, it should be noted that the level of production and sales were significantly lower than those at the beginning of the investigation period and those of 1997. In this respect, the investigation showed that the economic situation of the Community industry continued to deteriorate after the investigation period, in particular in terms of a decrease in sales price and profitability during the two first quarters of 1999.
- (254) This confirmed the negative effect of the massive overstocking which occurred at the beginning of the investigation period and the de-stocking which began during the third quarter of the investigation period and continued, despite a decrease in actual imports, throughout the first half of 1999. Apart from the effect of overstocking, the delay with which the negative development of the Community industry occurred was also due to the time lag under which the Community industry operates with its customers. This is apparent not only from the development of the injury indicators such as production, sales, prices and profitability, but also from the development of the orders received by the Community industry.
- (255) Some parties have claimed that the imposition of countervailing measures in the present proceeding was unnecessary as the imports concerned ceased after the investigation period.
- (256) The investigation showed that, based on generally available or unverified information, imports, in particular for some of the countries concerned by the present proceeding, have fallen since the beginning of the investigation period. However, this is not an unusual phenomenon in anti-subsidy and anti-dumping investigations as market participants, in particular importers, take into account the fact that investigations require prudent assessment of the market insofar as they can lead to the imposition of countervailing and anti-dumping measures. The reaction of market participants can be more or less pronounced. In any event, taking into account the

decrease in imports, which may be limited in time, to justify the non-imposition of measures would allow the exporting producers concerned to adopt a stop-and-go policy for their exports. It is considered that this would have highly disruptive effect on the Community market for any product and therefore can not in the present circumstances serve as a justification for not imposing countervailing measures.

- (257) Finally, it has been claimed that the phenomenon of high imports concentrated in the investigation period was only short-lived. In the meantime market prices in the Community have reached levels which ensure a quick recovery of the economic situation of the Community industry.
- (258) It should be noted that detailed analysis demonstrates that Community industry prices continued to deteriorate and reached very low levels during the first two quarters of 1999. This price decrease triggered considerable financial losses, which the Community industry incurred during a considerable period of time.
- ## 6. Conclusion on injury
- (259) On the one hand, the year-to-year analysis of the situation of the Community industry in the period from 1995 to the investigation period showed a number of negative developments. In addition, the quarterly analysis indicated that the economic situation of the Community industry significantly deteriorated throughout the investigation period. Contrary to the suggestion made by some exporting producers and taking into account the special characteristics of the Community market in terms of oversupply and time lag between orders and deliveries these developments are representative of the economic situation of the Community industry during the whole investigation period.
- (260) The investigation has also shown that these negative developments continued and even worsened after the end of the investigation period, a development which is particularly relevant in view of the functioning and the situation of the Community market. It has been ascertained that this deterioration went far beyond the seasonal fluctuations observed in previous years on a quarterly basis.
- (261) To summarise, it was found that, during the third and fourth quarters of the investigation period, all the injury indicators followed a negative trend compared to the average activity of the investigation period: production decreased by 10 % and 18 % respectively, capacity utilisation by 6 % and 10 %, sales volume by 14 % and 22 %, sales prices were negotiated 2,4 % and 13 % below the average price of the investigation period and profitability decreased by 2,1 and 15,5 percentage points respectively.

- (262) Similarly it was found that these economic indicators were also declining when compared with the relevant quarterly activity in 1997. In the third and fourth quarter of the investigation period as compared to the third and fourth quarter of 1997: production decreased by 20 % and 11 % respectively, capacity utilisation by 12 % and 18 %, sales prices were 6 % and 19 % and profitability was positive both in 1997 and during the investigation period but it was 15 percentage points lower in the fourth quarter of the IP as compared to the fourth quarter of 1997. All these trends were confirmed during the two quarters after the investigation period.
- (263) The investigation then revealed that the above trends would have been even more negative without specific sales such as those under long term contracts or those of pickled coils, which are less affected by the imports concerned. The orders received by the Community industry for delivery in the fourth quarter of the investigation period were 31 % lower than those received for delivery in the first quarter of the investigation period.
- (264) On the other hand, the year-to-year analysis has shown that average profit rates increased from 1997 to the investigation period, reaching a level of 12,9 %. Profits and sales prices remained stable during the first quarters of the investigation period.
- (265) Regarding these findings, which could at first sight appear to be contrary to a finding of injury, the investigation has shown that they were in line with a high level of apparent consumption during the first semester of the investigation period which, the investigation has confirmed, was not matched by actual consumption. As a consequence, the prices and profits of the Community industry (whose sales did not develop in line with the overstocking) remained stable but were bound to deteriorate thereafter in view of the fact that the significant apparent consumption was not met by a commensurate actual consumption. Indeed, during the second part of the investigation period, apparent consumption tumbled as the massive stocks were used, which in turn provoked a significant price and profit decrease.
- (266) The subsequent analysis of the economic situation of the Community industry in the first two quarters of 1999 confirmed that these negative trends were not confined to the investigation period and were the direct results of the developments during the investigation period. While production and sales volume improved somewhat compared to the second half of the investigation period, sales prices and profitability continued to decrease. It should be noted that the Basic Decision as confirmed by the jurisprudence of the Court permits the information pertaining to the time period after the end of the investigation period to be taken into account, in particular in

order to establish whether trends observed during the investigation period continue.

- (267) Based on the developments in the situation of the Community industry during the period from 1995 to the investigation period and during the investigation period in particular, the Commission has concluded that the Community industry has suffered injury during the investigation period. Contrary to the suggestion that the economic indicators showing injury are largely outweighed by other indicators showing lack of injury, the above detailed investigation showed that all economic indicators developed negatively, in particular profits and sales prices with a time lag of a few months. The magnitude of the injury suffered enables it to be classified as material in accordance with the provisions of Article 8(6) of the Basic Decision.

## F. CAUSATION

### 1. Introduction

- (268) In the present analysis it should be borne in mind that the product concerned is a very price sensitive product. In addition, the market for this product, as shown above, has a number of particular characteristics: the relationship between the Community industry and certain users is long-term; production set-up and planning entails a certain time lag between order and delivery; and the Community industry operates more in certain market segments than the exporting producers concerned. Nevertheless, these characteristics do not call into question the fact that the products produced and sold by the Community industry and those imported by the countries concerned are like products. It only indicates that certain sales channels and certain types of product are more prone to competition from the imports concerned than others.
- (269) In order to reach its conclusions on the cause of the injury suffered by the Community industry, the Commission examined the impact of the subsidised imports from the countries concerned. At the same time, the impact of other known factors and their possible consequences on the situation of that industry were also analysed. Such analysis ensured that any injury caused by other factors than subsidised imports would be identified and not attributed to these imports.
- (270) The other factors examined were: the development of consumption, the oversupply of the Community market, the impact of hot-rolled coils imported into the Community from other third countries, the behaviour of other Community producers not included in the definition of the Community industry, the export performances of the Community industry and the world-wide situation of the steel business.

## 2. Impact of subsidised imports

### a) *Impact of the volume of subsidised imports and stockpiling*

- (271) The investigation showed that the imports concerned increased considerably, in particular between 1997 and the investigation period. While in 1995, only 8 000 tonnes of hot-rolled coils entered the Community market from the countries concerned, in 1997, this rose to 47 000 tonnes.
- (272) The investigation also showed that the major increase in imports occurred during the period between 1997 to the investigation period (+ 797 000 tonnes) and particularly during the first two quarters of the investigation period. During that period over 550 000 tonnes were delivered onto the Community market. This represents more than 10 times the import volume of the second semester 1997. Between 1997 and the investigation period, the market share held by the countries concerned increased by 4 percentage points.
- (273) During the period from 1995 to the investigation period while Community consumption increased by 9 %, the Community industry's sales volume increased by only 1 % and it thus lost 3,7 percentage points of its market share.
- (274) As far as the period of the import surge (1997 to the investigation period) is concerned, it coincided with the deterioration of the Community industry's situation. Production decreased by 9 % and sales volume by 12 %. The loss in market share amounted to 6,6 percentage points and orders by 17 %.
- (275) In addition, the development of import volumes, taken together with the development of apparent consumption shown earlier, indicates that the subsidised imports concerned mainly fed the increase in stocks, and thus the increase in apparent consumption in the first two quarters of the investigation period, whereas the sales of the Community industry decreased from the very beginning of the investigation period.
- (276) The investigation revealed that contrary to the exporting producers in question the Community industry is not very present in the traders' sales channel. As regards certain large operators, it showed that these ordered few or no hot-rolled coils from the Community industry during the third and the fourth quarter of the investigation period. This resulted in a significant drop in sales in third quarter of the investigation period (– 28 %) and in the fourth quarter (– 12 %). This in turn had a significant negative influence on prices and profitability of the Community industry during the last two quarters of the investigation period.

- (277) In order to fully assess this development it should be borne in mind that the development of the situation of the Community industry was particularly negative, pronounced and immediate in sales channels and for product types in which the exporting producers are mainly active. Indeed, these producers are not very active in sales channels where long-term sales contracts are concluded. The Community industry has fared relatively better in these sales channels than in others, where competition from imports is more pronounced. It has also been shown above that the Community industry's sales of black coils, which account for around 90 % of the imports concerned, have been developing very negatively throughout the investigation period.

### b) *Impact of the import price level and functioning of the steel market*

- (278) The investigation showed that the situation of the Community industry remained stable in terms of prices and therefore overall profitability during the first two quarters of the investigation period, although import prices from the countries concerned continuously decreased during the whole investigation period. In this respect the investigation has shown that the development of prices and profits of the Community industry were due, on the one hand, to the general structure and functioning of the market in terms of the time lag between orders made by and deliveries to clients and, on the other hand, by the development of stocks and thus apparent consumption during the investigation period.
- (279) Concerning the general functioning of the market, it has been found that, given the time lag between orders and deliveries (at least one quarter), the situation of the Community industry during the first quarter of the investigation period, basically reflected the situation of orders placed during the fourth quarter of 1997, when imports started to surge.
- (280) In terms of the development of apparent consumption, it has been found that the situation of the Community market in general and of the Community industry in particular during the first quarter of the investigation period corresponded to a time period of spectacular growth in stocks — and thus apparent consumption. This allowed prices and profits to remain high despite the increase in imports which occurred at the same time. The subsidised imports thus had the biggest impact on the economic situation of the Community industry when it became clear that the growth in stocks and thus in apparent consumption was not matched by a growth in actual consumption. Indeed, given the considerable fall in demand for hot-rolled coils at the end of the investigation period, Community industry prices decreased by 17 % and profitability became negative.

- (281) The community industry claimed that during the entire investigation period the exporting producers adopted a policy of systematic price decrease and were continually undercutting the Community industry's prices. This precipitated and hastened the fall in sales prices on the Community market during that period.
- (282) The investigation showed that the exporting producers indeed, significantly reduced their price during the investigation period while the Community industry attempted to maintain its price level until June 1998. In July 1998, the Community industry reduced its sales prices. Their sales prices, which were over 300 ECU/tonne in January 1998, fell to around 250 ECU/tonne in December 1998.
- (283) This dramatic decrease in prices is explained by the fact that the exporting producers continued to undercut the Community industry's prices throughout the investigation period. It is to be noted that the level of the undercutting was lower at the beginning of the investigation period and became increasingly more significant throughout the investigation period. The Community industry had to reduce its prices in order to continue participating in the market, in particular from the middle of the investigation period onwards.
- (284) In this respect it is to be noted that steel is a major commodity product and the indicative base price of hot-rolled coils is published daily in specialised newspapers and is well known by all operators present on the market. The products produced and sold by the Community industry and those imported by the countries concerned are highly sensitive to price movements which are quickly transmitted through the market.

The above thus suggests that overall the findings of the investigation show that the imports concerned caused the negative development in the economic situation of the Community industry.

#### c) *Conclusion on the impact of subsidised imports*

- (285) It is considered that the volumes of subsidised imports, which accumulated in the Community market within a very short period, depressed prices and led to a reduced market share of the Community industry. These import volumes allowed traders and certain large Community-based users to accumulate stocks with negative repercussions on price negotiation with the Community industry as early as in the second quarter of the investigation period and to extend the period over which such imports depressed prices. Moreover, given the general transparency of the market, users and purchasers in the Community market became quickly aware of the low price policy applied by the exporting producers. This precipitated and hastened the fall of sales price on a market with negative results on market share and profitability of the Community industry.

- (286) Consequently, it is concluded that the presence of low-priced subsidised imports played an important role in the deteriorating situation of the Community industry and thus to the material injury suffered by that industry during the investigation period.

### 3. *Impact of other factors*

#### a) *Development of consumption*

- (287) During the period examined apparent consumption on the Community market increased continuously by 9 %. During the period between 1997 and the investigation period apparent consumption increased by 0,4 %.
- (288) Consequently, given the continuous positive development in consumption volume since 1996, it is considered that it cannot be linked to the injurious situation suffered by the Community industry during the investigation period.

#### b) *Oversupply of the Community market*

- (289) The allegation of an oversupply of the Community market at the beginning of the investigation period was also investigated. Some parties argued that the Community industry was continuously increasing its deliveries on the market and was thus the main contributing factor in the oversupply. Accordingly, they argued that the high rate of capacity utilisation of the Community producers resulting from high deliveries should exclude any injury to be attributed to imports from the countries concerned.
- (290) The detailed analysis of the development in apparent consumption in 1997 as compared to the investigation period showed that during the first two quarters of the investigation period apparent consumption was 1,4 million tonnes higher than in the corresponding quarters of 1997. This comparison should be seen in the light of the fact that 551 000 tonnes of subsidised hot-rolled coils were imported from the countries concerned in the first two quarters of the investigation period whereas the corresponding volume imported in the same period in 1997 was about 4 000 tonnes. This represents an increase of over 0,5 million tonnes during the first half of the investigation period.
- (291) Furthermore, it is recalled that traders significantly increased their stocks in the first half of the investigation period, thus participating to the oversupply of the Community market. The investigation revealed that the Community industry is not very active in the traders sales channel whereas the exporting producers sold significant quantities via traders. Accordingly, the Community industry did not feed the stocks piled by traders during the investigation period.

(292) In conclusion, the investigation has shown that the increase in subsidised imports was considerable during the investigation period while it was found that the Community industry lost sales and experienced a drop in production resulting in a fall in market share. Accordingly, the increase in low-priced subsidised imports largely contributed to the oversupply.

**c) Imports of hot-rolled coils from other third countries**

(293) In addition to the countries concerned by the present anti-subsidy proceeding other exporting countries, namely Bulgaria, Iran and the Federal Republic of Yugoslavia were concerned by an anti-dumping proceeding.

(294) In addition, other countries exported hot-rolled coils to the Community market. During the investigation period the main exporters were Russia, Slovakia, Romania, Hungary, South Korea and Indonesia.

(295) Some exporting producers argued that they have been unduly discriminated against in comparison to some other third countries mentioned above which were excluded from the scope of the investigation.

(296) In this respect it is pointed out that no complaint against the above third countries was lodged and that therefore no prima facie evidence of subsidisation and injury justifying the initiation of an investigation was received. As furthermore, the investigation has not brought to light any evidence of injurious subsidisation practices by such third country exports the allegation of discrimination is not founded.

(297) During the period examined, other third countries not subject to any proceeding's share of total imports of the product concerned onto the Community market while remaining significant showed a decreasing trend. The import volume decreased from 3 million tonnes in 1995 to 2,4 million tonnes in the investigation period, namely a decrease by 20 % in terms of volume. The share of these imports represented 99 % of total import volume in 1995 but only 74 % during the investigation period. Accordingly, throughout the period examined, the share of the Community market held by the other third countries decreased by 20 %.

(298) Import prices from these third countries followed the general downward tendency in the Community market and decreased by 9 %.

(299) Based on the above facts and considerations it was found that imports from other third countries not subject to any proceeding remained significant and enjoyed a continued presence in the Community market during the period examined. However, it also emerged that while the situation of the Community industry only deteriorated in particular from 1997 to the investigation period, namely when the subsidised imports surged massively, the increase in imports from other third countries was very limited.

(300) Accordingly, the suggestion by some exporting producers that the imports of hot-rolled coils from other third countries not subject to any proceeding are the cause of the injury suffered by the Community industry cannot be taken into consideration.

**d) Other producers in the Community**

(301) During the investigation period, the producers in the Community not included in the definition of the Community industry represented 35 % of total Community production.

(302) Based on the information available, during the period examined, the economic situation of the other producers of hot-rolled coils in the Community was similar to that of the Community industry. During the investigation period their sales volume increased by 5 %, namely an increase below the increase in consumption. Accordingly, their share of the market in terms of volume decreased by 4 %. Furthermore, these producers also suffered from price depression as the decrease in sale value by 6 % indicates and their sales prices were in line with those of the Community industry.

(303) Consequently, the impact of the other producers in the Community on the deteriorating economic situation of the Community industry was limited.

**e) Export activity of the Community industry**

(304) Certain exporting producers claimed that the situation of the Community industry deteriorated because of the decrease in its export activity during the period examined.

(305) The investigation showed that the sales volume destined for exports to third countries decreased by 536 000 tonnes between 1995 and the investigation period and by 299 000 tonnes between 1997 and the investigation period. This represents a decrease of 4,8 % and 2,9 % respectively of the total sales of the Community industry. On this basis, the Commission does not exclude that such a decrease in the export sales affected the overall economic situation of the Community industry. However, it is recalled that the present investigation exclusively covered the economic situation of the Community industry as regards the Community free market. Accordingly, prices and revenues from export sales were excluded from the injury analysis.

**f) Community industry's preference to supply captive market**

(306) A number of users of the product concerned on the Community market stated that the Community industry had attempted to increase the integration of its activities over the period examined. At the end of 1997, the Community industry had allegedly given priority to

supplying related parties in the captive market before supplying independent parties on the free market with the result that the users were forced to obtain their supplies from outside the Community. Therefore, injury could not be caused by the development of imports.

- (307) The Commission found that between 1997 and the investigation period the evolution of sales volume to both related and unrelated customers showed decreasing trends. The fact that the supply to the captive market followed a similar trend indicates that production capacity was available. This decline in sales volume indicated that there was no shortage of supply of the product concerned, which could have led to a decrease in the sales volume to unrelated parties.

#### g) *World wide situation in the steel business*

- (308) Some exporting producers claimed that the situation of the Community industry, in particular in the second part of the investigation period, was largely due to the deterioration of the worldwide situation of the steel business.
- (309) Based on the information available it emerged that a worldwide downturn occurred during the investigation period. Sales prices decreased in the USA, Japan and South Korea. However, it was found that sales prices in these countries were 15 %, 24 % and 7 % respectively, higher than those in the Community at the end of the investigation period.
- (310) Consequently the worldwide situation of the steel industry and in particular the situation in South East Asia, cannot explain the deterioration of the economic situation of the Community industry during the period examined.

#### 4. Conclusion on causation

- (311) The above analysis indicates that factors other than subsidised imports from the countries concerned may have contributed to the difficult state of the Community industry during the investigation period. However, the investigation has shown that the sudden increase in imports, the price depression and price undercutting practised by the exporting producers had significantly negative consequences on the situation of the Community industry. Therefore, it is concluded that the subsidised imports, taken in isolation, had caused material injury to the Community industry.

### G. COMMUNITY INTEREST

#### 1. Preliminary remarks

- (312) The purpose of countervailing measures is to remedy unfair trading practices having an injurious effect on the Community industry and re-establish a situation of effective competition on the Community market. In addition to subsidisation, injury and the cause of this injury, the

Commission examined whether any compelling reasons existed which could lead to the conclusion that it is not in the Community interest to impose measures. For this purpose, and in accordance with Article 31(1) of the Basic Decision, the impact of possible measures on all parties involved in this proceeding and the consequences of taking or not taking measures, were considered on the basis of the evidence available.

#### 2. Interest of the Community industry

- (313) In case of injurious subsidisation caused by low-priced subsidised imports, the interest of a Community industry is that conditions of effective competition are restored.
- (314) The investigation has shown that the Community market of hot-rolled coils was characterised by the presence of products originating in the countries concerned which were sold at prices undercutting those of the Community industry. The resulting injurious situation could be contained as long as the volume imported was limited. However, the high volume of subsidised imports, which suddenly flooded on the Community market in a very short time during the investigation period, caused a price depression, which had a significant impact on the financial situation of the Community industry. This situation leaves the Community industry in a seriously weakened position and this industry has an interest in it being corrected.
- (315) During the period examined, the Community industry, as well as other producers located in the Community, undertook important rationalisation and restructuring projects that are still going on at present. The realisation of these projects is important in view of the globalisation of the steel market. This activity of the Community industry at a worldwide level demonstrates its adaptability, its competitiveness and viability.

- (316) With measures in force, employment, which increased during the period examined, could be maintained and possibly increased, depending on the evolution of consumption. The results of the investigation have shown that the Community industry lost significant sales volume and saw its prices decrease, in particular towards the end of the investigation period. The proposed countervailing duties, which amount to around 6 % for cooperating exporting producers on a weighted average level, should allow the Community industry to recover from its injurious situation by either increasing its own prices and/or sales quantities.

(317) In view of the inadequate profitability in 1996 and 1997 and the material injury suffered during the investigation period, it is highly probable that the financial situation of the Community industry will deteriorate further in the absence of any measures to correct the negative effects of subsidised imports. This may ultimately lead to cuts in production or closures of certain facilities and therefore threaten employment in the Community.

### **3. Interest of users and related activities in the Community**

(318) In order to evaluate the impact on users of taking or not taking measures, the Commission sent questionnaires to the known users on the Community market. An on-the-spot investigation took place at the premises of a major user in order to verify the information submitted. The following conclusions are based on the responses received from users.

(319) Users were found to have themselves imported 40 % of total imports of hot-rolled coils from the countries concerned. They employ 4 000 people in the Community.

(320) Users claimed that in the event of the imposition of measures, they would no longer have a choice in their sources of supply and they feared that they would become entirely dependent on the goodwill of the Community producers. In particular it was claimed that these producers had to supply a large captive market and that they already held a share of 75 % of the Community free market. They recalled that these producers' sales on the captive market as well as a large share of their sales on the free market was destined for related companies, whose downstream products were in direct competition with their own products. The users in question also indicated that the Community industry supplied independent users only after the requirements of their related companies had been fully satisfied. They also claimed that the related user companies already bought the product concerned below the market price. Under these circumstances, the users were of the opinion that the imposition of countervailing measures would give the Community industry a decisive and unjustified competitive advantage in the downstream markets which would not be in the interest of the Community.

(321) Finally, these users claimed that the imposition of countervailing duties was likely to cause shortage of supply for independent buyers, as was the case in the Community market at the end of 1997. This situation would clearly be an infringement to the ECSC Treaty.

(322) It is to be noted that the purpose of the imposition of countervailing measures is not to prevent users from importing hot-rolled coils from the countries concerned, rather to ensure that these imports are made at non-injurious prices. Even with the imposition of counter-

vailing measures, these products will always be present in the Community market and will ensure that the choice of supply is maintained for users companies.

(323) The Commission estimated that a weighted average countervailing duty of 6 % on hot-rolled coils imported from the countries concerned may prompt at maximum an increase of around 1,2 % in the overall cost of the user companies' raw materials. This extra cost would cause an estimated increase in the full cost of production of about 0,8 %, given the mix of various sources of purchases and the average value added in the downstream products.

(324) This estimated extra cost of production incurred by the user companies, either charged or not to the subsequent purchasers, is not such as to endanger the profitability of the user industries. Moreover, this cost should be seen in the light of expected positive developments in the hot-rolled coils markets when governed by effective trade conditions.

(325) Concerning the level of sales price in the free market, it is recalled that no significant differences were found between the prices applied by the Community industry to related and unrelated customers. Moreover, the claim purporting that the Community industry did not supply or had set up priorities for its supplies of hot-rolled coils depending on the relationship with the purchaser during the period examined cannot be taken into consideration as no evidence in this respect has been made available. More to the contrary, it has been found that certain sales contracts concluded with the Community industry were cancelled.

(326) Based on the foregoing, it is considered that any negative effects on users from taking measures against subsidised imports from the countries concerned cannot outweigh the positive effects from which all the other operators active on the Community market will benefit.

### **4. Consequences on competition in the Community market**

(327) Some parties claimed that countervailing measures would reduce competition on the Community market, encouraging the creation of big steel groups. They argued that in the recent past major steel companies, such as British Steel and Sollac, had increased in size by merging with or by purchasing other steel companies. These groups are also in competition in the downstream products with independent users, mostly small and medium-sized enterprises. The consequences of such a concentration may be the disappearance of many independent users resulting in the reduction of employment in the Community.

(328) Concerning the alleged restriction in competition, it is recalled that there are a number of alternative sources of supply such as Russia, Indonesia, Hungary, Romania, South Korea, Slovakia, Brazil, etc. exporting hot-rolled coils to the Community. There are also several hundred SSCs, stockholders and dealers selling the product concerned mainly to small and medium-sized users. Finally, there are several Community steel producers, in addition to the Community industry, located in Finland, France, Austria and Greece.

(329) Furthermore, given that the level of the measures proposed is not such, from an economic point of view, to foreclose the Community market to the countries concerned there appears to be no risk of restricting competition in the Community market.

### 5. Shortage of supply on the Community market

(330) Certain exporting producers from the countries concerned and users in the Community claimed that the imposition of countervailing measures would cause a shortage of supply, in particular for independent user industries. This claim was based on the fact that the Community industry alone is not able to supply the whole Community free market in particular given its current high capacity utilisation levels.

(331) Other interested parties claimed that the Community industry does not have the capacity to supply its own related companies in the free market and, is therefore not in the position to compensate for any decrease in imports caused by the imposition of countervailing measures.

(332) In this respect it should be noted that as the producers in the Community cannot supply the whole of the free market, imports from third countries will always be needed and the Community market will always be open to such imports, provided they are made in respect of the provisions of the Basic Decision.

(333) In any event, the Community industry, other producers in the Community and exporting producers in other third countries will be able to continue to supply the Community market. The exporting producers in the countries concerned will also be able to continue to supply the Community market given that the measures proposed are not such as to close the market to them.

(334) Based on the above facts and considerations, the claim that the imposition of countervailing measures will entail a shortage of supply is not considered to be founded.

### 6. Conclusion on the Community interest

(335) The Commission considers that the imposition of countervailing duties is necessary to prevent further imports of low-priced subsidised imports and avoid the situation of the Community industry to deteriorate further. Moreover, the imposition of countervailing measures in the

present case will re-establish effective competitive conditions for all operators in the Community. Furthermore, having examined the various interests involved in the present proceeding, no compelling reasons were found to exist against the imposition of definitive countervailing measures. The imposition of definitive countervailing measures is therefore not against the Community interest.

## H. DEFINITIVE MEASURES

(336) Having established that the subsidised imports originating in India and Taiwan have caused material injury to the Community industry and that there are no compelling reasons not to take action, definitive countervailing measures should be adopted.

### 1. Injury elimination level

(337) For establishing the level of duty, account has been taken of the subsidy margins found and of the amount of the duty necessary to eliminate the injury caused by subsidised imports to the Community industry. The necessary price increase was determined on the basis of a comparison of the weighted average import price, as established for the undercutting calculations, with the non-injurious price of the different types of hot-rolled coils sold by the Community industry on the Community market.

(338) It was considered that the amount of duty necessary to remove the effects of injurious subsidisation should allow the Community industry to cover its costs of production and obtain a reasonable profit on sales. In this respect, it was considered that the profit margin before tax of 12,9 % on turnover claimed by the Community industry was an appropriate basis, regard being given to the need for long-term investments and for a rate of return, which the Community industry could reasonably expect in the absence of injurious subsidisation.

(339) Accordingly and given the profit rate realised by the Community industry during the investigation period, injury elimination levels were determined on a type-by-type basis as the difference between the actual net sales price of the Community industry and the actual net sales price of the comparable imported models. The difference was then expressed as a percentage of the cif import price at the Community frontier customs duty unpaid.

### 2. Level of definitive duties

(340) In the light of the foregoing, it is considered that a definitive countervailing duty should be imposed at the level of the subsidy margin found, but should not be higher than the injury margin set out above in accordance with Article 15(1) of the Basic Decision.



(341) The rates of countervailing duty applicable to the free-at-Community-frontier price, before duty, shall be:

(%)

Country/company	Injury margin	Total subsidy Margin	Proposed countervailing duty
India	23,8	13,1	13,1
Essar	6,4	4,9	4,9
SAIL	23,8	12,3	12,3
TISCO	6,4	8,7	6,4
Taiwan	29,3	4,4	4,4
CSC	8,9	4,4	4,4
Yieh Loong	3,9	0,3	0,0

(342) The individual company countervailing duty rates specified in this Decision were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during that investigation with respect to the above companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of products originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported products produced by any other company not specifically mentioned in the operative part of this Decision with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.

(343) Any claim requesting the application of these individual company countervailing duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission <sup>(1)</sup> forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with e.g. that name change or that change in the production and sales entities. The Commission, if appropriate, will, after consultation of the Advisory Committee, amend the Decision accordingly by updating the list of companies benefiting from individual duty rates.

(344) In the case of India, in order to avoid granting a bonus for non-cooperation, it was considered appropriate to establish the duty rate for the non-co-operating companies as the sum of the highest level established per individual subsidy programme for the cooperating companies, i.e. 13,1 %.

(345) The limited cooperation of Taiwanese exporters may also have warranted the establishment of a higher residual duty. However, since the residual dumping margin in the parallel anti-dumping case against Taiwan

exceeds the injury threshold, it is not necessary to make such a calculation.

### 3. Undertakings

(346) Exporting producers in India have offered a price undertaking in accordance with Article 13(1)(b) of the Basic Decision.

(347) The Commission considers that the undertakings offered by the exporting producers in India can be accepted. The acceptance of the price undertaking should be conditional on the presentation to the Member States' customs services of a valid undertaking invoice clearly identifying the producer and containing the information listed in the Annex. Where no such invoice is presented, the appropriate rate of countervailing duty will be payable.

(348) It should be noted that in the event of a breach or withdrawal of the undertaking a countervailing duty may be imposed, pursuant to Article (9) and (10) of the Basic Decision.

#### I. TERMINATION OF THE PROCEEDING

(349) In view of the findings on the level of imports originating in South Africa, the proceeding with respect to this country should be terminated,

HAS ADOPTED THIS DECISION:

#### Article 1

1. A definitive countervailing duty is hereby imposed on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled originating in India or Taiwan falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 10, 7208 37 90, 7208 38 10, 7208 38 90, 7208 39 10, 7208 39 90.

<sup>(1)</sup> European Commission, Trade Directorate-General C DM 24 — 8/38, Rue de la Loi/Wetstraat 200, B-1049 Brussels.

2. The rates of duty for products manufactured by the companies listed in the table below applicable to the free-at-Community-frontier price, before duty, shall be:

Country	Company	Rate of AS duty (%)	TARIC additional code
India	All companies	13,1	A999
Taiwan	China Steel Corp., 1 Chung Kang Road, Hsiao Kang, Kaohsiung 81233	4,4	A071
	Yieh Loong Enterprise Co., Ltd, 317 Yu Liao Road, Chiao Tou Hsiang, Kaohsiung Hsien	0,0	A072
	All other companies	4,4	A999

3. Notwithstanding paragraph 1, the definitive countervailing duty shall not apply to imports released for free circulation in accordance with the provisions of Article 2.

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

#### Article 2

1. The undertakings offered in connection with this anti-subsidy proceeding by:

Company	Country	TARIC additional code
Essar Steel Ltd, 27th KM, Surat Hazira Road, Hazira 394270, Dist: Surat, State: Gujarat	India	A073
Steel Authority of India Limited, Ispat Bhavan, Integrated Office Complex, Lodhi Road, New Dehli — 110 0031	India	A074
Tata Iron & Steel Company Limited, 43 Chowringhee Road, Calcuta — 700 071	India	A075

are hereby accepted.

2. Imports pursuant to these undertakings, when released for free circulation, shall be exempted from the countervailing duty set in Article 1(2) when they are manufactured and directly exported and invoiced to an importing company in the Community by a company listed in the table of paragraph 1 and declared under the appropriate TARIC additional code.

The exemption shall be conditional upon presentation to the relevant Member State's customs services of a valid undertaking invoice issued by the exporting company containing the essential elements listed in the Annex.

#### Article 3

Pursuant to Article 24(6) of Decision (EC) No 1889/98/ECSC, Member States' reports to the Commission shall indicate for each release for free circulation, the year and month of import, the Combined Nomenclature, TARIC and TARIC additional codes, the type of measure, the country of origin, the quantity, the value, the countervailing duty, the Member State of import and, where appropriate, the serial number of the production certificate.

*Article 4*

The anti-subsidy proceeding concerning imports of certain flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled originating in South Africa is hereby terminated.

*Article 5*

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

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

Done at Brussels, 4 February 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*

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*ANNEX***Elements to be indicated in the undertaking invoice referred to in Article 2(2)**

1. The product reporting code number (PRC) (as established in the undertaking offered by the exporting producer in question), including type and CN code.
  2. The exact description of the goods, including:
    - invoice number,
    - invoice date,
    - the 'company product code' (CPC),
    - the TARIC additional code under which the goods on the invoice may be customs-cleared at Community borders (as specified in the Decision),
    - quantity (to be given in kilos),
    - minimum price applicable.
  3. The description of the terms of the sale, including:
    - price per kilo,
    - the applicable payment terms,
    - the applicable delivery terms,
    - total discounts and rebates.
  4. Name of the importer to which the invoice is issued directly by the company.
  5. The name of the official of the company that has issued the undertaking invoice and the following signed declaration:
  6. 'I, the undersigned, certify that the sale for direct export to the European Community of the goods covered by this invoice is being made within the scope and under the terms of the undertaking offered by ... (name of the company), and accepted by the European Commission through Decision No 284/2000/ECSC. I declare that the information provided in this invoice is complete and correct.'
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