COMMISSION REGULATION (EC) No 1612/2001

of 3 August 2001

imposing a provisional anti-dumping duty on imports of ferro molybdenum originating in the People's Republic of China

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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], as last amended by Regulation (EC) No 2238/2000 [2], and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Initiation

(1) On 9 November 2000, the Commission announced by a notice (the 'notice of initiation') published in the *Official Journal of the European Communities* [3] the initiation of an anti-dumping proceeding with regard to imports into the Community of ferro molybdenum originating in the People's Republic of China (the 'PRC').

(2) The proceeding was initiated as a result of a complaint lodged in September 2000 by Euroalliages, Le Comite de liaison des industries de Ferro-alliages (the 'complainant') on behalf of producers representing a major proportion of the Community production of ferro molybdenum (FeMo). The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of a proceeding.

2. Investigation

(3) The Commission officially advised the exporting producers, the importers and the users known to be concerned and their associations, the representatives of the exporting country concerned, the complainant Community producers and other Community operators about the initiation of the proceeding. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

(4) A number of exporting producers in the country concerned, as well as Community producers, Community users and their associations and importers/traders made their views known in writing. All parties who so requested within the set above time limit and who demonstrated that there were particular reasons why they should be heard were granted the opportunity to be heard.

(5) In view of the large number of exporting producers in the exporting country concerned, and in conformity with Article 17 of Regulation (EC) No 384/96 (the 'basic Regulation'), it was considered appropriate to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, exporting producers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide information on their production, turnover and exports to the Community during the investigation period as well as the names and the activities of all related companies.

(6) 14 Chinese companies provided this basic information. One of the 14 companies decided to withdraw its cooperation immediately after the submission of the reply to the sampling questions.

(7) In order to allow exporting producers to submit a claim for market economy treatment ('MET') and/or individual treatment ('IT') if they so wished, the Commission sent to all exporting producers known to be concerned or which made themselves known, a MET/IT claim form. 10 companies requested MET and/or IT pursuant to Article 2(7)(b) of the basic Regulation.

(8) In view of the fact that only one exporting producer was granted MET (see recital 19), it was decided that sampling was not necessary.

(9) The Commission sent questionnaires to all other parties known to be concerned and to all the other companies that made themselves known within the deadlines set out in the notice of initiation. Replies were received from 11 Chinese companies, two Community producers, two Community operators, one unrelated importer and five users of FeMo.

(10) One exporting producer made itself known and submitted a reply to the questionnaire one month after the time limit set in paragraph 6(a)(ii) of the notice of initiation. Consequently, this information was not accepted because it was submitted substantially after the deadline.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 257, 11.10.2000, p. 2.
[3] OJ C 320, 9.11.2000, p. 3.

(11) The Commission sought and verified all the information it deemed necessary for the purpose of a provisional determination of dumping, injury and Community interest. Verification visits were carried out at the premises of the following companies:

(a) ***Exporting producer in the PRC:***

(i) MET verifications:

— Tianjin The Leader Group Co. Ltd, Tianjin,

and the related producer Tianjin Defu Ferroalloy Co. Ltd, Tianjin,

— Xuzhou Huanyu Special Alloy Co. Ltd, Xuzhou,

— Jinzhou Sing Horn Enterprise Co. Ltd, Jinzhou,

and its related trader Sing Horn Import Export Co. Ltd,

— Jinzhou Sanda Ferro-Alloys Co. Ltd, Jinzhou,

with the related domestic producer Jinzhou Chengguang Ferro-Alloys-Industry, Jinzhou,

— Fushun Shunkang Molybdenum Industry Co. Ltd, Fushun;

(ii) MET and questionnaire reply verification:

— Nanjing Metalink International Co. Ltd, Nanjing,

and its related company Xinzyuan Co. Ltd, Nanjing;

(b) ***Producers in the analogue country (USA):***

— Bear Metallurgical Co., Butler, Pennsylvania,

— Thompson Creek Metals Company, Englewood, Colorado;

(c) ***Community producers:***

— Climax Molybdenum UK Ltd, Stowmarket, UK,

— Treibacher Industrie AG, Treibach-Althofen, Austria;

(d) ***Other Community operators:***

— Sadaci NV, Gent, Belgium,

(e) ***Users:***

— Krupp Thyssen Nirosta, Krefeld, Germany,

— Georgsmarienhutte GmbH, Georgsmarienhutte, Germany.

(12) The investigation of dumping and injury covered the period from 1 October 1999 to 30 September 2000 (the 'investigation period' or 'IP'). As for the trends relevant for the assessment of injury, the Commission analysed data covering the period from 1 January 1997 to 30 September 2000 ('period considered').

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

(13) The product concerned is FeMo produced in the PRC and exported to the Community. FeMo is a ferro-alloy containing usually between 45 % and 80 % of molybdenum, the remaining part being iron and small quantities of impurities ('ferro molybdenum' or 'the product concerned'). The actual molybdenum (Mo) content of FeMo is variable and it is expressed as a percentage of the total weight of FeMo. The product concerned is currently classified under CN code 7202 70 00. This CN code is only given for information.

(14) The two main types of production process used in the production of FeMo are the thermic and the electrolytic processes. In both of these processes, technical grade molybdenum trioxide (MoO_3) is reduced in the presence of iron. Because of the practical reasons of the melting equipment used for the process, the reduced manufacturing costs and the inherent disadvantage of introducing a high carbon content into the FeMo alloy, the thermic process is practically the only manufacturing method used. In the thermic process aluminium and silicon metals are used for the reduction of a charge consisting of a mixture of MoO_3 and iron oxide.

(15) The largest practical application of FeMo is the introduction of molybdenum metal in the melts during the production of alloyed steel and cast iron, where the molybdenum enhances some required characteristics such as resistance to corrosion and to heat.

(16) The investigation showed that there are different grades of the product concerned according to the proportion of molybdenum content and the proportion of impurities. However, all grades share the same basic physical and chemical characteristics and the same use. They are therefore considered as a single product for the purpose of the present anti-dumping proceeding.

2. Like product

(17) The Commission found that the basic physical and chemical characteristics and uses of the FeMo imported from the PRC are alike to those of the FeMo product produced and sold by the Community industry in the Community. It was also found that the FeMo produced and sold on the domestic market of the PRC are alike to the FeMo originating in the PRC and exported to the Community. Furthermore, the FeMo produced and sold on the domestic market of the United States of America ('USA'), which was chosen as analogue country for the PRC, were alike to the FeMo produced and exported to the Community from the PRC. It was therefore concluded that the FeMo produced in the PRC and exported to the Community, the FeMo produced and sold on the domestic market of the PRC, the FeMo produced and sold on the domestic market of the USA, and those produced and sold by the Community industry on the Community market, are a like product within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. **Market economy treatment**

(18) Pursuant to Article 2(7)(b) of the basic Regulation, in anti-dumping investigations concerning imports originating in the PRC, normal value shall be determined in accordance with paragraphs 1 to 6 of the said article for those producers, which can show that they meet the criteria laid down in Article 2(7)(c), i.e. that market economy conditions prevail in respect of the manufacture and sale of the product concerned.

(19) Claims for MET were received from 10 exporting producers. These claims were analysed on the basis of the five criteria set out in Article 2(7)(c) of the basic Regulation. Four of these companies provided incomplete and deficient replies that did not contain sufficient information or evidence to permit any proper consideration of the merits of the claim. In particular, the companies did not provide the auditor reports and financial statements and infomation concerning the acquisition value and the current book value of the main fixed assets. Their claims for MET were therefore rejected. The remaining six MET claims were considered to merit further analysis and verification visits were carried out at the premises of these companies.

(20) For three exporting producers, a significant level of state interference was found. This interference occurred in different forms, varying from a direct influence in the management of the companies to the imposition of limitations in the freedom to run the business and the creation of distortions in the costs of major inputs. Consequently, these companies were unable to demonstrate that their business decisions were made in response of market signals reflecting supply and demand. The criterion set out in the first indent of Article 2(7)(c) of the basic Regulation was therefore not met.

(21) Five exporting producers could not demonstrate that they had a clear set of basic accounting records audited in line with the international accounting standards. Consequently they did not meet the criterion on accounting standards set out in the second indent of Article 2(7)(c) of the basic Regulation. The specific and detailed findings, pertaining to their accounts, that led to this conclusion have been disclosed to the exporting producers in question.

(22) For three companies a number of deficiencies concerning assets and distortions carried over from the former non-market economy system were found. In particular, the production costs and the financial situation were distorted due to the arbitrary evaluation of assets and in the case of one company, to the practise of barter trade. Consequently, these companies did not meet the criterion set out in the third indent of Article 2(7)(c) of the basic Regulation.

(23) The Commission informed the companies and the complainant Community industry of its findings and granted them the possibility to comment. Some exporting producers and the complainant provided comments on the findings of the MET investigation. These comments have been comprehensively addressed in the disclosure documents sent to the concerned parties.

(24) Finally, the Commission concluded that the conditions set out in Article 2(7)(c) of the basic Regulation for obtaining MET were met by the following exporting producer:

— Nanjing Metalink International Co. Ltd, Nanjing,

(25) The Advisory Committee was consulted and unanimously supported the Commission's conclusions. The remaining exporting producers were informed that their MET claims were rejected.

2. **Individual treatment**

(26) It is the Commission's policy to calculate a countrywide duty for non-market economy countries and for countries which can benefit from the rules set out in Article 2(7)(b) and (c) of the basic Regulation but where the company does not meet MET, except in those cases where companies can demonstrate that their export activities are free from state interference and that there is a degree of legal and factual independence from the State so that the risk of circumvention of the countrywide duty is removed.

(27) The nine Chinese exporting producers that did not fulfil the MET criteria alternatively requested individual treatment (IT). The Commission examined and verified the information deemed necessary for the purposes of the determination of IT for the companies in question.

(28) As explained in recital 18, four companies provided incomplete and deficient MET/IT claims and they were consequently excluded from further MET analysis. Furthermore, the extent and nature of the deficiencies found in these claims made it impossible to assess the merits of the IT claims. It was therefore decided not to grant IT to these companies.

(29) Three exporting producers could demonstrate that their export activities are free from state interference and that there is a degree of legal and factual independence from the State so that the risk of circumvention of the countrywide duty is removed and therefore they fulfilled the criteria for IT:

— Jinzhou Sing Horn Enterprise Co. Ltd, Jinzhou,

— Jinzhou Sanda Ferro-Alloys Co. Ltd, Jinzhou,

— Fushun Shunkang Molybdenum Industry Co. Ltd, Fushun,

the remaining two companies did not fulfil the IT criteria. In one case the nature of the state interference presented a risk of circumvention if the company was given individual treatment. As far as the other company is concerned, the production arm of the group was found to be producing also for companies other than the exporter with the consequent risk that other producers could use the individual duty of this company to channel the product concerned into the EU.

3. **Normal value**

3.1. *Determination of normal value for exporting producers not granted MET*

3.1.1. Analogue country

(30) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for exporting producers that were not granted MET was established on the basis of the prices in an appropriate analogue country for products comparable to those sold by the Chinese exporting producers to the Community.

(31) In the notice of initiation the Commission proposed the USA as an appropriate market economy third country for the purpose of establishing normal value for the PRC.

(32) Objections to this proposal were raised by some exporting producers within the time limit set in the notice of initiation. The alternatives proposed were Chile, Mexico, Iran, India and South Africa.

(33) The Commission analysed these options and established that that the production in Mexico, Iran, India and South Africa is either very low or non-existent. Consequently these countries could not be considered as adequate alternative analogue countries

(34) As far as Chile is concerned, the Commission ascertained that the production volumes in this country were significant. Therefore Chilean producers were contacted and invited to cooperate. However, they refused to cooperate with the Commission in this proceeding.

(35) One objection to the choice of the USA as analogue country concerned the fact that one of the complainants is a related company of a producer in the USA. It was alleged that this relationship could have distorting effects on the data provided. However, these allegations were found to be inexact and unjustified. The Commission checked whether the relationship had any distorting impact on the prices, costs of production and profitability of the US producer, during the on-the-Spot verification of the company's data at its premises. No indication was found of any such distortions and the Commission satisfied itself on the accuracy and reliability of the information provided for the purposes of this proceeding.

(36) Another objection raised against the choice of the USA concerned the fact that the requirements for environmental protection are stricter in the USA than in China. For this reason the companies in the USA have higher environmental protection costs than the Chinese producers. In this respect it should be noted that China had environmental protection rules in the IP, that were respected by the companies investigated. Therefore, this argument, by itself, was not considered a valid reason to reject the USA as an analogue country. However, the Commission services will continue to analyse this issue and due account will be taken at the definitive stage of the proceeding, of any differences that are claimed and shown to affect price comparability in this respect.

(37) In the light of the above the Commission confirmed the choice of the USA as an appropriate analogue country.

3.1.2. Determination of normal value

(38) Pursuant to Article 2(7)(a) of the basic Regulation, normal value for the exporting producers that were not granted MET was established on the basis of verified information received from the producer in the USA. It was found that the US domestic sales of ferro molybdenum were representative in comparison to the quantity of the product concerned produced in the PRC and sold for export to the Community.

(39) The Commission examined whether US sales of the product concerned could be considered as being made in the ordinary course of trade i.e. not made at a loss. For this purpose the average cost of production during the investigation period was compared to the average price of the sales transactions made during this period. It was accordingly found that all domestic sales of the two cooperating companies that accounted for the great majority of US production of ferro molybdenum were made at a loss and were therefore not in the ordinary course of trade.

(40) As a result, normal value was constructed in accordance with Article 2(3) of the basic Regulation by adding to the producers' cost of production a reasonable margin of profit. It should also be noted that as one of the US cooperating companies was a toll convertor, its cost of production was obtained by applying its conversion costs to the raw material and other costs of the other cooperating company. Furthermore, in the absence of a profit margin on US sales of ferro molybdenum during the IP, it was concluded that 5 % represented a reasonable estimate of a realistic profit margin in this instance. This was accordingly applied for the purposes of constructing normal value in this case.

3.2. *Determination of normal value for exporting producers granted MET*

(41) For the exporting producer that was granted MET, the Commission first determined whether the total volume of the domestic sales of the product concerned was representative in accordance with Article 2(2) of the basic Regulation, i.e. whether these sales represented 5 % or more of the sales volume exported to the Community.

(42) The Commission then examined for this exporting producer whether total domestic sales of each grade constituted 5 % or more of the sales volume of the same type exported to the Community.

(43) An examination was also made as to whether the domestic sales of each grade could be regarded as having been made in the ordinary course of trade, by establishing the proportion of profitable sales to independent customers of the grade in question. In cases where the sales volume of ferro molybdenum, sold at a net sales price equal to or above the calculated cost of production, represented 80 % or more of the total sales: volume and where the weighted average price of that grade was equal to or above the cost of production, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales made during the IP, irrespective of whether these sales were profitable or not. In cases where the volume of profitable sales of ferro molybdenum represented less than 80 % but 10 % or more of the total sales volume, normal value was based on the actual domestic price, calculated as a weighted average of profitable sales only.

(44) In cases where the volume of profitable sales of any grade of ferro molybdenum represented less than 10 % of the total sales volume, it was considered that this particular grade was sold in insufficient quantities for the domestic price to provide an appropriate basis for the establishment of the normal value.

(45) Wherever domestic prices of a particular grade sold by the exporting producer could not be used in order to establish normal value, constructed normal value was used. Normal value was calculated in accordance with Article 2(3) of the basic Regulation by adding to the producer's cost of manufacturing a reasonable amount for selling, general and administrative expenses ('SG & A') and a reasonable margin of profit. In this respect, it should be noted that SG & A and profit were calculated on the basis of the producer's own figures.

(46) The reply provided by this exporting producer included data on domestic sales made by a related domestic sales company. Since the exporting producer sold on the Chinese domestic market also via this related company and given the distribution of functions between the exporting producer and the domestic sales company, it was considered necessary to establish the normal value on the basis of prices paid in the ordinary course of trade by independent customers in China.

(47) As a result, for this cooperating exporting producer normal value was established on the basis of the domestic sales prices to independent customers for five grades of the product concerned, whilst for the remaining three grades a constructed normal value was calculated.

4. **Export price**

(48) 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.

5. **Comparison**

(49) For the purpose of ensuring a fair comparison between the normal value and the export price at an ex-works level, due allowance in the form of adjustments was made for differences affecting price comparability in accordance with Article 2(10) of the basic Regulation.

(50) On this basis, adjustments for commissions, inland transport, ocean freight, insurance, EC-freight, handling, loading and ancillary costs have been made when found justified. In particular, since inland transport costs incurred by the exporting producers were not considered reliable, the relevant adjustments were based on the analogue country's costs.

6. **Dumping margin**

6.1. *General*

(51) According to Article 2(11) of the basic Regulation the weighted average normal value was compared to the weighted average export price at the same level of trade. The comparison showed the existence of dumping in respect of the exporting producers concerned. The provisional dumping margins were expressed as a percentage of the cif Community frontier price duty unpaid for the exporting producers concerned.

6.2. *Dumping margins for the cooperating exporting producers granted MET/IT*

(52) The individual dumping margins are:

— Nanjing Metalink International Co. Ltd:	3,6 %
— Fushun Shunkang Molybdenum Industry Co. Ltd:	35,8 %
— Jinzhou Sanda Ferro-Alloys Co. Ltd:	34,3 %
— Jinzhou Sing Horn Enterprise Co. Ltd:	32,8 %

6.3. *Dumping margins for other exporting producers*

(53) Two out of the 10 Chinese exporting producers, whose exports represent a small proportion of the total export to the Community, and that initially cooperated, withdrew their cooperation in the course of the proceeding. The remaining eight cooperating Chinese exporting producers represented about 34 % of total Chinese exports of the product concerned to the Community.

(54) The Commission calculated the countrywide dumping margin on the basis of the export sales to the Community made by the cooperating exporting producers not granted MET or IT. The Commission first established the weighted average of the dumping margins determined for these cooperating companies. With regard to the exporting producers that failed to reply to the Commission's questionnaire, that did not make themselves known or otherwise did not cooperate with the investigation, the determination had to be based on facts available, in accordance with Article 18 of the basic Regulation. In view of the low level of cooperation and in order not to give a bonus for non cooperation, it was concluded that the most appropriate information would be the dumping margin of the grade with the highest dumping margin sold in representative quantities taken from all the grades exported by the cooperating Chinese producers that did not receive either IT or MET.

(55) The countrywide dumping margin for the PRC established on this basis is 43,5 %.

D. COMMUNITY INDUSTRY

1. Community production

(56) Within the Community, the product considered is manufactured by four operators. Two operators, Climax Molybdenum Ltd and Treibacher Industrie AG, on behalf of which the complaint was lodged, fully cooperated in the investigation.

(57) The two other Community operators, Ferro Alloys and Metals Ltd and Sadaci NV, submitted some basic information even though they did not reply fully to the questionnaire they did not oppose the proceeding ('other Community operators').

(58) It was assessed whether the production of the above mentioned operators could be considered as constituting the Community production within the meaning of Article 4(1)(a) of the basic Regulation. The investigation showed that one complaining Community producer imported and resold FeMo originating in the PRC during the IP. It was found that these imports were made in order to defend itself against low-priced, dumped imports and in order to maintain its market share. Furthermore, this trading activity does not alter the fact that the primary interest of this company was in the production of FeMo. Indeed, the total volume of these imports was less than 5 % of the Community operators' FeMo production throughout the period considered.

(59) Accordingly it is considered that all the above operators constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

2. Definition of the Community industry

(60) The two cooperating complaining Community producers, Climax Molybdenum Ltd and Treibacher Industrie AG, fulfil the requirements of Article 5(4) of the basic Regulation, since they account for a major proportion of the total Community production of FeMo, i.e. 58 %. They are therefore deemed to constitute the Community industry within the meaning of Article 4(1) of the basic Regulation and will hereinafter be referred to as the 'Community industry'.

E. INJURY

1. Community consumption

(61) In calculating total apparent consumption of FeMo on the Community market the Commission added the sales volume of the Community industry and by the other Community operators in the Community market and the total imports into the Community as reported by Eurostat under CN code 7202 70 00. Furthermore, all volumes have been adapted so as to correspond to the Mo content.

(62) On this basis, between 1997 and the IP, apparent consumption of FeMo in the Community increased by 12 %: Consumption went from 24 035 tonnes in 1997 to 26 707 tonnes, in 1998, to 23 652 tonnes in 1999 and to 26 912 tonnes in the IP.

(63) Apparent consumption increased by 11 % between 1997 and 1998, fell by 11 between 1998 and 1999 and increased again by 14 % between 1999 and the IP. This increase in Community consumption of 12 % during the period considered, in particular between 1999 and the IP, is attributable to the development of steel and iron industries.

2. **Imports originating in the PRC**

(a) *Volume and market share of the imports concerned*

(64) The volume of imports of FeMo from the PRC into the Community, as reported by Eurostat, increased by 70 % over the period considered: Imports increased from 7 782 tonnes in 1997 to 9 083 tonnes in 1998, to 9 434 tonnes in 1999 and to 13 257 tonnes in the IP.Imports increased by 17 % between 1997 and 1998, they increased slightly by 4 between 1998 and 1999 despite the fact that the Community market decreased by 11 % over the same period, and went up significantly by 41 % between 1999 and the IP, whereas consumption only increased by 14 % over the same period.

(65) The share of the Community market held by the dumped imports from the PRC increased continuously from 32,4 % in 1997, to 34 % in 1998, to 39,9 % in 1999 and to 49,3 % in the IP.

(b) *Prices of the dumped imports*

(i) Price evolution

(66) The average prices, cif duty unpaid, of the imports of FeMo originating in the PRC on the basis of Eurostat decreased by 24 % over the period considered. Prices of Chinese imports went from EUR 9,2 Kg in 1997, to EUR 8,6 kg in 1998, to EUR 6,8 kg in 1999 and to EUR 7,0 kg in the IP

(ii) Price undercutting

(67) A comparison was made between the exporting producers' and the Community industry's average selling prices net of all rebates and taxes to unrelated customs at the same level of trade The prices of the Community industry were at an ex-works level. The cif Community frontier prices of Chinese exporting producers were adjusted for customs duties and post importation costs, on the basis of the information provided by the sole cooperating unrelated importer.

(68) This comparison showed that during the IP, FeMo originating in China was sold in the Community at prices, which undercut the Community industry's prices, when expressed as a percentage of the latter, between 3,1 % and 16,2 %. The countrywide weighted average undercutting margin amounted to 14,4 %.

3. **Situation of the Community industry**

(a) *Preliminary remarks*

(69) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry. As stated above, all information in terms of volume has been adapted so as to correspond to FeMo with a 100 % content of Mo.

(70) Given that the Community industry consists only of two companies, data relating to the Community industry has been indexed in order to preserve confidentiality of the data submitted, in accordance with Article 19 of the basic Regulation.

(b) *Production capacity, actual production and utilisation rate*

(71) Production capacity increased by 11 % between 1997 and 1998 and remained thereafter stable. This increase was not due to any new investments in new production lines, but reflects the results of the rationalisation of the production facilities by one of the complaining Community producers.

(72) Production of the Community industry went from an index 100 in 1997, to 154 in 1998, to 148 in 1999 and then to 120 in the IP. Production increased significantly between 1997 and 1998, coinciding with an increase in apparent consumption, whereas it decreased thereafter. The biggest decrease took place between 1999 and the IP, at a time when consumption increased by 14 %.

(73) Assessed in the light of the development of production and capacity, capacity utilisation increased by 7 % between 1997 and the IP. Capacity utilisation went from an index 100 in 1997, to 138 in 1998, to 133 in 1999 and to 107 in the IP. The biggest decrease in capacity utilisation took place between 1999 and the IP, coinciding with a sharp decrease in production.

(c) *Stocks*

(74) Stocks remained stable over the period considered. They went from an index 100 in 1997, to an index 79 in 1998, to an index 143 in 1999 and then back to an index 100 in the IP. When analysing stocks, it is to be noted that FeMo is generally produced to order and that therefore stocks are goods awaiting despatch to customers. In this context, therefore, the evolution of stocks does not appear to be relevant for the examination of the economic situation of the Community industry.

(d) *Sales volume and market share*

(75) The sales volume of FeMo to unrelated customers on the Community market increased by 25 % during the period considered. Sales went from an index 100 in 1997, to an index 161 in 1998, to an index 151 in 1999 and then to an index 125 in the IP.

(76) The share of the Community market held by the Community industry went from (between 17 % and 19 %) in 1997, to (between 26 % and 28 %) in 1998, to (between 28 % and 30 %) in 1999 and then to (between 20 % and 22 %) in the IP.

(77) This development should be seen in the light of the fact that the Community industry, when faced with low priced imports originating in the PRC, had the choice of either maintaining its sales prices at the expense of a negative development of its sales volume and market share, or to lower its sales prices and follow the trend of the imports concerned at the expense of its profitability. Between 1997 and 1999, the Community industry decreased its sales prices and thus increased its sales volume and market share. Between 1999 and the IP, the Community industry, in an effort to maintain profitability, increased its prices with the result that it lost volume of sales and market share.

(e) *Growth*

(78) As mentioned above, while Community consumption increased by 12 % over the period considered, the sales volume of the Community industry increased by 25 % and the volume of imports concerned by 70 %.

(79) However, between 1999 and the IP at a time when the Community consumption increased by 14 %, the sales volume of the Community industry decreased by 17 %. Consequently, the growing trend of the market did not translate into an increase of the Community industry's share of the market. On the contrary, its market share decreased by (between 7 and 9 percentage points) between 1999 and the IP whereas the share of imports concerned increased by 9,4 percentage points during the same period. Thus, the Community industry could not benefit from the growth of the market between 1999 and the IP.

(f) *Sales prices and factors affecting prices*

(80) The weighted average prices of FeMo sold by the Community industry decreased by 24 % over the period considered. Sales prices went from an index 100 in 1997, to an index 86 in 1998, to an index 71 in 1999 and then to an index 76 in the IP.

(81) This evolution in prices, should be seen in comparison with the evolution of the Community industry's costs. Between 1997 and 1998 the costs of the Community industry decreased by 14 %, due to a decrease in the costs of raw materials (MoO_3) and an increase in the capacity utilisation. Prices also decreased by 14 % and thus profitability remained at the same level. Between 1998 and 1999 the costs of the Community industry decreased by 18 % mainly due to a decrease in the costs of raw materials, whereas the Community industry's sales prices decreased by 17 %. Between 1999 and the IP the Community industry's costs increased by 8 % whereas its prices only increased by 7 % thus negatively affecting profitability. Thus, between 1999 and the IP the Community industry suffered price suppression.

(g) *Employment*

(82) The employment of the Community industry related to the production of FeMo increased by 4 % during the period considered. The number of employees went from 89 in 1997 to 92 in the IP. The relatively low number of employees is explained by the fact that the FeMo production is by far more capital than labour intensive.

(h) *Productivity*

(83) Productivity of the Community industry's workforce linked to manufacturing of FeMo, measured as output per person employed, increased by 15 % over the period considered. Productivity went from an index 100 in 1997, to an index 133 in 1998, to an index 131 in 1999 and then to an index 115 in the IP.

(i) *Wages*

(84) Wages per employee increased by 10 % over the period considered. When analysing wages account should be taken of the fact that labour costs represent a minimal part of the overall costs of the Community industry, since FeMo production is capital intensive.

(j) *Investments*

(85) The Community industry's total investments went from an index 100 in 1997, to an index 155 in 1998, to an index 208 in 1999 and then to an index 49 in the IP. It should be noted that throughout the period considered, investment represented less than 2 of the turnover of the Community industry.

(k) *Profitability*

(86) The Community industry's profitability in terms of return on net sales before taxes remained stable between 1997 and 1998 at (between 0 % and 2 %). The low level of profitability in 1997 coincided with the downturn in the economic cycle of the steel industry, which is the main user of FeMo. Profitability improved to (between 1 % and 3 %) in 1999, due to a more efficient utilisation of the production plants and coinciding with an increase in the output of the steel industry Despite the growth in consumption of FeMo in the IP, profitability deteriorated (between 0 % and 2 %) in the IP, as a consequence of the decrease in production and sales, which increased the costs of the Community industry.

(l) *Cash flow, return on investments (ROI) and ability to raise capital*

(87) It should firstly be noted that the information on cash flow and return on investments was provided for the total of the companies. In this respect, net cash flow from operating activities went from an index 100 in 1997, to an index 367 in 1998, to an index 182 in 1999 and then to an index 40 in the IP.

(88) Return on assets went from an index 100 in 1997, to an index 129 in 1998, to an index 47 in 1999 and then to an index 40 in the IP.

(89) The investigation showed that the Community industry was not experiencing difficulties in its ability to raise capital.

(m) *Magnitude of dumping margin*

(90) 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.

4. **Conclusion on injury**

(91) Between 1997 and the IP the volume of the dumped imports of FeMo originating in the PRC increased significantly, by 70 %, and its share of the Community market went from 32,4 % in 1997 to 49,3 % in the IP. The biggest increase took place between 1999 and the IP, when the volume of dumped imports increased by 41 % gaining 9,4 percentage points of market share. The average prices of dumped imports originating in the PRC were, with the exception of 1998, consistently lower than that of the Community industry during the period considered. Furthermore, during the IP the prices of the dumped imports undercut those of the Community industry by 14,4 %.

(92) The examination of the abovementioned factors shows that between 1997 and the IP the situation of the Community industry deteriorated. 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. This resulted in a stagnation in its market share of the Community industry. The development of the economic situation of the Community industry was particularly negative in the period between 1999 and the IP: production decreased by 19 %, sales volume decreased by 17 %, market share decreased by (between 7 and 9) percentage points and employment decreased by 8 %. Profitability deteriorated from (between 1 % and 3 %) in 1999 to (between 0 % and 2 %) in the IP, reaching a level which is insufficient to ensure the long-term viability of the Community industry.

(93) In the light of foregoing, and in particular the decrease in sales volume, market share, production and low profitability, its is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

F. **CAUSATION**

1. **Introduction**

(94) According to Article 3(6) and (7) of the basic Regulation, the Commission examined whether the dumped imports of FeMo originating in the PRC have caused injury to the Community industry to a degree which enables it to be classified as material. Known factors other than the dumped imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the dumped imports.

2. **Effects of the dumped import**

(95) The significant increase in the volume of the dumped imports by 70 %, i.e. from 7 782 tonnes in 1997 to 13 257 tonnes in the IP, and of its corresponding share of the Community market, i.e. from 32,4 % in 1997 to 49,3 % in the IP as well as the level of price undercutting found (14,4 % during the IP) coincided with the deterioration of the economic situation of the Community industry. This market penetration was particularly significant between 1999 and the IP, when the import volume increased by 41 % and the market share of the dumped imports by 9,4 percentage points.

(96) It was also found that, during the same period, the Community industry suffered a decrease of sales volume (–17 %) and market share (between 7 and 9 percentage points), price suppression and a deterioration of its profitability from (between 1 and 3 %) to (between 0 % and 2 %). This development should be seen in the context of an increasing consumption of FeMo on the Community market, by 12 % over the period considered and, in particular by 14 % between 1999 and the IP, coinciding with an upturn in the economic cycle of the steel industry.

(97) In addition, Chinese prices were below those of the Community industry throughout the period considered, with the exception of 1998, and exerted a pressure on them which prevented Community industry's prices from increasing at the same rate as the increase in the costs of production between 1999 and the IP, thus reducing the already low level of profitability if the Community industry. In this respect it is worth noting that while the costs of the main raw material increased by 8 % between 1999 and the IP, Chinese prices only increased by 3 %. The market for FeMo is price sensitive and transparent, a worldwide commodity market where prices are followed and published by several specialised publications. In view of the price sensitivity of the market, the growth of Chinese imports at low dumped prices well known to the potential customers of the Community industry had the effect of suppressing prices of the Community industry.

(98) It is therefore considered that the pressure exerted by the dumped imports concerned, which significantly increased their volume and market share at low prices, as shown by the price undercutting found, caused a price suppression of the Community industry resulting in a deterioration of its financial situation.

3. **Effects of other factors**

(a) *Performance of other Community operators*

(99) As already mentioned above at recital 57 two other operators produce FeMo in the Community. The situation of these two operators sharply deteriorated during the period considered: production decreased by 44 %, sales volume by 42 % and their share of the Community market went from (between 40 % and 42 %) in 1997 to (between 20 % and 22 %) in the IP. It should be noted that the substantial deterioration of the economic situation of the other Community operators coincided with an increase in the import volume of Chinese FeMo at decreasing prices.

(100) In view of the deterioration of the situation of the other Community operators, it is concluded that these operators did not contribute to the material injury suffered by the Community industry.

(b) *Worldwide oversupply*

(101) It was argued that any injury suffered by the Community industry was caused by an inability of the complainants to adapt to the prevailing oversupply of FeMo in the worldmarket. In particular, it was claimed that the world market for FeMo faces a structural problem with the presence of overly large quantities of molybdenum products and, consequently, the market has experienced a depressed price development globally, which can not be attributed to the FeMo originating from the PRC.

(102) Between 1997 and 1998 the Community industry's capacity increased by 11 %, although not due to new investments in additional production lines, but merely as a result of rationalisation of the existing production facilities. Between 1998 and the IP, the capacity of the Community industry remained at the same level. Furthermore, the alleged oversupply of FeMo in the world market cannot explain the loss of sales volumes and market shares suffered by the Community industry on the Community market between 1999 and the IP especially in view of the increase in apparent consumption during the same period.

(103) It is therefore concluded that any world-wide oversupply cannot be the cause of the injury suffered by the Community industry.

(c) *Evolution of prices of raw materials*

(104) It has also been considered whether the injury suffered by the Community industry could have been caused by the fluctuation in the cost of the raw material during the period considered.

(105) The main raw material used in the production of FeMo is MoO_3. The investigation showed that prices of MoO_3 decreased by 28 % over the period considered. More specifically, they decreased by 16 % between 1997 and 1998, further by 20 % in 1999 before increasing by 8 % in the IP.

(106) During the same period the Community industry's sales prices moved alongside the prices of raw materials. Between 1997 and 1999 the Community industry was able to reflect the fluctuations in the prices of raw materials in its sales prices. However between 1999 and the IP, the Community industry could not increase its sales prices to cover the increase in costs caused by an increase in the prices of raw materials and by a decrease in the rate of capacity utilisation. It should be noted that during the same period the prices of the Chinese imports undercut those of the Community industry by 14,4 %, thus preventing the Community industry from increasing its prices to cover the increase in its costs.

(107) Therefore, it is concluded that the effect of the fluctuations on the world market to MoO_3 had an impact on the evolution of the Community industry's sales prices but could not have broken the causal link between the dumped imports originating in the PRC and the injury suffered by the Community industry.

(d) *Imports from other third countries*

(108) According to Eurostat information, the total import volume of FeMo from third countries than the PRC increased by 22 %, from 1 974 tonnes in 1997 to 2 414 tonnes in the IP and their market share increased from 8,2 % in 1997 to 9,0 % in the IP. The weighted average prices of these imports decreased by 24 % between 1997 and the IP. However, it should be noted that the prices of imports from other third countries were, with the exception of 1999, higher than the weighted average prices of the Chinese imports during the period considered.

(109) Only imports originating in three countries other than the PRC had a share of the Community market beyond 1 % during the IP, i.e. Chile, Armenia and Iran.

(110) Imports of FeMo originating in Chile decreased from 1 008 tonnes in 1997 to 887 tonnes in the IP and their share of the Community market decreased from 4,2 % in 1997 to 3,3 in the IP. As far as average import prices are concerned, they have always been higher than those of the imports from the PRC and did not undercut the sales prices of the Community industry in the IP. In view of the above, it is considered that imports from Chile were also adversely affected by the dumped imports from the PRC and have not materially contributed to the injury suffered by the Community industry.

(111) The volume of imports originating in Armenia increased from 145 tonnes in 1997 to 917 tonnes in the IP and their share of the Community market went from 0,6 % in 1997 to 3,4 % in the IP. Regarding the average prices of imports originating in Armenia, they increased by 17 % between 1997 and 1998, decreased by 15 % between 1998 and 1999 and increased thereafter by 3 % between 1999 and the IP. It should be noted that average prices of imports originating in Armenia were below those of the Community industry but at the same level as those of imports originating in the PRC in 1999 and the IP.

(112) Import volume from Iran increased from 32 tonnes in 1997 to 489 tonnes in the IP and their share of the Community market increased from 0,1 % in 1997 to 1,8 % in the IP. The prices of FeMo originating in Iran were, with the exception of 1997, below those of the imports originating in the PRC.

(113) In conclusion, it cannot be excluded that factors other than the dumped imports from the PRC, in particular imports originating in Armenia and Iran, may have contributed to the injury suffered by the Community industry. Nevertheless, even if these imports contributed to the injury suffered by the Community industry, this contribution remains only marginal, given the small volume of these imports and their limited market share compared to that of the imports originating in the PRC. Furthermore, indications that these imports may have been made at dumped prices were submitted neither by the complainant nor by the exporting producers claiming a discriminatory treatment. For these reasons, imports originating in third countries other than the PRC cannot break the causal link between the imports from the PRC and the material injury suffered by the Community industry.

(e) *Traded FeMo by the Community industry*

(114) It was also considered whether the Community industry had inflicted upon itself injury through its resale of FeMo originating in the PRC.

(115) It was found that the volume of these sales by the Community industry in the IP represented a negligible part of the total sales made by the Community industry and amounted to less than 5 % of the total volume of imports of the product concerned originating in the PRC. This could be considered as a normal commercial behaviour to counteract the surge in low-priced imports originating in the PRC. It was found that the sales prices charged by the Community industry for traded FeMo were at the same level as the prices of FeMo originating in the PRC.

(116) It was therefore provisionally concluded that the Community industry's resales of Chinese originating FeMo did not contribute to the injury suffered by the Community industry.

4. **Conclusion on causation**

(117) It cannot be excluded that factors other than dumped imports, in particular imports originating in Armenia and Iran, may have contributed to the situation of the Community industry. However, these factors were not such as to break the causal link between the injury established and the imports concerned as shown by the price pressure and price undercutting attributable to the imports originating in the PRC as well as the volume and market share gained by the low-priced Chinese imports which had negative consequences on the situation of the Community industry, notably on production, sales volume and market share.

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

G. **COMMUNITY INTEREST**

(119) In order to assess the Community interest, the Commission carried out an investigation into the likely effects of the imposition/non-imposition of anti-dumping measures on the economic operators concerned. Questionnaires were sent to all interested parties known to be concerned at the time of the initiation of the proceeding, namely the Community industry, importers/traders and industrial users Other interested parties, which came forward, were also invited to provide information on the likely effects of the imposition/non-imposition of anti-dumping measures.

1. **Interest of the Community industry**

(a) *Nature and structure of the Community industry*

(120) The Community industry is composed of two medium-sized companies located in Austria and in the UK. One of them belongs to a globally organised company based in the USA, but its profit centres dealing with manufacturing and selling of the product concerned are located in the Community. One of them is upstream integrated and produces MoO_3 partly for use in its downstream production of FeMo and for sales to third parties. Production of FeMo is capital intensive and the Community industry employed a total of 510 people out of which 92 were directly linked to the production of FeMo in the IP. Account should also be taken of the workforce relating to the production of the main raw material concerned (MoO_3) used in the production of FeMo which amounted to 71 employees.

(121) Despite the finding of material injury, the Community industry is viable and competitive and can continue to be active in this product if fair market conditions are restored. It should be mentioned that the Community industry is also active in other products where returns on sales are well above those obtained in the product concerned.

(b) *Possible effects of the imposition/non-imposition of measures on the Community industry*

(122) Following the imposition of measures, it is expected that the volume of Chinese imports of the product concerned on the Community market would decrease. This would enable the Community industry to recover lost market share and by increasing capacity utilisation to decrease unit production costs and to increase profitability. Furthermore, the level of the Community industry's prices would, in all likelihood moderately increase, although not by the level of any anti-dumping duty, since competition will still remain amongst Community operators, imports originating in the PRC and imports originating in other third countries. In conclusion it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, eventually combined with a moderate price increase will allow the Community industry to improve its financial situation.

(123) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend of the Community industry will continue. The Community industry is particularly marked by a loss of sales volume and market share as well as insufficenti profitability. Indeed, in view of the decreasing sales volume particularly since 1999 and the material injury suffered during the IP, it is obvious that the financial situation of the Community industry will deteriorate further in the absence of any measures This may ultimately lead to closures of certain production lines and/or even closure of entire plants and therefore threaten employment and investments in the Community Furthermore, should the negative trend continue, not only the production of FeMo is affected but also the upstream production of MoO_3 in the Community.

(c) *Conclusion*

(124) In conclusion, the imposition of anti-dumping measures would allow the Community industry to recover from the injurious dumping found.

2. **Interest of other Community operators**

(125) On the basis of the information submitted by two other Community operators, there are no indications that the effects of the proposed measures on their situation will be different from the abovementioned for the Community industry. On the other hand it appears that other Community operators have also suffered from the increased FeMo imports at low prices. They already reduced their production by 44 % and their market share by 49 % from 1997 to the IP and their situation will continue to deteriorate should measures not be adopted. One Community operator stopped production shortly after the IP due to its unsustainable financial situation. The other one claimed that the continuous downward trend of prices renders the FeMo activity not profitable, as proven by the sharp decrease in its profitability between 1997 and the IP, and consequently the closure of a FeMo plant may be envisaged.

3. **Interest of unrelated importers/traders in the Community**

(126) The distribution of FeMo in the Community is characterised by a relatively small number of importers and traders who trade in a large number of other products.

(127) Questionnaires were sent to 14 known importers and traders in the Community. Only one response was received from one trader within the time limits set:

— Grondmet Metall- and Rohstoff Vertriebs GmbH, Düsseldorf, Germany.

(128) This trader represents less than 10 % of the total import volume of the product concerned from the PRC in the Community during the IP. This low level of cooperation could already justify the conclusion that the outcome of the investigation would probably not have a significant effect on importers/traders given that these companies also trade with other products which are not concerned by this proceeding.

(129) Should anti-dumping measures be imposed, it is likely that imports originating in the PRC decrease and that consequently, the Community industry regain sales volume and market share. Furthermore, it cannot be excluded that the imposition of anti-dumping measures results in a moderate increase in the prices of FeMo in the Community, thus affecting the economic situation of importers and traders.

(130) However, the impact of any anti-dumping duty on the situation of importers and traders should be seen in the light of the small part of their overall activities represented by trade in FeMo. On the basis of the information provided by the sole cooperating importer/trader, it has been found that FeMo represented less than 15 % of the cooperating company's total turnover. Thus, the effect of any measures on this trader's overall business would be limited. Furthermore, the effect on importers/traders of the increase in the Chinese prices of FeMo will depend on their ability to pass increase in prices on to their customers. Information provided by cooperating users indicate that prices of imported FeMo have fluctuated over the period and thus it is likely that importers/traders pass any increases in prices of FeMo on to users.

(131) On this basis, it has been provisionally concluded that the imposition of anti-dumping measures is not likely to have a serious negative effect on the situation of importers/traders in the Community.

4. **Interest of the user industry**

(a) *Nature and structure of the user industries*

(132) The main users of FeMo in the Community are the steel industry and foundries. Both users are estimated to represent around 80 % of the Community consumption of all molybdenum products, the steel industry representing around 70 % and foundries around 10 %. Consequently FeMo demand is primarily dependent upon the production of steel and cast iron where ferro molybdenum is used to introduce molybdenum metal in the melts during the production of alloyed steel and cast iron to enhance some required characteristics such as resistance to corrosion and to heat.

(133) Questionnaires were sent to 20 users of FeMo. Furthermore, two main users' associations, i.e. the European Confederation of Iron and Steel Industries (EUROFER) and the Committee of Associations of European Foundries (CAEF), were invited to forward copies of the questionnaire intended for users to those of their members which were concerned by the investigation. Responses were received from the following five steel producers:

— Edelstahl-Witten-Krefeld GmbH, Witten, Germany.

— Krupp Edelstahlprofile GmbH, Siegen, Germany,

— Krupp Thyssen Nirosta, Krefeld, Germany,

— Georgsmarienhütte GmbH, Georgsmarienhütte, Germany,

— Hüttenwerke Krupp Mannesmann GmbH, Duisburg, Germany.

(134) Furthermore, the Federation of German Steel Industry (Wirtschaftsvereinigung Stahl) made allegations as regards the possible impact of anti-dumping measures on the steel industry which were supported by the German Foundry Association (Deutcher Giessereiverband) and the CAEF.

(135) The likely effects of the imposition/non-imposition of anti-dumping measures were examined on the basis of the information received from the cooperating parties. Even if neither the Committee of Associations of European Foundries nor individual foundries did submit any substantiated comments, although expressly invited to do so, there are no indications that the following conclusions would not be *mutatis mutandis* valid also in respect of foundry industry.

(b) *Economic situation of users*

(136) The cooperating users represented around 7 % of the Community FeMo consumption in the IP. Their total turnover ranged from EUR 277 million to EUR 1 760 million in the IP, their overall weighted average profitability increased from 3,4 % in 1998 to 4,4 % in the IP. Total staff employed by these companies amounted to around 13 000 persons and the employment attributable to the product concerned represented around 50 persons.

(c) *Effects of the imposition/non imposition of measures*

(137) On the basis of the information provided by cooperating users it was found that FeMo represented on average 0,6 % of the cost of raw materials in the IP and on average 0,4 % of total costs. Given the above, the imposition of an anti-dumping measure would only have a negligible effect on the costs and financial situation of users.

(138) Users were found to have a substantial buying power and alternative sources of supply exist, which are not subject to the measures. Furthermore, as explained above in recital 122, the Community industry is unlikely to increase its prices by the full amount of the anti-dumping duty, since it will also benefit from reduced costs resulting from an increase in its sales volume. Furthermore, FeMo may in certain limited technical processes at steel and cast iron plants be partially substituted by MoO_3 depending on the availability and relative prices of the different Mo-containing products.

(139) Should measures not be imposed, users would continue to benefit from the existing low prices of FeMo on the Community market which are the result of unfair trading practices, which are injurious and detrimental to the Community industry. Furthermore, it should be noted that, in the event of a reduction or even disappearance of the Community industry, the available sources of supply would also be reduced with the consequent negative effect for the users. In this respect it is considered that the existence of alternative sources of supply is vital for guaranteeing a significant level of competition on the Community market as well as an adequate access to raw materials.

(d) *Conclusion*

(140) Given the above, in particular the small incidence of FeMo on the overall costs of users, it is provisionally concluded that the imposition of any anti-dumping measure is not likely to affect the situation of users of FeMo in the Community.

5. **Consequences for competition in the Community market**

(141) The single cooperating trader and the Wirtschaftsvereinigung Stahl opposed the anti-dumping measures, arguing in general terms that the Community industry had insufficient production capacity to meet demand.

(142) As far as the competitive environment in the Community market is concerned, it should be noted that it is the aim of any anti-dumping measure not to prevent imports from entering the Community market, but to restore fair conditions of competition on the market. Moreover, given the level of duties proposed and the effect of a price increase on the downstream industries as described above, it is likely that Chinese exporting producers will continue to export to the Community market, albeit at non-dumped prices.

(143) Furthermore, as there are no quality differences between the product concerned originating in the PRC and in other third countries, importers and users in the Community would have no difficulty in obtaining FeMo from other sources as well as from the PRC, especially as there is no shortage of supply on the world market. On the contrary, the removal of the unfair trade practices will prevent the further deterioration of the situation of the Community industry and thus help to maintain the availability of a wide choice of supply sources and even strengthen competition among existing producers.

(144) Regarding the insufficient capacity by the Community industry to meet demand, the information provided by the Community industry shows that it has sufficient spare capacity to supply the increased demand in the Community market. Indeed, the rate of capacity utilisation by the Community industry during the IP amounted to around 50 %.

(145) On the other hand, should anti-dumping measures not be imposed, the situation of the Community industry and the other Community operators would most likely further deteriorate, leading eventually to the disappearance of Community production for FeMo. In view of the above, it cannot be excluded that without anti-dumping measures the number of players in the Community market will decrease, with the consequent negative effects for competition.

(146) It is therefore provisionally concluded that the imposition of anti-dumping measures is highly unlikely to result in supply constraints for FeMo in the Community, given the level of unused capacity by the Community industry, the level of the anti-dumping measures proposed and the existence of alternative sources of supply.

6. **Conclusion on Community interest**

(147) In the light of the above, it is provisionally concluded that no compelling reasons exist on grounds of Community interest against the imposition of anti-dumping measures.

H. **PROVISIONAL ANTI-DUMPING MEASURES**

(148) In view of the conclusions reached with regard to dumping, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury being caused to the Community industry by the dumped imports.

1. **Injury elimination level**

(149) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. 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 under normal conditions of competition, i.e. in the absence of dumped imports on the sales of the like product in the Community.

(150) On the basis of the information available, it was preliminarily 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, taking into account the level of profitability obtained in the sales of other products of the same type produced by the Community industry.

(151) The necessary price increase was then determined on the basis of a comparison, at the same level of trade, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of FeMo sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry to reflect the above mentioned reasonable profit margin of 5 %. Any difference resulting from this comparison was then expressed as a percentage of the total cif import value.

2. **Provisional measures**

(152) In the light of the above, it is considered that, in accordance with Article 7(2) of the basic Regulation, provisional anti-dumping duties should be imposed in respect of imports originating the PRC at the level of the lower of the injury elimination and dumping margins found.

(153) As regards the residual duty to be applied to the non-cooperating exporting producers, as the level of cooperation was considered low and in order not to give a bonus for non-cooperation, it was concluded that the residual duty should be fixed on the basis of the methodology explained in recital 54.

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

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

I. **FINAL PROVISION**

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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 duty applicable to the net, free-at-Community-frontier price, before duty, for products produced by the following companies, shall be as follows:

Company	Rate of duty (%)	TARIC additional code
Fushun Shunkang Molybdenum Industry Co. Ltd	12,7 %	A273
Jinzhou Sanda Ferro-Alloys Co. Ltd	17,2 %	A274
Jinzhou Sing Horn Enterprise Co. Ltd	9,8 %	A275
Nanjing Metalink International Co. Ltd	3,6 %	A276
All other companies	26,3 %	A999

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

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

Article 2

1. Without prejudice to Article 20 of Regulation (EC) No 384/96, interested parties may present their views in writing and request a hearing from the Commission within one month of the date of entry into force of this Regulation.

2. Pursuant to Article 21(4) of Regulation (EC) No 384/96, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of six months

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

Done at Brussels, 3 August 2001.

For the Commission

Pascal LAMY

Member of the Commission