

COMMISSION DECISION No 1238/2000/ECSC

of 14 June 2000

imposing a provisional anti-dumping duty on imports of coke of coal in pieces with a diameter of more than 80 mm originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 2277/96/ECSC of 28 November 1996 on protection against dumped imports from countries not members of the European Coal and Steel Community ⁽¹⁾, as amended by Commission Decision No 1000/1999/ECSC ⁽²⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

- (1) On 16 September 1999, the Commission announced by notice (the 'notice of initiation') published in the *Official Journal of the European Communities* ⁽³⁾ the initiation of an anti-dumping proceeding with regard to imports into the Community of coke of coal in pieces with a diameter of more than 80 mm ('coke 80+') originating in the People's Republic of China (the 'PRC').
- (2) The proceeding was initiated as a result of a complaint lodged in August 1999 by Eucoke-EEIG (the 'complainant') on behalf of producers representing 80 % of the community production of coke 80+. The complaint contained evidence of dumping of the said product 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 producers/exporters, the importers and the users known to be concerned, the representatives of the exporting country concerned and the complainant Community producers about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.
- (4) A number of producers/exporters in the country concerned, as well as Community producers, Community users and importers/traders made their views known in writing. All parties who so requested within the set time limit and who indicated that there

were particular reasons why they should be heard were granted the opportunity to be heard.

- (5) In view of the large number of producers/exporters in the exporting country concerned, and in conformity with Article 17(1) of the Commission Decision No 2277/96/ECSC (the 'basic Decision'), it was considered appropriate to make use of sampling.
- (6) The Commission sent questionnaires to parties known to be concerned and to all the other companies, which made themselves known, within the deadlines set out in the Notice of Initiation. Replies were received from six Community producers, four Chinese producers/exporters, six importers, and two users of coke 80+.
- (7) Furthermore, the Commission sent to all producers/exporters known to be concerned or which made themselves known a claim form to be completed by the companies requesting market economy status pursuant to Article 2(7) of the basic Decision. The Commission received one claim for market economy status within the time limit set.
- (8) The Commission sought and verified all the information it deemed necessary for the purpose of a provisional determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:
 - (a) Community producers:
 - Coal Products Ltd, Chesterfield, United Kingdom,
 - Cokes de Drocourt SA, Rouvroi, France,
 - Cokeries d'Anderlues SA, Anderlues, Belgium,
 - Industrias Doy SL, Oviedo, Spain,
 - Industrial Química del Nalon SA,
 - Italiana Coke SA, Savona, Italy,
 - Productos de Fundición SA, Baracaldo, Spain;
 - (b) Exporting producer in the PRC:
 - Tianjin General Nice Coke & Chemicals Co. Ltd, Tianjin;
 - (c) Producers in the analogue country (USA):
 - Citizen Gas & Coke Utility, Indianapolis (IN),
 - Empire Coke Company, Birmingham (AL),
 - Sloss Industries Corporation, Birmingham (AL);
 - (d) Importers in the Community:
 - SSM Coal BV, Rotterdam, The Netherlands;

⁽¹⁾ OJ L 308, 29.11.1996, p. 11.

⁽²⁾ OJ L 122, 12.5.1999, p. 35.

⁽³⁾ OJ C 262, 16.9.1999, p. 10.

(e) Users in the Community:

— Rockwool International A/S, Hedehusene, Denmark.

(9) The investigation of dumping and injury covered the period from 1 July 1998 to 30 June 1999 (hereinafter referred to as 'the investigation period' or the 'IP'). As for the trends relevant for the assessment of injury, the Commission analysed the period from 1 January 1995 to the end of the investigation period (the 'period considered')

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. General

(10) Coke 80 + is a solid carbonaceous residue in a size over 80 mm in diameter that remains after certain coal blends are heated to a high temperature out of contact with air. This product is currently classifiable within CN code ex 2704 00 19. Coke 80 + is commonly known as foundry coke.

(11) Coke 80 + is produced from coking coals which are the only coals having coking properties. By mixing together different coking coals with antifracturants (powdered anthracite and coke breeze) into blends, a wide variety of grades of coke 80 + can be produced, in particular, with different contents of fixed carbon (calculated as '100 minus ash content minus moisture content minus volatile matter content') as well as of various lump sizes.

(12) There are two methods for producing coke 80 +, by means of 'beehive ovens' and by means of 'coke oven batteries'. Beehive ovens are fire brick chambers with a roof in which coking-coals undergo carbonisation and where by-product gases are vented to the atmosphere. Carbonisation in coke oven batteries is highly mechanised and environmental pollution is minimised since hot gases leaving the ovens are collected, drawn away, and cooled. Crude tar is separated and removed for refining. The crude coke oven gas is washed free of ammonia, and then crude benzol is removed from it. Some of the remaining gas is used to heat the coke ovens, while the rest is generated to produce electricity.

(13) Irrespective of the production method used, the carbonisation is a process where at high temperatures, the coal mix first becomes plastic, then undergoes decomposition, and finally forms coke when the decomposed material resolidifies into a hard and porous solid. In a production chain and after carbonisation, hot coke is discharged and quenched. Given that the product concerned is marketed in sizes over 80 mm, coke then undergoes screening to separate the fractions in commercial sizes from smaller particle sizes, i.e. coke below 80 mm.

(14) The investigation has shown that a clear dividing line exists between coke 80 + and coke below 80 mm. Coke 80 +, which is exclusively used in industrial applications, is the only size suitable for use as a combustion agent in cupola ovens for the production of cast iron, stone wool and zinc lead, mainly due to its high combustion heat and strength to support the burden without breakdown. Coke below 80 mm is generally unsuitable for the abovementioned uses. It may be used in steel furnaces and for other purposes such as the production of chemicals and sugar.

2. Product concerned

(15) The product concerned is coke 80 + originating in the PRC. The investigation has shown that in the PRC, coke 80 + is produced mostly in beehive ovens and to a lesser extent in coke oven batteries.

(16) The investigation showed that all types of the product concerned, despite differences in coal blends used as raw materials, differences in the production methods and different grades according to its fixed carbon content and lump sizes, have the same basic physical, technical and chemical characteristics and are used for the same purposes (as a combustion agent for cast iron, stone wool and zinc lead production).

(17) Therefore and for the purpose of the present anti-dumping proceeding all types of the product concerned are regarded as one product concerned.

3. Like product

(18) In the Community coke 80 + is produced in coke oven batteries. This development took place mainly for environmental and cost reasons in order to minimise atmospheric pollution and lessen the labour needed. Those companies in the United States of America (the 'USA'), which cooperated with the Commission, also use coke oven batteries.

(19) Certain interested parties argued that coke 80 + produced in the Community should not be considered as a like product to coke 80 + originating in the PRC. They claimed in particular that in comparison to the Community produced product the Chinese product was produced from lower quality raw materials, by different production processes, and was of a lower quality. Moreover, the Chinese product could not be used for as many purposes as the Community product.

(20) It should be noted that the criteria to be applied in the determination of the 'like product' are based on the basic physical, technical and chemical characteristics, the end uses or functions, and finally the user's perception of the product, and not the raw materials or the methods used for their production.

- (21) The investigation has shown that, although the coke 80 + exists in many different grades, the Chinese coke 80 + and that produced and sold in the Community by the Community industry have the same basic physical, technical and chemical characteristics, i.e. it is a hard, dry and porous fuel with a high carbon content. Furthermore, the end uses are the same, i.e. it is used as a combustion agent, a reducing agent and a supporting material in smelting iron, stone and zinc, and it is generally interchangeable, although particular users may require specific grades. This has been confirmed by the fact that end-users of the product concerned, such as foundries as well as stone wool and zinc producers, have switched from the Community-produced product to the Chinese coke 80 +. Furthermore, differences in quality have no incidence on the definition of the like product, as no clear distinction can be made between the two products in relation to their physical, technical and chemical characteristics and to the end use and to the perception of the users.
- (22) The same holds true for the coke 80 + produced and sold on the domestic market of the USA. In this respect the Commission found that coke 80 + originating in the PRC and exported to the Community on one hand and the product produced and sold on the domestic market of the USA, on the other, are closely resembling in their basic physical, technical and chemical characteristics and in their uses.
- (23) In view of the above, it is provisionally concluded that coke 80+ produced and sold by the Community industry on the community market is a like product within the meaning of Article 1(4) of the basic Decision to the coke 80 + exported to the Community originating in the PRC. Similarly, the coke 80 + produced and sold in the USA, which served as an analogue country, is alike to the coke 80 + exported to the Community and originating the PRC.

C. DUMPING

1. Market economy status

- (24) One company, namely Tianjin General Nice Coke & Chemicals Co Ltd ('TJGN') applied for market economy status ('MES').
- (25) Pursuant to Article 2(7)(b) of the basic Decision, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said article for those producers, which can show that they meet the criteria laid down in Article 2(7)(c), i.e. that market economy conditions prevail in respect of the manufacture and sale of the product concerned.

- (26) As regards the claim for MES made by TJGN, it could not be established whether all export sales during the investigation period were reflected in the company's accounts and it was thus concluded that these did not show a true picture of the company's financial situation and activity during the investigation period. Since international accounting standards were not respected it was concluded that TJGN did not meet the criterion set out in the second indent of Article 2(7)(c) of the basic Decision.
- (27) Furthermore it was established that there was significant State interference. TJGN did not have an export licence and had to export exclusively via State-owned Chinese traders against an agency fee, which equalled the net profit on turnover during the same period and had thus to be considered as significant within the meaning of Article 2(7)(c), first indent of the basic Decision. Finally, there were also indications of State interference as regards the setting of the salaries for workers.
- (28) The Commission informed the company concerned and the complainant Community industry of its findings and granted them the possibility to comment. Finally, the Commission concluded that the conditions set out in Article 2(7)(c) of the basic Decision for obtaining MES were not met by TJGN.
- (29) The Advisory Committee did not object to this conclusion.

2. Individual treatment

- (30) It is the Commission's policy to calculate a countrywide duty for non-market economy countries, except in those cases where companies can demonstrate that their export activities are free from state interference and that there is a degree of legal and factual independence from the State so that the risk of circumvention of the country-wide duty is removed.
- (31) Three Chinese producers requested individual treatment. However, one company did not cooperate during the investigation and its claim had thus to be rejected.
- (32) As regards the second company, TJGN, following the rejection of the claimed MES, the Commission examined whether the company qualified for individual treatment. However, as mentioned, TJGN not having an export licence had no alternative but to export the product concerned exclusively via State owned traders. It was therefore concluded that its independence from State authorities could not be sufficiently guaranteed and thus the risk of circumvention of anti-dumping measures was clearly present. Moreover, TJGN's mother company in Hong Kong which was directly involved in the export to the Community of the product concerned did not provide a reply to the Commission's questionnaire.

- (33) As regards the third company, the investigation revealed that it was fully State-owned, did not have an export licence and thus exported the product concerned via State owned traders which negotiated for more than half of the reported export sales price and volume of the transaction. The trader subsequently offered the contract as negotiated to the producer concerned which had no influence on the price setting. Consequently, there was a clear interference from the State authorities regarding the determination of export prices and quantities.
- (34) Considering the above, no individual treatment could be granted to any of the three companies.

3. Sampling

- (35) Due to the large number of Chinese producers/exporters listed in the complaint, the Commission decided to apply sampling in accordance with Article 17 of the basic Decision. In order to enable the Commission to select a sample, producers/exporters were requested, pursuant to Article 17(2) of the basic Decision, to make themselves known within two weeks of the initiation of the proceeding and to provide basic information on their export sales for the investigation period as well as the names and activities of all related companies.
- (36) In total 25 Chinese companies expressed their willingness to participate in the sample. The investigation revealed that 19 companies were either not producing the product concerned or did not export the product concerned to the Community during the IP. Therefore, these companies could not be considered for the purpose of determining a sample.
- (37) There were consequently only six companies left which were taken into consideration for the purpose of selecting the sample. The volume of sales by these companies represented nearly 60 % of all coke 80 + originating in the PRC exported to the Community during the investigation period.
- (38) The selection of the sample was made in agreement with the companies concerned. According to Article 17(1) of the basic Decision, the selection was based on the largest representative volume of exports which could reasonably be investigated within the time available. Therefore, three companies which represented more than 50 % of the total export volume to the Community during the investigation period were selected.
- (39) Interested parties were invited to comment on the choice of the sample. No substantive comments were received in this respect.

4. Normal value

4.1. Analogue country

- (40) In the absence of any companies qualifying for MES, it was necessary to establish normal value on the basis of the prices and costs in an appropriate market economy third country ('analogue country'), pursuant to Article 2(7) of the Basic Decision. The USA was suggested by

the complainant Community industry and was also proposed by the Commission in the notice of initiation.

- (41) The Commission subsequently verified in more detail whether the USA was indeed an appropriate choice. It was found that the production volume of coke 80 + in the USA was comparable to the one in the PRC, the USA being after PRC the second largest producer of coke 80 +. Furthermore, the physical, technical and chemical characteristics and uses of coke 80 + in the USA were similar to those of the coke 80+ produced in the PRC and exported to the Community. Moreover, coke 80 + producers in the USA and the PRC had a similar access to raw material and domestic sales of coke 80 + on the US domestic market were substantial and representative as compared to the quantities exported to the Community by the PRC. Finally, the level of competition in the USA was found to be very high. Indeed, in addition to the competition between several producers on the United States domestic market, there was also competition from imported coke 80+, which could be imported in the United States without quantitative restrictions or import duties.
- (42) In these circumstances, the selection of the USA as an analogue country appeared reasonable and justified.

4.2. Determination of normal value

- (43) The Commission considered it appropriate to make use of sampling in accordance with Article 17 of the basic Decision. Thus, out of a total of five producers of coke 80 + in the USA three producers, representing more than 50 % of the total US domestic sales of coke 80 + were selected. This was the largest representative volume of sales which could reasonably be investigated within the time available.
- (44) In accordance with Article 2(7) of the basic Decision, normal value for the Chinese exports was calculated on the basis of the weighted average normal values established for the three sampled producers of coke 80+ in the USA.
- (45) It was considered that the United States-domestic sales of coke 80 + were representative in comparison to the quantity of the product concerned produced in the PRC and sold for export to the Community.
- (46) The Commission examined whether United States sales of the product concerned could be considered as being made in the ordinary course of trade by reason of price, i.e. not made at a loss. For this purpose the full cost of production per unit during the investigation period was compared to the average unit price of the sales transactions made during this period. It was found that all domestic sales were made at a profit.

(47) As a result, normal value was established as the weighted average domestic sales price for all transactions to independent customers by the three selected United States producers.

5. Export price

(48) The export prices were calculated in accordance with Article 2(8) of the basic Decision, i.e. on the basis of the export prices actually paid or payable.

(49) As a result of the particular economic structure of the sector in the PRC, most producers of coke 80+ were small-sized companies not directly exporting to the Community, but selling via traders located in the PRC. Since the export price had to be established on an fob-basis, the Commission concluded that it should not use the prices charged by the these producers to the exporting traders. Thus, the Commission considered as export price the resale price from the Chinese traders concerned charged to the first independent party in the Community.

6. Comparison

(50) The Commission compared the normal value and the export price at an fob-basis at the same level of trade.

(51) The Chinese companies concerned claimed that they had a comparative advantage as to the purchase price of the main raw material used in the production of coke, namely coking coal. They argued that coking coal in the PRC was sold at a market price and an adjustment was claimed for the difference in the coking coal prices between the PRC and the USA. This claim could not be accepted because it was merely based on a price difference between the raw material in different markets and not on the basis of evidence of a comparative advantage. Furthermore, it should be noted that costs and prices in the PRC, being a non-market economy country, are in general considered unreliable and that for this reason and pursuant to Article 2(7) of the basic Decision, the normal value established for the PRC should be based on prices of an analogue country. An allowance for higher costs for raw materials in the analogue country is therefore incompatible with the objectives underlying Article 2(7) and thus not justified.

(52) The Chinese companies concerned further claimed an adjustment for differences in the production process. They argued that Chinese coke 80+ producers used different ovens from United States producers, which were less capital intensive. However, the Chinese companies did not provide details of such statement and failed to quantify it. Moreover and taking into consideration that the United States producers of coke 80+ are amongst the most efficient producers in the world, it was provisionally concluded that no adjustment should be made for differences in the production process.

(53) For the purpose of ensuring a fair comparison between the normal value and the export price, due adjustments were made, where applicable and justified, for other differences affecting price comparability in accordance with Article 2(10) of the basic Decision.

(54) On this basis, adjustments for differences in grades of the products, in transport costs, insurance costs, credits costs, commissions as well as handling and loading costs have been made when found justified.

(55) Finally, an allowance to the normal value was granted for screening costs of the product concerned when exported from the PRC into the Community. In this regard, the screening cost per ton was provisionally estimated based on information collected during the investigation and deducted from the normal value.

7. Dumping margin

(56) According to Article 2(11) of the basic Decision the weighted average normal value was compared to the weighted average export price.

(57) The comparison as described above, showed the existence of dumping.

(58) The level of cooperation of the Chinese producers/exporters concerned has to be further investigated and the dumping margin was therefore provisionally established on the basis of data obtained from cooperating Chinese producers/exporters only.

(59) The weighted average dumping margin expressed as a percentage of the cif export price free at Community frontier exceeded 60 %.

D. COMMUNITY INDUSTRY

1. Total Community production

(60) Within the Community, the product concerned was manufactured during the IP by:

- five producers on whose behalf the complaint was lodged and one supporting the complaint and cooperating in the investigation, and
- three other Community producers supporting the complaint.

(61) It was found that, during the IP, three Community producers had resold Chinese coke 80+. The volume of these sales by all of these producers did not, on an individual basis, exceed 8,5 % of their total production and they represented 3,8 % of the sales of the Community industry in the IP. It was therefore concluded that this was in accordance with normal commercial behaviour of self-defence, in the face of increased low priced imports of Chinese coke 80+. In light of the above circumstances, it is provisionally concluded that there are no reasons for the exclusion of any of these Community producers from the definition of the Community production.

- (62) The nine Community producers of coke 80 + mentioned therefore, constitute the Community production within the meaning of Article 4(1) of the basic Decision.

2. Community industry

- (63) The following Community producers cooperated in the investigation, i. e. replied to the Commission's questionnaires, allowed on-spot verifications and provided the Commission with additional information when requested:

- Coal Products Ltd, Chesterfield, United Kingdom,
- Cokeries d'Anderlues SA, Anderlues, Belgium,
- Cokes de Drocourt SA, Rouvroy, France,
- Industrial Química del Nalón SA, Oviedo, Spain,
- Italiana Coke SA, Savona, Italy,
- Productos de Fundación SA, Baracaldo, Spain.

It should be noted that although Cokes de Drocourt SA was not among the companies on whose behalf the complaint was lodged, this company, nevertheless, supported it and cooperated in the investigation.

- (64) On this basis, the Community producers supporting the complaint and fully cooperating in the investigation represented 73,1 % of the total Community production of the product concerned in the IP and, thus, constituted a major proportion of the total Community production pursuant to Articles 4(1) and 5(4) of the basic Decision. These companies are referred to as the 'Community industry'.

3. Other Community producers

- (65) None of the three other producers in the Community fully cooperated in the investigation. Nevertheless, they provided information on their overall production and sales. These three companies are referred to as the 'other Community producers'.

E. INJURY

1. Apparent Community consumption

- (66) Apparent consumption of coke 80 + in the Community was established on the basis of the total sales of the Community industry, the total sales of the other Community producers, the imports of the product concerned originating in the PRC as provided by the cooperating importers and on the basis of the information contained in the complaint and the estimated imports originating in third countries other than the PRC as provided in the complaint (the 'other third countries').
- (67) On this basis, it was found that the total apparent Community consumption of coke 80 + remained practically stable over the period considered. It went from 1,358 million tonnes in 1995, to 1,290 million tonnes in 1996, to 1,344 million tonnes in 1997, to 1,394

million tonnes in 1998 and to 1,372 million tonnes in the IP.

2. Imports originating in the PRC

2.1. Volume of the imports concerned

- (68) Despite the fact that Community consumption has remained stable, imports of Chinese coke 80 + into the Community increased substantially throughout the period considered, equivalent to an increase of 63 % when comparing 1995 and the IP. Imports of Chinese coke 80+ went from 235 000 tonnes in 1995 to 233 000 tonnes in 1996, before rising to 270 000 tonnes in 1997, to 362 386 tonnes in 1998 and to 383 150 tonnes in the IP.

2.2. Market share and share of production of the imports concerned

- (69) The market share held by the Chinese imports rose steadily from 17,3 % in 1995 to 27,9 % in the IP, which is equivalent to an overall increase of 10,6 percentage points over the period considered. It went from 17,3 % in 1995 to 18,1 % in 1996, to 20,1 % in 1997, to 26,0 % in 1998 and to 27,9 % in the IP. It should also be noted that the share of imports originating in the PRC as compared to the total imports of coke 80 + into the Community has accounted for around 95 % throughout the period considered.
- (70) Furthermore, the proportion of the Chinese imports as compared to the total production of the Community industry has also steadily increased throughout the period considered from 26,6 % in 1995 to 47,0 % in the IP representing an overall increase of 77 %. The highest share was reached during the IP.

2.3. Prices of the imports concerned

(a) Evolution of the prices of the imports concerned

- (71) The weighted average unit prices of coke 80 + imported from the PRC and sold on the Community market were established on the basis of the information provided by the co-operating importers. Expressed in ECU-EUR/tonne, they increased by 12 % over the period considered with a peak in 1997. Prices increased from ECU 71,1 per tonne in 1995 to ECU 77,9 per tonne in 1996, to ECU 90,1 per tonne in 1997 and then decreased to ECU 82,6 per tonne in 1998 and further decreased to ECU/EUR 79,7 per tonne in the IP.
- (72) According to the information provided by interested parties, the increase in prices between 1995 and 1997 (27 %) was linked to improved stability of quality of Chinese coke 80 +, which therefore obtained higher prices in the Community market. Between 1997 and the IP the price decrease was very marked and amounted to 11 %. This price decrease coincided with a gain in market share through low prices.

(b) Price undercutting

(73) It was further examined whether the producers/exporters of the PRC undercut the prices of the Community industry during the IP. For that purpose, the weighted average prices of the Chinese coke 80+ in the Community were compared to the weighted average prices of the Community industry in the Community market, at the same level of trade.

(74) As regards the prices of the Chinese coke 80+, the Commission used the export transactions reported by the cooperating Chinese producers/exporters. The fob Chinese border prices reported were converted into cif Community frontier prices by adding the cost of freight and insurance on the basis of the information provided by co-operating importers. In a second step, the Chinese prices thus calculated were adjusted for differences in grade according to the content of fixed carbon. In a third step, the cif Community frontier prices were further adjusted by a margin reflecting the selling and financing costs incurred by importers in the Community subsequent to importation to an ex-importer-warehouse level (e.g. unloading, inspection, screening and degradation). This adjustment was done on the basis of a substantiated claim made by one importer representing around 26% of total imports originating in the PRC in the IP.

(75) As regards the prices of the Community industry, the Commission used the sales transactions of the Community industry to the first unrelated customers, whether directly ('ex-works' basis) or through their related sales companies ('ex-related-salescompany' basis).

(76) Since it was found that the importers sold the Chinese coke 80+ exclusively to users, the Chinese prices were compared with the prices of the Community industry for sales made at the same level of trade, i.e. to users. These sales represented around 67% of total sales made by the Community industry during the IP. Therefore the Community producers' weighted average net ex-works sales prices to unrelated users in the Community were compared to the net weighted average prices of Chinese coke 80+ at an ex-importer-warehouse level.

(77) This comparison showed that during the IP, Chinese coke 80+ was sold in the Community at prices, which undercut the Community industry's prices, when expressed as a percentage of the latter by 29,5%.

3. Situation of the Community industry

3.1. Production, capacity and capacity utilisation

(78) Given the special nature of the production process and the high fixed costs linked to the production of coke 80+, it is important to use capacity as fully as possible and to maintain a relatively stable level of production, even if the sales of this product would be made at a loss.

Indeed, the production facilities, which are dedicated to the production of coke 80+, have to operate 24 hours a day, all year round. Coke oven batteries are also, due to the environmental standards of the Community, linked to specific coking gas purification and water treatment machinery and equipment limiting atmospheric pollution. As a whole, the capacity in place cannot in practice be adjusted to the actual volumes of sales or used to produce other products.

(79) In this respect the production of the Community industry decreased from 884 809 tonnes in 1995 to 816 026 tonnes in the IP, which represents an overall decrease of 8%. Production remained stable between 1995 and 1997 and then showed a continuous decreasing trend between 1997 and the IP. It is also worth noting that the Community consumption remained relatively stable over the same period.

(80) The Community industry's production, capacity remained constant between 1995 and the IP, at around 1,130 million tonnes.

(81) The utilisation of production capacity decreased in line with production, i.e. capacity utilisation declined by 6 percentage points, going from 78% in 1995 to 72% in the IP. Given the fact that coke-making is capital intensive, the decreasing utilisation rate has significant effects on unit costs:

3.2. Stocks

(82) The Community industry's closing stocks increased by 22% between 1995 and the IP reaching a peak in 1997. In relation to the total sales volume on the Community market, closing stocks have increased by 42% over the period considered, namely stocks represented 6,2% of total sales volume in 1995 and 8,8% in the IP.

3.3. Sales volume and market share

(83) Sales volume of the Community industry in the Community market decreased continuously over the period considered equal to an overall decrease of 14% between 1995 and the IP. Sales went from 880 666 tonnes in 1995 to 813 789 tonnes in 1996, to 818 061 tonnes in 1997, to 788 176 tonnes in 1998 and to 753 866 tonnes in the IP.

(84) The corresponding market share of the Community industry dropped constantly representing an overall loss of market share of 9,9 percentage points, going from 64,8% in 1995 to 54,9% in the IP.

3.4. Sales prices

- (85) The weighted average selling prices of coke 80+ sold by the Community industry in the Community market, whether directly or through related sales companies, showed an overall decrease of 1 % over the period considered. After an increase of 6 % between 1995 and 1997, prices decreased by 7 % between 1997 and the IP. Prices went from ECU 146,5 per tonne in 1995 to ECU 154,1 per tonne in 1996, to ECU 154,9 per tonne in 1997, to ECU 149,0 per tonne in 1998 and to ECU/EUR 144,5 per tonne in the IP.
- (86) Between 1995 and 1996 the Community industry's prices increased in line with the increase in the cost of raw materials. Between 1996 and 1997 prices remained stable whereas prices of raw materials increased, which coincided with a reduction in the profitability of the Community industry to the level of 1995. Between 1997 and the IP raw material prices decreased and so did the prices of the Community industry. However, during that period the unit costs of the Community industry increased coinciding with a decrease in the level of capacity utilisation. Therefore, between 1997 and the IP the Community industry's prices were prevented from increasing so as to keep in line with the evolution of costs of production. On the contrary, the Community industry was obliged to decrease its prices in an attempt to maintain its market share. This situation can therefore be characterised as one of price depression.

3.5. Cost of production

- (87) It was found that the Community industry's average full unit cost of production increased by 11 % between 1995 and the IP. While the selling and financing unit costs decreased, the unit cost of manufacturing increased over the period (14 %). Within the cost of manufacturing, the purchase prices of the main raw material (coking coal) remained stable over the period, whereas the unit cost of direct labour and other manufacturing overheads, which represent around 40 % of the cost of manufacturing, increased substantially, notably between 1997 and the IP.
- (88) The increase in the unit cost of manufacturing of the Community industry, especially from 1997, coincided with the decrease in the capacity utilisation of the Community industry, which led to an increase in fixed costs per unit produced.

3.6. Profitability

- (89) Profitability of the Community industry in terms of return on net sales in the Community market before any extraordinary items went from 4,8 % in 1995, to 9,6 % in 1996, to 5,9 % in 1997, to 0,9 % in 1998 and to -3,9 % in the IP.

- (90) The improvement of the Community industry's profitability between 1995 and 1996 coincided with an increase in sales prices and relatively stable costs of the raw materials. The reduction in profitability between 1996 and 1997 coincided with relatively stable sales prices but with a moderate increase in the costs of the raw materials and an increase in the unit costs due to decreasing production and capacity utilisation. Between 1997 and the IP the profitability of the Community industry deteriorated continuously, which coincided with a continuous decrease in the sales prices and an increase in unit costs due to decreasing production and capacity utilisation. It is worth noting that between 1997 and the IP the cost of raw materials decreased. It should also be noted that all of the producers forming the Community industry suffered losses or decreasing profitability in the IP.

3.7. Investments and employment

- (91) The Community industry's investments went from ECU 7,787 million in 1995 to ECU/EUR 6,777 million in the IP. The investments have in general been in replacement of coking gas purification and water treatment machinery and equipment. Between 1995 and 1997 the Community industry's return on sales was sufficient to cover the necessary yearly investments. However, the level of investments in 1998 and the IP shows that the Community industry had to maintain the rate of investments even at a time when profitability was insufficient to cover the costs of those investments.

- (92) The Community industry's employment related to the production of coke 80 + declined by 10 %, from 750 persons employed in 1995 to 673 employed in the IP. The total employment of the Community industry was 1 461 persons in the IP. The relatively low number of employees is explained by the fact that the coke production by coke oven batteries used by the Community industry is by far more capital than labour intensive.

3.8. Productivity

- (93) Productivity of the Community industry, measured as output per person employed, increased by 3 % over the period considered. After increasing between 1995 and 1998, productivity decreased by 3 % between 1998 and the IP coinciding with a decrease in employment of 1 % and a decrease in production of 4 %.

4. Conclusion on injury

- (94) In assessing the situation of the Community industry, account has been taken of the fact that a high level of capacity utilisation is necessary to cover the fixed costs of this industry. Furthermore, constant investments are needed in order to comply with the environmental legislation of the Community. Thus, an essential condition

for the Community industry to keep pace with the capacity utilisation and investment flow required is the achievement of adequate levels of production, sales and prices yielding an appropriate profitability.

- (95) In this respect it was found that between 1995 and the IP, the economic factors pertaining to the Community industry such as production, capacity utilisation and consequent unit cost of production, stocks, sales volume, unit prices, market share as well as profitability deteriorated.
- (96) In particular, in a practically stable market, the Community industry suffered a serious erosion of its market share. It has since 1997 tried to face this situation by reducing its sales prices down to a level sufficient to at least cover its operational costs in order to maintain its market share. In this respect, the Community industry suffered a 7 % reduction in its sales prices between 1997 and the IP.
- (97) Moreover, the decline in sales volume affected the level of capacity utilisation and increased unit production costs. Indeed, the rise in unit production costs occurred when the fixed costs had to be spread over a continuously decreasing production volume, which dropped by 8 % between 1995 and the IP. The decline in the Community industry's sales prices, together with the increase in the unit costs as a result of a decrease in capacity utilisation led to a decreasing profitability especially since 1997, which went to losses in the IP (-3.9 %). In this respect, the investments required in this type of industry had to be maintained even at a time when earnings achieved were insufficient to finance these. Indeed, particularly in 1998 and the IP, the return on sales of the Community industry was insufficient to cover the costs of yearly investments required. Furthermore, as mentioned above in recital 78, the capacity of the Community industry in place cannot in practice be adjusted to actual volumes of sales or converted to other products. In this respect, the specificity of the production capacity exacerbated the material injury experienced by the Community industry when losing sales volumes and market share.
- (98) In the light of the foregoing analysis, it has been provisionally concluded that the community industry suffered material injury within the meaning of Article 3(1) of the basic Decision.

F. CAUSATION

1. Preliminary remarks

- (99) In accordance with Article 3(6) of the basic Decision, it was examined whether the material injury suffered by the Community industry was caused by the volume and the price level of the Chinese dumped imports to a degree, which enables it to be classified as material. Other factors were also examined, in accordance with

Article 3(7) of the basic Decision, in order to ensure that injury caused by these other factors was not attributed to the dumped imports concerned.

2. Effects of the dumped imports

- (100) In this respect it was found that the dumped imports originating in the PRC increased significantly in terms of volume and market share over the period considered. The increase was particularly significant between 1997 and the IP (41 % for import volume and 7,8 percentage points for market share). This coincided with the deterioration of the situation of the Community industry in terms of loss of market share, price depression as well as deterioration of its profitability.
- (101) With regard to the import volume and market share, imports originating in the PRC increased by 63 % over the period considered. This represents an overall increase in their market share of 10,6 percentage points, while the market share of the Community industry decreased by 9,9 percentage points. It is therefore concluded that the loss of market share suffered by the Community industry could be entirely attributed to the gain in market share held by the PRC. This conclusion is justified taking into consideration that the other Community producers also lost market share (1,2 percentage points) and imports from the other third countries remained stable over the period considered.
- (102) As concerns the Community industry's financial situation, it improved from 1995 to 1997. This was due to the increase in the level of prices of the Community industry and the relatively stable level of production and improvement in productivity. However, the increase in prices was at the expense of market share, which declined by 3.9 percentage points over the same period. It is worth noting that this development coincided with the price increase (27 %) of the Chinese exports. From 1997 onwards, the Chinese export prices to the Community dropped (-11 %) and import volume (+42 %) as well as corresponding market share (+7,8 percentage points) rose significantly, parallel to the downward trend of the situation of the Community industry, which lost further market share (-5,9 percentage points) and suffered a decrease in its sales prices (-8 %).
- (103) In this respect, the decline in sales volume affected negatively the level of production and hence capacity utilisation, unit production costs and productivity of the Community industry. The progression in imports of Chinese coke 80 + can be clearly illustrated by the ratio between the share of these imports as compared to the total production of the Community industry, which has increased from 26,6 % in 1995 to 47,0 % in the IP representing an overall increase of around 20 percentage points.

- (104) Furthermore, imports of Chinese coke 80 + were made at prices, which significantly undercut those of the Community industry during the IP. Consequently, substantial losses were recorded during the IP when these imports reached their highest level in terms of volume and market share.
- (105) It has therefore provisionally been concluded that the depressed prices and the deteriorating situation of the Community industry, in particular in terms of market share and financial losses, can clearly be attributed to the persistently low prices of the imports of Chinese coke 80 + in increasing volumes, which reached a significant level of the Community market during the IP.

3. Impact of other factors

3.1. Preliminary remarks

- (106) In terms of other factors, the Commission examined the development of consumption in the Community market, the performance of the other Community producers, developments of the Community industry's production capacity and export performance, new environmental legislation, changes in the prices of raw materials, the evolution and impact of imports from third countries not covered by the present proceeding and the Community industry's resale of Chinese coke 80 +.

3.2. Development of consumption

- (107) Consumption of the product concerned on the Community market remained relatively stable over the period considered. Furthermore, it should be noted that the Community industry suffered decreasing profitability and became loss making between 1997 and the IP when the Community market increased by 2 %. Therefore, the material injury suffered by the Community industry cannot be attributed to a contraction in demand on the Community market.

3.3. Performance of other Community producers

- (108) In the course of the investigation it was also considered whether the situation of the other Community producers, which represented 26,9 % of the total Community production in the IP, was different from that of the Community industry. For this purpose, information contained in the complaint as well as information provided by the other Community producers on their overall production, sales volume and prices was examined.
- (109) It was found that the other Community producers also lost market share from 16,9 % in 1995 to 15,7 % in the IP. Furthermore, in the period considered they lost sales volume (-6 %) and their average sales price declined by 11 %. It is also worth noting that after the IP one of the other Community producers closed down its two coke-making plants in Germany.

- (110) In view of the above, it is concluded that the other Community producers were also facing difficulties in line with those of the Community industry. Thus, the other Community producers cannot have contributed to the material injury suffered by the Community industry.

3.4. Over-capacity of the Community industry and export performance

- (111) Certain interested parties argued that any injury suffered by the Community industry was caused by over-capacity in the Community coke 80+ production due to declining demand and to a deterioration of the export performance of the Community industry.
- (112) The investigation has shown, however, that Community consumption has remained relatively stable between 1995 and the IP, as did the production capacity of the Community industry. Moreover, the capacity of the Community industry in the IP was almost the same as that existing in 1996 when the Community industry achieved adequate profits.
- (113) With regard to export sales, these have represented a small percentage (around 5 %) of the total sales made by the Community industry. Although the volume of export sales declined overall by 8 % between 1995 and the IP, in relation to the sales volume on the Community market, exports have increased from 5,2 % in 1995 to 5,6 % in the IP.
- (114) In view of the above, the material injury suffered by the Community industry cannot be attributed to any increase in capacity. As regards the contraction in the export performance of the Community industry, the relatively low percentage that export sales represent on the total sales made by the Community industry cannot be such as to break the causal link between dumped imports of Chinese coke 80+ and the material injury suffered by the Community industry.

3.5. Change in the environmental legislation

- (115) It has been examined whether the injury suffered by the Community industry is due to any extraordinary investments that it has been obliged to make in view of any change in the environmental legislation applicable to this industry.
- (116) It was found that during the period considered, the Community industry has maintained a normal level of investments for this type of industry. The Community industry has not invested with the aim of increasing its production capacity but in replacement of coking gas purification and water treatment machinery and equipment required by the Community's environmental legislation. Therefore, no extraordinary investments have been made by the Community industry as a result of any new environmental legislation.

(117) It is therefore concluded that the injury suffered by the Community industry has not been caused by excessive investments due to the introduction of new environmental legislation.

3.6. Prices of raw materials

(118) It has also been considered whether the injury suffered by the Community industry could be attributed to an increase in the costs of raw materials, as it was claimed that these increases were at least in part responsible for the injury suffered.

(119) It was found that the basic raw material used in the production of coke 80 + is coking coal, which represents around 60 % of the cost of manufacturing coke 80 +. The coking coal used by the Community industry is imported from the USA. As regards the prices of the coking coal used by the Community industry, the investigation showed that these remained stable over the period considered. After an increase of 7 % between 1995 and 1997, prices of the raw materials decreased by 8 % between 1997 and the IP. In this respect, it should be noted that although the dollar has appreciated with respect to the ECU/EUR, especially during the IP, the higher purchase price of coking coal has been compensated by a sharp decrease in the costs of ocean freight.

(120) In this respect, the increase in raw material prices between 1995 and 1997 could be passed on in the sales prices, which increased during the same period coinciding with the higher profit margins of the Community industry. On the contrary, between 1997 and the IP, despite a decrease in 8 % in the prices of raw materials, the financial situation of the Community industry deteriorated since its sales prices decreased more than the decrease in the prices of raw material while its cost of production increased due to a decrease in the capacity utilisation.

(121) Consequently, it is considered that the prices of the raw materials did not contribute to the material injury suffered by the Community industry.

3.7. Imports from other third countries

(122) It was found that the market share of the imports from other third countries taken together represented, over the period considered, less than 1,5 % of the Community market. As far as prices of imports from other third countries are concerned, no indications were available that suggested that the imports concerned were made at low prices.

(123) Even if imports from other third countries were made at low prices, the negligible market share of these imports is not such as to have materially contributed to the injury suffered by the Community industry.

3.8. Community industry's re-sale of Chinese coke 80 +

(124) It was also considered whether the Community industry had caused injury through its resale of coke 80+ originating in the PRC.

(125) As already mentioned above, it was found that the volume of these sales by the Community industry in the IP did not, on an individual basis, exceed 8,5 % of their total production volume. These imports represented only 7,6 % of the total imports originating in the PRC and 3,8 % of all sales by the Community industry in the IP. This clearly corresponded to normal commercial behaviour of self-defence in order to counteract the surge in imports originating in the PRC. Furthermore, the low level of this resale cannot have shielded the Community industry from the effects of dumping nor have these imports substantially benefited it.

4. Conclusion on causation

(126) The Commission found that there is strong evidence of the causal link between the dumped imports and the material injury found. This conclusion is based, in particular, on the loss of market share of the Community industry combined with the deterioration of profitability, which coincided with the increase in the volume of imports originating in the PRC at prices that were constantly and significantly below those of the Community industry. Any other factors that may have contributed to the injurious situation of the Community industry, in particular the Community industry's export performance, changes in the cost of raw materials and the Community industry's own resale of Chinese coke 80 + are such that they cannot be considered to break the causal link between the dumping and the material injury found.

(127) It is therefore provisionally concluded that the dumped imports originating in the PRC have caused material injury to the Community industry within the meaning of Article 3(6) of the basic Decision.

G. COMMUNITY INTEREST

1. Preliminary remarks

(128) The purpose of anti-dumping 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 the investigation of dumping and injury caused thereby, it has been examined whether any compelling reasons existed which could lead to the conclusion that it is not in the Community interest to impose measures in the present case. For this purpose, and in accordance with Article 21(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 all evidence submitted.

2. Collection of Community interest data

- (129) In order to assess the impact of possible measures, questionnaires were sent to all interested parties, including the importers/traders and the industrial users known to the Commission at the time of the initiation of the proceeding. Other interested parties, which came forward, were invited to provide information on the likely effects of the imposition/non-imposition of anti-dumping measures. The Commission also requested information on Community interest from the Community industry.
- (130) Questionnaire responses were received within the time limits set from six importers/traders, together representing the quasi-totality of imports of coke 80 + originating in the PRC:
- Adriacoke SpA, Ravenna, Italy,
 - Eurocoke Due Srl, Milano, Italy,
 - Krupp Energiehandel GmbH, Essen, Germany,
 - Mongecoke SpA, Milano, Italy,
 - RAG Trading GmbH, Essen, Germany and
 - SSM Coal BV, Rotterdam, The Netherlands.
- (131) During the investigation it was found that Eurocoke Due Srl ceased importing coke 80 + originating in the PRC since the beginning of 1999.
- (132) Responses were also received from two companies using coke 80+ in manufacture of cast iron or stone wool:
- Buderus Guss GmbH, Wetzlar, Germany, and
 - Rockwool International A/S, Copenhagen, Denmark, on behalf of the following subsidiaries:
 - Rockwool A/S, Hedehusene, Denmark,
 - Deutsche Rockwool Mineralwoll, GmbH, Gladbeck, Germany,
 - Rockwool Lapinus, BV, Roermond, The Netherlands,
 - Rockwool Isolation SA, Paris, France.
- (133) Substantiated comments were received from three cast iron producers:
- Fritz Winter Eisengiesserei GmbH & Co KG, Stadtlendorf, Germany,
 - Georg Fischer GmbH & Co KG, Mettmann, Germany,
 - Pont-à-Mousson, SA Nancy, France.
- (134) The Committee of Associations of European Foundries as well as six National Foundry Associations also made allegations as regards the possible impact of anti-dumping measures on Community foundries.

3. Impact on the Community industry

3.1. Nature and viability

- (135) The Community industry is composed of medium-sized companies dedicated only to coke production located in France, Spain, Belgium, UK and Italy. The Community industry employed a total of 1 461 people out of which 673 were employed directly for the product concerned in the IP. It should also be noted that the Community industry is a mature industry, with strategic importance in terms of reliability of supply for the user industries.
- (136) The Community industry has been found to be viable. This is evident from the profit margins obtained between 1995 and 1997 (ranging between 4,8 % and 9,6 %) as well as by the level of investments made throughout the period considered. However, the impact of the dumped Chinese imports as from 1997 has significantly worsened the situation of the Community industry, to the extent that it suffered losses amounting to -3,9 % in the IP.
- (137) As mentioned in recital 78, the product concerned is produced in coke oven batteries, which are dedicated to the production of coke 80 + and the capacity in place can neither be adjusted, in practice, to the actual volumes of sales, nor can it be used to produce other products. Furthermore, coke-making using coke oven batteries is capital intensive, highly automated and the Community industry constantly needs to make investments in order to comply with the Community's environmental legislation. In this respect, during the period considered the Community industry maintained its investments in replacement of machinery and equipment in order to comply with anti-pollution obligations.
- ### 3.2. Effects of the imposition of measures
- (138) In case of injurious dumping caused by low-priced dumped imports, the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration.
- (139) In order to assess the effects of any possible measures on the Community industry, the Commission has assumed a stable demand situation. This is justified given the stability in production of cast iron, stone wool and zinc lead in the Community.

(140) Following the imposition of measures, it is expected that the volume of sales and to a certain extent prices of the product concerned on the Community market would rise. This volume increase would enable the Community industry to recover market share and with increased capacity utilisation decrease unit production costs and increase productivity. Although a reduction in the volume of imports originating in the PRC is possible, given that the Community industry does not have the capacity to supply the whole Community market, this reduction in imports is not expected to be significant.

(141) As regards the level of prices by the Community industry, it is expected that it will increase, although not by the full amount of the duty, since part of the benefit to the Community industry will result from an increase in the sales volume, which it can obtain if it regains a certain advantage in terms of prices over imports of Chinese coke 80 +.

(142) Any increase in sales volume and the level of the Community industry's prices would, in all likelihood, enable it to restore its financial situation, thus allowing the companies concerned to continue trading and making the necessary investments.

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

(143) Should measures not be imposed, it is likely that the negative trend of the Community industry will continue, leading in the medium/long term to the closure of companies. The Community industry is particularly marked by a loss of market share and a negative financial situation. Indeed, in view of the decreasing profitability particularly since 1997 and the material injury suffered during the IP, it is obvious that the financial situation of the Community industry will deteriorate further in the absence of any measures to correct the negative effects of dumped imports. This may ultimately lead to cuts in production or closures of certain facilities and therefore threaten employment and substantial investments in the Community. In this respect the closure of two production plants by one of the other Community producers should be noted.

(144) Consequently, without measures, the price effect of the dumped imports will continue to frustrate the efforts of the Community industry to regain a satisfactory margin of profitability, which could lead to a further reduction in the production of the product concerned in the Community. It follows that with fewer producers present in the Community market, effective competition will also be reduced.

3.4. *Conclusion*

(145) In conclusion, given that the analysis of the Community industry indicated that it is structurally viable, it is expected that measures would be effective in affording the industry the opportunity to recover from the injury suffered. The Community industry would be expected to improve its sales volume and recover lost market share, which as such would reduce unit costs and increase profitability. Furthermore, a certain increase in the sales prices by the Community industry is expected, albeit not by the full extent of the duty. Therefore, it is considered to be in the interest of the Community industry to impose measures. If anti-dumping measures are not adopted, there is a risk that certain Community producers may close down their facilities.

4. **Impact of the measures on importers/traders**

4.1. *Structure of the import and distribution channels*

(146) Distribution of coke 80 + in the Community is characterised by a limited number of importers/traders who hold large stocks of the product concerned. Essentially these companies act between the Chinese exporters and the end-users in the Community by importing, screening and keeping stocks of Chinese coke 80 +. The investigation showed that end-users are not importing the product concerned directly from the PRC but their purchases are made out of importers' stocks.

4.2. *Economic situation of importers*

(147) The abovementioned cooperating importers represent around 96 % by volume of the imports of the product concerned in the Community during the IP. All of these importers were against anti-dumping measures, as they argue that since the Community industry has insufficient capacity to supply demand, measures would lead to loss of their business and earnings as well as have a negative effect on the users.

(148) In this respect it should firstly be noted that although importers hold significant stocks of the product concerned, they also trade in a large number of other coal products that are not concerned by this proceeding. It was found that the total turnover of the cooperating importers was ECU/EUR 1,627 million in the IP whereas the turnover relating to the product concerned was ECU/EUR 40 million representing less than 2,5 % of the total turnover. On the basis of the information available the total employment of these companies was around 500 people of which, allocated on the basis of turnover, 12 can be considered as related to the product concerned. With regard to the financial situation, it should be noted that the weighted average profit for those importers amounted to 7,2 % in the IP.

4.3. *Effect of imposition/non-imposition of measures*

- (149) As previously stated, it is considered that in the event of the imposition of measures, prices of coke 80+ on the Community market will increase while, given the level and nature of the measures proposed as well as the production capacity available in the Community, imports will continue to take place, albeit at non-injurious prices. This increase in prices is likely to have a negative impact on importers who may see their margins reduced.
- (150) However, any reduction in the margins of the importers should be seen in the light of the profitability achieved by importers in the IP as well as the fact that importers also act to a large extent as traders and may choose an alternative source of supply, for instance the Community produced coke 80+. Indeed, it was found that some traders importing from the PRC also purchased coke 80+ from the Community industry. Furthermore, the negative impact of any price increases is likely to be minimised by combining reduced margins with a certain price increase to the user industries. Given that the Community industry is unable to supply the entirety of consumption on the Community market, the volume of imports will in all likelihood remain significant.
- (151) Given the above, it is provisionally concluded that if measures are not imposed, the positive trend observed in the situation of the importers is likely to continue. However, in the event of the imposition of measures, the likely impact of anti-dumping measures on the importers of the product concerned would not be such as to put their economic activity at serious risk, although their situation could deteriorate.

5. Users

5.1. *Economic operators concerned*

- (152) The Community user industry is comprised of three major sectors:
- foundries producing castings,
 - producers of stone wool, and
 - producers of zinc lead.

5.2. *Stone wool producers*

(a) Nature and structure

- (153) Information available to the Commission indicates that one user, Rockwool represents the quasi-totality of stone wool production in the Community. This company responded to the questionnaire addressed to it in the course of the investigation. A verification visit to this

company was carried out by the Commission services. This company represents around 10 % of the total consumption of coke 80+ in the Community and around 28 % of the total imports of Chinese coke 80+ into the Community in 1998.

- (154) Coke 80+ is used as a combustion agent to melt stone. The melted stone is then spun into fine fibres, which are then impregnated by binder and oils to produce stone wool. After hardening and shaping the stone wool is used as insulation material. Rockwool is the leading Community producer of stone wool and holds around one third of the total insulation market in the Community, which includes stone wool, glass wool and plastic foam insulation.
- (155) Coke 80+ has been found to represent between 2 % and 5 % (*) of the total costs of production of Rockwool in 1998.
- (156) The company has eleven production plants in the Community employing a total of around 7 000 persons. According to the information presented by the company, only four production plants use Chinese coke 80+ with an employment of around 3 490 persons in 1998.

(b) Effects of the imposition of measures

- (157) Rockwool expressed concerns over the imposition of measures in the present proceeding. It argued that the imposition of measures would result in an increase in purchase costs, which could affect its competitiveness and thus compromise its manufacturing operations in the Community. It also argued that the increase in costs resulting from the imposition of anti-dumping measures would reduce its profitability since these costs cannot be passed on to its customers.
- (158) As regards the impact of the imposition of an anti-dumping duty on Rockwool, it should firstly be noted that Chinese coke 80+ is not imported directly by users but through importers in the Community. It is not excluded, therefore, that importers sustain part of the price increase resulting from the imposition of an anti-dumping measure, although the extent of this will depend on both the behaviour of the Community industry in its pricing strategy and of the importers.
- (159) Secondly, the investigation showed that coke 80+ represents between 2 % and 5 % (*) of the total costs of stone wool production. Therefore, an anti-dumping duty as proposed would have a maximum hypothetical increase in the cost of production of Rockwool of around 1 %. This impact has been calculated on the assumption that the importers pass the duty fully to the users and that the Community industry increases its prices on average by 5,6 %, i.e. regaining the situation being present in 1996. It is unlikely that such a cost increase takes place given that it cannot be excluded that importers sustain part of the increase in the price of coke 80+. As mentioned, the weighted average profitability of the cooperating importers amounted to 7,2 % in the IP.

(*) Actual data has been indexed for reasons of confidentiality.

Furthermore, it is expected that the prices of the Community industry will increase by less than the calculated 5,6 % mentioned above, since part of the benefit to the Community industry will consist of decreasing unit costs due to increasing production and sales in the Community.

(160) In addition, the profitability of Rockwool almost doubled between 1995 and 1998 and amounted to between 7 % and 9 % in 1998 ⁽⁵⁾.

(161) As regards the impossibility to pass on to customers of stone wool any increase in costs, this has been analysed by reference to one of Rockwool's subsidiaries for which information had been provided on costs, and also on prices of stone wool and which represented around 40 % of the total imports of Rockwool from the PRC in 1998. The strong market position held by Rockwool in the segment of stone wool as such, where the company claims to be Community leader, and the fact that the stone wool represents around one third of the total Community market for insulation products, seem to contradict that argument. Despite an increase in the unit full cost of production of this subsidiary between 1995 and 1998 (between 4 % and 7 %) ⁽⁵⁾, the profitability of this subsidiary increased by 20 % during the same period. It should be noted that the prices of stone wool also increased during the same period (by 7 %). This indicates that such increases in costs can be passed on in the prices to the final customers.

(162) Rockwool claimed that following the imposition of anti-dumping measures, imports of coke 80 + originating in the PRC would decrease. This would cause difficulties to users of Chinese coke 80 +, which would have to bear considerable costs in adjusting their cupola ovens as a result of switching from the Chinese coke 80 + to that produced by the Community industry.

(163) In this respect the investigation showed that cupola ovens in general have to be adjusted switching from one coke 80 + to another irrespective of whether it is sourced from the PRC or from different Community producers. In this respect the imposition of an anti-dumping measure is not likely to have a major impact beyond these normally associated with the switching of sources of supply. In any event, such costs, should they be considerable, have not constituted an insurmountable barrier for this company when it initially decided to switch sources of supply between 1995 and the IP.

(c) Effects of the non-imposition of measures

(164) Should measures not be imposed, Rockwool would continue to benefit from the existing low prices of coke 80 + on the Community market. While it is acknowledged that every reduction in cost is important, it must be stressed that the lower prices being offered by the Chinese producers are the result of unfair trading prac-

tices, which are injurious and detrimental to the Community industry.

(165) Furthermore, it should be noted that, in the event of a reduction or the eventual disappearance of the Community industry of coke 80+, the available sources of supply would also be reduced with the consequent negative effect for Rockwool. In such an event the supply of coke 80+ in the Community could become entirely dependent on Chinese production which would then enjoy a dominant position in the Community market. In this respect it is considered that the existence of alternative sources of supply is vital for guaranteeing proper access to raw materials. Information available to the Commission indicates that shortages of supply of Chinese coke 80 + for export are currently taking place for reasons unrelated to the anti-dumping proceeding. The reduction or even disappearance of the Community industry could exacerbate such problems and create supply shortage to the user industry.

(d) Conclusion

(166) The information provided by Rockwool does not confirm the allegations made as regards the likely impact of the imposition of anti-dumping measures on stone wool producers. Firstly, the incidence of an anti-dumping measure of the amount found, on the cost of production would likely be limited and secondly, any increase in the cost is likely to be passed to the final customer. Therefore, in these circumstances, it is concluded that the imposition of anti-dumping measures on Chinese coke 80+ is not expected to significantly impact their economic situation.

5.3. Foundries

(a) Nature and structure

(167) Foundries represent around 85 % of the total consumption of coke 80 + in the Community and around 63 % of the imports of Chinese coke 80 + into the Community in 1998. Information on the impact of any anti-dumping measure on foundries was received from four Community foundries representing 10 % of total consumption and 13 % of total imports from the PRC. Furthermore, a number of claims were made by several National Foundry Associations as well as by the Committee of Associations of European Foundries. Those claims have been examined in the light of the substantiated information provided by the abovementioned four foundries.

(168) Coke 80 + is used as a combustion agent to melt scrap for the production of ferrous castings. The melted castings are then further transformed and used as input in the production of parts for the automotive, engineering, machinery and public utilities sectors.

⁽⁵⁾ See footnote 4.

- (169) Coke 80 + has been found to represent 2,3 % of the total costs of production of foundries in 1998.
- (170) As regards the employment by the user industry, the Committee of Associations of European Foundries alleged that the employment concerned in this sector amounted to around 194 000 people in 1998. In this respect, information provided by the four cooperating foundries' users representing 10 % of total consumption of coke 80 + during 1998, showed that the total employment of the sector concerned of these four companies amounted to around 6 000 people in 1998. In view of this it appears that the total employment of foundries in the sector using coke 80+ would rather be at around 50 000. It should again be stressed that this figure represents total employment for that sector and not employment directly related to the use of the product concerned.

(b) Effects of the imposition of measures

- (171) The National Foundry Associations claimed that the imposition of an anti-dumping measure on imports of Chinese coke 80 + would have significant adverse effects on foundries, which are mostly small and medium sized companies and would be likely to lead to plant closures. Furthermore, it was alleged that given that coke 80 + represents a high share of the total costs of foundries, any anti-dumping measure would significantly affect the profitability of foundries, which is currently very low (between 1 % and 3 %).
- (172) As already explained in recital 146, Chinese coke 80+ is not imported directly by users but through importers in the Community. It is not excluded, therefore, that importers would sustain part of the price increase resulting from the imposition of an anti-dumping measure.
- (173) As regards the share of coke 80+ on the total costs of foundries, the National Foundry Associations claimed that it ranged between 2,6 % and 6 %. According to the information presented by the four foundries, coke 80+ represents 2,3 % of their total costs. Therefore, an anti-dumping duty as proposed would have a maximum average hypothetical increase in the cost of production of foundries of less than 0,5 %. This impact has been calculated on the assumption that the importers pass the duty fully to the users and that the Community industry increases its prices on average by 5,6 %, i.e. regaining the situation being present in 1996. Whether this cost increase takes place will firstly depend on the behaviour of importers, who could sustain part of the increase in the price of coke 80 + and on the behaviour of the Community industry, whose prices could increase by less than the calculated 5,6 %, since part of the benefit to the Community industry will consist of decreasing unit costs due to increasing production and sales in the Community.

(174) In relation to the costs of foundries, it should be noted that they are generally subject to fluctuations in the main cost items. In more detail, the prices of scrap representing around 50 % of the foundries' full cost of production fluctuated greatly over time. According to information available to the Commission prices of scrap fluctuated by 24 % between 1995 and 1998. In view of the limited maximum impact of an anti-dumping measure on the costs of foundries it is unlikely that any closures of foundries would take place as a result of the imposition of measures.

(175) Secondly, the National Foundry Associations claimed that the profitability of foundries in 1998 ranged between 1,5 % and 3 %. However, the average profitability of the Community foundries submitting information in this respect and representing a usage of 13 % of all imports of Chinese coke 80 + ranged between 5,1 % and 22,1 %, on an average basis around 18 % in 1998. Profits of other major foundries (which alleged to represent an additional usage of around 4 % of Community consumption) that have made themselves known and whose profitability (return on sales) is publicly available range between 10 % and 13 % in 1998. These foundries are suppliers of castings for automotive and machinery industries. The argument of the low profitability margins attained by Community foundries could therefore not be sustained on the basis of the evidence available. The Commission will further look into this matter on the basis of additional information submitted by interested parties subsequent to the disclosure of the provisional findings.

(c) Conclusion

(176) On the basis of the evidence available to the Commission at this stage, the claims made by the National Foundry Associations as regards the impact of an anti-dumping measure on Community foundries have not been confirmed. Indeed, the evidence presented to the Commission indicates that coke represents a marginal proportion of the total costs of foundries and that therefore the impact of any anti-dumping measure on the costs of foundries is likely to be minimal. This conclusion has been reached, in particular, in view of the large fluctuations in the costs of raw materials which have occurred in the past and which did not appear to have the negative impact that the National Foundry Associations now claims would occur should anti-dumping measures be introduced. The claims regarding the profitability of Community foundries have also not been confirmed. It is therefore concluded that the impact of an anti-dumping measure such as the one proposed is not likely to significantly affect the economic situation of foundries.

6. Consequences for competition in the Community market

(177) As far as the competitive environment in the Community market is concerned, two aspects have to be highlighted. First, although it is the intended effect of the imposition of anti-dumping measures that the price

levels of the exports originating in the PRC in the Community increase, the measures are not such as to close the Community market to the Chinese exporters and therefore will allow the continued presence of Chinese products in the market.

- (178) On the contrary, the removal of the unfair advantages gained by the dumping practices is designed to prevent the further decline of the Community industry and thus help to maintain the availability of a wide choice of supply sources and even strengthen competition among existing producers. Indeed, without such measures, there are convincing reasons that the situation of the Community industry would further deteriorate and the competition in the Community market might ultimately be limited to coke 80+ originating in the PRC. This would clearly not be in the interest of the Community, in particular since the Community industry would ensure a more effective competition on the Community market as there would be a greater number of players involved on that strategically important market. Thus, the benefits of a market governed by a greater number of competitive forces would be available to the industrial users of the product concerned.
- (179) Secondly, as far as other imports to the Community are concerned, which were found to have been relatively stable during the period considered, there is no evidence that these could not increase their presence in the Community market once fair competitive conditions are restored.
- (180) Consequently, the benefit of a market governed by competitive forces would still be available to end-users of the product concerned.

7. Conclusion on Community interest

- (181) The imposition of measures can be expected to afford the Community industry with the opportunity to regain lost market share and restore profitability, with consequent beneficial effects on the competitive conditions on the Community market. In view of the deteriorated situation of the Community industry, there is a risk that in the absence of measures, certain Community producers may close down their facilities. In that event the Community market will become more dependent on imports.
- (182) Whilst negative effects are likely to result in the form of price increases for the importers, the extent of these may be reduced by decreasing margins or by passing part of the increase on to the user industry.
- (183) As regards stone wool producers, it is unlikely that they will be significantly affected by the imposition of anti-dumping measures given that any increase in costs, which is likely to be minimal, could be passed on to the final customer. As regards foundries, the information available to the Commission at this stage indicates that, given the relatively low incidence of coke 80+ in the total cost of foundries, the imposition of anti-dumping measures is not likely to significantly affect their economic situation. Furthermore, users are likely to benefit from the maintenance of an alternative source of coke 80+ production on the Community market.
- (184) It is therefore provisionally concluded that no compelling reasons exist not to impose provisional anti-dumping measures in the present case.

H. PROVISIONAL MEASURES

1. Injury elimination level

- (185) Having established that the dumped imports have caused material injury to the Community industry and that there are no compelling reasons not to take anti-dumping measures, the Commission considers it necessary to adopt anti-dumping measures in the form of provisional measures.
- (186) The level of the anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found.
- (187) The removal of such injury requires that the industry should be put in a position where the prices of the Chinese imports should be increased to a non-injurious level. For the purposes of calculating the necessary price increase, i.e. the injury margin, it is considered that the prices of the dumped imports should be compared with the non-injurious prices of the Community industry. This non-injurious price has been calculated by adding to the average sales prices of the Community industry in the IP the profit shortfall and a reasonable margin of profit.
- (188) When determining the profit margin, the Commission examined what amount the Community industry could reasonably expect to obtain in the absence of dumping. The investigation revealed that a profit margin of 9,6 % should be provisionally regarded as appropriate. This was the profit margin, which was achieved by the Community industry in 1996 at a time when the volume of imports of Chinese coke 80+ were at their lowest level and when no other significant imports were present in the Community market.
- (189) On this basis, the weighted average export prices duly adjusted for quality differences and post-importation costs, as explained in recitals 73 to 77, were compared, for the IP, with the weighted average non-injurious prices of the Community industry. The difference, when expressed as a percentage of the total cif import value amounted to 45,1 %, i.e. less than the dumping margin.

2. Provisional anti-dumping measures

- (190) In accordance with Article 7(2) of the basic Decision, the provisional anti-dumping duty should not exceed the margin of dumping established but should be less than the margin if such lesser duty would be adequate to remove the injury to the Community industry. The provisional anti-dumping duty should therefore amount to 45,1 %.
- (191) In order to ensure the efficiency of the measures and to discourage any absorption of the anti-dumping measure through a decrease in the export prices, it was found that the duty should be imposed in the form of a specific amount per ton. This amount results from the application of the injury margin to the export prices used in the calculation of the injury elimination level during the IP. Therefore, the duty amounts to EUR 33,7 per tonne.

I. FINAL PROVISION

- (192) In the interest of a sound administration, a period should be fixed within which the interested parties may make their views known in writing and request a hearing. Furthermore it should be stated that the findings made for the purpose of this Decision are provisional and may have to be reconsidered for the purpose of any definitive finding.

HAS ADOPTED THIS DECISION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of coke of coal in pieces larger than 80 mm in maximum diameter, falling within CN code ex 2704 00 19 (TARIC code 2704 00 19 10), and originating in the People's Republic of China.
2. The amount of the anti-dumping duty shall be equal to the fixed amount of EUR 33,7 per tonne of dry net weight.

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

4. The release for free circulation in the Community of the product referred to in paragraph 1 shall be subject to the provisions of a security, equivalent to the amount of the provisional duty.

5. In cases where the goods as described in paragraph 1 are imported together with coke of smaller sizes the quantity of goods subjects to the anti-dumping duty of paragraph 2 shall be determined in accordance with Articles 68 and 69 of Council Regulation (EEC) No 2913/92.

6. In cases where goods have been damaged before entry into free circulation and, therefore, the price actually paid or payable is apportioned for the determination of the customs value pursuant to Article 145 of Commission Regulation (EEC) No 2454/93, the amount of anti-dumping duty, calculated on the basis of the fixed amounts set out above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

Article 2

Without prejudice to Article 20 of Decision No 2277/96/ECSC, interested parties may request disclosure of the essential facts and considerations on the basis of which this Decision was adopted, present their views in writing and request a hearing from the Commission within one month of the date of entry into force of this Decision.

Pursuant to Article 21(4) of Decision No 2277/96/ECSC, the parties concerned may request a hearing concerning the analysis of the Community interest and may comment on the application of this Decision within one month of the date of its entry into force.

Article 3

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

Article 1 of this Decision shall apply for a period of six months.

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

Done at Brussels, 14 June 2000.

For the Commission

Pascal LAMY

Member of the Commission