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(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 (CCCMC) 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 %.

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.

(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.

(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**

(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.

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

(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