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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 215/2002

of 28 January 2002

imposing definitive anti-dumping duties on imports of ferro molybdenum originating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the Basic Regulation), and in particular Article 9 thereof,

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

Whereas:

A. PROVISIONAL MEASURES

- (1) By Regulation (EC) No 1612/2001 ⁽²⁾ (the 'Provisional Regulation') the Commission imposed a provisional anti-dumping duty on imports of ferro molybdenum ('FeMo') falling within CN code 7202 70 00 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 it was decided to impose provisional anti-dumping measures on imports of FeMo originating in the PRC, several interested parties submitted comments in writing. The parties who so requested were granted an opportunity to be heard orally.
- (3) The Commission continued to seek and verify all information it deemed necessary for reaching definitive findings.
- (4) All parties 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 on imports of FeMo originating in the PRC 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 this disclosure.

- (5) The oral and written comments submitted by the interested parties were considered and, where appropriate, the findings have been modified accordingly.

C. PRODUCT CONCERNED AND LIKE PRODUCT

- (6) In the absence of any new argument on the product concerned and the like product, the provisional findings as described in recitals 13 to 17 of the Provisional Regulation are hereby confirmed.

D. DUMPING

1. General methodology

- (7) A number of Chinese exporting producers argued that the timing of the sampling decision as stipulated by the notice of initiation created considerable legal uncertainty with regard to the applicable deadlines for the submission of the relevant questionnaires and that the Commission should have been more lenient in applying the statutory deadlines.
- (8) In fact, the standard notice of initiation applied in this proceeding clearly set out the applicable deadlines and time limits for the submission of all the requisite information. Furthermore, the Commission provided the parties concerned with additional clarifications concerning the various stages of the proceeding and was available to address any further doubts or questions if necessary. Moreover, exceptional flexibility was accorded to some exporting producers who experienced difficulties in submitting the requisite information. Finally, the fact that the Commission services decided not to use sampling was a mere consequence of the limited number of cooperating exporting producers. Since this number was considered to be manageable, the Commission services based their findings on the information duly provided by all cooperating exporting producers. Any allegation of legal uncertainty in this case is therefore unfounded and in any event no exporting producer can be said to have been negatively affected by the decision not to sample or even by the timing of such a decision.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 2238/2000 (OJ L 257, 11.10.2000, p. 2).

⁽²⁾ OJ L 214, 6.8.2001, p. 3.

- (9) The Commission has reviewed the treatment accorded to one Chinese exporter which complied with the deadline for the submission of the sample questionnaire but did not apply for market economy or individual treatment. This company is now treated as a cooperating party and its export transactions have been included with those from the other cooperating exporters in the dumping calculations and in the assessment of the countrywide dumping rate.

2. Withdrawal of Market Economy and Individual Treatment (MET/IT)

- (10) It is recalled that at the provisional stage one exporter was granted MET and three exporters were granted IT. Significant information has come to light since then which means that individual duty rates are no longer justified at the definitive stage.
- (11) It was established that the China Chamber of Commerce and Minmetals (CCCCM) hosted a meeting shortly after the publication of the Provisional Regulation, that set up a grouping of Chinese FeMo producers (the so-called Molybdenum and Molybdenum Products Coordination Group of China Chamber of Commerce of Minmetals and Chemicals), accounting for 70 % of China's FeMo output, which agreed to apply price and quantitative restrictions on exports of FeMo to the Community. This grouping brings together 25 producers, most of which did not cooperate in the proceeding and thus did not even make an attempt to demonstrate that they operate in accordance with market economy principles and without State interference. The Chairman of this group is employed by a State-owned enterprise that is the largest FeMo producer in China and which did not co-operate in the anti-dumping investigation. The Vice-Chairman meanwhile was drawn from the company that was granted MET at the provisional stage of the investigation. The producers concerned were granted specific export allocations which appear to have been determined by taking into account the level of their provisional anti-dumping duties. Thus, companies with low duty levels were allocated disproportionately high quotas. The company which had been granted MET and had the lowest duty (3,6 %) was allocated an export quota in excess of its production capacity corresponding to more than a third of the entire quantity which the grouping intended to export to the Community. Furthermore, the group included as a stated aim the avoidance of anti-dumping duties.
- (12) All parties concerned, including all cooperating companies and the relevant Chamber of Commerce, were informed of the Commission's concerns on this matter and given the opportunity to respond to these findings. Replies were subsequently received from all parties with

the exception of the Chamber of Commerce. These responses confirmed the establishment of an association of FeMo producers with some of them claiming that it would be unreasonable to infer State interference or overturn the MET/IT findings based on the self-regulatory decisions of this grouping. A number of parties also asserted that the Chinese Trade Ministry, MOFTEC, was not involved in this matter and that the resolutions of the Group were not submitted to MOFTEC for approval.

- (13) However, the arrangement in question is clearly incompatible with the criterion of the free determination of export prices and quantities that needs to be satisfied if IT is to be awarded or maintained. Moreover, these export constraints which were adopted under the auspices of the Chamber of Commerce, in agreement with several State-owned companies, strongly suggests significant State influence, and a serious risk of circumvention of the duties. Furthermore, such a pact is a clear and deliberate attempt to channel exports of one company via another company with a lower anti-dumping duty for the purposes of avoiding such duties. It should also be noted that if this arrangement had been found to exist at an earlier stage in the investigation neither IT nor MET would have been granted to the companies concerned.
- (14) Whilst information relating to a period subsequent to the IP should not normally be taken into account, in these exceptional circumstances, it is appropriate to take account of these new developments which have the effect of rendering the previous conclusions manifestly unsound. In the light of this new information therefore, it is concluded that sufficient evidence exists to render the provisional IT findings invalid and the IT granted to the concerned companies in the Provisional Regulation is hereby effectively withdrawn. These companies will henceforth be subject to the countrywide margin for China.
- (15) With regard to the MET granted to one cooperating company, it is recalled that the company declared in its questionnaire response that its decisions concerning *inter alia* prices, output and sales were made in response to market signals reflecting supply and demand and without significant State interference. It is also stressed that the granting of MET must, in line with the applicable provisions of Article 2(7) of the Basic Regulation, be based on clear evidence that the producer operates under market economy conditions. However, in this case the company is seen to be aligning its operations and business decisions not only with companies that failed to satisfy the MET criteria but also with State owned

firms that did not cooperate in the proceeding. Moreover, it appears willing to agree to export products that it does not have the capacity to produce at minimum prices established by the group. Clearly, this is contrary to its prior declarations and incompatible with one of the main criteria for granting MET that *inter alia* decisions regarding prices, output and sales are made in response to market signals.

- (16) In its assessment of whether or not a company should be granted MET, the Commission bases its conclusions mostly on the situation during the investigation period (IP). If the criteria set out in Article 2(7) of the basic Regulation have been complied with during this period, the Commission can reasonably assume that the company will operate in the future with a sufficient degree of independence from the State and according to market economy standards. However, in the present case the company that appeared to act according to market economy standards during the IP has modified its behaviour since it received its individual dumping margin. Consequently, it is now apparent that this company no longer operates in accordance with market economy principles in accordance with Article 2(7)(c) of the Basic Regulation, but that it is subject to external interference and party to export constraints in terms of prices and quantities. It also appears that the company does not operate without significant State interference. Whilst information relating to a period subsequent to the IP should not normally be taken into account, in these exceptional circumstances, it is appropriate to take account of the new developments which have the effect of rendering the previous conclusions manifestly unsound.
- (17) In the light of this new information therefore, it is concluded that the MET finding concerning this company can no longer stand. Furthermore, an individual duty is no longer appropriate for this company. The MET previously awarded to Nanjing Metalink therefore is hereby revoked and it also will henceforth be subject to the countrywide margin for China.
- (18) It should be noted that in any event, if such an arrangement as described above had been found in the context of an investigation relating to a fully-fledged market economy country, the Institutions would have had no choice but to impose a country-wide duty in accordance with Article 9(5) because individual duty rates would not have been appropriate.

3. Normal value

(a) Analogue country

- (19) A number of exporting producers alleged that the information provided by the cooperating US companies did not provide a reliable basis for determining normal value and questioned the Commission's finding that the US

companies sales during the IP were not in the ordinary course of trade.

- (20) In fact, the information provided by both cooperating companies in the US was fully verified by the Commission at the premises of both companies in the US. The Commission has consequently satisfied itself as to the accuracy and reliability of the data provided by both companies for the purposes of this proceeding and confirms that normal value continues to be based on that determined for the analogue country.
- (21) Some exporting producers submitted that it was inappropriate to use information provided by one of the companies which was operating as a converter rather than a producer, whilst others requested an adjustment to take account of extraordinary costs relating to the conversion process.
- (22) The Commission accordingly reconsidered the appropriateness of using data from a converter in the calculation of normal value in this proceeding. The importance of ensuring that the data used were as comprehensive and representative as possible was also considered in this context. In this respect, it was concluded that even if the information pertaining to the converter was not included in the relevant calculations, normal value would still be based on reliable and representative data. Consequently, and in order to address the concerns of the relevant Chinese exporting producers, it was decided to exclude the data relating to the converter in question from the normal value determination. In any event, the effect of this change in methodology was minimal.
- (23) Two exporting producers also claimed adjustments to take account of differences in the costs of environmental protection and molybdenum loss. As noted in the Provisional Regulation, the Commission services considered the merits of these claims. In this respect, it was noted that Chinese companies are indeed subject to environmental protection laws and standards and whilst these are not the same as those in the US, the extent, if any, to which the differences affect price comparability is neither clear nor has it been demonstrated. Furthermore, when this matter is viewed in conjunction with the claim for molybdenum loss, the likelihood of any significant impact on price comparability is further reduced.

- (24) Indeed, the claim that the molybdenum loss is potentially higher in China than the US implies that the US producers are more efficient than the Chinese producers. Thus any difference in environmental costs may well be at least partly offset by a more efficient production process. In any event, in the absence of any precise quantification of the alleged differences relating to environmental costs and molybdenum loss, the Commission concludes that no effects on price comparability have been demonstrated and no adjustments are consequently warranted in this respect.

- (25) With the exception of the exclusion of data from the converter explained above, the methodology for the determination of normal value set out in recitals 38 to 40 of the Provisional Regulation is confirmed.

(b) Export price

- (26) The export prices were calculated in accordance with Article 2(8) of the Basic Regulation, i.e. on the basis of the export prices actually paid or payable for the product concerned to the first independent customer.

(c) Comparison

- (27) The methodology set out in recitals 49 and 50 of the Provisional Regulation is hereby confirmed.

- (28) Two exporting producers claimed that calculations should be conducted by reference to the two grades quoted in the Metal Bulletin. However, the method used in the Provisional Regulation, i.e. referring to the exact contents of molybdenum is considered more accurate since it takes into account any variance of the contents, and, moreover, allows better comparability with the normal value, as the analogue country producers reported the relevant data according to molybdenum content.

(d) Dumping margin

- (29) In view of the changes concerning MET and IT outlined above, all cooperating exporting producers will now receive the countrywide dumping margin for the PRC. The methodology for the calculation of this margin set out in recitals 51 and 54 of the Provisional Regulation is hereby confirmed.
- (30) The countrywide dumping margin for the PRC established on this basis is 38,5 %.

E. COMMUNITY INDUSTRY

- (31) In the absence of any new argument on the Community production and on the definition of the Community industry, the provisional findings as described in recitals 56 to 60 of the Provisional Regulation are hereby confirmed.

F. INJURY

1. Community consumption

- (32) It has been argued that the Community industry is composed only of complaining/supporting companies and thus information from other Community operators should not be taken into account for the purpose of the injury analysis.

- (33) It should be noted that the sales volume of other Community operators have only been used to establish the Community consumption and not for the evaluation of the economic indicators pertaining to the situation of the Community industry. Had the sales volume of other Community operators not been added, the apparent Community consumption would have been underestimated.

- (34) In view of the above, the provisional findings concerning the Community consumption, as described in recitals 61 to 63 of the Provisional Regulation are hereby confirmed.

2. Imports originating in the PRC

(a) Volume and market share of the imports concerned

- (35) In the absence of any new argument on the volume and market share of the imports concerned, the provisional findings as described in recitals 64 to 65 of the Provisional Regulation are hereby confirmed.

(b) Prices of the imports concerned

(i) Price evolution

- (36) In the absence of any new information on the price evolution, the provisional findings as described in recital 66 of the Provisional Regulation are hereby confirmed.

(ii) Price undercutting

- (37) Two interested parties questioned the use of the date of invoice to convert the currency of export into euro. They claimed that, since there is about a one-month time lag between the date of invoice and the date of imports into the Community, the currency conversion should be done on the basis of the exchange rate of the month following that of invoice. In the alternative, they claimed that an average exchange rate for the entire IP should be used.

- (38) As prescribed by the basic Regulation in the context of the conversion of currencies for the calculation of the dumping margin, the exchange rate of the date of sales should be used, the date of sale being the invoice date, unless another date more appropriately establishes the material terms of the sale. In this context, no information was provided showing that the date of customs clearance would provide a more appropriate term of sale. Thus, for both the exporters and the Community industry the currency conversion was performed at the same level, i.e. on the date of invoice, irrespective of the date of delivery or customs clearance. In view of the above, it is considered that the conversion into euro used at the provisional stage is adequate for the price comparison. The request was thus rejected.

- (39) Two exporting producers argued that the export prices should be adjusted for differences in the level of trade, since exporting producers sell to traders whereas the Community industry sells to end-users.
- (40) It should be noted that the Community industry's sales were found to have been made through various sales channels, i.e. both traders and end-users. Furthermore, no consistent and/or significant price differentials were found to exist according to the different sales channels. The request for a level of trade adjustment was thus rejected.
- (41) At the provisional stage, the cif prices of the exporting producers were compared with those of the Community industry at an ex-works level. In order to allow for a fair comparison, two exporting producers requested that an adjustment be made to the Community industry's prices for costs relating to the renting of warehouses.
- (42) It is considered that no adjustment should be made to the Community industry's prices regarding warehousing costs given that the prices of the exporting producers used for the calculation include these costs amongst the post-importation costs which were added to the export prices as described in recital 67 of the provisional Regulation. Therefore, the request is rejected.
- (43) Taking into account the treatment of one additional exporting producer at the definitive stage as a cooperative party, the withdrawal of MET/IT, the arguments mentioned above and the correction of clerical errors, the difference between the prices expressed as a percentage of the Community industry's weighted average prices, i.e. the country-wide weighted average price undercutting margin, amounted to 13,8 %.
- (46) The situation of the Community industry shows two marked periods between 1997 and the IP:
- between 1997 and 1999 the production, sales, market share and profitability improved as the Community industry took advantage of the decreasing sales volumes and market share of other Community operators;
 - between 1999 and the IP, coinciding with the largest penetration of the Chinese imports, Community industry's production decreased by 19 %, sales volume by 17 %, market share by more than 7 percentage points and profitability decreased to between 0 % and 2 %. Thus, between 1999 and the IP, despite an increase in Community consumption, the volume of sales of the Community industry decreased, thus resulting in a loss of market share.
- (47) A clerical error occurred in the second sentence of recital 92 of the Provisional Regulation, that should have read as follows: 'Even though the Community industry increased its volume of production and sales during the period considered, it did not follow the growth of the Community consumption between 1999 and the IP'.
- (48) It has been argued that if 1997 is taken as a start point and the IP as an end point, the situation of the Community industry has not deteriorated. It is also argued that the findings on injury cannot be based on a deterioration of the situation of the Community industry in the last part of the period considered, i.e. between 1999 and the IP.
- (49) The purpose of an anti-dumping investigation is to evaluate the effect of the dumped imports on the situation of the Community industry during the IP, which is the period for which the existence of dumping is examined. In this respect the period before the IP merely serves as an indicator of the evolution of the situation of the Community industry to determine whether the situation during the IP can be classified as injurious. Furthermore, rather than an end-point to end-point analysis, the examination of the economic situation of the Community industry should take into account events within the period considered, as was done in the Provisional Regulation.

3. Situation of the Community industry

- (44) In the absence of any new information affecting the findings for the abovementioned factors, the provisional findings as described in recitals 71 to 90 of the Provisional Regulation are hereby confirmed.

4. Conclusion on injury

- (45) In the Provisional Regulation it was concluded that the Community industry had suffered material injury during the IP. It was found that between 1997 and the IP the volume of the dumped imports of Chinese FeMo increased by 70 % and their share of the Community market increased from around 34 % to around 49 %. The largest increase took place between 1999 and the IP, when the volume of imports increased by 41 % gaining 9,4 percentage points of market share.
- (50) It is thus concluded that the analysis of the situation of the Community industry made at the provisional stage satisfies the requirements of the basic Regulation.
- (51) In the absence of any new information on the situation of the Community industry and with account being taken of the abovementioned findings, the provisional findings on the injury suffered by the Community industry, as described in recitals 91 to 93 of the Provisional Regulation, are hereby confirmed.

G. CAUSATION

(ii) *Lack of access to Mo natural resources by the Community industry*

(52) Some interested parties have argued that any injury suffered by the Community industry was caused by one or various of the following factors:

(i) *Evolution of prices of raw material*

(53) One interested party argued that the prices of the Community industry have moved alongside the prices of the raw materials and thus their evolution cannot be attributed to the Chinese import prices.

(54) The investigation showed that the main raw material used in the production of FeMo is MoO_3 and that there should be a link between MoO_3 and FeMo prices, since any price movement of MoO_3 automatically corresponds to a movement in the cost of raw material for the Community industry. Consequently, FeMo producers do not have much room to set their prices. Indeed, in a transparent market FeMo users carefully follow MoO_3 prices in order to be in a good position to negotiate FeMo prices.

(55) It should be noted that the trend of the Community industry's prices during the period considered followed the trend of the cost of raw material. At the same time, given the imports from the PRC at prices which were below those of the Community industry throughout the period considered, with the exception of 1998, the Community industry's prices were prevented from increasing at the same rate as the increase in the total cost of production between 1999 and the IP. In this respect it should be noted that between 1999 and the IP, coinciding with the significant penetration of the Chinese imports in the Community market, the production and capacity utilisation of the Community industry decreased, with the consequent increase in its costs. Thus the increase in costs of 8 % in the IP, which could not be fully reflected in the sales prices, led to a deterioration of the profitability to a level which is insufficient to ensure the long-term viability of the Community industry.

(56) It is thus therefore concluded that the evolution of the prices of the raw materials did not materially contribute to the deterioration of the situation of the Community industry. On the contrary, it is reasonable to assume that in the absence of the dumped Chinese exports, both the Community industry's price level and its market share would have been significantly higher. In view of the above, and in the absence of any new information, the provisional findings as described in recitals 104 to 107 of the Provisional Regulation are hereby confirmed.

(57) It was argued that the injury suffered by the Community industry is attributable to its lack of access to Mo natural resources, which significantly hampers its efficiency. On the other hand, the access of Chinese FeMo producers to Mo resources would result in their alleged competitiveness.

(58) Firstly, it should be noted that one of the producers constituting the Community industry, is upstream integrated and produces MoO_3 and that no evidence has been provided to show the alleged positive effect on the Community industry's efficiency if vertically integrated.

(59) Secondly, it should be noted that even if the PRC has Mo natural resources, its output has been reduced since 1998. Furthermore, information provided by an interested party indicates that the PRC imported substantial volumes of molybdenum products, mainly Mo concentrate. Consequently the present situation contradicts any alleged Chinese competitive advantage.

(60) Finally, in the IP imports of Chinese FeMo were found to be made at dumped prices and in significant quantities coinciding with a loss of market share previously held by the Community industry.

(61) In the view of the above, it cannot be argued that the injury suffered by the Community industry has been caused by any lack of access to Mo natural resources.

(iii) *The alleged problems of the Community industry were intrinsic to the Mo market*

(62) It was argued that the examination of causation in the Provisional Regulation was flawed since it did not address the impact of the business cycle of the upstream industry (copper industry) and that of the downstream industry (steel industry) on the injury suffered by the Community industry. It was alleged that the injury suffered by the Community industry was intrinsic to the Mo market although no evidence was provided in support of this claim.

(63) It should firstly be noted that in the Provisional Regulation the Commission examined the impact of the evolution of the prices of the raw material used in production of FeMo, MoO_3 , on the situation of the Community industry and it found that it had not contributed to the injury suffered by the Community industry.

(64) Secondly, MoO_3 is obtained from Mo concentrates which in turn can be obtained both as a by-product from copper mining but also from the mining of crude ores.

(65) Thirdly, regarding the downstream industry, in the provisional Regulation the Commission examined the evolution of the consumption in relation to the developments in the steel industry, the FeMo main user. In particular, it is recalled that the Community industry could not benefit from the growth of the market between 1999 and the IP where consumption increased by 14 % coinciding with the upturn of the steel industry, while the sales volume of the Community industry decreased by 17 %.

(66) In view of the above, it cannot be argued that the injury suffered by the Community industry has been caused by any problem intrinsic to the Mo market itself.

(iv) Behaviour of the Community producers of FeMo

(67) One interested party alleged that the injury suffered by the Community industry was due to the behaviour of the two producers making up the Community industry and that of the other two Community operators, which were alleged to hold a collective dominant position in the Community market, given their combined market share. No information was provided on the behaviour of these producers in the Community market other than their combined market share.

(68) It should firstly be noted that the mere fact that the four companies producing FeMo in the Community hold a market share of between 40 % and 44 % cannot be presumed to be the cause of the injury suffered by the Community industry, which is incidentally composed of only two of the four companies, in the absence of any indication that would prove that such injury is due to the collective position of economic strength, enabling the companies to behave to an appreciable extent independently of their competitors, customers and ultimately of consumers.

(69) Secondly, the four companies producing FeMo in the Community have a different position in the market: the two companies making up the Community industry primarily produce FeMo on their own account to be sold to users, whereas the other two companies convert MoO_3 into FeMo on account of third parties (importers/traders) against payment of a fee.

(70) Finally, regarding the Community industry, no evidence was found that would show that the injury it suffered during the IP was attributable to any anti-competitive practice on its side.

(71) It is therefore concluded that the injury suffered by the Community industry was not caused by its own anti-competitive behaviour.

(v) Imports from other third countries

(72) It has been argued that the injury suffered by the Community industry may be caused by imports from Armenia and Iran.

(73) It should be noted that imports from these two countries reached in the IP a market share of respectively 3,4 % (Armenia) and 1,8 % (Iran) at prices which were at the same level or below those of the PRC. It should also be noted that even if they may have contributed to the injury suffered by the Community industry, given their market share compared to the Chinese one (49,3 %), their contribution remains marginal and does not break the causal link between the imports from the PRC and the material injury suffered by the Community industry.

(74) In the view of the above and in the absence of any new information on the imports from other third countries, the provisional findings as described in recitals 108 to 113 of the Provisional Regulation are confirmed.

(vi) Conclusion

(75) In view of the above it is confirmed that the imports concerned taken in isolation have caused material injury to the Community industry within the meaning of Article 3(6) of the Basic Regulation as described in recitals 117 to 118 of the Provisional Regulation.

H. COMMUNITY INTEREST

(76) Some interested parties made allegations as regards the possible impact of anti-dumping measures on the steel industry without, however, providing the relevant supporting evidence.

(77) In the absence of any new information on the analysis of the Community interest aspects of the case, the provisional findings as described in recitals 120 to 147 of the Provisional Regulation are confirmed.

I. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level

(78) One interested party argued that the profit margin regarded as a minimum that the industry could be expected to obtain in the absence of injurious dumping is not appropriate as the level of profitability obtained by the Community industry in comparable sectors is higher.

(79) It should be noted that when calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to cover its costs and obtain overall a profit before tax that could be reasonably achieved by the Community industry under normal conditions of competition, i.e. in the absence of dumped imports. In this case, taking into account, in particular, the level of profitability obtained in the sales of other products of the same type produced by the Community industry, it was found that a profit margin of 5 % of turnover could be regarded as an appropriate minimum which the Community industry could be expected to obtain in the absence of injurious dumping.

(80) It is to be noted that the arguments and corresponding findings regarding the adjustments claimed in the context of the price undercutting, as well as the correction of clerical errors, were also taken into account in the injury margin calculation.

(81) In the absence of any new information or comment, the methodology used for establishing the injury elimination level as described in recitals 149 to 151 of the Provisional Regulation is confirmed.

2. Definitive anti-dumping measures

(82) In the light of the foregoing, it is considered that a definitive anti-dumping duty should be imposed at the level of the injury margin found as it is lower than the level of the dumping margin found, in accordance with Article 9(4) of the basic Regulation.

(83) On the basis of the above, the proposed definitive duty rate, expressed as a percentage of the cif Community border price, customs duty unpaid, is 22,5 %.

3. Undertaking

(84) Following the disclosure of the provisional findings, one exporting producer expressed an interest in offering price undertakings. As no individual determination of dumping was established at the definitive stage, the

Commission services cannot accept such an individual undertaking.

4. Collection of provisional duties

(85) In view of the magnitude of the dumping margins found and in the light of the level of the injury caused to the Community industry, it is considered necessary that the amounts secured by way of the provisional anti-dumping duty, imposed by the Provisional Regulation, should be definitively collected at the rate of the duty definitively imposed,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of ferro molybdenum, falling within CN code 7202 70 00 and originating in the People's Republic of China.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Community-frontier price, before duty, for the product described in paragraph 1 shall be 22,5 %.

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

Article 2

The amounts secured by way of the provisional anti-dumping duty imposed by the Provisional Commission Regulation shall be definitively collected at the rate of the duty set out in Article 1, or at the rate of the provisional duty where this is lower. Any amount secured in excess of the definitive rate of anti-dumping duties shall be released.

Article 3

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

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

Done at Brussels, 28 January 2002.

For the Council

The President

J. PIQUÉ I CAMPS

COMMISSION REGULATION (EC) No 216/2002
of 5 February 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 February 2002.

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

Done at Brussels, 5 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 5 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	85,9
	204	79,5
	212	110,5
	999	92,0
0707 00 05	052	169,0
	220	230,6
	628	196,8
	999	198,8
0709 90 70	052	168,7
	204	159,5
	999	164,1
0805 10 10, 0805 10 30, 0805 10 50	052	56,1
	204	55,1
	212	41,5
	220	39,5
	508	22,3
	624	86,7
	999	50,2
0805 20 10	204	88,9
	999	88,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	70,1
	204	120,2
	220	68,1
	464	128,3
	600	83,5
	624	77,9
	999	91,4
	052	58,1
0805 50 10	600	44,9
	999	51,5
0808 10 20, 0808 10 50, 0808 10 90	060	36,5
	400	116,8
	404	92,9
	720	120,7
	728	112,1
	999	95,8
	388	107,8
0808 20 50	400	114,7
	528	125,7
	999	116,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 217/2002**of 5 February 2002****fixing eligibility criteria for raw materials under the production aid scheme in Regulation (EC) No 2201/96**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Regulation (EC) No 1239/2001 ⁽²⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Article 2 of Regulation (EC) No 2201/96 provides for an aid scheme to assist producer organisations delivering tomatoes, peaches and Williams and Rocha pears for processing.
- (2) Eligibility conditions for consignments of raw materials delivered for processing should be laid down to ensure proper application of the above aid scheme, without distorting competition and without prejudicing the rules by which the contracting parties may agree on varying the price of the raw material based on quality criteria in addition to the defects covered by this Regulation.
- (3) This Regulation lays down detailed rules of application in addition to those in Commission Regulation (EC) No 449/2001 of 2 March 2001 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables ⁽³⁾, as amended by Regulation (EC) No 1343/2001 ⁽⁴⁾.
- (4) The extent to which the Member States or the contracting parties may agree clauses in addition to this Regulation should be indicated.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down the criteria to be met by consignments of tomatoes, peaches or pears delivered for processing in

order to benefit from the production aid scheme established by Article 2 of Regulation (EC) No 2201/96.

Article 2

1. Upon reception of each consignment, processors shall examine the quality of the raw material on the basis of samples. The competent authorities in the Member States shall take the necessary measures to ensure that the procedure followed in taking and examining samples guarantees objectivity and selects samples representative of each consignment. The producer organisation or its representative may be present at this procedure, which may also be conducted by a third party designated by both parties.

2. The examination referred to in paragraph 1 shall establish the percentage by weight of defective raw material for each type of defect defined in Article 3 and the total of these percentages, rounded up or down to the nearest whole number. If this total exceeds the 10 % limit, the consignment shall not be eligible for aid.

3. The reduction rate referred to in Article 11(1)(e) and Article 13(1)(b) of Regulation (EC) No 449/2001 shall, for each eligible consignment, be the total referred to in paragraph 2.

4. The price to be paid by the processor, as referred to in Article 3(4)(e) of Regulation (EC) No 449/2001, on the one hand, and the unit amount of production aid, on the other, shall apply to the net weight delivered once the reduction rate has been applied.

Article 3

The defects shall be defined as follows:

(a) for tomatoes, peaches and pears:

- foreign matter: foreign matter is considered to be anything other than the fruit itself. Foreign matter includes above all plant debris (leaves, twigs, grass, etc.), mineral matter (earth, gravel, stones, etc.) and miscellaneous debris,
- diseased, rotten or wormy fruit: fruit attacked by disease, insects or a rotting agent over an area more than 30 mm in diameter, extending into the fruit;

(b) in the case of tomatoes alone:

- green tomatoes: healthy fruit which have not reached maturity and are completely green on the outside. The colour inside the fruit is not taken into account;

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 171, 26.6.2001, p. 1.

⁽³⁾ OJ L 64, 6.3.2001, p. 16.

⁽⁴⁾ OJ L 181, 4.7.2001, p. 16.

- (c) in the case of peaches and pears alone:
- sizing defects: minimum size is 55 mm,
 - ripeness: underripe or overripe fruits are defective. The degree of ripeness is measured and compared to a scale of limit values fixed by the contracting parties,
 - hail damage penetrating the skin, covering more than 20 % of the surface of the fruit;
- (d) in the case of peaches alone:
- visible split pits: a pit whose two halves have separated is visible between the peach halves at the stem end.

Article 4

1. The Member States or the signatories to the contracts referred to in Article 3 of Regulation (EC) No 2201/96 may agree:

- to reduce the limit fixed in Article 2(2) for any of the products concerned, fix specific limits for each of the defects referred to in Article 3 or increase the minimum size referred to in Article 3(c),
- to define defects in addition to those referred to in Article 3, in respect of which the percentage of defective fruit is to be included in the total referred to in Article 2(2).

2. The Member States may authorise the contracting parties to increase the limit fixed in Article 2(2) by a maximum of 15 % for each of the products concerned.

3. The provisions adopted under this Article shall be specified in the contracts.

Article 5

This Regulation shall apply from the 2002/03 marketing year.

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

Done at Brussels, 5 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 218/2002
of 5 February 2002
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, as last amended by Regulation (EC) No 624/98 ⁽³⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1309/2001 ⁽⁴⁾, as last amended by Regulation (EC) No 201/2002 ⁽⁵⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 February 2002.

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

Done at Brussels, 5 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 16.

⁽³⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁴⁾ OJ L 177, 30.6.2001, p. 21.

⁽⁵⁾ OJ L 31, 1.2.2002, p. 71.

ANNEX

to the Commission Regulation of 5 February 2002 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	20,05	6,28
1701 11 90 ⁽¹⁾	20,05	11,91
1701 12 10 ⁽¹⁾	20,05	6,09
1701 12 90 ⁽¹⁾	20,05	11,39
1701 91 00 ⁽²⁾	27,69	11,39
1701 99 10 ⁽²⁾	27,69	6,87
1701 99 90 ⁽²⁾	27,69	6,87
1702 90 99 ⁽³⁾	0,28	0,37

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 March 2001

on the State aid which Germany is planning to implement for the steel firm BRE.M.A Warmwalzwerk GmbH & Co. KG

(notified under document number C(2001) 971)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/81/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 4(c) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof, read in conjunction with Protocol 14,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry ⁽¹⁾ (hereinafter referred to as the 'Steel Aid Code'), and in particular Article 6(5) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾ and having regard to those comments,

Whereas:

laid down in Article 6(5) of the Steel Aid Code in respect of the aforementioned aid.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid.
- (4) The German authorities presented their comments by letter dated 31 July 2000. The UK Steel Association, the beneficiary undertaking Brema and SIDMAR, the parent company of Stahlwerke Bremen GmbH, sent comments in the context of the procedure. The Commission notified Germany of these comments by letter dated 22 December 2000 and Germany gave its comments in a letter dated 19 January 2001.

I. PROCEDURE

- (1) By letter dated 18 January 2000, Germany, acting under Article 3 of Decision No 2496/96/ECSC (Steel Aid Code), notified the Commission of aid for a plant belonging to Stahlwerke Bremen GmbH and which in the meantime has become a legally independent firm, BRE.M.A Warmwalzwerk GmbH & Co. KG (hereinafter referred to as 'Brema'). The aid amounted to DEM 1,214 million (EUR 622 564), representing 15 % of an investment of DEM 8,09 million (EUR 4,14 million).
- (2) By letter dated 5 July 2000, the Commission informed Germany that it had decided to initiate the procedure

II. DESCRIPTION OF THE AID

- (5) Brema became an undertaking with an independent legal status in January 2000, separating itself from Stahlwerke Bremen GmbH, which became its parent company, is in turn owned by SIDMAR and forms part of the Luxembourg-based ARBED group. It is an ECSC steel company that manufactures mainly hot-rolled sheets. Its hot-rolling mill produces 3,12 million tonnes per year. Slabs for the hot-rolling process are reheated in a walking-beam furnace. According to the German authorities, the steering system of the furnace, which is 27 years old, is based on obsolete technology and requires modernisation.

⁽¹⁾ OJ L 338, 28.12.1996, p. 42.

⁽²⁾ OJ C 310, 28.10.2000, p. 11.

⁽³⁾ See footnote 2.

(6) The necessary modernisation of the furnace would have involved an investment of DEM 3,91 million (EUR 2 million). However, instead of limiting itself to carrying out this necessary modernisation, Brema decided to undertake a complete reconstruction of the steering and operating system of the walking-beam furnace in the interest of energy saving. The additional investment amounted to DEM 8,09 million, bringing the total investment cost to DEM 12 million (EUR 6,15 million). According to the German authorities, it qualifies for environmental aid on the basis of the energy-saving effect and the reduction in CO₂ emissions.

(7) The reconstruction of the operating and steering equipment will lead to a total energy saving of 6 %, equivalent to 11,7 million Nm³ of natural gas per year. Total CO₂ emissions would be reduced by about 21 000 tonnes per year. In the case of the necessary modernisation alone, 3,3 million Nm³ of gas would be saved, permitting an emission reduction of 6 000 tonnes CO₂ per year. The total reconstruction of the operating and steering system of the furnace as decided by the firm will lead to additional energy saving of 8,4 million Nm³ of natural gas and a further CO₂ reduction of 15 000 tonnes per year.

(8) The additional energy saving of 8,4 million Nm³ of natural gas represents DEM 1,58 million in terms of direct cost savings per year for the firm. There will be other indirect cost savings associated with the effect that the investment will have on the firm's efficiency, capacity and productivity.

(9) The increased efficiency of the process will lead to a workforce reduction of five people, resulting in a cost reduction of DEM 432 800 per year.

(10) There will also be a small capacity increase of the rolling mill of 550 tonnes per year, yielding DEM 58 000 per year in extra revenue.

(11) Total annual savings resulting from the extra investment will thus amount to DEM 2,07 million per year.

III. COMMENTS FROM GERMANY

(12) In its reply to the initiation of proceedings, Germany confirmed the position it had already taken during the preliminary investigation, namely that the investment is eligible for aid because the firm would not contemplate making such an investment without aid because of its high initial cost. In spite of a depreciation period of 12,5

years, the fact that the investment will earn a return on capital in four years is not decisive for the firm's decision to invest. The extra improvement in the protection of the environment is significant since the additional energy saving of 8,4 million Nm³ of natural gas entails a further reduction in CO₂ emissions of 15 000 tonnes per year, with the initial investment already leading to a reduction of 6 000 tonnes.

IV. COMMENTS FROM INTERESTED THIRD PARTIES

(13) The beneficiary undertaking Brema and its parent company SIDMAR take the same view as Germany regarding the eligibility of the investment on environmental protection grounds.

(14) The UK Steel Association shares the Commission's misgivings and deems it important to examine the reason for State aid. In view of the most recent technological developments, all new investments have an indirect positive effect on the environment. There is therefore the temptation to present normal productive investments as being determined by environmental factors in order to attract State aid.

V. ASSESSMENT OF THE AID

1. Legal basis

(15) Brema is an undertaking within the meaning of Article 80 of the ECSC Treaty and is therefore subject to the rules of the Steel Aid Code. The measure notified by Germany constitutes aid within the meaning of Article 1 of the Steel Aid Code. In accordance with Article 3, aid for environmental protection in the case of steel undertakings may be deemed compatible with the common market if it is in compliance with the Community guidelines on State aid for environmental protection ⁽⁴⁾ (hereinafter referred to as the 'guidelines') and in conformity with the criteria outlined in the Annex to the Steel Aid Code.

(16) According to the guidelines (point 3.2.1), aid ostensibly intended for environmental protection measures but which in fact is aid for general investment is not covered by the guidelines. The eligible costs must be strictly confined to the extra investment costs necessary to meet environmental objectives. Moreover, the following rules apply.

(17) Aid for investment that allows significantly higher levels of environmental protection may be authorised up to a maximum of 30 % of the eligible costs. Its level must be in proportion to the improvement of the environment that is achieved and to the investment necessary for achieving the improvement (point 3.2.3.B).

(18) Aid for energy conservation will be treated like aid for environmental purposes in so far as it aims at and achieves significant benefits for the environment and the aid is necessary, having regard to the cost savings obtained by the investor (point 3.2).

⁽⁴⁾ OJ C 72, 10.3.1994, p. 3.

- (19) According to the Annex to the Steel Aid Code, aid to encourage firms to contribute to significantly improved environmental protection (applying both to investments in the absence of environmental standards and investments to improve on environmental protection) is governed by the following provisions.
- (20) The Commission will analyse the economic and environmental background of a decision to opt for the replacement of existing plant or equipment. A decision to undertake new investment which would have been necessary in any event on economic grounds or on account of the age of the existing plant or equipment (useful life left of less than 25 %) will not be eligible for aid.
- (21) The investor will have to demonstrate that a clear decision was taken to opt for higher standards which necessitated additional investment, that is, that a lower-cost solution existed which would meet the statutory requirements.
- (22) Any advantage in regard to lower costs of production will be deducted.

2. The present case

- (23) The notification by Germany does not relate to aid for initial investment made to replace old installations. It relates only to aid towards the extra investment leading to a reduction in energy consumption and hence, in CO₂ emissions. In Germany's view, therefore, the aid ceiling for such investment is 30 %; however, Germany decided to limit the grant to 15 %.
- (24) Aid for investments in energy saving are assessed in the same way as aid for other investments that bring about an improvement in environmental protection. In view of the applicable rules as set out above, the Commission has to make sure in the present case that all the advantages in the form of lower production costs attributable to the investment are deducted from the eligible costs. This is to ensure that only investments aimed exclusively at environmental protection receive State aid. For this purpose, the economic advantages obtained by the firm during the life of the equipment as a result of the investments must be taken into consideration.
- (25) The equipment that is being partially replaced is at least 27 years old, i.e. at the time of replacement. It could therefore be assumed that the life of the new equipment will be the same. If, however, the life of the equipment cannot be readily determined, the Commission may, in view of constant technological developments, apply in some cases the normal depreciation period entered in the accounts of the company. It can do this if the depreciation period is long enough to ensure that all the

economic gains obtained by the company from the investment will be deducted. In the present case, the depreciation period is 12,5 years. Although the potential effective life can be more than double that, the depreciation period might be considered long enough for the purpose mentioned and might be accepted by the Commission as the life of the equipment.

- (26) However, the Commission cannot accept the argument put forward by Germany and by Brema and SIDMAR to the effect that the aid is necessary in view of the high cost of the investment. Such a criterion does not ensure that the provisions of the Steel Aid Code and the guidelines will be complied with.
- (27) According to the information provided by Germany, the investment in question generates savings for the firm not only at the level of energy consumption but also through rationalisation of the production process. These savings amount to around DEM 2,07 million per year. As a result of these savings, the extra investment of DEM 8,09 million will pay for itself within four years. Although the investment has considerable positive effects on environmental protection, the Commission cannot accept that the aid is necessary, having regard to the cost savings obtained by the investor.

VI. CONCLUSIONS

- (28) Since any advantage in the form of lower production cost has to be deducted and since after four years the notified investment will be paid for with the savings and extra earnings it generates, the investment is not eligible for State aid under the Steel Aid Code or the guidelines. The aid notified by Germany of DEM 1,214 million for an investment of DEM 8,09 million is, therefore, incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany is planning to implement for BRE.M.A Warmwalzwerk GmbH & Co. KG, amounting to DEM 1,214 million (EUR 622 564), is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 28 March 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 17 October 2001
authorising the United Kingdom to grant aid to two coal production units for 2000 and 2001

(notified under document number C(2001) 3081)

(Only the English text is authentic)

(Text with EEA relevance)

(2002/82/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽¹⁾, and in particular Article 9(4) thereof,

Whereas:

Article 9(4) of that Decision. The Commission's approval is subject to the general objectives and criteria laid down in Article 2 and the specific criteria set out in Article 3 of Decision No 3632/93/ECSC and, more generally, to the aid being compatible with the proper functioning of the common market. In addition, in its assessment the Commission is required to check, in accordance with Article 9(6) of that Decision, whether the measures notified are in conformity with the plan for modernisation, rationalisation and restructuring of the United Kingdom coal industry approved by the Commission by Decision 2001/114/ECSC ⁽²⁾, and Decision 2001/597/ECSC ⁽³⁾ (hereinafter referred to as 'the restructuring plan').

II

I

- (1) By letter of 8 August 2001, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of financial aid which it intends to grant to the 'Longannet Mine' production unit of Mining (Scotland) Ltd for the period from 17 April 2000 to 31 December 2000 and for 2001.
- (2) Moreover, by letter of 3 September 2001, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of the financial aid which it intends to grant to the 'Aberpergwm Colliery' production unit of Anthracite Mining Ltd for the year 2001.
- (3) In the light of the information submitted by the United Kingdom, the Commission is required to take a decision on operating aid amounting to GBP 5 397 000 to cover special operating losses of Longannet Mine, namely GBP 2 190 000 for the period from 17 April 2000 to 31 December 2000 and GBP 3 207 000 for 2001. The Commission is also required to take a decision on operating aid amounting to GBP 1 031 066 to cover operating losses of the Aberpergwm Colliery for 2001.
- (4) The financial measures are covered by Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on these measures pursuant to

- (5) The sum of GBP 5 397 000 which the United Kingdom is proposing to grant to the Longannet Mine under Article 3 of Decision No 3632/93/ECSC is intended to cover part of the difference between the production cost and the selling price of coal freely agreed between the contracting parties in the light of the conditions prevailing on the world market for coal of similar quality from third countries.
- (6) By Decisions 2001/217/ECSC ⁽⁴⁾ and 2001/683/ECSC ⁽⁵⁾, the Commission has already authorised the United Kingdom to grant operating aid to the Longannet Mine pursuant to Article 3 of Decision No 3632/93/ECSC amounting to GBP 17 462 000 for the period from 17 April 2000 to 31 December 2000 and GBP 18 318 000 for 2001. In accordance with Article 3(2) of Decision No 3632/93/ECSC, the Commission was of the opinion that the aid which the United Kingdom proposed to grant was intended to improve the economic viability of the production unit concerned by reducing its production costs. In accordance with the restructuring plan, the aid should help to make Longannet Mine viable, enabling it to continue its activities beyond 2002 without the need for public subsidy.
- (7) However, the aid which the Commission authorised for Longannet Mine covered only a part of the operating losses relating to the abovementioned periods. Direct depreciation as provided for in point 2(c) of Form A in Annex I to Decision No 341/94/ECSC ⁽⁶⁾ is not covered by State aid. By excluding this eligible expenditure, the

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 43, 14.2.2001, p. 27.

⁽³⁾ OJ L 210, 3.8.2001, p. 32.

⁽⁴⁾ OJ L 81, 21.3.2001, p. 31.

⁽⁵⁾ OJ L 241, 11.9.2001, p. 10.

⁽⁶⁾ OJ L 49, 19.2.1994, p. 1.

aim of the United Kingdom was to minimise the level of aid provided to the Longannet Mine. Appropriate financial support by the shareholders should make it possible to attain a balance commensurate with the Longannet Mine's operating results.

- (8) Unforeseeable geological problems, together with major flooding, have recently caused significant production losses. These temporary losses due to exceptional circumstances have led to serious financial difficulties. In order to ensure Longannet Mine's survival, it is therefore a matter of urgency to inject additional resources to prevent it from having to close down because of insolvency.
- (9) According to the notification of 8 August 2001, Longannet Mine's financial difficulties are due to exceptional circumstances and should therefore remain temporary. Accordingly, they do not jeopardise prospects for economic viability by reducing the mine's production costs. In accordance with Decisions 2001/217/ECSC and 2001/683/ECSC, Longannet Mine therefore remains able to continue its activities beyond 2002 without any public subsidy. An independent expert has examined the underground seismic studies and an audit carried out at the production site, and has confirmed that Longannet Mine has sufficient mineral reserves to enable it to continue operating until the end of 2002 under favourable economic conditions.
- (10) In accordance with the first indent of Article 3(1) of Decision No 3632/93/ECSC, the aid per tonne as notified does not exceed the difference between production costs and foreseeable revenue for the period from 17 April 2000 to 31 December 2000, or for 2001.
- (11) In view of the above and on the basis of the information provided by the United Kingdom, the additional aid of GBP 5 397 000 which the United Kingdom intends to grant to the Longannet Mine for the period from 17 April 2000 to 31 December 2000 and for 2001 is compatible with Decision No 3632/93/ECSC, and in particular with Articles 2 and 3 thereof.

III

- (12) The sum of GBP 1 031 066 which the United Kingdom is proposing to grant to the Aberpergwm Colliery under Article 3 of Decision No 3632/93/ECSC is intended to cover the difference between the production cost and the selling price of coal freely agreed between the contracting parties in the light of the conditions

prevailing on the world market for coal of similar quality from third countries.

- (13) After a complete closure in 1986, substantial investment was made in order to foster new activities for this mine. Following preparatory work in 1996, it resumed operation in July 2000. However, Aberpergwm Colliery's mining activities will become more substantial only from 2001, with an estimated production of 66 800 tce ⁽¹⁾.
- (14) The measures to modernise the coalmining conditions that still have to be taken will steadily optimise the economic operating conditions. As a result, the production costs, which in 2000 amounted to [...] ^(*) GBP/GJ ^(?), should diminish significantly and should in 2002 — at 1999 prices — not exceed the economic viability threshold of 1,15 GBP/GJ laid down in the United Kingdom coal industry restructuring plan. In addition, according to forecasts up to 2004, continuous production cost reduction should be conducive to steadily improving the mine's economic viability beyond 2002.
- (15) At the request of the United Kingdom authorities, an independent expert has compiled a technical report examining the potential of modernisation, rationalisation and restructuring measures implemented by Aberpergwm Colliery to improve its economic viability. In drawing up his report, the expert took account of the geological and technical operating conditions and the quality of the coal produced by this production unit. The report concludes that the various measures envisaged were consistent and realistic in terms of attaining the estimated costs calculated by the production unit.
- (16) In accordance with Article 3(2) of Decision No 3632/93/ECSC, the aid which the United Kingdom proposes to grant is therefore intended to improve the economic viability of Aberpergwm Colliery by significantly reducing its production costs. In view of the prospects for reducing production costs and increasing revenue, this aid will help to make the production unit competitive in order to ensure that it will be able to continue its activities beyond 2002 without public subsidy.
- (17) The plan proposed by the company, and more specifically the temporary nature of the financial aid necessary for restructuring, will allow the aid to be degressive, in accordance with the first indent of Article 2(1) of Decision No 3632/93/ECSC.
- (18) In accordance with the first indent of Article 3(1) of Decision No 3632/93/ECSC, the aid per tonne as notified does not exceed the difference between production costs and foreseeable revenue calculated on the basis of the financial data relating to the period covered by this aid.
- (19) The Commission notes that an auditor has certified that the financial data notified by the United Kingdom are an accurate reflection of the accounts of Anthracite Mining Ltd. The auditor has also stated that the forecasts were drawn up using the same accounting standards as were in use before the period covered by the aid.

⁽¹⁾ tce = tonnes coal equivalent.

^(*) Confidential information.

^(?) 1 tonne coal equivalent (tce) = 29 302 Gigajoules (GJ).

- (20) In the light of the above and on the basis of the information provided by the United Kingdom, the aid proposed for 2001 to be granted to the Aberpergwm Colliery production unit is compatible with Decision No 3632/93/ECSC, and in particular with Articles 2 and 3 thereof.

IV

- (21) The United Kingdom is required to ensure that the aid does not cause any distortion of competition and does not discriminate between coal producers, buyers or consumers in the Community.
- (22) In accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC and with the provisions of Decision 2001/114/ECSC, the United Kingdom will take all measures necessary to ensure that the amount of the aid granted to each production unit does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries.
- (23) Moreover, in accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid must be entered in United Kingdom's national, regional and local public budgets or comply with strictly equivalent mechanisms.
- (24) In accordance with the second indent of Article 3(1) and with Article 9(2) and (3) of Decision No 3632/93/ECSC, the Commission has to check that the aid authorised is used only for the purposes stipulated in Article 3 of that Decision. At the latest by 30 September of each year, the United Kingdom shall notify the amount of aid actually paid for the previous year and declare any changes made to the amounts originally notified. Any information required to ascertain that the criteria laid down in Article 3 of the Decision have been complied with shall be provided together with this annual statement.
- (25) The United Kingdom is required to justify any departures from the restructuring plan and from the economic and financial forecasts notified to the Commission on 8 August 2001 and 3 September 2001. In particular, should it turn out that the conditions laid down in Article 3(2) of Decision No 3632/93/ECSC cannot be

met, the United Kingdom will propose to the Commission which corrective measures ought to be taken,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is authorised, subject to the conditions set out in Article 3 of Decision No 3632/93/ECSC, to grant operating aid of GBP 5 397 000 to the Longannet Mine production unit for the period from 17 April 2000 to 31 December 2000 and for 2001.

The United Kingdom is further authorised, subject to the conditions set out in Article 3 of Decision No 3632/93/ECSC, to grant operating aid of GBP 1 031 066 to the Aberpergwm Colliery production unit for 2001.

Article 2

The United Kingdom shall ensure that the authorised aid is used only for the purposes declared in its notifications of 8 August 2001 and 3 September 2001, and that any expenditure on items covered by this Decision which is cancelled, overestimated or misused is reimbursed.

Article 3

Without prejudice to the obligations laid down in Article 9(1), (2) and (3) of Decision No 3632/93/ECSC, the United Kingdom shall, by 30 September 2002 at the latest, communicate the amount of aid actually paid for the period from 17 April 2000 to 31 December 2000 and for 2001.

Article 4

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 17 October 2001.

For the Commission

Loyola DE PALACIO

Vice-President