

**COMMISSION DECISION No 2730/2000/ECSC****of 14 December 2000****imposing a definitive 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 and definitively collecting the provisional duty imposed**

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 <sup>(1)</sup>, as amended by Commission Decision No 1000/1999/ECSC <sup>(2)</sup>, and in particular Article 9 thereof,

Whereas:

priate, the provisional findings have been modified accordingly.

- (5) Having reviewed the provisional findings on the basis of the information gathered since the provisional Decision was adopted, it is concluded that the main findings as set out in that Decision should be confirmed, to the extent that they are not amended by the considerations outlined in the present Decision.

**A. PROCEDURE**

- (1) By Commission Decision No 1238/2000/ECSC <sup>(3)</sup> ('the provisional Decision'), the Commission imposed a provisional anti-dumping duty on imports of coke of coal in pieces with a diameter of more than 80 mm falling within CN code ex 2704 00 19 and originating in the People's Republic of China ('the PRC').

**B. SUBSEQUENT PROCEDURE**

- (2) Subsequent to the disclosure of the essential facts and considerations on the basis of which provisional measures were imposed, several interested parties made written submissions making their views known on the provisional finding. In accordance with Article 6(5) of Decision No 2277/96/ECSC ('the basic Decision'), parties that so requested were granted an opportunity to be heard.
- (3) The Commission continued to seek and verify all information deemed to be necessary for the definitive findings. All interested parties cooperating in the investigation were informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive anti-dumping duty and the definitive collection of the amounts secured by way of the provisional duty. They were also granted a period within which to make representations subsequent to the disclosure.
- (4) The oral and written comments submitted by the interested parties were considered, and, where deemed appro-

**C. PRODUCT CONCERNED AND LIKE PRODUCT****1. Product concerned**

- (6) The product concerned was defined in the provisional Decision as coke of coal in pieces with a diameter of more than 80 mm falling within CN code ex 2704 00 19 and originating in the PRC. This product, commonly known as foundry coke, is produced in different grades with, in particular, different fixed carbon content, and in various lump sizes. All grades were found to have the same basic physical, technical and chemical characteristics and the same use as a combustion agent for use in cupola ovens for the production of cast iron, stone wool, zinc and lead <sup>(4)</sup>.
- (7) Foundry coke was distinguished from other cokes falling under the same CN code by virtue of the size, namely coke of coal in pieces with a diameter of more than 80 mm was considered to be the only size suitable for use in cupola ovens due to its combustion heat and strength to support burden without breakdown. Coke with a diameter of less than 80 mm, commonly known as blast furnace coke, was found to be unsuitable for those uses. Blast furnace coke is used in blast furnaces for the production of steel and for other purposes such as the production of chemicals and sugar.
- (8) Subsequent to the imposition of provisional measures certain interested parties argued that, although 80 mm was a clear dividing line, there were instances where blast furnace coke was imported in sizes over 80 mm, up to a maximum of 100 mm. In this respect, information was presented showing that certain customs authorities were applying the provisional anti-dumping duty on both foundry coke and blast furnace coke in pieces with a diameter of more than 80 mm.

<sup>(1)</sup> OJ L 308, 29.11.1996, p. 11.

<sup>(2)</sup> OJ L 122, 12.5.1999, p. 35.

<sup>(3)</sup> OJ L 141, 15.6.2000, p. 9.

<sup>(4)</sup> The Commission found that the term 'zinc lead' used in the provisional Decision was a clerical error and should be corrected as 'zinc and lead'.

- (9) It should be noted that the product investigated was foundry coke and not blast furnace coke. Furthermore, since blast furnace coke in pieces with a diameter of more than 80 mm has generally a lower strength it is not destined for use in cupola ovens for the manufacture of cast iron, stone wool or melting zinc and lead. It should also be noted that according to the information provided by interested parties in the course of the investigation, in those instances where coke in pieces with a diameter of more than 80 mm up to a maximum of 100 mm is imported together with coke in pieces of 80 mm or less in diameter, this coke was destined for use in blast furnaces and could not generally be used in cupola ovens.
- (10) For these reasons, the product concerned should be clarified and defined taking into consideration, on the one hand, its physical characteristics, that is to say coke of coal in pieces larger than 80 mm in maximum diameter and, on the other hand, its use, that is to say of a kind used in cupola ovens for the manufacture of cast iron and stone wool as well as melting zinc and lead. It should therefore be clarified that blast furnace coke, although in pieces with a diameter of more than 80 mm up to 100 mm, which are imported together with coke in pieces of 80 mm or less in diameter are not covered by this proceeding.
- (11) The Chinese exporters/producers and one Community importer argued that the product concerned imported from the PRC during the investigation period ('IP') (1 July 1998 to 30 June 1999) was semi-finished foundry coke which could only be considered finished foundry coke after screening. The Community importer claimed that screening is not just to separate the fractions in commercial sizes (over 80 mm) from smaller particles (80 mm or below) as stated in recital 13 of the provisional Decision, but is also a phase of mechanical stabilisation aimed at breaking up cracked parcels of foundry coke. Being the last substantial step in the production chain adding significant value, it was claimed that screening in the Community was enough to change the origin of foundry coke imported from the PRC. It was alleged that this was also supported by the significant adjustment for screening costs granted by the Commission in the calculation of price undercutting.
- (12) This claim was not considered to be justified. Mechanical screening is a treatment in which coke fractions are separated into sizes or size ranges without however altering the basic chemical or physical characteristics, which are inherited from the coking coals used as raw materials and the production method. Foundry coke has to be screened before industrial end-use in order to obtain the desired size or size range for the cupola oven. Normally screening is made immediately after carbonisation but, as foundry coke suffers some natural deterioration during loading, transportation and unloading, it is often screened again after sea transportation. In this respect, it cannot be considered that by screening, the resulting foundry coke receives its own properties and a composition of its own which it did not possess before this operation. Therefore it cannot be concluded that unscreened foundry coke at Community border is a semi-finished product.
- (13) Furthermore, it was found that screening represented on average less than 4 % of the cif import price and that the adjustment granted in the calculation of price undercutting included not only the cost of screening, but all selling and financing costs incurred between importation and resale. It cannot therefore be concluded that the total amount of the adjustment granted in the calculation of price undercutting is an indication of the value added to the product after importation for the purpose of determining the origin of the good. In view of the above, it cannot be argued that screening in the Community confers Community origin on the product concerned.
- (14) It is therefore concluded that the product concerned is foundry coke originating in the PRC, that is to say coke of coal in pieces with a diameter of more than 80 mm of a kind used in cupola ovens for the manufacture of cast iron, stone wool, zinc and lead. It is also concluded that all grades of foundry coke are one product since they all share the same basic physical and chemical characteristics and have the same use.
- ## 2. Like product
- (15) One user claimed that Community foundry coke was not alike to the product concerned, since the latter was of a lower quality. In support of this claim it argued that switching between the two could not take place without substantial and expensive modifications in technical equipment leading to substantial costs. Some users also alleged that the product concerned was of a lower quality and could only be used by mixing it with the Community produced one, thereby showing that they are not like products.
- (16) It should firstly be recalled that differences in quality have no effect on the definition of the like product, as long as the basic physical and chemical characteristics remain the same and the two products are interchangeable. This matter has been explicitly dealt with in recitals 19 to 21 of the provisional Decision. The issue of quality has also been the source of seemingly contradictory statements, mainly by foundries. Some of them claimed that they could not use Chinese foundry coke because of the lower quality, while others claimed that the Chinese foundry coke was superior to that produced in the Community. Furthermore, this contradiction

simply shows that, although there are certain generally accepted limits of chemical and physical characteristics for foundry coke, end-users are either able to select the most suitable foundry coke for their purposes or to adjust their equipment to suit a particular foundry coke. This is confirmed by the fact that end-users have changed from the Community produced to Chinese foundry coke and, in some cases, back to Community-produced coke. There is therefore a clear interchangeability of these products and the argument concerning the need for substantial and expensive modifications to the technical equipment is not convincing and should be rejected. That the two products compete with each other is also proven by the fact that users decide which one to purchase according to its price. The fact that specific users might not be able to switch products does not invalidate this conclusion.

- (17) In view of the above, the conclusions in recitals 18 to 23 of the provisional Decision are hereby confirmed.

#### **D. DUMPING**

##### **1. Market economy status**

- (18) The company, which requested market economy status ('MES'), objected to the Commission's conclusion that its accounts did not comply with the requirements of Article 2(7)(c), second indent, of the basic Decision. The company claimed that the Commission failed to investigate whether the company's accounts were sufficiently reliable to be used as a basis to establish an individual dumping margin.
- (19) As outlined in recital 26 of the provisional Decision, the investigation clearly revealed that the company's accounts did not adequately reflect the financial situation of the company during the IP, namely in terms of sales records. The Commission established that the accounts were not kept on a regular and consistent basis, which meant that they were generally unreliable and did not comply with international accounting standards. As this is a criterion for establishing whether or not the exporter concerned operates under market economy conditions, the Commission had to reject the claim for market economy status in accordance with the basic Decision. The company did not submit any further evidence, which could show that its accounts were nonetheless in conformity with international accounting standards. Therefore, and in the absence of any information showing that the Commission's preliminary conclusion was wrong, the provisional findings are confirmed.

##### **2. Individual treatment**

- (20) The same company argued that the Commission erred in concluding that it did not enjoy legal and factual independence from the State and that the Commission did not demonstrate the existence of a risk of circumvention of anti-dumping measures should individual treatment

be granted to it. In this regard, it further argued that the company negotiated all sales contracts directly with its customers in the Community and that it had full control over these transactions. It finally argued that the absence of a questionnaire reply by its mother company in Hong Kong should not have been considered as a deficiency.

- (21) The Commission established that the company's export sales were, at least partly, controlled by the Chinese authorities due to the fact that the company could not export the product concerned in its own name, but had to rely on state-owned traders possessing a licence to export. In addition, the investigation revealed that the company was not entirely free to determine export prices, due to the fact that it was required to pay an agency fee to the state owned traders. The fact that the sales contracts were negotiated directly with the customers in the Community could not be considered by itself as sufficient in order to demonstrate the necessary independence from state authorities. Due to the fact that the state had at least partial control over the company's export sales, the risk of circumvention of the country-wide duty was clearly present and individual treatment could not be granted to the company.

- (22) The investigation revealed that the mother company in Hong Kong was clearly involved in the marketing of the product concerned and in the facilitation of the export transactions. It should however be noted that the fact of whether or not the mother company submitted a separate reply to the Commission's questionnaire could not alter the conclusions in recitals 20 and 21, namely that the exporter in the PRC could not show that it was sufficiently independent from the State so be entitled to individual treatment. The provisional findings in recitals 32 and 34 of the provisional Decision are therefore confirmed.

##### **3. Export price**

- (23) The Chinese exporters objected to the Commission's methodology for calculating ocean freight and insurance costs ('cif costs') as regards their export sales and argued that for all export sales the same amount of cif costs should have been used, that is to say either the cif costs as reported by the exporting producers or the cif cost as calculated by the Commission on the basis of actual verified cif costs submitted by one of the main importers.
- (24) For the purpose of the determination of the provisional dumping margin and in cases where transactions were made on a free-on-board ('fob') basis, the Commission calculated the cif costs on the basis of the actual verified cif costs submitted by one of the main importers.

However, in cases where sales were made on a cif basis, the cif cost reported by the exporter concerned were used. For the purpose of the determination of the definitive dumping margin and further to the comments received, the Commission reviewed this approach. It was found that the cif cost reported by the exporter concerned in cases where sales were made on a cif basis were in fact over estimates and should be disregarded. Consequently, and since no evidence was submitted showing that the actual cif costs of the above mentioned importer were unreliable or incorrect, the Commission considered it appropriate to apply these to all Chinese export transactions reported.

#### 4. Comparison

##### 4.1. Transport costs

- (25) One Chinese exporter claimed that in view of the company's close location to the port, its own transport cost should have been used in order to calculate the fob prices in the United States of America ('the USA') which was retained as the analogue country. The two other Chinese exporters requested that an average of the transport cost of the third exporter and the inland transport cost found in the analogue country be used.
- (26) Costs and prices in a non-market economy country are distorted by state influence and are thus not a function of normal market signals. This also applies to transport cost and this is why the actual transport costs of the Chinese exporter were not used but rather the actual verified transport cost incurred by the producers in the analogue country. The argument that for one Chinese producer these costs had been verified by the Commission in the framework of the MES investigation is irrelevant since no market economy treatment was granted in this investigation. Therefore, the proposal to use transport cost incurred by the aforementioned exporter had to be rejected.
- (27) The Commission further investigated the appropriateness of the comparison of the normal value and export price on a fob-basis. In this regard, account was taken of the fact that in some instances the distance between the factories and the port in the exporting country was considerable. For the purpose of the definitive determination, it was therefore considered appropriate to change the basis of the comparison to ex-works. The appropriate adjustments were made on the export price and in the absence of any other reliable information in this respect, the lowest actual inland transport cost found on the US domestic market was used as a basis for calculating the adjustment.

##### 4.2. Production process

- (28) The Chinese exporters reiterated their claim for an adjustment for differences in the production process. They argued that it was less capital intensive than the one used in the analogue country, due to the use of more sophisticated ovens in the USA.

- (29) As regards differences in the production process between a non-market economy country and the respective analogue country, it is the Commission's position to grant an adjustment for comparative advantages. However, such allowances cannot be given selectively for certain cost elements which may not provide a representative picture overall.

##### 4.3. Comparative advantages

- (30) The Chinese exporters reiterated their claim for an adjustment for natural comparative advantages vis-à-vis the analogue country in terms of access to raw material. In this regard, the exporters alleged that the normal value of the analogue country should not have been used as such in order to compare it to the export price due to the fact that the PRC had the largest coal reserves worldwide, which allow efficient mining and therefore had an impact on the price of the raw material and consequently of the foundry coke. Furthermore, the Chinese exporters alleged that Chinese producers had easy access to the raw material, due to surface mining, in contrast to the USA, where coal is mainly mined underground.
- (31) The Commission investigated in further detail whether or not Chinese producers had natural comparative advantages compared to the US-producers. In this regard, the investigation revealed firstly that, in contrast to what was claimed, the USA had the largest coal reserves worldwide. Moreover, it was found that the USA made extensive use of surface mining and that the amount of surface mining was likely to be equivalent to that of the PRC. Moreover, the investigation revealed that underground mining was also practised in the PRC. In conclusion, it was therefore established that the USA and the PRC had similar access to the raw material and that both countries had the same comparative advantages. An adjustment was consequently not justified. The Commission confirms the provisional findings in this respect set out in recital 51 of the provisional Decision and reaffirms that, pursuant to the basic Decision, the selection of the USA as an analogue country in the present proceeding was the most appropriate and reasonable choice.

##### 4.4. Commission fee

- (32) One Chinese exporter claimed that the commission fee paid should not have been deducted from the export price. The claim was accepted and the export prices were adjusted accordingly.

#### 5. Dumping margin

- (33) As announced in recital 58 of the provisional Decision, the level of cooperation of the Chinese producers/exporters was further investigated and was found to be 57,8 % of the total exported volume of foundry coke into the

Community during the IP. It should be noted that given that separate Eurostat import data for foundry coke were not available, the volume of foundry coke imported as reported, and verified, by the co-operating importers was taken as a basis to calculate the level of cooperation.

- (34) In the calculation of the single country-wide dumping margin, the Commission consequently had to take into account the high level of non cooperation, in order not to reward non-cooperating parties. In this regard, a dumping margin, which corresponded to the highest margin established for a representative transaction by one co-operating company in the PRC, was attributed to the non-cooperating producers/exporters. The single country-wide dumping margin was subsequently calculated as a weighted average of the margin established for the cooperating producers/exporters and the margin established for non-cooperating producers/exporters.
- (35) The definitive single country-wide dumping margin expressed as a percentage of the cif export price free at Community frontier exceeded 60 %.

#### E. COMMUNITY INDUSTRY

- (36) Since no representations were made by any interested parties as regards the provisional definition of the Community industry, the conclusions in recitals 60 to 65 of the provisional Decision are hereby confirmed.

#### F. INJURY

##### 1. Preliminary remark

- (37) The examination of trends relevant for the determination of injury covered the period 1 January 1995 to the end of the IP.
- (38) One interested party argued that the choice of 1995 as a starting year for the data collection has distorted the injury analysis. It alleged that this year was exceptionally good for the Community industry due to a very high demand, whereas using the year 1994 as a starting point would have shown that the situation of the Community industry in the IP was at the same level as in 1994 and therefore it did not suffer injury.
- (39) It should be noted that the purpose of the injury investigation is to evaluate the effect of the dumped imports on the economic situation of the Community industry during the IP. In order to make such an analysis, trends are established for a number of indicators on the basis of information relating to a number of years preceding the IP. The purpose of this analysis is not to do an end-point to end-point analysis but rather to assess the developments within the entire period considered in order to determine whether the situation of the Community

industry in the IP can be considered as injurious. In this respect, given the situation of the Community industry in the IP, the findings of injury suffered by the Community industry in the IP would have been reached regardless of whether 1994 or 1995 was taken as the starting point.

##### 2. Apparent Community consumption

- (40) Since no new representations were received on apparent consumption on the Community market, the conclusions in recitals 66 to 67 of the provisional Decision are hereby confirmed.

##### 3. Imports originating in the PRC

###### 3.1. *Volume of the imports concerned; market share, share of production and evolution of the prices of the imports concerned*

- (41) In the absence of new representations regarding the import volume and market share of dumped imports, the facts and findings set out in recitals 68 to 72 of the provisional Decision are hereby confirmed.

###### 3.2. *Price undercutting*

- (42) One interested party argued that in order to carry out the undercutting calculation on a fair basis, the prices charged by the Community industry should be compared to the importer's selling prices adjusted for a lower heating value due to the lower fixed carbon content and for the investments needed for the use of Chinese foundry coke.
- (43) It should be noted that the difference in heating value has already been duly taken into account in the calculation of price undercutting (see recital 74 of the provisional Decision). Furthermore, the information provided by interested parties shows that no dedicated equipment is required in order to use either the product concerned or that produced in the Community. Both the product concerned and Community foundry coke can be used in any cupola oven, even if the cupola oven needs to be adjusted for the different grades of foundry coke used, irrespective of its origin. This claim is therefore not relevant.
- (44) It was claimed that the adjustment of the Chinese prices for a lower fixed carbon content did not sufficiently reflect the differences in physical characteristics between the product concerned and the Community foundry coke. It was thus proposed that the market value of this difference should be based on the penalties stipulated in the contracts for exceeding the agreed maximum levels in each of these items.

- (45) The information presented by interested parties shows that sales of foundry coke are generally based on contracts where both parties stipulate minimum/maximum levels for the contents of ash, moisture and volatile matter, determine penalties that will apply if those limits are exceeded and agree on prices. It is therefore normal that the same price is paid for foundry coke in different grades provided the stipulated limits are not exceeded. Moreover, the export prices reported by the Chinese exporting producers in their export transactions used in the calculation of price undercutting are those before the application of any contractual penalty. In view of the above, it is considered inappropriate to value the difference in content of ash, moisture and/or volatile matter between the product concerned and Community foundry coke on contractual penalties.
- (46) One interested party claimed that in order to compare the product concerned and the Community foundry coke at the same level of trade, an adjustment should be made to the Chinese import prices to include, not only the selling and financing costs incurred by unrelated importers, but also their profit margin.
- (47) This request is considered justifiable in order to compare both products at the same level of trade. Therefore the adjustment made at the provisional stage for selling and financing costs incurred by importers in the Community should also include the profit margin achieved by unrelated importers on their sales of the product concerned. This adjustment has been done on the basis of the weighted average profitability reported by the cooperating unrelated importers during the IP, 7,2 %.
- (48) On the basis of the above it is concluded that during the IP, Chinese foundry coke was sold in the Community at prices which undercut the Community industry's prices, when expressed as a percentage of the latter, by 25,7 %.

#### 4. Situation of the Community industry

- (49) In the absence of any comments, the provisional findings regarding stocks, sales volume and market share (growth), investments, employment and productivity are hereby confirmed.

##### 4.1. Production, capacity and capacity utilisation

- (50) One user argued that the decrease in production and capacity utilisation found in the provisional Decision was not due to the increase in the volume of imports of the product concerned but rather to technical factors. To support this statement, it pointed out that the quantity of foundry coke produced depended on the coking time

used: more foundry coke would be produced with longer coking time, but the capacity utilisation of foundry coke would be reduced accordingly. Also, as foundry coke production generates around 10 % of waste ('coke breeze') and at least 10-15 % of coke in pieces with a diameter less than 80 mm, it claimed that for a nominal capacity of 100 %, the actual production volume of the Community industry may only be 75 %. Finally, it argued that, unless the machinery is constantly upgraded, the Community industry's actual capacity would drop by 1,3-1,5 % per year.

- (51) With respect to the assessment of production capacity, it was found that the size of foundry coke correlates not only with the coking time (the longer the coking time, the higher the foundry coke yield) but also with the blend (the producer specific mix of coking coals and anti-fracturants) and with the oven temperature (higher temperature allows shorter coking time) used in the production. In addition, the assessment of production capacity for the Community industry was based on a uniform formula which took into account maximal input of coking coal per oven, operative days per year (365), number of pushes (unloading of ovens) per day, yield of coking coal's volatile matter converted into coking gas during carbonisation as well as size yield. As regards constant upgrading of the machinery, this is the reason for the yearly investments made by the Community industry as explained in recital 91 of the provisional Decision. In view of the above, the claim that the decrease in production and capacity utilisation is independent of the effect of the dumped imports should be rejected and the conclusions in recitals 78 to 81 of the provisional Decision are hereby confirmed.

##### 4.2. Sales prices and factors affecting sales prices including wages

- (52) Regarding the development of the weighted average unit prices and unit costs, two phases could be identified, one between 1995 and 1997 and the second between 1997 and the IP. In the first phase, the prices of the Community industry increased by 6 %, coinciding with an increase in the prices of the raw materials. In the second phase, the Community industry's prices decreased more than the prices of the raw materials while its unit costs increased due to a decrease in the capacity utilisation. In these circumstances the Community industry's prices were prevented from increasing to a level sufficient to cover costs between 1997 and the IP.

(53) Concerning the cost of production two phases were identified. Between 1995 and 1997, despite an increase in the costs (mainly in raw materials) these production costs could be passed on to the sales prices and therefore the Community industry remained profitable. However, between 1997 and the IP, the capacity utilisation of the Community industry decreased and therefore fixed costs which, in such an industry comprise all costs except raw materials, had to be allocated over a declining production, with the result that the unit costs increased. Furthermore, the sales volume and sales prices of the Community industry decreased. The combined effect of an increase in costs and a decrease in sales volume (- 8 %) and prices (- 7 %) resulted in the Community industry posting losses amounting to - 5.5 % in the IP.

(54) Regarding in particular labour costs, despite decreasing in absolute terms between 1997 and the IP, the unit cost of labour has increased as a result of the decrease in the units produced.

#### 4.3. Profitability, cash flow, return on investment and ability to raise capital

(55) It should be noted that the findings in recital 89 of the provisional Decision concerning the Community industry's profitability have been revised to take account of a calculation error which occurred at the provisional stage. The profitability of the Community industry also followed the above mentioned two phases: between 1995 and 1997 profitability remained positive (9,4 % in 1995, 14,1 % in 1996 and 8,1 % in 1997) whereas profitability decreased to 1,3 % in 1998 and then to losses amounting to - 5,5 % in the IP.

(56) Regarding cash flow it developed from an index of 100 in 1995, to 141 in 1996, to 96 in 1997, to 33 in 1998 and to - 16 in the IP. The trend shows that the situation of the Community industry in terms of cash flow deteriorated sharply between 1997 and the IP.

(57) Concerning return on investments and ability to raise capital, between 1995 and 1997 the profit before taxes generated by the Community industry was sufficient to cover investments in new assets. However, in 1998 and in the IP, the profits generated could not cover the investments in new assets.

#### 4.4. Magnitude of the actual margin of dumping

(58) As concerns the impact on the Community industry of the magnitude of the actual margin of dumping, given the volume and the prices of the imports from the PRC, this impact cannot be considered to be negligible.

### 5. Conclusion on injury

(59) On the basis of the facts and considerations in recitals 50 to 58, it can clearly be concluded that the situation of the Community industry in the IP was injurious. In particular, the Community industry suffered losses as a result of a decrease in its sales volume and sales prices, together with an increase in unit costs resulting from a decrease in capacity utilisation. The provisional findings in recital 98 of the provisional Decision regarding the material injury suffered by the Community industry are therefore confirmed.

### G. CAUSATION

(60) In the provisional Decision it was concluded that there was strong evidence of a causal link between the dumped Chinese imports and the material injury found. It was found that, while consumption remained stable, the volume of Chinese imports increased by 63 % over the period considered and their market share increased from 17,3 % in 1995 to 27,9 % in the IP. The increase in market share by the Chinese imports corresponded to the same decrease in the market share of the Community industry. Furthermore, the prices of the Chinese imports significantly undercut those of the Community industry in the IP (25,7 %). The increase in Chinese imports coincided with a decrease in the sales volume and in the capacity utilisation of the Community industry, contributing to an increase in unit costs, which led to substantial losses in the IP (- 5,5 %).

(61) Several interested parties claimed that the evolution of the Community industry's prices and costs were not influenced by the Chinese imports but were driven by the prices of the main raw material, coking coal. In particular, one user claimed that the price of the coking coal imported from the USA increased substantially over the period, essentially as a result of the appreciation of the US dollar which could not be compensated by a decrease in freight costs. However, no supporting evidence was provided.

(62) Regarding coking coal prices, as stated in recital 119 of the provisional Decision, the raw material prices increased between 1995 and 1997 and then decreased between 1997 and the IP. Although the ECU/EUR depreciated against the US dollar during the period considered, it was found that both fob-prices of coking coal from the USA and Atlantic freight costs have decreased, compensating the effects of the appreciation of the US dollar since 1997.

(63) Furthermore, the sales prices of Community foundry coke between 1997 and the IP decreased by more than the decrease in the unit price of raw materials. On this basis, the conclusion in recital 120 of the provisional Decision that the Community industry's sales prices decreased faster than the decrease in raw material prices is hereby confirmed.

- (64) One exporting producer also argued that Chinese imports could not have caused injury to the Community industry as the Community industry's profitability increased between 1995 and 1996 while the Chinese import prices were at their lowest level during the same period.
- (65) In this respect it should firstly be noted that the causal link between the dumped imports and the situation of the Community industry should be established during the IP. Moreover, the development of Chinese import prices between 1995 and 1997 was found to be linked to the improved stability of quality of the product concerned. Finally, in the IP the Chinese prices were found to have decreased and to substantially undercut those of the Community industry, which resulted in a significant increase in the volume of Chinese imports in the IP.
- (66) In conclusion and, given that no other possible injury factors have been found nor have any further arguments concerning the causal link between the dumped imports originating in the PRC and the material injury been submitted, the provisional findings on the causation of injury in recitals 99 to 127 of the provisional Decision are hereby confirmed.

## H. COMMUNITY INTEREST

### 1. Preliminary remarks

- (67) It should be recalled from recitals 128 to 184 of the provisional Decision that an appreciation of all the various interests was made, including the interests of the Community industry, importers and industrial users. The Commission provisionally concluded that there were no compelling reasons not to impose anti-dumping measures against the dumped imports originating in the PRC.

### 2. Impact of the measures on the Community industry

- (68) As no new facts or arguments were submitted by any party with regard to the impact of the anti-dumping measures on the Community industry, the findings in recitals 135 to 145 of the provisional Decision are hereby confirmed.

### 3. Impact of the measures on importers/traders

- (69) One importer argued that the interests of importers/traders had not been properly assessed. In particular, it claimed that although the product concerned was a small part of the importers/traders overall activities, it had a substantial positive effect on their total costs and turnover due to the economies of scale of importing

larger quantities of different kinds of coal products, including foundry coke. It also claimed that there are no adequate alternative sources of supply to Chinese foundry coke.

- (70) It should firstly be noted that any economy of scale attributable to the imports of the product concerned is a result of dumping practices by the Chinese exporting producers. Furthermore, the small percentage of the total coal business affected by the imposition of anti-dumping measures on foundry coke (less than 2,5 % of total turnover) negates the possibility of substantial economies of scale being seriously jeopardised.
- (71) As regards alternative sources of supply, it should be recalled that the aim of the imposition of anti-dumping measures is not to prevent imports of the product concerned into the Community, but to eliminate the trade distorting effects of the injurious dumping and to restore effective competition. Moreover, it is unlikely that importers/traders would cease importing from the PRC given the investments made in the PRC and the quality of the product concerned. Finally, importers/traders also trade in foundry coke produced by the Community industry.
- (72) Consequently, the conclusions in recitals 146 to 151 of the provisional Decision regarding the likely impact of anti-dumping measures on importers/traders are hereby confirmed.

## 4. Impact of the measures on users

### 4.1. Preliminary remarks

- (73) At the provisional stage of the investigation, the likely effects of imposing/not-imposing anti-dumping measures were examined on the basis of the substantiated information presented by cooperating users, including a major producer of stone wool and a number of foundries.
- (74) Certain users argued that the data used to examine the impact of anti-dumping duties on the foundries fell short of being representative. A further examination of the effects of the imposition of measures on users was made on the basis of additional information received from the following users:

#### Stone wool producers

— Partek Paroc Oy, Helsinki, Finland,

#### Foundries

— CFFC-Pamco Industries SA, Paris, France,

— Chamberlin & Hill plc, Walsall, UK,



- Cradley Castings Ltd, Cradley, UK,
- Darcast Components Ltd, Smethwick, UK,
- Eisengießerei Kronach Karl Sperber GmbH, Kronach, Germany,
- FASS SA, Sancerre, France,
- Fonderia de Montorso Spa, Vicenza, Italy,
- Fonderies franco-belges SA, Merville, France,
- Fucoli SA, Coimbra, Portugal,
- Godin SA, Guise, France,
- Guss Komponenten GmbH, Hall in Tirol, Austria,
- Jones and Champbell Ltd, Larbert, UK.
- Piret SA, Gilly, Belgium,
- Römheld & Moelle GmbH, Mainz, Germany,
- Sachs Gießerei GmbH, Kitzingen, Germany,
- Tiroler Röhren- und Metallwerke AG, Hall in Tirol, Austria,
- V. Luzuriaga-Tafalla SA, Tafalla, Spain,

#### Lead smelter

- Tudor SA, Madrid, Spain.

#### 4.2. Stone wool producers

- (75) The definitive conclusions regarding the impact of the anti-dumping measures on stone wool producers are based on the information provided by Rockwool International A/S, Copenhagen, Denmark, on behalf of four subsidiaries as mentioned in recital 132 of the provisional Decision, and Partek Paroc Oy, Helsinki, Finland.
- (76) Foundry coke has been found to represent 2,8 % of the total cost of production of stone wool producers, whose profitability was found to have increased from 6,5 % in 1997 to 7,9 % in 1998.
- (77) It was claimed that contrary to the provisional findings, the Community industry was likely to increase its prices by the full amount of the anti-dumping duty imposed.
- (78) The information provided by interested parties shows that the prices of Community producers have largely remained at the same level as during the IP, since price negotiations are normally conducted annually at the end of the year. In the negotiations for the year 2001, price increases are being discussed. These increases can be attributed partly to the imposition of the anti-dumping measure but also to the increase in the Community industry's costs. The expected benefit to the Community industry from the imposition of anti-dumping measures is likely to be in the form of increased production and sales resulting in a decrease in unit costs, allowing the Community industry to regain profitability.

(79) In any event, even assuming that the Community industry increases its prices by the full amount of the duty, the maximum hypothetical increase in the costs of stone wool producers would be around 1 %. Should this occur and assuming that all other costs items remain equal, an increase in the costs of stone wool producers resulting from the imposition of anti-dumping measures as described above would require the maximum increase in prices of less than 1 % in order to maintain the same level of profitability.

(80) It was reiterated that stone wool producers will be forced to relocate production facilities in order to avoid a reduction of profitability if anti-dumping measures are imposed, since the resulting increases in costs cannot be passed on to the final customers.

(81) It should be noted that in the stone wool market it is fundamental that producers are situated close to their industrial customers, and have flexibility in production in order to meet the required demand and service. Given the above findings on the likely effects of the anti-dumping measures and the nature of the stone wool market in recital 79, it is considered unlikely that such a price increase of foundry coke would result in a relocation of production outside the Community.

(82) In view of the above, the conclusions in recitals 153 to 166 of the provisional Decision, that the imposition of anti-dumping measures on Chinese foundry coke is not expected to significantly affect the economic situation of stone wool producers, are hereby confirmed.

#### 4.3. Foundries

(83) In recital 175 of the provisional Decision the Commission indicated that it would further look into the profitability of foundries at the definitive stage on the basis of additional information submitted by interested parties subsequent to the disclosure of the provisional findings.

(84) The conclusions set out below in recitals 88 and 89 are based on all substantiated data provided by 22 foundries of different sizes in terms of turnover, employment and profitability. They are located in eight Member States (United Kingdom, Belgium, Austria, Portugal, Germany, France, Italy and Spain) and produce a wide range of castings for the main end-use sectors such as the automotive industry (e.g. motor blocks and power steerings), the mechanical industry (e.g. pumps and blowers) as well as the construction industry (for example water conveyance and drainage). In view of the above, the data provided by these companies is considered sufficiently representative of the situation of foundries.

(85) The Committee of Associations of European Foundries (CAEF) argued that the interest of foundries had not been properly assessed at the provisional stage. In particular, it claimed that foundries that cooperated at the provisional stage and whose data was retained for this analysis produced mainly high added value products generating profit margins well above the industry average and were thus unrepresentative of the situation of this industry. The CAEF supported this allegation by submitting information on the profitability of some individual foundries as well as estimates provided by the national foundry associations claiming that the latter should be used to assess the impact of anti-dumping measures on the overall sector of foundries and that the data submitted by individual companies should be disregarded.

(86) In this respect it should be noted that the data presented by the national foundry associations are based on estimations and/or relate also to foundries not using foundry coke. Furthermore, the data used to analyse the effect of the anti-dumping measures on foundries stem from foundries of different sizes in several Member States and producing castings for various end-uses. Moreover, the data provided by these companies has been duly substantiated, namely by audited accounts. In view of the above, it does not appear appropriate to disregard, the data provided by cooperating foundries and to use in its place the information presented by the national foundry associations.

(87) The CAEF reiterated its argument that the imposition of anti-dumping measures would result in a cost increase for foundries. Such increase in costs, which foundries cannot pass on to their customers, would translate into decreasing profits which would have to be compensated by a decrease in the workforce, the latter being more significant than that of the Community industry of foundry coke. It also pointed out that any increase in the price of foundry coke would affect the competitiveness of the foundries.

(88) Since foundry coke has been found to represent 1,8 % of the foundries' total cost of production, the imposition of an anti-dumping duty may result in a maximum hypothetical increase in costs of foundries of less than 0,8 %. This has been calculated even by assuming that the importers pass the duty fully on and that the Community industry increases its prices by the full amount of the duty.

(89) Subsequently, it is unlikely that the estimated increase in the foundries' costs of production would endanger their profitability. In order to appreciate such a cost impact, it should be noted that between 1997 and 1998 the average price per tonne of castings increased by 4 %. As the foundries' costs of production remained stable, their weighted average profitability increased from 4,4 % in 1997 to 7,4 % in 1998. Furthermore, it has to be borne

in mind that the foundries have to cope with fluctuations in their main cost items such as prices of scrap, namely the main raw material used in the production of cast iron, as well as fluctuations in exchange rates. Consequently, the negative impact of the measures for foundries' cost of production, profitability, competitiveness or employment, if any, is likely to be very limited.

(90) This further analysis has confirmed that the conclusions drawn by the Commission in recital 176 of the provisional Decision, that the impact of an anti-dumping measure is not likely to significantly affect the economic situation of Community foundries, is hereby confirmed.

#### 4.4. Zinc or lead smelter

(91) One response was received from a company using foundry coke in the captive production of lead and lead alloys used in its battery manufacturing plant. Since this producer smelts lead in a captive operation, indicators such as costs, prices and profitability were not available for the activity relating to the smelting of lead. The data provided by this company could, therefore, not be taken into consideration for the assessment of the impact of imposing an anti-dumping measure.

### 5. Other arguments concerning Community interest

(92) Users argued that, as the Community industry is not capable of supplying the entire Community market, any change in the current structure of supply could result in a general supply shortage. It has been argued that the imposition of provisional anti-dumping measures has already led to a shortage of supply in the Community market and to a price increase negatively affecting the position of Community users.

(93) First of all, it should be recalled that it is likely that in the absence of anti-dumping measures, the situation of the Community industry would further deteriorate, leading to medium/long-term closure of companies, as stated in recitals 177 to 180 of the provisional Decision. This conclusion has been reached particularly in view of the loss of market share and deterioration of the profitability of the Community industry during the period considered. This situation would result in a limitation in the sources of supply which could lead to a shortage of supply, as well as a reduction in effective competition on the Community market.

(94) Secondly, it is unlikely that the imports from the PRC will disappear from the Community market as a result of the imposition of anti-dumping measures. This conclusion has been reached in particular in view of the investments made by Community importers/traders, the channels of supply already established in the PRC, the quality of the product concerned and the fact that the Community industry is not capable of supplying the entire Community market.

- (95) In addition, information available to the Commission indicates that certain shortages of Chinese foundry coke took place after the initiation of the anti-dumping proceeding and before the imposition of provisional measures for reasons unrelated to the anti-dumping proceeding. Indeed, according to this information, the limited supplies of Chinese foundry coke were due to a shortage of railcars to transport the foundry coke from inland China to the harbours and to a shortage of coking coal in the PRC, which in turn led to a certain price increase. The reduced production or even disappearance of the Community industry would in such circumstances accentuate the dependence of the Community market on Chinese foundry coke.

## 6. Conclusion on Community interest

- (96) After carefully examining all the arguments raised, it is concluded that there are no compelling reasons not to impose anti-dumping measures in the present case. Therefore the conclusions set out in recitals 128 to 184 of the provisional Decision are confirmed.

### I. DEFINITIVE ANTI-DUMPING MEASURES

- (97) In view of the conclusions reached regarding dumping, injury, causation and Community interest, it is considered that definitive anti-dumping measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports originating in the PRC.

#### 1. Injury elimination level

- (98) In the provisional Decision and for establishing the level of the duty, account was taken of the dumping margin found and the duty necessary to remove the injury caused by the dumped imports. It was therefore provisionally determined that the removal of such injury required that the prices of the Chinese imports be increased to a non-injurious level. This non-injurious price was based on a comparison of the prices of dumped imports and the non-injurious price of the Community industry. The latter was calculated by adding to the average sales prices of the Community industry the profit shortfall during the IP and a reasonable margin of profit. A profit margin of 9,6 % on sales before tax appeared to be reasonable taking into account what amount the Community industry could reasonably expect to obtain in the absence of dumping.
- (99) Some interested parties questioned both the reasonableness of the profit margin used and its justification. They claimed that the profit margin achieved by the Community industry in 1996 was exceptional and that a more reasonable profit margin would be that achieved in 1995 or in 1997.

- (100) The determination of the injury elimination level was re-examined in light of the revised profitability findings. It was found that a profit margin of 10,5 % on sales would be the profitability that the Community industry could have achieved in the absence of the dumped imports. This was the weighted average profit margin achieved by the Community industry between 1995 to 1997 time before the increased market penetration of the Chinese imports.

- (101) The Chinese import prices as adjusted for the calculation of price undercutting were compared, for the IP, with the weighted average non-injurious prices of the Community industry. The difference was then expressed as a percentage of the total cif import value. For the purpose of calculating a country-wide injury margin, account was taken of the low level of cooperation and the same methodology as that described in recital 34 was followed. The definitive country-wide injury margin amounted to 43,6 %.

#### 2. Form and level of the definitive measure

- (102) Since the injury margin is below the dumping margin established, the definitive duty should be set at the level of the injury margin established at 43,6 %.
- (103) 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 tonne. 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 32,6 per tonne.
- (104) Subsequent to the imposition of the provisional anti-dumping measures, certain Chinese exporters that cooperated in the investigation offered undertakings within the meaning of Article 8(1) of the basic Decision. However, these undertakings could not be accepted, as they did not contain the necessary guarantees on the part of the Chinese authorities to allow adequate monitoring. In these circumstances, a specific duty should be imposed at the level of injury definitively established. It is to be noted, however, that the measure could be modified, if ever there was a change in circumstances such that the conditions for the acceptance of an undertaking were met.

### J. COLLECTION OF THE PROVISIONAL DUTY

- (105) In view of the clarification of the product scope subsequent to the imposition of the provisional measures, the amounts secured by way of provisional anti-dumping duty should be definitively collected for all imports except in those cases where coke of coal in pieces larger than 80 mm has been declared for import together with coke of coal of smaller sizes, in which cases the amounts secured by way of provisional anti-dumping duties should be released,

HAS ADOPTED THIS DECISION:

*Article 1*

1. Except as provided for in paragraph 3 a definitive 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 32,6 per tonne of dry net weight.

3. In cases where the goods declared for release into free circulation are a mixture of coke as described in paragraph 1 together with coke of coal in pieces of smaller sizes, the quantity of coke subject to the anti-dumping duty in paragraph 2 shall be determined in accordance with Articles 68 to 70 of Council Regulation (EEC) No 2913/92 <sup>(1)</sup>. However, the anti-dumping duty shall not apply to such a mixture of coke pieces, where it is determined that the maximum diameter of the coke pieces forming part of the goods declared for release into free circulation does not exceed 100 mm.

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

5. 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 <sup>(2)</sup>, the amount of anti-dumping duty, calculated on the basis of the amounts set above, shall be reduced by a percentage which corresponds to the apportioning of the price actually paid or payable.

*Article 2*

The amounts secured by way of provisional anti-dumping duty imposed by Decision No 1238/2000/ECSC shall be definitively collected at the rate of the duty definitively imposed on imports of coke of coal in pieces with a diameter of more than 80 mm and originating in the People's Republic of China.

The amounts secured in excess of the definitive rate of anti-dumping duty shall be released.

In cases where coke of coal in pieces with a diameter of more than 80 mm has been declared for import together with coke of coal in pieces of smaller sizes, the amounts secured by way of provisional anti-dumping duty shall be released.

*Article 3*

This Decision shall enter into force on the day following 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, 14 December 2000.

*For the Commission*

Pascal LAMY

*Member of the Commission*

<sup>(1)</sup> OJ L 302, 19.10.1992, p. 1.

<sup>(2)</sup> OJ L 253, 11.10.1993, p. 40.