

Official Journal

of the European Communities

ISSN 0378-6978

L 116

Volume 37

6 May 1994

English edition

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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 February 1994

relating to a proceeding pursuant to Article 65 of the ECSC Treaty concerning agreements and concerted practices engaged in by European producers of beams

(Only the Spanish, German, English, French and Italian texts are authentic)

(94/215/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 65 thereof,

Having regard to information received by the Commission and inspections carried out pursuant to Article 47 of the ECSC Treaty by officials of the Commission,

Having regard to the written and oral comments made pursuant to Article 36 of the ECSC Treaty in the name and on behalf of the parties,

Whereas:

I. FACTS

A. SUMMARY OF THE RESTRICTIONS OF COMPETITION

- (1) The restrictions of competition which the Commission objects to stem from a series of agreements, decisions and concerted practices which have as their object or effect the fixing of prices, the allocation of quotas and an extensive exchange of information on the market for beams in the Community. Some of these agreements or concerted practices date back to 1984 at least.

- (2) This cooperation between European producers and distributors of beams and some of their associations proceeded on different levels which may be summarized as follows:

(a) COMMUNITY:

On a Community level the most important forum for this cooperation were the meetings of a group known as the 'Poutrelles Committee', one of the committees of Eurofer. The exchange of information through Eurofer also has to be mentioned in this context.

(b) INDIVIDUAL MARKETS:

Apart from the meetings of the Poutrelles Committee, undertakings and associations of undertakings also met, on a more irregular basis, to discuss the markets of individual Member States — namely Italy, France and Germany — and to coordinate their behaviour on these markets.

(c) INDIVIDUAL AGREEMENTS:

In addition to the cooperation outlined above some companies entered into individual market-sharing and/or price-fixing arrangements.

(d) EUROFER/SCANDINAVIA:

Undertakings and associations of undertakings from the Community regularly met their

counterparts from Norway, Sweden and Finland at the so-called 'Eurofer/Scandinavia' meetings where the Scandinavian markets (including the Danish market) were discussed.

B. THE PRODUCTS CONCERNED

- (3) The products concerned by the present proceedings are wide-flanged beams and other I, H und U sections with a diameter of 80 mm and more (with the exception of mine frame sections). These products are together referred to in this Decision as 'beams'. They are finished hot-rolled long products which are mainly used in the construction industry. Beams are ECSC products within the meaning of Article 81 of the ECSC Treaty.

The undertakings and associations concerned divide beams into various categories. The following is the categorization which was introduced in Germany in July 1987:

Category	Dimensions in mm
1	IPN 80 to 220 UPN 80 to 220
2a	IPE 80 to 220
2b1	HE 100 to 180
2b2	UPN 240 to 300 IPE 240 to 330 HE 200 to 220
2b3	IPN 240 to 300 IPE 360 to 400 HE 240 to 300
2c	IPN 320 to 500 UPN 320 to 400 IPE 450 to 600 HE 320 to 600
3	IPN 550 to 600 IPE 750 HE 650 to 1 000

As from 1 July 1990 a new category 2d (UPN 320 to 400) was used in Germany.

The same categories (with minor modifications) are used by all the parties concerned with regard to the ECSC markets on the continent.

Due to the fact that the 'imperial' sizes are still being used in the United Kingdom, different categories are used there. The products concerned are classified as joists, beams/columns and channels. In the fourth quarter of 1990 for example the following categories were applied:

Category	Dimensions in mm
A 1	203 x 133 all kg weights 152 x 152 all kg weights
A 2	203 x 102 254 x 102 x 22 only 254 x 146 all kg weights 305 x 165 all kg weights 356 x 171 all kg weights 406 x 178 x 54 } only 406 x 178 x 60 } 457 x 191 x 67 } only 457 x 191 x 74 } 533 x 210 x 82 } only 533 x 210 x 92 } 203 x 203 x 46 } only 203 x 203 x 52 } 203 x 203 x 60 } 254 x 254 x 73 } only 254 x 254 x 89 }
A 3	All other beams and columns

- (4) Under the terms of the various measures adopted by the Commission since 1980 in order to deal with the crisis in the steel industry (see section G) beams were — together with mine frame sections — being referred to as 'Category III'. Notwithstanding the expiry of these measures, this expression is still used in the industry.

C. THE MARKET

- (5) As Table 1 shows, the production of beams in the ECSC has grown markedly during the period up to the year 1990 ⁽¹⁾

Table 1
Production in the ECSC
(in 1 000 tonnes)

Year	Production (in 1 000 tonnes)
1984	4 769
1985	5 218
1986	6 508
1987	6 618
1988	7 580
1989	7 944
1990	8 003

(Source: Eurostat)

- (¹) The figures in Tables 1 to 9 also include the production of mine frame sections. The share of these products is relatively small, however. Only in Germany and the United Kingdom does the production of these products reach a substantial amount of the tonnages set out in Table 2 (approximately 18 and 10 % respectively). The production figures for Spain, France and Luxembourg (the only other ECSC countries where these products are produced) are negligible.

- (6) The most important ECSC producers are located in the United Kingdom, Germany, Spain and Luxembourg respectively. Table 2 shows the production of beams per Member State in the years between 1986 and 1990:

Table 2
Production

(in tonnes)

	1986	1987	1988	1989	1990
Germany	1 266 587	1 279 870	1 480 212	1 529 624	1 552 923
Belgium	320 294	260 964	309 830	334 362	357 879
France	560 076	541 985	619 810	568 153	571 734
Italy	573 148	635 723	733 699	836 150	926 494
Luxembourg	1 002 647	928 279	1 096 178	1 195 990	1 189 903
United Kingdom	1 321 718	1 528 223	1 721 151	1 787 280	1 770 252
Spain	1 284 330	1 243 093	1 379 117	1 379 805	1 336 744
Portugal	22 703	20 262	26 172	28 383	20 810
Ireland	156 626	179 239	213 505	283 762	276 636
Total	6 508 129	6 617 638	7 579 674	7 943 509	8 003 375

(Source: Eurostat — Steel Data Base)

- (7) Trade between the Member States of the ECSC is very important. In 1990, for example, imports from other Member States amounted to more than 36 % of overall production. An important part of the Community production (normally around 25 %) is exported to third countries. Imports of beams from third countries are less important.

Table 3
Trade between Member States and with third countries

(in 1 000 tonnes)

	Imports			Exports		
	From the ECSC	From third countries	Total	To the ECSC	To third countries	Total
1988	2 349	640	2 989	2 302	1 853	4 155
1989	2 635	655	3 290	2 604	1 863	4 467
1990	2 895	619	3 514	2 877	1 939	4 816

(Source: Eurostat)

- (8) It is difficult to establish exactly the consumption of beams in the ECSC as there are not sufficiently precise and detailed statistics on the movements in stocks of the products concerned at the various levels in the distribution chain (producer, stockholder and consumer). However, it is possible to calculate the apparent consumption by adding

imports from third countries to production and deducting exports to third countries. These approximate figures give an idea of the importance of the products concerned:

Table 4
Apparent consumption in the ECSC

(in 1 000 tonnes)

	Production ECSC (1)	Imports from third countries (2)	Exports to third countries (3)	Apparent consumption (1 + 2 - 3)
1988	7 580	640	1 853	6 367
1989	7 943	655	1 863	6 735
1990	8 003	619	1 939	6 683

(Source: Eurostat)

- (9) As some of the agreements and concerted practices are concerned with the markets of individual Member States it is necessary to consider these sub-markets:

Table 5
German market

(in 1 000 tonnes)

	Production (1)	Exports			Imports			Apparent con- sumption (1 - 4 + 7)
		To other Member States (2)	To third countries (3)	Total (4)	From other Member States (5)	From third countries (6)	Total (7)	
1988	1 480	440	254	694	578	213	791	1 577
1989	1 530	490	378	868	633	218	851	1 513
1990	1 553	560	343	903	715	204	919	1 569

(Source: Eurostat)

Table 6
Italian market

(in 1 000 tonnes)

	Production (1)	Exports			Imports			Apparent con- sumption (1 - 4 + 7)
		To other Member States (2)	To third countries (3)	Total (4)	From other Member States (5)	From third countries (6)	Total (7)	
1988	734	212	64	276	181	142	323	781
1989	836	254	81	335	192	115	307	808
1990	926	276	60	336	206	104	310	900

(Source: Eurostat)

Table 7
French market

(in 1 000 tonnes)

	Production	Exports			Imports			Apparent consumption (1 - 4 + 7)
		To other Member States	To third countries	Total	From other Member States	From third countries	Total	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1988	620	148	151	299	594	60	654	973
1989	568	165	144	309	645	54	699	958
1990	572	179	130	309	754	39	793	1 056

(Source: Eurostat)

Table 8
Spanish market

(in 1 000 tonnes)

	Production	Exports			Imports			Apparent consumption (1 - 4 + 7)
		To other Member States	To third countries	Total	From other Member States	From third countries	Total	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1988	1 379	348	324	672	46	9	55	762
1989	1 380	331	265	596	70	13	83	867
1990	1 337	341	258	599	152	34	186	924

(Source: Eurostat)

Table 9
Danish market

(in 1 000 tonnes)

	Production	Exports			Imports			Apparent consumption (1 - 4 + 7)
		To other Member States	To third countries	Total	From other Member States	From third countries	Total	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1988	—	12	1	13	31	54	85	72
1989	—	2	1	3	40	41	81	78
1990	—	4	3	7	52	51	103	96

(Source: Eurostat)

Table 10
United Kingdom market

(in 1 000 tonnes)

	Production	Exports			Imports			Apparent consumption (1 - 4 + 7)
		To other Member States	To third countries	Total	From other Member States	From third countries	Total	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1988	1 721	148	472	620	234	53	287	1 388
1989	1 787	229	316	545	266	43	309	1 551
1990	1 770	313	490	803	217	29	246	1 213

(Source: Eurostat)

D. THE UNDERTAKINGS AND ASSOCIATIONS OF UNDERTAKINGS CONCERNED

(10) The undertakings and associations of undertakings which took part in the infringements are the following:

1. Peine-Salzgitter AG
2. Thyssen Stahl AG
3. Saarstahl AG
4. Walzstahl-Vereinigung
5. TradeARBED SA
6. Cockerill Sambre SA
7. Unimétal, Société Française des Aciers Longs SA
8. British Steel plc
9. Empresa Nacional Siderurgica SA
10. José María Aristrain, Madrid SA and José María Aristrain SA
11. Ferdofin SpA
12. Acciaierie e Ferriere Stefana F.lli fu Girolamo SpA
13. Eurofer asbl
14. Hoesch Stahl AG
15. Neue Maxhütte Stahlwerke GmbH
16. Norsk Jernverk AS
17. SSAB — Svenskt Stål AB
18. Ovako Profiler AB
19. Smedjebacken/Fundia Steel AB.

This list is not the same as the list of addressees of this Decision.

E. INFORMATION ON THE UNDERTAKINGS AND ASSOCIATIONS OF UNDERTAKINGS CONCERNED

(11) GERMANY

- (a) Stahlwerke Peine-Salzgitter AG, (hereinafter referred to as 'Peine-Salzgitter') is a public limited company with a share capital of DM 312 million. Nearly all (99,48 %) of its shares are held by Salzgitter Hüttenwerk GmbH, a wholly-owned subsidiary of Salzgitter GmbH which itself is a wholly-owned subsidiary of Preussag AG. It is one of the major steel producers in Germany and had a consolidated turnover of DM 3 225 million in 1989/90. In 1990 its turnover in beams was [...] ⁽¹⁾. In 1992 it changed its name to Preussag Stahl AG.
- (b) Thyssen Stahl AG (hereinafter referred to as 'Thyssen') is a public limited company with a share capital of approximately DM 2 000

million. It is a wholly-owned subsidiary of Thyssen AG (formerly August Thyssen-Hütte) and represents the main steel producing subsidiary of the Thyssen group. In 1989/90 it had a turnover of DM 8 241 million. In 1990 its sales of beams amounted to [...].

- (c) Saarstahl AG (hereinafter referred to as 'Saarstahl') is the successor of Saarstahl Völklingen GmbH. The latter company had been transformed, on 15 June 1989, into a public limited company called DHS-Dillinger Hütte Saarstahl AG (hereinafter referred to as 'DHS').

Subsequently the core of the business of the former Saarstahl Völklingen GmbH was transferred to a newly-formed company called Saarstahl AG which is a wholly-owned subsidiary of DHS. Saarstahl, a producer of long products, is thus in economic terms the successor of Saarstahl Völklingen GmbH and has agreed to accept all liabilities which Saarstahl Völklingen GmbH may have incurred. The use of the expression 'Saarstahl' has therefore to be understood, in so far as the period prior to June 1989 is concerned, as a reference to Saarstahl Völklingen GmbH.

The Usinor Sacilor Group held 70 % of the shares in DHS while 27,5 % was owned by the German Land of Saarland. The remaining 2,5 % was held by Arbed SA.

In 1989 Saarstahl had a turnover of DM 2 438 million of which beams represented [...]. On 18 May 1993 it was declared bankrupt and on 31 July 1993 it was placed under judicial administration.

- (d) Hoesch Stahl AG (hereinafter referred to as 'Hoesch', Dortmund was a public limited company with a share capital of DM 210 million. All of its shares were owned by Hoesch AG which had a consolidated turnover of DM 10 679 million in 1989. In 1992 it merged with Krupp to form Krupp-Hoesch AG.
- (e) Klöckner Stahl GmbH (hereinafter referred to as 'Klöckner') is a wholly-owned subsidiary of Klöckner-Werk AG, the steel, plastics and engineering concern. In 1989/90 Klöckner-Werke AG had a consolidated turnover of nearly DM 7 500 million. Its production of rolled steel products amounted to more than 3,6 million tonnes over the same period. In May 1993 Klöckner Stahl GmbH entered 'Vergleich' proceedings and on 3 June 1993 reached an agreement with its creditors including the Commission (see recital 29).
- (f) Neue Maxhütte Stahlwerke GmbH (hereinafter referred to as 'Neue Maxhütte') was founded in 1988 by the German Land of Bavaria (which at the relevant time held 45 % of the shares),

⁽¹⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 47, second paragraph, of the ECSC Treaty.

Thyssen (5,5 %), Thyssen Edelstahlwerke AG (5,5 %), Lech-Stahlwerke GmbH (11 %), Krupp Stahl AG (11 %), Klöckner (11 %) and Mannesmannröhren-Werke AG (11 %). This company took over the main assets of Eisenwerk-Gesellschaft Maximilianshütte mbH which had been declared bankrupt on 16 April 1987. In 1991 its turnover was DM 226 million. The company is now known as NMH Stahlwerke GmbH.

- (g) The Walzstahl-Vereinigung is an association of producers of rolled steel products in Germany but also has some members from abroad. It belongs to the Wirtschaftsvereinigung Stahl, the German association of steel producers.

(12) LUXEMBOURG

- (a) SA TradeArbed (hereinafter referred to as 'TradeArbed') is a public limited company all of whose shares owned (directly or indirectly) by Arbed SA (hereinafter referred to as 'Arbed'). TradeArbed carries on the business of distributing Arbed's steel products. In 1990 Arbed had a consolidated turnover of Lfrs 208 760 million of which [...] were for beams.

In so far as beams and other long products are concerned Arbed has entered into cooperation and marketing arrangements with two of its competitors, Cockerill Sambre und Unimétal.

An agreement between Arbed and Cockerill Sambre providing for rationalization and specialization of the production of the parties in the field of both flat products and long products was authorized by the Commission on 28 May 1984 for a period of approximately 10 years. Under the terms of the agreement Arbed was to specialize in long products while Cockerill Sambre was to focus on flat products. This agreement has been modified in 1989/90. As a consequence some of the beams marketed by TradeArbed are now rolled by Cockerill Sambre which itself has retired from that market.

On 14 July 1988 the Commission authorized, until the end of 1992, a specialization agreement between Arbed and Unimétal in the field of long products.

On 9 September 1991 the Commission authorized a joint-selling agreement for beams between Arbed and Usinor Sacilor (Decision 91/515/ECSC) ⁽¹⁾.

On 23 July 1993 the Commission authorized the concentration of certain activities of Usinor Sacilor SA and Arbed, including the production

and distribution of beams, within ProfilArbed SA, a subsidiary of Arbed.

- (b) Eurofer asbl (hereinafter referred to as 'Eurofer'), the European Confederation of Iron and Steel Industries, is an association. Most of its members are associations of undertakings but there are also some undertakings (for example Det Danske Stålvalseværk AS and British Steel during the period covered by this Decision) which are themselves members of Eurofer.

(13) BELGIUM

SA Cockerill Sambre (hereinafter referred to as 'Cockerill Sambre') is Belgium's principal steel producer. SA Steelinter (hereinafter referred to as 'Steelinter') is the main distributor of Cockerill Sambre which owns — directly or indirectly — all of its shares. In 1990, the Cockerill Sambre group had a turnover of Bfrs 203 billion. In 1989, the last year Cockerill Sambre produced beams, they accounted for [...] of sales.

(14) FRANCE

Unimétal, Société Française des Aciers Longs SA, (hereinafter referred to as 'Unimétal') is the most important producer of long products of the Usinor Sacilor group of which it is a wholly-owned subsidiary. In 1990 its turnover amounted to FF 6 896 million of which beams represented [...].

Usinor Sacilor SA, (hereinafter referred to as 'Usinor Sacilor') is a State-owned holding company which unites the majority of France's steel-producing companies. It was created by the merger of Usinor SA and Sacilor SA which was formalized on 18 November 1987. In fact the two companies had been concentrated already since 1982. This concentration had been authorized by the Commission on 2 April 1982.

Usinor Sacilor is the second-largest producer of steel in the world. In 1990 it had a consolidated turnover of FF 96 053 million.

(15) UNITED KINGDOM

British Steel plc (hereinafter referred to as 'British Steel') is the most important steel producer in the United Kingdom. It is the successor of British Steel Corporation which was privatized in 1988. In the business year ending on 31 March 1990 British Steel had a consolidated turnover of £ 5 113 million. In 1990, its sales of beams totalled [...].

(16) SPAIN

- (a) Empresa Nacional Siderúrgica SA (hereinafter referred to as 'Ensidesa') is a major steel

⁽¹⁾ OJ No L 281, 9. 10. 1991, p. 17.

producer in Spain. The Instituto Nacional de Industria (a State-owned entity) owns 99,9997 % of its shares. The consolidated turnover of Ensidesa amounted to ECU 1 437 million in 1990, of which beams represented [...].

- (b) José María Aristrain Madrid SA and José María Aristrain SA (hereinafter together referred to as 'Aristrain') are steel-producing companies belonging to the Aristrain group whose shares are held by members of the Aristrain family. In 1990, the group turnover was Pta 73 216 million of which [...] was for beams. José María Aristrain Madrid SA and José María Aristrain SA are now known as Siderúrgica Aristrain Madrid SL and Siderúrgica Aristrain Olaberria SL respectively.
- (c) On 6 January 1993 the Commission authorized a specialization and joint selling agreement for beams between Aristrain and Ensidesa.

(17) ITALY

- (a) Ferdofin SpA (hereinafter referred to as 'Ferdofin') is a holding company which specializes — through its subsidiaries — in long products. One of its subsidiaries is Eurocolfer Accial SpA; Ferdofin holds 99,99 % of the shares of this company. ILVA owns 20 % of the shares in Ferdofin. In 1990 Ferdofin had a consolidated turnover of Lit 773 000 million of which [...] was for beams.
- (b) Acciaieria e Ferriere Stefana F.lli fu Girolamo SpA (hereinafter referred to as 'Stefana') is a producer of long products. Its 1990 turnover was Lit 215 194 million.

(18) SCANDINAVIA

- (a) Fundia Norsk Jernverk AS (hereinafter referred to as 'Norsk Jernverk') came into being in 1989 when Norsk Jernverk AS was divided up into Fundia Norsk Jernverk AS and Norsk Jern Eiendom AS. Norsk Jernverk AS was a Norwegian public limited company with a share capital of Nkr 300 million. Total sales in 1990 amounted to Nkr 1 450 million (ECU 180 million). Norsk Jernverk is active on the ECSC market *inter alia* through subsidiaries in Germany and the United Kingdom. For the period prior to 1989, reference to 'Norsk Jernverk' has to be read as a reference to Norsk Jernverk AS.
- (b) SSAB Svenskt Stål AB (hereinafter referred to as 'SSAB') was established in 1978. It is a Swedish public limited company with a share

capital of SKr 2 650 million. In 1990 it had a consolidated turnover in steel of SKr 15 619 million (ECU 2 094 million). In 1990 some 53 % of the undertaking's steel production was exported to countries outside Scandinavia. Sales companies are located in several Community countries.

On 1 September 1988 SSAB sold its structural steels business (including the production of beams) to Ovako. SSAB thus withdrew from the market for the production of beams.

- (c) Ovako AB came into being in 1986 as the result of a merger between the two leading Scandinavian engineering steel companies, the Swedish SKF Steel and the Finnish Ovako. Ovako AB exports to the ECSC via wholly-owned subsidiaries located in several ECSC countries.

Ovako Profiler AB (hereinafter referred to as 'Ovako') was a wholly-owned subsidiary of Ovako AB incorporating the beams operation purchased from SSAB. It formed part of the Steel Division in the Ovako group. The turnover of the Ovako group amounted to SKr 6 006 million (ECU 805 million) in 1990. Sales by the steel division alone accounted for SKr 3 355 million (ECU 450 million) or 56 % of total turnover.

On 14 May, 1992, Inexa AB, a newly-formed company, acquired all shares in Ovako. Subsequently, Inexa AB arranged for Ovako to assign its business and all assets and liabilities to its subsidiary, Ovako Pretech AB, following which Inexa AB purchased from Ovako all of the outstanding shares in Ovako Pretech AB, the effect of which was that both Ovako and Ovako Pretech AB became direct subsidiaries of Inexa AB. Thereafter, Inexa AB sold all of its shares in Ovako to the community of Luleå, which changed the name of Ovako to Svartön Förvalnings AB. Subsequent to the transactions, Inexa AB arranged for Ovako Pretech AB to change its name to Inexa Profil AB.

- (d) Fundia Steel AB, which is a 100 % subsidiary of Fundia AB, resulted from a merger between Smedjebacken-Boxholm Stål AB (hereinafter referred to as 'Smedjebacken') and the Swedish companies Halmstad Järnverk and Forsbacka, in 1988. Total sales of Fundia AB in 1990 were SKr 2 607 million (ECU 349 million), of which Fundia Steel AB accounted for SKr 1 360 million (ECU 182 million).

Fundia AB has sales offices in some Community countries which conduct the marketing of its products on these markets.

F. IMPORTANCE OF THE UNDERTAKINGS CONCERNED ON THE MARKET FOR BEAMS

- (19) The following table shows the deliveries of the 10 most important companies concerned — British Steel, Aristrain (for which only the 1989 figures were available), TradeArbed, Peine-Salzgitter, Unimétal, Cockerill Sambre, Ferdofin, Ensidesa, Saarstahl and Thyssen — in the ECSC from 1986 to 1989. In 1989 for example the deliveries of these companies accounted for two-thirds of the apparent consumption of beams in the ECSC.

Table 11
Deliveries in the ECSC

	1986	1987	1988	1989
Peine-Salzgitter	262 664	301 288	380 082	440 455
Thyssen	174 756	150 940	185 932	192 430
Saarstahl	123 792	159 100	225 140	229 602
Unimétal	387 628	392 756	460 068	418 887
Ferdofin	234 540	291 104	307 680	350 420
Cockerill Sambre	309 368	296 092	326 172	353 830
Arbed	408 248	367 220	464 576	506 463
British Steel	578 092	730 284	1 008 622	1 189 287
Ensidesa	209 744	217 556	233 204	283 226
Aristrain	(¹)	(¹)	(¹)	512 123
Total (without Aristrain)	2 688 832	2 906 340	3 591 476	3 964 600
Total	(¹)	(¹)	(¹)	4 476 723

(¹) Figures not available.

(Source: Eurofer/Monitoring Poutrelles (Aristrain))

G. THE CRISIS IN THE STEEL INDUSTRY

- (20) The European steel industry was affected by a drop in demand which created problems of excess supply and capacity and consequent low prices from the mid 1970s to 1988, with variations between different steel products.

- (21) On 1 January 1977, the Commission adopted, on the basis of Article 46 of the ECSC Treaty, the so-called 'Simonet Plan' under which each company made unilateral voluntary commitments *vis-à-vis* the Commission to adjust its deliveries to the levels suggested by the Commission each quarter in its forward programme. This system proved insufficient to stabilize the market and thus in 1978 the 'First Davignon Plan' came into effect. This new regime complemented the unilateral voluntary commitments with indicative and minimum prices.

- (22) Despite all these measures, the situation in the steel market continued to deteriorate and on 31 October 1980 the Commission adopted Decision No 2794/80/ECSC (¹), by which a state of

'manifest crisis' was declared in accordance with Article 58 of the ECSC Treaty. By virtue of this Decision, mandatory production quotas were imposed by the Commission for most steel products including beams. These measures were extended by Decisions No 1831/81/ECSC (²), No 1696/82/ECSC (³), No 2177/83/ECSC (⁴), No 234/84/ECSC (⁵), No 3485/85/ECSC (⁶) and No 194/88/ECSC (⁷).

- (23) This anti-crisis regime can be summarized as follows: the Commission fixed a general objective of Community production for each quarter for different product categories and each undertaking was allotted a compulsory production quota and a quota for deliveries within the Community market, known as its share of 'Big I', i.e. the Community market. The quotas were backed, between 1984

(¹) OJ No L 291, 31. 10. 1980, p. 1.

(²) OJ No L 180, 1. 7. 1981, p. 1.

(³) OJ No L 191, 1. 7. 1982, p. 1.

(⁴) OJ No L 208, 31. 7. 1983, p. 1.

(⁵) OJ No L 29, 1. 2. 1984, p. 1.

(⁶) OJ No L 340, 18. 12. 1985, p. 5.

(⁷) OJ No L 25, 29. 1. 1988, p. 1.

and 1986, by a system of minimum prices for beams and other products⁽¹⁾. The Commission also adopted Decision No 3483/82/ECSC⁽²⁾ establishing a so-called 'surveillance system' by which each undertaking was obliged to declare its deliveries by country to the Commission.

- (24) Originally, the Commission considered that the stability of traditional patterns of deliveries of steel products represented an essential factor which had to be preserved in order to allow the necessary restructuring of the steel industry to take place (see recital 5 of Decision No 234/84/ECSC). In its communication on steel policy in 1987⁽³⁾, the Commission declared, however, that it had arrived at the conclusion that the maintenance of the traditional patterns of deliveries was inconsistent with the establishment of the common market for steel.
- (25) The anti-crisis regime came to an end, in so far as beams were concerned, on 30 June 1988. However, by Commission Decision No 2448/88/ECSC⁽⁴⁾ the Commission introduced a monitoring system covering production and deliveries by producers into the Community and to third countries. Under this system, each company was required to declare its deliveries to the Commission. The system expired in 1990.
- (26) In the period from the end of the anti-crisis regime until the end of 1990 producers of beams in the ECSC enjoyed very favourable market conditions. The market has deteriorated considerably since.

H. INSPECTIONS

- (27) On 16, 17 and 18 January 1991 the Commission carried out inspections in the offices of seven undertakings and two associations of undertakings, namely British Steel, Peine-Salzgitter, Thyssen, Usinor Sacilor, Unimétal, Valor, TradeArbed, the Walzstahl-Vereinigung and the Centre Professionnel des Statistiques de l'Acier (CPS)⁽⁵⁾. These inspections were based on individual

decisions adopted by the Commission pursuant to Article 47 of the ECSC Treaty. Additional inspections were carried out on 5 March (CPS), 7 March (Ferdofin) and 25 March 1991 (Ferrosider SpA). Copies of a number of documents were taken by the inspectors of the Commission during these inspections.

- (28) Further information was provided by some of the undertakings and associations concerned on the basis of requests made pursuant to Article 47 of the ECSC Treaty.

I. HEARING OF THE PARTIES

- (29) The parties were offered the opportunity to present their cases at the hearing held in Brussels between 11 and 14 January 1993. The minutes of the hearing were circulated to the parties and their lawyers on 8 September 1993.

A copy of the Statement of Objections was also sent to Irish Steel Ltd, Nuova Sidercamuna Spa, Boliden Intertrade Srl, Aciers d'Usinor et Sacilor (Valor), CPS, Usinor Sacilor, Federazione Imprese Siderurgiche Italiane (Federacciai), Unesid, Jernkontoret, Klöckner and ILVA Spa. In the light of the comments submitted by these parties, the Commission decided to terminate the proceedings against them for the following reasons:

- Irish Steel only attended one Eurofer/Scandinavia meeting on an informal basis; there is no further evidence of the company's involvement,
- in the case of Nuova Sidercamuna Spa and Boliden Intertrade Srl the only evidence against them is a short report by the Italian representative of Peine-Salzgitter,
- Valor was not directly involved, see recital 38, point g,
- CPS and Usinor Sacilor were involved in administrative tasks, the behaviour of Usinor Sacilor is taken into account in the fines imposed on Unimétal;
- in the case of Federacciai, Unesid and Jernkontoret, there is no proof of their direct involvement, only of a number of their members,
- Klöckner does not produce beams as defined in recitals 3 and 4,
- it could not be substantiated that Mr Traverso was acting on behalf of ILVA.

(1) OJ No L 373, 31. 12. 1983, p. 1 (Decision No 3715/83/ECSC).

(2) OJ No L 370, 29. 12. 1982, p. 1.

(3) OJ No C 272, 10. 10. 1987, p. 3.

(4) OJ No L 212, 5. 8. 1988, p. 1.

(5) The 'Centre Professionnel des Statistiques de l'Acier' (previously known as 'Comptoir Français des Produits Siderurgiques' and hereinafter referred to as 'CPS') is an association of undertakings mainly of the Usinor Sacilor group. It is nowadays charged with the task of collecting and preparing statistical information for the 'Fédération Française de l'Acier' (previously known as the 'Chambre Syndicale de la Siderurgie Française'), an association of undertakings of which the CPS forms an integral part.

J. DETAILED DESCRIPTION OF THE INFRINGEMENTS OF COMPETITION RULES

1. 'POUTRELLES COMMITTEE' AND RELATED ACTIVITIES

1.1. General

(30) The 'Poutrelles Committee' (also known under the French name 'Commission Poutrelles' and in the past sometimes referred to as 'Commission des Produits Longs' or 'Long Products Committee') is one of the so-called 'Product Committees' of Eurofer. Each of these committees is — as the name indicates — concerned with a particular product or group of products (e.g. beams, merchant bars or wire rod). The meetings of all of these committees are arranged by Eurofer which also provides logistical assistance (for example interpreters).

(31) Another Eurofer committee which has to be mentioned in this context is the so-called 'CDE'. This is the forum where the commercial directors of the Eurofer companies — that is to say, those companies which are members of Eurofer or which belong to associations which are members of Eurofer — meet to discuss the market. There are also regular meetings of the presidents and the vice-presidents respectively of these companies. On a more technical level this framework is complemented by meetings of experts.

(32) All of these committees were set up during the crisis in the steel industry (see Section G). The structure thus established assisted the Commission in its efforts to find solutions for the problems caused by the crisis. It also served as a forum for discussions between steel producers on general topics such as the level and impact of imports from third countries, possible market trends and schemes for the promotion of steel in third countries. None of these activities will be discussed here. This Decision is concerned only with those aspects of the cooperation between the parties concerned which went beyond what is permitted under the competition rules of the ECSC Treaty.

(33) The structure of and the participation in the Poutrelles Committee are outlined in a short note prepared by Mr Vygen of the Walzstahl-Vereinigung for Mr Everard of TradeArbed dated 4 October 1990 on the occasion of the latter's taking over the presidency of the Committee. According to this note Mr J. Meyer of Peine-Salzgitter had presided over the Committee since mid 1985. The secretariat of the Committee is said to have been in the hands of the Usinor

Sacilor group for many years. At that time an employee of Usinor Sacilor (Mrs S.) served as secretary. The secretariat sent out invitations to the meetings, prepared the minutes which were sent to the members of the Poutrelles Committee and provided (on a routine basis or as required) certain documents. The documents supplied regularly comprised those concerning the 'Monitoring Poutrelles' (see below).

It further emerges that the Walzstahl-Vereinigung regularly provided its members with documents (minutes of meetings, statistics and price information) before meetings of the Poutrelles Committee.

(34) The note indicates that the individual groups were usually represented at the meetings by the following:

Luxembourg (Belgium): H. Becker (TradeArbed)

France: G. (Unimétal)
Mrs. S. (Secretariat)

United Kingdom: Cooper, Legge,
Mrs Ross (British Steel)

Italy: Dr. Arnuzzo (Ferdofin)
Dr. Masserdotti
(Ferrosider)

Spain: Alvarez (Ensidesa)
Nägele (Aristrain)
Izquierdo (Unesid)

Germany: Engel, Knüfermann
(Thyssen)
Dr. v. Engelhardt, Schuh
(Saarstahl)
Kröll, Mette
(Peine-Salzgitter)
Vygen
(Walzstahl-Vereinigung)

The note explains that Mr Masserdotti normally speaks on behalf of the small Italian producers.

(35) Although the Poutrelles Committee is a Eurofer committee some of the undertakings or associations of undertakings taking part in the meetings are not (or were not) members (directly or indirectly) of Eurofer.

(36) Meetings of the Poutrelles Committee were held very frequently. In 1989 and 1990 for example the Committee was convened nine and seven times respectively. In a letter dated 5 October 1990 Eurofer informed its members and other parties that for 1991 a 'two-month-rhythm' was envisaged for beams meetings.

The Commission has knowledge of the following meetings of the Poutrelles Committee:

7 April 1987	Düsseldorf
19 May 1987	Stresa
28 October 1987	Paris
25 November 1987	Düsseldorf
3 May 1988	Madrid
19 July 1988	Paris
18 October 1988	Düsseldorf
15 November 1988	Bruxelles
13 December 1988	Paris
10 January 1989	Düsseldorf
7 February 1989	Paris
19 April 1989	Paris
6 June 1989	Paris
11 July 1989	Paris
3 August 1989	Düsseldorf
21 September 1989	Taormina
7 November 1989	Teesside
12 December 1989	Düsseldorf
14 February 1990	Berlin
21 March 1990	Düsseldorf
16 May 1990	Milano
10 July 1990	Düsseldorf
11 September 1990	Luxembourg
9 October 1990	Madrid
4 December 1990	Bruxelles.

- (37) For some of the meetings of the Poutrelles Committee the Commission has discovered two sets of minutes the contents of which vary slightly. This appears to be due to the fact that the French secretariat which prepared these minutes submitted the draft minutes to the chairman of the Poutrelles Committee for approval (and to Eurofer for its comments) while at the same time sending a copy to the Walzstahl-Vereinigung for translation into German. The evidence suggests that the Walzstahl-Vereinigung sometimes circulated its translation of these draft minutes before they had been approved by the chairman of the Poutrelles Committee.

The final version of the minutes is usually more circumspect. This may have to do with a meeting of the secretariats of Eurofer's product committees which was convened on 23 November 1988. The following is one of the two items on the agenda for the meeting: 'Review of the way of drafting minutes'.

1.2. Participation of the companies and associations concerned

- (38) Mr Vygen's note, referred to in recital 33, shows that the companies or persons mentioned therein

regularly participated in the meetings of the Poutrelles Committee. In the course of the proceedings the undertakings and associations concerned provided the following more specific information:

- (a) Peine-Salzgitter confirmed that it had attended all the meetings listed above;
- (b) The Walzstahl-Vereinigung informed the Commission that it had participated in all the meetings listed above apart from the one on 3 May 1988;
- (c) British Steel confirmed that it had attended all the meetings listed above apart from those on 10 January and 6 June 1989. The evidence (a list of participants and a British Steel memo on the results of that meeting) shows, however, that British Steel also attended the meeting on 10 January 1989;
- (d) Arbed informed the Commission that its subsidiary TradeArbed had in principle attended all the meetings listed above;
- (e) Ensidesa confirmed that it had attended, through its subsidiary Infisa GmbH (a trading company incorporated in Germany), all the meetings listed above apart from those on 21 September and 7 November 1989;
- (f) Thyssen confirmed that it had attended all the meetings listed above in the period from 25 November 1987, apart from the meeting on 7 November 1989;
- (g) Unimétal informed the Commission that it had been represented at all the meetings listed above until the end of 1989. The person who had represented Unimétal at these meetings moved to Aciers d'Usinor et Sacilor (Valor) ⁽¹⁾ at the beginning of 1990. Valor initially confirmed that these meetings were attended by Valor from the beginning of 1990. However, the evidence shows that the person concerned continued to act for Unimétal (see for example an undated note from Unimétal to the secretariat of the Poutrelles Committee which was written on or before 18 May 1990 and notes that Unimétal had not been able to attend the last meeting of the Committee, clearly implying that Unimétal normally still attended these meetings). This was confirmed by Unimétal at the oral hearing;
- (h) Saerstahl confirmed that it had attended the meetings on 19 May 1987, 3 May, 18 October,

⁽¹⁾ Valor is one of the most important distribution companies of the Usinor Sacilor group which holds 97 % of its shares. In 1990 it effected sales in the amount of FF 15 013 million, mainly in France.

15 November and 13 December 1988, all the meetings held in 1989 and the meetings on 14 February, 16 May, 11 September and 4 December 1990. The evidence (a note on the meeting prepared by Peine-Salzgitter) shows that it had also been present at the meeting on 25 November 1987;

- (i) Cockerill Sambre and Steelinter told the Commission that they had attended the meetings on 19 July, 18 October and 15 November 1988, 10 January, 7 February and 3 August 1989 and probably also the meeting on 6 June 1989. The evidence shows that Cockerill Sambre had also been present on 11 July 1989 (see the minutes of the meeting);
- (j) Ferdofin confirmed that it had attended some of the meetings although it could not specify the dates. The evidence shows, however, that Ferdofin attended these meetings on a regular basis at least since 1987. This is confirmed by the note on the Poutrelles Committee drawn up by the Walzstahl-Vereinigung (see recital 33). With reference to some of the meetings listed above, Ferdofin claimed, in its reply to the Statement of Objections, that the Commission had not proved Ferdofin's participation. However, the minutes of the meeting on 19 April 1989, the list of participants of the meeting on 14 February 1990 and correspondence concerning the meeting on 7 February 1989 (draft letter from Ferdofin to Mr Meyer and Mr Meyer's reply dated 29 March 1989) show that Ferdofin had attended these meetings;
- (k) Aristrain confirmed that it attended all the meetings in 1989 and 1990 apart from those on 21 September and 12 December 1989, 21 March, 10 July and 4 December 1990. However, the reference to 'a Spanish mill' in the minutes of the meeting on 21 September 1989 (where Ensidesa was not represented) shows that Aristrain attended this meeting. It may be inferred from the note of the Walzstahl-Vereinigung on the Poutrelles Committee together with the note of Peine-Salzgitter on the meeting on 25 November 1987 that Aristrain attended these meetings regularly at least from 1987 onwards.

1.3. *Monitoring*

1.1.3. *Monitoring of orders until mid 1990*

- (39) A monitoring system under which the participating companies informed each other on a regular basis

about the orders they had received for delivery in a specific quarter has been in operation at least since the third quarter of 1984. British Steel, Peine-Salzgitter, TradeArbed, Thyssen, Cockerill Sambre and Unimétal took part in this system from a very early stage, at least since 1987. This emerges from an internal memo of Peine-Salzgitter dated 24 November 1987 and a table prepared by Peine-Salzgitter dated 5 December 1989 (see Annex I, No 16).

Ferdofin participated since the second quarter of 1987 and Saerstahl began to supply its figures in the second quarter of 1988. This is confirmed by an internal memo of Peine-Salzgitter dated 9 November 1987 and a document found at Peine-Salzgitter which bears the inscription 'Marktentwicklung' and, in manuscript, 'Buchungsmonitoring' dated 9 December 1988.

Ensidesa and Aristrain took part in the system from the beginning of 1989. Initially they provided their figures on a monthly basis only. In its reply to the Statement of Objections, Aristrain claimed that it had only provided figures on deliveries but not on orders. This is contradicted by the documents discovered by the Commission (see, for example, the minutes of the meeting on 10 January 1989 and the monitoring tables distributed by the secretariat on 1 March 1990, Annex I, No 13).

Neue Maxhütte and Hoesch participated at least since the first quarter of 1988 and the first quarter of 1989 respectively.

In the first quarter of 1990, Federacciai (Federazione Imprese Siderurgiche Italiane — an Italian association of steel producers and distributors) began to supply aggregate figures for Italian steel producers other than Ferdofin.

Cockerill Sambre ceased to participate towards the end of 1989.

- (40) The figures which were provided and exchanged show (with the exception of the Federacciai figures) the orders which each individual company had received for delivery in France, Germany, Belgium/Luxembourg, the Netherlands, the United Kingdom, Italy, Spain, Portugal and Greece/Ireland/Denmark.

At least since the beginning of 1989 these figures were collected and distributed among the participants by Usinor Sacilor on a weekly basis.

For the years 1989 and 1990 the Commission discovered a considerable number of documents illustrating the functioning of the monitoring system. These documents are listed in Annex I.

1.3.2. Monitoring of deliveries until mid 1990

- (41) A monitoring of deliveries was introduced in 1988 at the request of the French group (see the minutes of the meeting of the Poutrelles Committee on 18 October 1988). Peine-Salzgitter, Thyssen, Saarlöh, TradeArbed, Cockerill Sambre, Unimetal, British Steel, Ferdofin, Ensidesa, Aristrain, Neue Maxhütte and Hoesch exchanged information on their deliveries to markets in the ECSC on a quarterly basis from early 1989 onwards, beginning with the figures for deliveries in the fourth quarter of 1988. Cockerill Sambre stopped participating early in 1990 after having withdrawn from the market.
- (42) Individual figures were exchanged for the following markets: the ECSC as a whole, Germany, France, the United Kingdom, the Benelux area, Italy, Greece/Ireland/Denmark, Portugal and Spain. These figures were distributed a month or two after the end of the relevant quarter. Since late 1989 Federacciai provided aggregate figures for the deliveries of Italian producers other than Ferdofin.

The most important documents concerning the monitoring of deliveries are also listed in Annex I.

1.3.3. Monitoring after mid 1990

- (43) On 18 July 1990 the Commission adopted, pursuant to Article 65 of the ECSC Treaty, Decision 90/417/ECSC (1) concerning an agreement and concerted practices engaged in by European producers of cold-rolled stainless steel flat products, in which the Commission ruled that a number of undertakings had infringed Article 65 (1) of the ECSC Treaty and imposed fines on some of these undertakings.
- (44) On 30 July 1990 Eurofer addressed a letter headed 'Statistics exchange and circulation' among others to the chairman and the secretariat of the Poutrelles Committee. The relevant parts of this letter read as follows (2):

'The decision recently made by the Commission in the matter of stainless flat products and some contacts taken by DG IV with the general

management of Eurofer, have drawn attention to the statistics exchange or circulation made by our office or by the committee secretariats and to their compatibility with Article 65 of the ECSC Treaty.

While waiting for a thorough examination from the legal point of view, we decided to suspend any circulation which discloses individual figures for production, delivery or orders and we ask you to kindly abstain from any similar exchange or circulation in the framework of your Committee.

Of course, this request does not affect the collection of individual figures by one neutral centre, namely the Eurofer office, and the circulation of aggregate results, without mention of individual elements, as we usually do. Such statistics are perfectly legal because they obviously aim at giving a global information on the economic and market development. They will be maintained as before by us and you may proceed in the same way.'

The Poutrelles Committee complied with Eurofer's request of 30 July 1990. However, the (individual) figures for deliveries in the second quarter of 1990 of all companies concerned apart from British Steel were still distributed.

From August 1990 onwards, British Steel refused to provide information on its orders and deliveries.

- (45) An internal memo of British Steel dated 19 November 1990 shows that the distribution of individual data was soon resumed though without British Steel:

'Following discussions held by the presidents, the Eurofer administration decided to recommence distributing delivery and production figures by company (having earlier limited distribution to aggregate all company totals only).

It is clearly understood that British Steel is still not providing figures to Eurofer, so it has been equally clearly stated that British Steel will not receive the figures of other companies.'

The evidence shows that this decision applied not only to Eurofer but also to Eurofer's product committees.

(1) OJ No L 220, 15. 8. 1990, p. 28.

(2) Where appropriate quotations from documents have been translated by the Commission from the original language into the language of the decision. The accuracy of these translations was not challenged during the administrative proceedings in which the Statement of Objections contained the original text and any necessary translation into the language of procedure.

- (46) The Commission discovered tables dated 3 December 1990 (see Annex I, No 26) which contain individual figures for deliveries in the third quarter of 1990 and for orders for delivery in the same quarter for TradeArbed, Unimetal, Ensidesa, Aristrain and Ferdofin (orders only). The documents show that the exchange of individual

information must have been resumed — between TradeArbed, Ensidesa, Unimétal, Ferdofin and Aristrain — in October 1990 at the latest. Individual data on orders for delivery by Thyssen, Saerstahl, Peine-Salzgitter, Neue Maxhütte and Hoesch were sent to the secretariat and circulated by the Walzstahl-Vereinigung in December 1990 and January 1991 (see Annex I, No 28).

1.3.4. Exchange of information through the Walzstahl-Vereinigung

- (47) The monitoring organized by the secretariat of the Poutrelles Committee was supplemented by an exchange of information through the Walzstahl-Vereinigung.
- (48) The Commission is in possession of a folder prepared by the Walzstahl-Vereinigung with a view to the meeting of the Poutrelles Committee on 9 October 1990. Amongst other documents, this folder contains tables dated 1 October 1990 setting out the deliveries and orders for deliveries of Thyssen, Peine-Salzgitter, Hoesch, Neue Maxhütte, Saerstahl and TradeArbed.

Deliveries are shown per month from January 1990 until and including July 1990. As to orders for delivery in the third quarter of 1990, the tables list the figures for each company on a weekly basis beginning with the position on 2 June 1990 and ending with the position on 22 September 1990. Similarly, orders for delivery in the fourth quarter of 1990 are shown as at 1 September, 8 September, 15 September and 22 September 1990. As the monitoring tables prepared by the French secretariat in the relevant period only show aggregate figures and not individual figures for each company, it follows that these tables form part of the up-to-date statistics which the Walzstahl-Vereinigung supplied to its members, according to the memo from Mr Vygen to Mr Everard dated 4 October 1990 (recital 33). This is confirmed by the cover note to this memo which shows that the Walzstahl-Vereinigung had sent a copy of the folder to TradeArbed on 2 October 1990.

The Commission has found a similar set of documents prepared by the Walzstahl-Vereinigung for the meeting of the Poutrelles Committee on 4 December 1990.

1.3.5. Purpose and effect of the exchange of information

- (49) The importance and the use of the figures exchanged under the monitoring system are illustrated by several documents.

- (50) At the meeting on 6 June 1989, the German producers complained about the high level of Spanish exports to Germany. The Spanish producers promised to stagger their deliveries in the future.

- (51) At the meeting on 11 July 1989 Unimétal pointed out that, according to the monitoring figures, the Eurofer companies other than Ensidesa had reduced their deliveries to France by 25 % whilst deliveries by the Spaniards had increased. The minutes note laconically:

'It was hoped that there would be a certain degree of moderation in the future.'

It was also pointed out that in the second quarter of 1989 orders for delivery on the market of Belgium/Luxembourg had — contrary to the situation on the other Community markets — exceeded orders for delivery in the first quarter of 1989. It was considered that this fact

'through Belgian steel merchants, risked disturbing neighbouring markets.'

Cockerill Sambre defended itself by claiming that its deliveries went to its subsidiary (Steelinter) whose stocks were very low.

The minutes also note that an exchange of opinions concerning imports from Spain took place:

'The level of imports from Spain remained high. Ensidesa stated that it had not increased its usual volume.'

- (52) The copy of the minutes of the meeting on 21 September 1989 which the Commission found at Thyssen — a German translation of the French minutes — indicates that TradeArbed had been blamed for disturbing the market in France:

'The Luxembourg mill also denied any disruptive behaviour in France since it had been out of the market for five weeks.'

- (53) The French version of the minutes of the meeting on 12 December 1989 refers to an exchange of views on trade between the United Kingdom and Germany/France. The German version is much more explicit:

'However, the German and French mills spoke of a certain "aggressiveness" on the part of the British mill on their domestic markets, which was borne out by the Poutrelles Committee statistics. The British mill explained that it was restricting itself to the tonnages which it normally delivered to these markets, and that its

returns for the Poutrelles Committee statistics included process work. However, it pointed out that since January 1989, 21 000 tonnes had been delivered from Germany to the United Kingdom.'

- (54) An internal briefing note dated 19 March and prepared for Mr Meyer (Peine-Salzgitter) reveals that a controversy had arisen at the meeting of the Poutrelles Committee on 14 February 1990:

'It was agreed in Berlin that serious discrepancies between order-book monitoring and actual deliveries would have to be explained. There was a difference of opinion on this point between Ferdofin and Saarstahl.'

- (55) A table which was sent to British Steel by Peine-Salzgitter at the beginning of March 1990 sets out, for the last two quarters of 1988 and for each quarter in 1989, deliveries from the United Kingdom to Germany and deliveries by Peine-Salzgitter, Thyssen and Saarstahl to the United Kingdom. Two further columns show the 'surplus' of the United Kingdom and Germany respectively, that is to say the difference between deliveries to Germany by the British producer and deliveries to the United Kingdom by the German producers. The copy of this table found at British Steel carried a manuscript message from Peine-Salzgitter which declared that

'according to these figures there is — I fear — no backlog due to British Steel plc!'

The German version of the minutes of the meeting on 21 March 1990 indicates that the Spanish producers considered the exports of British Steel and TradeArbed to Spain as being too high.

- (56) A letter dated 10 May 1990 from Peine-Salzgitter to TradeArbed shows that TradeArbed had accused Peine-Salzgitter of manipulating its figures for deliveries to the Netherlands in the first quarter of 1990. In its reply Peine-Salzgitter tried to explain the differences.

- (57) A report on the results of the meeting on 16 May 1990 (prepared by the Walzstahl-Vereinigung) notes:

'A central theme was, as always, inter-penetration deliveries which cause considerable market disturbance. Responsible behaviour here would help to reduce these disturbances.'

A note on the results of this meeting dated 18 May 1990 which was prepared by the secretariat of the Poutrelles Committee and sent to Unimetal confirms this:

'Market inter-penetration was reported. Everyone wants to return to traditional delivery flows.'

- (58) Deliveries were again discussed at the meeting on 10 July 1990. An internal British Steel memo dated 20 July 1990 notes:

'There was a concerted attack of BS sales in northern Europe by the French and Germans (Arbed were quiet) who suggested that our increased sales in these markets had only been accomplished by "buying" market share. There were some veiled threats from Mette of Peine that there would be a reaction from Peine in the United Kingdom if there was not some reduction in the 10 kt or so from BS to Germany every quarter.'

- (59) An internal briefing note dated 10 September 1990 prepared by Peine-Salzgitter for Mr Meyer with a view to the next meeting of the Poutrelles Committee on 11 September 1990 reveals that the object of the monitoring system was to allow the participants to ascertain the behaviour of their competitors on the market:

'An exchange of only aggregated figures is (almost) useless for our purposes (opinion expressed by the German-Luxembourg group on 30 August 1990) because the market behaviour of individual suppliers can no longer be traced. Only once official customs statistics are available, which experience shows does not occur until a few months later, is it possible to individualize figures, and then only in the case of countries with just one producer.'

It also shows that the parties were aware of the competition law aspects of this system:

'A system of mutual exchange of statistics which extends to the backflow of individualized company data to competitors is at least suggestive of effects which restrict competition.'

- (60) At the meeting on 4 December 1990 TradeArbed (referred to as the 'representative from Luxembourg' in the minutes) pointed out that the increase in market share of Ferdofin — and other companies — was worrying other producers.

A TradeArbed memo dated 3 December 1990 (which reflects the text of the speech which the representative of TradeArbed was to give at the meeting on 4 December 1990) reveals that TradeArbed would — if necessary — take measures to remedy this situation:

'However, I would point out that we can no longer sit back and watch as certain mills have considerably increased their tonnages this year, especially in Belgium, our home market, i.e. (...).'

1.4. *Market-sharing arrangements and 'Traverso-methodology'*

1.4.1. *Ferdofin*

- (61) The minutes of the meeting of the Poutrelles Committee on 19 July 1988 (an excerpt of which is in the possession of the Commission) list the market estimates for the fourth quarter of 1988 adopted by the CDE on 14 July 1988. The following are the figures for Germany:

'Germany	189 000 tonnes/quarter
Of which Eurofer	159 000 tonnes/quarter
Ferdofin	30 000 tonnes/quarter.'

Corresponding figures (for Eurofer and Ferdofin respectively) are given for the Benelux area, France and Denmark/Ireland/Greece.

- (62) If the only purpose of the market estimates had been to assess the size of the future markets it would obviously not have been necessary to show separate figures for Ferdofin. It must therefore be assumed that it was intended to fix quotas for deliveries by Ferdofin to the abovementioned markets. Ferdofin claims that these figures had been suggested by its competitors without Ferdofin's involvement. The fact that Ferdofin did nevertheless in fact agree to comply with quotas (although these may have been different from the figures in the abovementioned minutes) is however confirmed by a telex which Ferdofin sent to Peine-Salzgitter on 4 August 1988:

'We would draw your attention to the fact that Ferdofin has accepted a limitation of sales in the Federal Republic of Germany, France and Benelux on the basis of the old quotas.'

1.4.2. *France*

- (63) On 13 September 1989 representatives of Peine Salzgitter, Thyssen, Saarlust, British Steel, Unimetal, TradeArbed, Cockerill Sambre/Steelinter met in the offices of the Walzstahl-Vereinigung.

The discussions at this meeting focused on the question of deliveries of beams to the French market in the fourth quarter of 1989.

At Peine-Salzgitter the Commission discovered a document drawn up by the Walzstahl-Vereinigung.

The second page of this document bears the heading 'French market — beams — fourth quarter 1989'. The document notes that the market estimate for France in the fourth quarter of 1989 amounted to 75 000 tonnes/month and that 60 000 tonnes/month would be supplied by Eurofer companies. Of this figure 27 000 tonnes/month are deducted for Unimetal and 375 tonnes/month and 750 tonnes/month for Klöckner and Ensidesa respectively. The remaining 31 875 tonnes/month for Klöckner and Ensidesa respectively. The remaining 31 875 tonnes/month are then divided on the basis of two percentages relating to deliveries in the past (see page 1 of the document):

'P+S	
11,6/11,4 %	3 698/3 634 tonnes/month
Thyssen	
2,0/ 2,1 %	638/ 669 tonnes/month
Saarlust	
14,3/13,9 %	4 558/4 431 tonnes/month
Ferdofin	
16,8/17,4 %	5 355/5 546 tonnes/month
Cockerill Sambre	
21,4/20,5 %	6 821/6 534 tonnes/month
Arbed	
28,4/28,8 %	9 052/9 180 tonnes/month
BSC	
5,5/ 5,9 %	1 753/1 881 tonnes/month.'

The third page of this document is labelled 'Alternative G.'. Here a further 7 000 tonnes/month for what are called 'indirect deliveries' are deducted from the 31 875 tonnes/month referred to above. The remaining 24 875 tonnes/month are then divided among the seven companies in the same way as in the table shown above.

The manuscript note of Peine-Salzgitter accompanying these documents mentions that the last-mentioned alternative owes its origin to an intervention by Mr G. (Unimetal).

- (64) An internal memo dated 19 September 1989 prepared by Peine-Salzgitter confirms that the Eurofer companies endeavoured to find a marketsharing arrangement for deliveries to the French market:

'Plan for France

The basis for the allocation to Eurofer suppliers is the paper compiled by WAV for the last 12 or 18 months. Peine-Salzgitter agrees with the percentage. However, the basis must be 33 000 tonnes/month.'

- (65) According to the minutes of the meeting of the Poutrelles Committee on 21 September 1989, Unimetal pointed out that for the fourth quarter of 1989 it considered a market estimate of 75 000 tonnes/month to be realistic and then specified the tonnages as follows:

'During this quarter the French mill intends to deliver 27 000 tonnes/month. It believed that the

tonnages of Community companies outside Eurofer would be around 10 000 tonnes/month. Non-member country penetration remains reasonable and should stay at about 5 000 tonnes/month.'

- (66) A short note on the results of this meeting dated 25 September 1989 which was prepared by the Walzstuhl-Vereinigung shows that a compromise had been found:

'An adapted delivery behaviour on the French market in the fourth quarter of 1989 should contribute to a rapid resolution of tonnage problems here as well. Both Eurofer companies and other mills had notified plans to reduce deliveries.'

- (67) This is confirmed by a telex dated 26 September 1989 which the Walzstuhl-Vereinigung sent to Peine-Salzgitter, Thyssen, Saarstahl, Ferdofin, TradeArbed, British Steel, Ensidesa and Unimétal:

'Beams deliveries in the fourth quarter of 1989 (French market)

The survey carried out as part of the delivery monitoring showed that the following deliveries to the French market were expected for the fourth quarter of 1989 (approximate tonnages):

P+S	9 950 tonnes/quarter
Thyssen	1 800 tonnes/quarter
Saarstahl	12 200 tonnes/quarter
Ferdofin	14 800 tonnes/quarter
Cockerill-Sambre	18 100 tonnes/quarter
Arbed	24 750 tonnes/quarter
BSC	4 950 tonnes/quarter
Ensidesa	2 250 tonnes/quarter
Unimétal	72 000 tonnes/quarter.'

- (68) A short account of the results of the meeting of the Poutrelles Committee on 7 November 1989 which was prepared by the secretariat and faxed to the Walzstuhl-Vereinigung on 10 November 1989 confirms the existence of an understanding with regard to deliveries to the French market in the fourth quarter of 1989:

'Desire that the "system of deliveries for the French market in the fourth quarter of 1989" should be extended to the first quarter of 1990 and to all ECSC markets.'

- (69) The monitoring of deliveries in the fourth quarter of 1989 shows that only three companies delivered substantially more than envisaged on the French market:

Thyssen	4 164 tonnes
Ferdofin	18 347 tonnes
British Steel	11 623 tonnes.

- (70) Ensidesa did not attend the meetings on 13 and 21 September 1989. Even if the figure of 750 tonnes/month for Ensidesa's deliveries to France may originally have been set by the other companies without Ensidesa's approval as it claims, the fact remains that Ensidesa was informed of this figure and kept to it (its actual deliveries amounted to 2 317 tonnes, that is to say somewhat more than 770 tonnes/month.

- (71) The minutes of the meeting on 7 November 1989 indicate that the concerted efforts to reduce deliveries to the French market were regarded as successful and that Unimétal hoped that they would continue.

1.4.3. 'Traverso methodology'

- (72) The minutes of the meeting of the Poutrelles Committee on 19 July 1988 describe a system matching supply and demand which had been set up:

'The companies should make their sales intentions known to Eurofer, which will assess them as a whole in the light of the market estimates established by the CDE. Should it emerge that some of these intentions diverge significantly from past figures, the chairman of the CDE and the Eurofer administration will contact the company in question to ask it to pursue a policy that is more conducive to the necessary equilibrium.'

- (73) The president of the CDE at that time and for the rest of the period under consideration (i.e. until the end of 1990) was Mr Traverso, a manager of Nuova Italsider SpA and later of ILVA (both Italian steel producers).

- (74) The system outlined in the minutes of the meeting on 19 July was usually referred to as the 'Traverso-method' or 'Traverso-methodology' (see, for example, an internal memo of British Steel dated 11 January 1990).

The first document which sheds some light on the way in which the system worked is a fax (No 1017) on the subject of delivery intentions for the fourth quarter of 1988 from Eurofer to Arbed/TradeArbed, British Steel, Cockerill Sambre, Usinor Sacilor, Ferdofin, Klöckner (see recital 29), Peine-Salzgitter, Saarstahl, Thyssen and others. The copy in the possession of the Commission was found at Peine-Salzgitter where it had been received on 4 August 1988. The fax refers to a 'table showing the final delivery intentions

collected at the end of the last CDE meeting of 27 and 28 July 1988 in Paris' and continues:

'Our chairman expects all the companies not to exceed these delivery intentions which are related to the price stability.'

- (75) The Commission found at Peine-Salzgitter an (undated) internal memo of Peine-Salzgitter which compares the delivery intentions for the fourth quarter of 1988 with actual deliveries. Attached to this note written in German is a table in English with the heading 'Category III ... (illegible) Delivery intentions'. It is not disputed that this is the table referred to in Eurofer's fax. The delivery intentions shown in the table are those for Peine-Salzgitter, Thyssen, Klöckner (see recital 29), Saarstahl, Usinor Sacilor (Unimétal), Ferdofin, Cockerill Sambre, TradeArbed and British Steel.

It emerges that the actual deliveries of all the companies except Klöckner exceeded the delivery intentions they had previously announced. The difference between these two figures is rather moderate for Peine-Salzgitter, Cockerill Sambre and Saarstahl while it is quite considerable for the others (in particular for British Steel).

- (76) This would seem to imply that the system was not functioning very effectively. The main reason for this seems to have been that the system did not apparently provide for any penalties for companies whose deliveries exceeded the orders they had previously reported to Mr Traverso or the tonnages suggested by him.
- (77) The voluntary character of this system is confirmed by a telex from Unimétal to British Steel of 28 November 1988 and British Steel's reply of 6 December 1988. This correspondence also demonstrates, however, that the participating companies nevertheless attached considerable weight to this system. It shows that, at least in principle, the companies concerned considered the tonnages suggested by the chairman of the CDE as figures to be respected. Companies which disregarded these suggestions had to expect that the other participants would resort to retaliatory measures on their own markets.
- (78) The system was discontinued in early 1989. It was resumed in early 1990 (in respect of deliveries in the first quarter of 1990). This was confirmed by British Steel and is evidenced by a British Steel briefing note dated 20 July 1990 and the fact that on 31 January 1990 Peine-Salzgitter sent a letter to the president of the CDE setting out its delivery intentions for the first and second quarters of 1990.

- (79) It would appear, however, that on the whole this system of matching supply and demand neither worked particularly well nor lasted for long.

An undated file note of British Steel which summarizes the results of the meeting of the Poutrelles Committee on 21 March 1990 reports the following remark of Mr G. (Unimétal) concerning the French market:

'G.' mentioned his understanding that the Traverso procedure had broken down due to some producers 'sticking'.

1.5. *Price-fixing arrangements*

1.5.1. *Target prices*

- (80) The minutes of the Eurofer/Scandinavia meeting on 30 July 1986 note with respect to the market for beams in the Community:

'Eurofer mills make efforts to stabilize prices and to defend imports. Decisions especially concerning prices will be taken in a meeting within a few days.'

- (81) Attached to the copy of these minutes which the Commission discovered at the Walzstahl-Vereinigung was a document which sets out the 'prices for quarter 4/86' for the Scandinavian markets. With regard to beams on the Danish market the following is noted:

'Information is given after new price fixing in EEC countries.'

Similar references are to be found in the minutes of other Eurofer/Scandinavia meetings.

- (82) In a fax sent to the CPS on 27 March 1987 the Walzstahl-Vereinigung explained that the chairman of the Poutrelles Committee was desirous to proceed with the discussion of two particular subjects before the next meeting on 7 April 1987. One of these topics was the harmonization of prices in the ECSC:

'The achievement of comparable price levels in the EC, and in particular, how quickly French prices can be increased to levels that broadly match those in neighbouring countries (certain differentials may be tolerated provided they are not disruptive).'

- (83) The next meeting was held on 3 June 1987. An internal briefing note dated 2 June 1987 prepared by Peine-Salzgitter for the chairman of the Poutrelles Committee indicates:

'The short-term objective of the meeting on 3 June should however be to set binding prices for beams for the third quarter of 1987.'

'Germany: Prices will reach target level during q4. No price increase intended for quarter 1/88.'

- (84) A decision on prices for the third quarter of 1987 was indeed adopted at this or one of the next meetings. This emerges from the minutes of the Eurofer/Scandinavia meeting on 4 August 1987 which note with regard to the market for beams in the ECSC that the prices planned for the third quarter of 1987 had been achieved.

- (87) The minutes of the Eurofer/Scandinavia meeting on 2 February 1988 note:

'It was decided to increase prices on 1 April as follows: on the German market by DM 20 for categories 1, 2a, 2b2 and 2b3, and by DM 10 for category 2b1; on the French market, By FF 50 for all categories except 2c.

- (85) The Poutrelles Committee subsequently decided to adopt price increases for sales in the fourth quarter of 1987. This is revealed by an internal memo of Peine-Salzgitter dated 9 November 1987:

It is also intended to increase prices in the United Kingdom market on 1 April 1988, although the size of the increase has not yet been decided.'

'With a view to further consolidation or implementation of the price increases introduced 1 October 1987, it was agreed at the meeting of the Poutrelles Committee in Paris on 28 October 1987 not to increase prices again on 1 January 1988. However, this must be seen in the context of the suggestion that prices will be increased in any event on 1 April 1988. There must be a timely exchange of views on the scope and size of that increase'.

- (88) The results of the meeting on 19 July 1988 are documented by a table attached to the minutes of the Eurofer/Scandinavia meeting on 25 July 1988 a copy of which was found at Usinor Sacilor. This table shows what is called the 'prix de marché T4-88' for beams in the ECSC. Basis prices are given for each category (category 1, 2a, 2b1, 2b2, 2b3 and 2c) in Germany, France and Belgium/Luxembourg respectively.

- (86) This account is confirmed — in so far as the German market is concerned at least — by the minutes of the Eurofer/Scandinavia meeting on 4 November 1987 which note:

- (89) The minutes of the meeting on 18 October 1988 note that the price increase envisaged for the fourth quarter of 1988 had been obtained on the markets. The minutes also set out what are called 'price estimates' for the first quarter of 1989:

'Price estimates for the first quarter of 1989

Price increases are estimated at DM 25 to 40 in Germany, FF 50 to 100 in France and Bfrs 200 to 800 in Benelux. They will result in the following price levels:

Basic point:

France Thionville	Germany O'hausen	Belgium/Luxembourg Charleroi	Italy Palenzano
Category 1 January:			
FF 2 250	DM 630	Bfrs 13 500	Lit 480 000
Base	Base	Base	Base
Category 2a January:			
FF 2 350	DM 670	Bfrs 14 000	Lit 530 000
Base	Base	Base	Base
Category 2b1			
FF 2 350	DM 670	Bfrs 14 000	Lit 530 000
Base	Base	Base	Base
Category 2b2			
FF 2 450	DM 720	Bfrs 15 000	Lit 540 000
Base	Base	Base	Base
Category 2b3			
FF 2 600	DM 760	Bfrs 15 700	Lit 560 000
Base	Base	Base	Base
Category 2c			
FF 2 650	DM 795	Bfrs 16 500	Lit 600 000
Base	Base	Base	Base

Germany: less 'merchant' discount of 2,5 %
plus DM 20 for small merchants
plus DM 80 for consumers

France: plus FF 100 for consumers

Italy: plus Lit 30 000 for consumers

Fresh prices increases are also planned for Spain for the first quarter of 1989.'

- (90) A comparison of this table with the table attached to the minutes of the Eurofer/Scandinavia meeting on 25 July 1988 shows that in so far as the markets of France, Germany and Belgium/Luxembourg are concerned — the table attached to the minutes of the Eurofer/Scandinavia meeting does not show figures for the Italian market — the difference between the prices for the fourth quarter of 1988 and those of the first quarter of 1989 does indeed amount to between DM 25 and 40, FF 50 and 100 and Bfrs 200 and 800 for the respective categories. The only exception is category 1 in France (where the increase is FF 150) and in Belgium/Luxembourg (where the increase is Bfrs 1 000).

- (91) The wording of the paragraph in the minutes of the meeting of 18 October, quoted in recital 89, suggests that the prices set out in this table are not the prices which the companies concerned expected the market to yield but those which they had agreed to apply. This is confirmed by a telex which was sent by Thyssen to TradeArbed on 22 September 1988:

'Basically, the most helpful timing of the discussion would be after the Eurofer/Scandinavia meeting. However, since this is rather late, we should in my view notify our friends of our broad intention for the EC and plead for parallel action, i.e. increases for the Scandinavian programme of:

Sweden SKr 100

Norway Nkr 100

Finland FM 40

The decision about category 2c can then be taken on 29 September.'

- (92) It emerges that the Eurofer companies had discussed future prices and that they intended to implement increases of around DM 40 in so far as beams falling within the 'Scandinavian programme' (that is to say, categories 1, 2a, 2b1, 2b2 and 2b3) were concerned.

- (93) The minutes of the Eurofer/Scandinavia meeting on 3 November 1988 note with regard to the markets for beams in the ECSC:

'Fresh increases are planned for the first quarter of 1989 and are expected by the trade. They

involve increases in Germany of DM 25 to 40, in France of FF 50 to 100, and in Benelux of Bfrs 200 to 800.'

- (94) The minutes of the meeting on 13 December 1988 note that the price increases for deliveries in the first quarter of 1989 (erroneously referred to as '1988') in Germany and France were accepted by the customers without any problem and that further increases were considered.

- (95) The minutes of the meeting on 10 January 1989 note that the prices 'envisaged' for the first quarter of 1989 had been obtained on the German, French, Benelux, Italian, Spanish and British markets. The minutes also set out the 'expected' price increases in the second quarter of 1989 and the prices resulting from these increases.

- (96) An undated file note on the results of this meeting prepared by British Steel refers to 'price intentions'. These are set out on a table accompanying the file note. The heading of this table is 'European price intentions April/June — increases'. The table shows the increases per category in the respective markets (between DM 10 and 20 in Germany, between FF 30 and 50 in France, between Bfrs 200 and 400 in Belgium and Lit 20 000 in Italy) and the 'implied new levels April 1989'.

The figures for France, Germany and the Benelux countries are identical with those set out in the minutes of the meeting on 10 January 1989. The prices for Italy are Lit 20 000 per tonne higher than the corresponding figures in the minutes. It appears that this divergence is due to a misunderstanding on the part of British Steel.

An internal memo dated 13 January 1989 prepared by Peine-Salzgitter contains corresponding data:

'At the meeting of the Poutrelles Committee on 10 January 1989, the price increases already envisaged for 1 April were set as follows: (...)'

- (97) The minutes of the Eurofer/Scandinavia meeting on 1 February 1989 provide further information on the concertation of prices within the Poutrelles Committee:

'It was also pointed out that "harmonious" base prices (a differential of some DM 10 between the different Community markets) had been achieved for three quarters.'

- (98) According to the minutes of the meeting on 7 February 1989 the participants expressed their opinion that the prices envisaged for the second quarter of 1989 were or would be obtained on all the markets concerned (Germany, France, Benelux, Italy and Spain) without any difficulties. The prices contained in the minutes of the meeting on 10 January were supplemented by prices for two categories in Italy and by prices for Spain.

- (99) The minutes of the meeting on 19 April 1989 note that the expected prices were being obtained in Germany, France and Italy and that British Steel intended to increase its prices. The prices for the third quarter of 1989 set out in the minutes are basically identical with the prices shown in the minutes of the meetings of 10 January 1989 and 7 February 1989 respectively for the second quarter of 1989.

- (100) A British Steel memo dated 24 April 1989 provides further information on the prices being charge in the United Kingdom:

'I informed the Committee that BS would be increasing prices by between 4 and 5 % at the beginning of June and suggested that companies sold into the United Kingdom at the BS "price ruling" to avoid undermining this increase.'

The memo also illustrates a conflict between the Spanish producers and British Steel:

'The Spanish group complained about British Steel's aggressive selling into Spain and in particular the low prices being charged. British Steel commented on the large tonnage (21 000 tonnes in January and February) imported from Spain to the United Kingdom and the disruptive prices at which this was being sold.'

A short report on the results of the meeting prepared by the Walzstuhl-Vereinigung notes that a solution for this particular problem was to be found in bilateral talks.

- (101) According to the minutes of the meeting on 6 June 1989, difficulties existed in relation to smaller sections (categories 1 and 2) in France and Italy but both Unimétal and the Italian producers declared to be determined to maintain prices. British Steel (which was not present at the meeting) informed its competitors that the price increases on the British market were accepted without difficulties.

- (102) At the meeting on 11 July 1989, it was announced that the envisaged prices were obtained on the French market with the exception of categories 1 and 2a where prices were weak. On the Benelux markets certain offers at prices below the envisaged levels had been noticed:

'None the less planned prices have been achieved and they should be maintained.'

With regard to the British market it was confirmed that the price increase in the order of 4,25 % had been accepted by customers.

The discussion of prices for the fourth quarter of 1989 revealed that, given the increase in size and quality extras (see 1.5.2), the German producers did not intend to increase prices. The prices planned and achieved in the third quarter of 1989 were therefore maintained.

- (103) The minutes of the meeting on 3 August 1989 contain the following paragraph (concerning the French market) which illustrates the thoughts and intentions of the participants of the Poutrelles Committee:

'At the moment, steel merchants are somewhat reluctant to place orders in the "hope" that prices will soon fall.'

The use of the inverted commas implies that the members of the Poutrelles Committee did not think that this hope was well-founded.

- (104) It was noted that the price levels for categories 1 and 2a had by now been accepted by the clients in Italy. In Britain the prices which had been increased at the beginning of June were reported as being stable. The minutes give the impression that no increase of basis prices ⁽¹⁾ was intended on any of the markets concerned in the fourth quarter of 1989.

- (105) At Valor the Commission discovered an undated document which, according to Valor, formed part of an internal memorandum prepared by Usinor Sacilor for the meeting on 21 September 1989. The document discusses the relationship between Articles 60 and 65 of the ECSC Treaty. After noting that Article 60 does not prevent one company from publishing future prices long before the intended date of application of such prices the document continues:

(1) Steel companies are required to establish their list prices with reference to a fixed geographical location, the basing point (usually the producing mill). These prices are referred to as 'basis prices'.

'6. None the less the provisions of Article 65 expressly forbid all agreements between undertakings tending "to fix or determine prices". It seems evident that the announcement by a number of companies of their decision to increase their prices by the same amount, on the same date, would be in breach of the above provision.

7. There are two possible solutions:

- (a) vague wording to imply that the state of the market should allow a change in prices within a non-specified period of time;
- (b) "price leadership", a device used by United States companies. One company announces its intention to increase or reduce prices on a specified date. Several days later, the other companies announce that they intend to follow their competitor's example.'

This shows that Usinor Sacilor was contemplating ways of evading the competition rules of the ECSC Treaty.

(106) The minutes of the meeting on 7 November 1989 report that no price increases were planned for the first quarter of 1990. The only exception was France where Unimétal hoped to implement an increase of FF 50 on the actual prices for smaller beams.

(107) The next meeting was held on 12 December 1989. Its results are reflected in a speaking note which was prepared by the representative of TradeArbed (who was then the chairman of the Eurofer/Scandinavia meetings) for the Eurofer/Scandinavia meeting on 31 January 1990 which also provides valuable insights into the thoughts and intentions of the Eurofer companies:

'It is therefore absolutely necessary that all Eurofer mills and our Scandinavian friends do not exert pressure on the market.

(...)

Prices for the fourth quarter of 1989 have in principle been maintained in the first quarter of 1990. The new size extras are no longer a problem. However, it is regrettable, especially for categories 1, 2a and 2b1, that some mills have seen fit to undercut programmed prices over the past two or three weeks, thereby creating grey areas of DM 15 to 20. This must be stopped at once.

It is clear that this grey area must disappear in the second quarter and that the programmed prices must be applied across the board, in particular since the second quarter is probably going to produce the required demand. I call on everyone here to observe this rule strictly.'

(108) The minutes of the meeting on 14 February 1990 note with regard to prices for the second quarter of 1990 that the producers hoped to return to the price levels they had achieved in the fourth quarter of 1989:

'With regard to prices the local mills hoped very much to eliminate the current shortfall (of some DM 20) and to return rapidly to the levels achieved, in so far as each of them was concerned, during the fourth quarter of 1989.'

(109) Only Unimétal declared that it intended to increase the price for category 2c by FF 45. This is not a coincidence. In a letter to Unimétal (with a copy to TradeArbed) dated 6 November 1989, the president of the Poutrelles Committee had expressed his view that it was of paramount importance to harmonize prices in the ECSC in order to prevent what he called 'distortions' in the flux of trade.

Mr Meyer pointed out that in his view category 2c caused a major problem in this respect since prices in France and Germany respectively had been differing by approximately DM 30 per tonne for some time. The chairman of the Poutrelles Committee considered that the time had now come to bridge this gap:

'This is a good time to close the gap with the German price. I believe this to have been necessary for some time and, in my view, it is achievable now.'

(110) Peine-Salzgitter reiterated its request in a letter dated 19 December 1989. On 7 February 1990 TradeArbed sent a fax to Unimétal (with a copy to Peine-Salzgitter) in which it urged the French producer to increase its price for category 2c in order to rectify this 'distortion' despite what it called a somewhat difficult position on the markets:

'This distortion is encouraging a number of French merchants to make greater inroads into the German market, disturbing the price structure in Germany (...). Despite the fact that conditions do not favour a price increase, prices for this category should be put up by FF 100/tonne, at the latest for deliveries in the second quarter.'

- (111) Shortly after the meeting of the Poutrelles Committee on 14 February 1990 British Steel sent a fax to TradeArbed, Peine-Salzgitter, Thyssen, Saerstahl and Unimetal/Valor (Mr G.) setting out the definition of categories A 1, A 2 and A 3 currently applied by British Steel. Further explanations were to be given over the telephone on 19 February.

- (112) The original of this fax which was found by the Commission at British Steel contains additions in manuscript. Under the heading 'Suggested £/t interpen. allowances' figures are inserted for each of the categories for stockholders and merchants respectively. The significance of these figures is clarified by an internal British Steel memo dated 20 February 1990:

'G. has been informed of the prices to charge which are not judged by us to be disruptive. I have been unable to contact Saerstahl — (Baron Dr Von Englehard) however I complained most strongly to him last week about the excessively low prices he is offering in the United Kingdom. It would not be unreasonable for us to point out to Unimetal that the consequences of the sins of Saerstahl should be felt in France rather than Germany.'

It emerges from all this that British Steel informed its most important competitors as to which prices (or inter penetration allowances) it would tolerate.

- (113) According to the minutes of the meeting on 21 March 1990 British Steel deplored the fact that certain offers on the British market had been £ 55 to £ 70 below British Steel's price lists. An undated file note on the results of this meeting prepared by British Steel notes:

'Message to EC producers from BS is not to support these discounts.'

- (114) The British Steel memo also contains information on the German market:

'German group wished to implement DM 20 increase on basis prices to recover position envisaged last October when extras increased by DM 20/25 (basis prices have slipped since).'

- (115) According to the minutes of the meeting on 16 May 1990 British Steel announced that it contemplated increasing prices in the United Kingdom for the third quarter of 1990 and that a decision would be taken in May. A note dated 18 May 1990 produced by Usinor Sacilor reports that British Steel had requested the other producers to

wait until the end of May before making any binding offers for deliveries to the United Kingdom.

On 7 June 1990 British Steel sent a fax to TradeArbed, Peine-Salzgitter, Saerstahl, Thyssen, Ensidesa, Unimetal and Aristrain:

'I enclose details of British Steel's new price list 5 changes applicable from 1 July 1990 for structural sections.

(...)

Overall there is an increase of around 5 % on our previous list. Please ensure that offers for the third quarter take full account of this increase.'

- (116) An internal briefing note (dated 9 July 1990) prepared by Peine-Salzgitter for the chairman of the Poutrelles Committee with a view to the meeting on 10 July 1990 sums up the policy issues which were then discussed. The author suggests that in view of the partial increase of size extras no 'official increase' of prices should be introduced with effect for the fourth quarter of 1990. However, participants were to be exhorted to ensure the application of the new size extras and of prices agreed:

'Appeal to all participants concerning the third and fourth quarters:

- implementation of the new size extras,
- implementation of the agreed price levels/dismantling of grey discounts.'

- (117) An internal British Steel memo dated 17 July 1990 notes that the other producers had so far paid 'little regard' to the guidance which British Steel had given them on price levels for sales in the United Kingdom. As the British Steel memo dated 20 July 1990 shows British Steel used the meeting on 10 July 1990 in order to urge its competitors again to respect the new British Steel prices.

Another British Steel memo dated 30 July 1990 reveals that TradeArbed's behaviour was particularly irritating for British Steel:

'There is little doubt that Arbed, who are seen as the largest EEC importer, have been irresponsible in their pricing and have not adhered to the agreement we reached when we met with Everard and Sevenig. Of importance they are offering large discounts across the total range of products.'

(118) The minutes of the meeting on 11 September 1990 note that the meeting was told that the increase in the British Steel price list was accepted by the customers in the United Kingdom. With regard to the other markets the minutes note that a price increase of DM 25 to 30 was 'foreseeable'.

(119) A British Steel memo dated 25 September 1990 which reports on the results of this meeting puts the matter more bluntly:

'There is a general feeling that prices should be increased moderately — approximatively DM 30 per tonne. Some discussion as to whether this should be in addition to basis or a further addition to extras. Likely timing for the increase is 1 January.'

This memo also indicates that British Steel did not take part in the discussion of prices:

'British Steel did not enter into the discussion on prices. Remained simply in the spirit of transparency. Strongly advised chairman that the market should not be told that the "Eurofer producers had decided to have an increase".'

(120) The minutes of the meeting on 9 October 1990 note that prices for the first quarter of 1991 were discussed and that an increase of DM 20 to 30 would be acceptable to clients on the continent. No 'forecast' was made for the United Kingdom market.

(121) A fax from the Walzstahl-Vereinigung to Ferdofin dated 19 December 1990 shows that the companies concerned hoped to achieve an increase in prices of up to DM 20 per tonne by applying new extras (see 1.5.2):

'It should be remembered that the price levels prevailing in the fourth quarter of 1990 were expected to be maintained in the first quarter of 1991, though accompanied by continued improvement in sales revenue of up to DM 20 per tonne on average by the end of the quarter through the application of the new extras.'

1.5.2. Harmonization of extras

(122) A proposal for the harmonization of quality extras which had been prepared by Usinor Sacilor was submitted at the meeting on 18 October 1988. The minutes of the meeting on 15 November 1988 indicate that the quality extras applied in Germany were chosen as the target to be attained ('Zielpreis').

British Steel announced at the meeting that it would take the results of this harmonization into account when deciding on its prices.

(123) The minutes of the meeting on 10 January 1989 record that an 'Italian representative' submitted a proposal for the harmonization of size extras for IPE, HEB and HEA beams at the meeting. It was agreed to study this proposal and prepare a project for the harmonization of size extras for application in the third or fourth quarter of 1989.

(124) Increasing the extras of course entailed the risk that a company might be tempted to offset this increase by a reduction of the basis price and thus obtain an advantage over its competitors. The members of the Poutrelles Committee appear to have been aware of this risk but do not seem to have regarded it as a serious threat. In its letter of 24 February 1989 (a draft of which is in the possession of the Commission) to the chairman of the Committee Ferdofin stated:

'I assert that the European group (including Ferdofin) which produces HE beams is sufficiently homogeneous to exclude reductions in basis prices where there is an increase in size extras.'

(125) The minutes of the meeting on 19 April 1989 note that a working group was due to meet in order to determine the extent of the increases ('hausses') of size extras which were due to be applied as from 1 October 1989. The evidence shows that this meeting was held on the same day, apparently after the meeting of the Poutrelles Committee.

A report on the results of the meeting of this working group shows that the participants of the Poutrelles Committee had agreed, through the working group they had set up for that purpose, both to harmonize and to increase size extras for beams:

'In view of the fact that the date of application of these new extras was fixed at 1 October 1989 by the Poutrelles Committee, the Italian group proposed total alignment on the highest size extras in the Community.

It was nevertheless thought preferable to proceed in stages. The meeting laid down the following guidelines:

1. harmonization will be upwards.

It must on no account lead to a reduction in the list price;

2. it represents a second stage.

A third stage will have to be envisaged for a number of profiles in order to reduce the current gap in relation to the highest Community extra;

3. the date of application was fixed at 1 October 1989.'

The report lists the harmonized extras for all IPN, UPN, IPE, HEA, HEB and HEM beams.

- (126) The Commission has obtained some of the working documents (found at the Walzstahl-Vereinigung) and some of the tables (found at Valor) comparing the size extras applied at the time in France, Germany, Luxembourg and Italy with the new size extras to be applied as from 1 October 1989. These documents show that the harmonization agreed on 19 April 1989 resulted in increases of virtually all the size extras applied in France, Germany and Luxembourg at that time. In many instances, these increases were quite considerable. The extras for HEB 200 for example in France, Germany and Luxembourg had previously stood at ECU 20, 19 and 19 respectively; they were now increased to ECU 46 per tonne. The fact that the 'harmonization' of size extras resulted in an increase of prices is confirmed by an internal memo of Peine-Salzgitter dated 10 July 1989.

- (127) An internal memo dated 5 June 1989 drawn up by Peine-Salzgitter points out that Peine-Salzgitter had informed the Commission of the new extras to be applied by Peine-Salzgitter in a letter dated 23 May 1989. This underlines the fact that the notification of these harmonized extras was effected only after they had been agreed between the members of the Poutrelles Committee. The minutes of the Eurofer/Scandinavia meeting on 25 April 1989 confirm that the new size extras had not been published prior to that date.

- (128) At the meeting on 6 June 1989, the Spaniards declared that they would increase their size extras in stages in order to harmonize them with the European levels.

- (129) At the same meeting the question of the harmonization of quality extras was discussed. The decision adopted was similar to the one taken at the previous meeting in respect of size extras, that is to say the harmonization was meant to result in higher prices:

'The meeting decided to endorse the French group's proposal for harmonization. The date of entry into force was set at 1 October 1989. It was stressed that harmonization would be upwards and must on no account lead to a reduction in the list price.'

The minutes list the new extras and note that British Steel had announced (by telex) that it would comply with the results of this harmonization.

- (130) In a letter dated 15 December 1989 sent to Mr Arnuzoo (Ferdofin) Peine-Salzgitter notes that several of the participants of the Poutrelles Committee had asked at the meeting on 12 December 1989 (not attended by Ferdofin) whether Ferdofin was applying the new extras, particularly in so far as the German market was concerned.

Ferdofin replied by telex on 21 December 1989 and assured Peine-Salzgitter that it had applied the new extras for deliveries to all the European markets since 1 October 1989 without exception.

- (131) The implementation of the new extras appears to have had repercussions on the basis price. The minutes of the meeting on 14 February 1990 note:

'The new extras have been fully achieved, although regrettably sometimes at the expense of the basis prices.'

- (132) The minutes of the meeting on 16 May 1990 report that the producers 'envisaged' increasing size extras by DM 15 to 20 as of 1 July 1990.

This was based on a proposal submitted by the participants from Germany and Luxembourg (see the fax dated 11 May 1990 from Peine-Salzgitter to the secretariat). An examination of this document reveals that the proposed modifications would have resulted in a virtually complete harmonization of the size extras concerned but also in a considerable increase of the amount of these size extras.

- (133) While the minutes of the meeting give the impression that an increase of size extras was only contemplated, a report prepared by the Walzstahl-Vereinigung shows that in reality all the participants had accepted this proposal:

'All groups present accepted this proposal on condition that it did not lead to another reduction in the basis prices, as happened in the fourth quarter of 1989.'

This is also confirmed by a confidential note dated 17 May 1990 sent by the secretariat of the Poutrelles Committee of Unimétal:

'All groups confirmed their agreement to this proposal, with immediate publication and application from 1 July 1990.'

- (134) In a fax dated 21 May 1990 Peine-Salzgitter informed Aristrain's representation in Germany (which had not been able to attend the meeting on 16 May) of the details of the agreement reached. This document reveals that it had also been agreed that orders for delivery in the period starting on 1 July 1990 would not be accepted by the participants before 1 June 1990.

- (135) Usinor Sacilor's confidential note dated 17 May 1990 shows that some of the participants wished to proceed even further:

'With regard to the smaller sizes (IPE 80 to 150 mm) for which no increase is proposed, Mr Masserdotti will contact you to see whether they cannot be increased too.'

- (136) In a fax to the secretariat which was written on Stefana's letterhead dated 31 May 1990, Mr Masserdotti expressed his displeasure at the fact that the extras for smaller sizes had not been increased. The author demanded that all the participants should reconsider his proposal in which he had suggested what he called a 'moderate' increase:

'I invite everybody to reconsider the proposal to go on with the collaboration spirit that ties up our relationship.'

- (137) The chairman of the Poutrelles Committee replied in a letter dated 12 June 1990 that he would not object if the Italian producers were to apply 'somewhat different extras in their market' and assured them:

'Needless to say, the German-Luxembourg mills will apply your extras in your home-market.'

- (138) The minutes of the meeting on 11 September 1990 note that size extras were on the agenda again:

'The Italian proposal for new size extras for IPN, UPN and IPE was submitted during the meeting (see Annex II). This was upward harmonization which would in no way bring about a fall in price lists. It could be applicable as of 1 October 1990.'

A short report dated 11 October 1990 on the results of the meeting which was prepared by the Walzstahl-Vereinigung notes that 'a Spanish producer' had informed the other participants at the meeting that it intended to increase its size extras during the fourth quarter of 1990 in order to bring them closer to the harmonized size extras.

- (139) On 14 November 1990 the Walzstahl-Vereinigung circulated a 'German' proposal for the harmonization of size extras.

An examination of this proposal reveals that it would have resulted in increases in all markets apart from Italy where, for some of the sizes concerned, the proposed new extras were still lower than the extras currently applied.

- (140) On 28 November 1990 Eurofer sent a copy of this proposal to the person in charge of legal affairs at Eurofer since it had some doubts as to the compatibility of this proposal with ECSC competition rules. The addressee replied by fax on 3 December 1990 and claimed that the document in question did not represent a proposal for the harmonization of prices but a neutral 'expertise':

'Of course, an infringement of the ECSC competition rules could arise if firms jointly decided to alter their lists of extras in line with this model, or if they coordinated changes to their extras in line with this model, or if they coordinated changes to their extras in accordance with it.'

- (141) A report on the results of the meeting on 4 December which was prepared by the Walzstahl-Vereinigung notes that a 'German company' had decided to increase its size extras by between DM 5 and 30 per tonne as from 1 January 1991. The minutes of the meeting note that the other producers were planning similar action:

A fax which the Walzstahl-Vereinigung sent to British Steel on 13 December 1990 puts the matter straight:

'For good order's sake I inform you that Peine-Salzgitter and — in the meantime — Thyssen Stahl too, have published new dimension extras for beams which follow a new harmonized structure within the Community countries (except for the United Kingdom and Spain).'

- (142) On 19 December 1990 the Walzstahl-Vereinigung sent a fax to Ferdofin:

'We can assure you that all German representatives in Italy have now been informed of the increases in size extras in the German price lists. Has Ferdofin also changed its list of size extras?'

The wording of the above paragraph and the fact that this fax was sent to TradeArbed, Peine-Salzgitter, Thyssen and Saarstahl imply that these companies had adopted the new size extras by 19 December 1990.

2. EXCHANGE OF INFORMATION THROUGH EUROFER

- (143) The evidence shows that certain statistics on orders and deliveries were also collected and circulated by Eurofer itself. For the purpose of this exchange of information the participating companies reported their orders and deliveries to Eurofer almost immediately — hence their name 'fast bookings'.
- (144) Figures for orders were distributed on an aggregate basis. However, individual figures were exchanged for deliveries by Peine-Salzgitter, Thyssen, Klöckner, Hoesch, Saarstahl, Usinor Sacilor, Ferdofin, Cockerill Sambre, Arbed, British Steel, Ensidesa and Siderurgia Nacional (a Portuguese producer), divided into the markets of the Member States.

The most important documents concerning this exchange of information are listed in Annex II.

- (145) The evidence shows that Eurofer was circulating, on a regular basis, the figures for deliveries by the companies concerned no longer than approximately two months after the end of the quarter or month in question. This exchange dates back at least to 1986.

The exchange of information was suspended by Eurofer at the end of July 1990 but resumed shortly afterwards. British Steel did not participate in this further exchange of information.

- (146) The evidence available does not allow all the recipients of the figures circulated by Eurofer to be identified. It is fair to assume, however, that all those companies which reported their deliveries to Eurofer and whose figures are set out in the tables prepared by Eurofer also received a copy of these documents in return. This view was not contested by Eurofer in its reply to the Statement of Objections.

3. AGREEMENTS AND PRACTICES IN RESPECT OF INDIVIDUAL MARKETS

3.1. Germany

- (147) A note dated 16 January 1987 (discovered at Peine-Salzgitter) of a meeting between representatives of Thyssen, Peine-Salzgitter and TradeArbed in Düsseldorf on 15 January 1987 shows that prices for the first quarter of 1987 were fixed between these companies.

- (148) An internal note dated 2 June 1987 prepared by Peine-Salzgitter reveals that prices had been fixed by Thyssen, Peine-Salzgitter and TradeArbed for some time. The document refers to agreements between these companies in December 1986, January 1987 (see above) and February 1987 and lists the prices fixed.

- (149) An internal note dated 9 November 1987 prepared by Peine-Salzgitter with a view to a meeting with traders on 11 November 1987 shows that the forthcoming meeting was a continuation of discussions which had been held on 11 and 24 June 1987. The discussions at these previous meetings seem to have focused on the stabilization or increasing of prices. It is pointed out that these discussions had resulted in two price increases on 1 July and 1 October 1987 respectively.

TradeArbed confirmed that it attended the meeting on 11 June 1987. Peine-Salzgitter, TradeArbed and the Walzstahl-Vereinigung informed the Commission that they were present at the meeting on 24 June 1987.

- (150) On 20 January 1988 a meeting of a group called 'VA Profilstahl' was held in Düsseldorf which was attended by TradeArbed, Hoesch, Peine-Salzgitter, Saarstahl and Thyssen. A report on the results of this meeting dated 25 January 1988 lists the price increases recommended for 1 April and continues:

'All mills present agreed that in all future price announcements, prices for *all* merchants would be given and a certain differential would be applied/agreed for the six large merchants (e. g. DM 20).'

- (151) On 20 April 1988 Peine-Salzgitter sent a fax to Thyssen, TradeArbed and Saarstahl in which it informed the addressees that at the meeting with traders to be held on 22 April 1988 a possible further increase of prices should be discussed. A proposal for these increases was made.

- (152) A meeting of the VA Profilstahl took place in Paris on 18 April 1989. A manuscript note on the results of this meeting prepared by the Walzstahl-Vereinigung notes:

'Arbed vetoed higher size extras for UNP 320 and larger sizes (the other producers — especially Hoesch — should first respect the agreed prices).'

- (153) A briefing note dated 20 April 1989 which was drawn up by Peine-Salzgitter with a view to a forthcoming meeting with traders on 21 April 1989 records that on the occasion of the last meeting of this forum on 16 February 1989 it had been agreed that the participating producers would not exert pressure on the market in the second quarter of 1989. The author notes that this appears to have been the case.

- (154) A letter dated 20 December 1989 from Peine-Salzgitter to Saarlust reveals that certain producers had agreed to limit their deliveries to the German market in the second half of 1989 to a specific threshold (deliveries in the third quarter of 1988 minus 10 %). It appears that Saarlust had not complied with this agreement.

At least Peine-Salzgitter, Saarlust and TradeArbed were parties to this agreement. This is confirmed by a letter from Peine-Salzgitter to TradeArbed dated 19 December 1989.

3.2. France

- (155) An internal memo dated 14 May 1987 which was prepared by Peine-Salzgitter reveals that at that time Unimetal, Cockerill Sambre and Arbed/TradeArbed were concerting to fix the prices they charged in France.

This is confirmed by a note dated 18 May 1987 which was prepared by Peine-Salzgitter.

3.3. Italy

- (156) On 7 April 1987 a meeting was held in Düsseldorf during which the Italian market was discussed. TradeArbed, Peine-Salzgitter, Unimetal and the Walzstahl-Vereinigung have confirmed that they attended this meeting; the minutes show that Ferdofin had also been present.

The minutes note that it was agreed that it was essential that the participants coordinated their action in order to achieve the 'programmed' prices:

'This coordination is essential to achieve programmed prices, summarized below:

Basis price category 2b H 100 to 300
PE 240 to 400

1. For the merchants Presider(*), Novasider, Sidercomit

Category 2b: Lit 460 000 for delivery to northern Italy, less agent's commission maximum 2 %

Category 2c: Lit 500 000 for delivery to northern Italy, less agent's commission maximum 2 %

(*) Abovementioned prices plus Lit 15 000 for delivery to central Italy.

2. Other merchants

Abovementioned prices plus Lit 15 000 for delivery to northern Italy.

3. Consumers

Category 2b: Lit 500 000 basing point

Category 2C: Lit 550 000 basing point.'

- (157) A letter from the chairman of the Poutrelles Committee of 23 October 1987 to Ferdofin sets out the general lines of Peine-Salzgitter's sales policy on the Italian market:

'We follow the prices mentioned by you in the various meetings or the market prices which may have been set in other contexts, e.g. your talks with the German representatives.'

In its reply dated 27 October 1987 Ferdofin complained that Peine-Salzgitter (and British Steel) did not comply with the prices which had been fixed.

- (158) A telex sent by Peine-Salzgitter to Ferdofin on 17 November 1987 notes:

'In the past we have regularly followed the prices agreed with you. We shall also adhere to the decisions which will be taken at the meeting in Düsseldorf on 25 November 1987.'

- (159) A briefing note dated 24 November 1987 prepared by Peine-Salzgitter reveals that the secretariat of the Poutrelles Committee had urged the participants to abstain from sales in Italy before an agreement (on prices) was reached.

This document also sets out the prices which had been agreed previously and the modifications which had been made due to market pressure and notes:

'We keep strictly to price agreements.'

- (160) On 25 November 1987 a meeting was held in Düsseldorf during which the Italian market was discussed. TradeArbed, Peine-Salzgitter, Unimétal and the Walzstahl-Vereinigung confirmed that they attended this meeting. A list of participants (found at Peine-Salzgitter) shows that British Steel, Aristrain, Ensidesa, Ferdofin, Stefana, Thyssen, Saarstahl and Cockerill Sambre were also represented at this meeting.

A note (dated 30 November 1987) prepared by Peine-Salzgitter and the minutes of the meeting reveal that there had been an agreement to increase prices by Lit 20 000 in the fourth quarter of 1987 and that this increase had only partially been achieved. Ferdofin demanded that a marked increase of prices be implemented on 1 January 1988 and distributed a proposal to that effect (a copy of this document was found at the Walzstahl-Vereinigung).

- (161) The minutes and the abovementioned note of Peine-Salzgitter confirm that prices were indeed fixed at this meeting. The minutes clearly set out the principal features of the agreement under the heading 'Programmation de prix T1-88' and list the prices which were fixed.

- (162) The next meeting concerning the Italian market was held in Portofino on 13 March 1988. TradeArbed, British Steel, Peine-Salzgitter, Saarstahl, Thyssen, Unimétal and the Walzstahl-Vereinigung have confirmed that they attended this meeting. The evidence in the possession of the Commission shows that Cockerill Sambre, Ferdofin and Stefana also took part.

- (163) The minutes of this meeting show that the prices fixed at the previous meeting had only partially been achieved.

In these circumstances Mr. Arnuzzo (Ferdofin) made the following proposal:

'The need for an agreement

(...)

He therefore proposed for the second quarter an assessment of total consumption on the Italian market and an allocation of shares of this assessment. He stated that it was not a question of introducing a new method to change the Eurofer quota or reference systems, but of restricting *second quarter* deliveries to this market to enable prices to recover.'

- (164) The minutes show that this proposal was accepted. The parties excluding Stefana entered into what was called a 'gentlemen's agreement' pursuant to

which they were to restrict deliveries to the Italian market to specific tonnages in order to increase prices.

- (165) The parties also agreed to fix prices:

'It was also decided to increase prices in the first quarter of 1988 for categories 2b1, 2b2 and 2b3 by Lit 10 000 for the five large merchants and by Lit 20 000 for other customers (...).'

The minutes list the prices agreed for deliveries by Ferdofin and the other companies respectively.

- (166) A fax circulated by the secretariat of the Poutrelles Committee on 18 May 1988 reveals that it was intended to adopt further price increases for the Italian market as from 1 July 1988 at the request of Ferdofin.

A telex from Ferdofin to Peine-Salzgitter dated 28 June 1988 confirms that prices had been fixed:

'By mutual agreement, the price increase for the third quarter was set out at Lit 30 per Kg instead of Lit 50 per kg (as we had demanded) for the five large merchants who had rejected the proposed increase of Lit 50 per kg.'

- (167) The evidence suggests that on 21 June 1988 the Eurofer works agreed that the quotas which had been agreed for deliveries to the Italian market in the second quarter of 1988 were to be applied in the third quarter of 1988 as well.

This is confirmed by a fax dated 21 June 1988 from Saarstahl to the Walzstahl-Vereinigung, a fax dated 22 June 1988 from the Walzstahl-Vereinigung to the secretariat of the Poutrelles Committee and a telex from Ferdofin to Peine-Salzgitter dated 28 June 1988 which notes:

'In conclusion, I consider that the main objective must remain the price increase. This is achievable only through tonnage restrictions. For these reasons I still believe that the third quarter quotas must on no account be increased.'

- (168) A telex from Ferdofin to Peine-Salzgitter dated 4 August 1988 allows the conclusion that a quota of more than 2 000 tonnes had been allocated to Saarstahl for the third quarter of 1988.

The available evidence in particular the figures used in monitoring orders shows that the quotas were respected by the majority of the companies concerned.

- (169) A discussion on the Italian market was held in Milan on 3 October 1988. TradeArbed, British Steel, Peine-Salzgitter and Unimétal have confirmed that they attended this meeting. The evidence shows that Ferdofin participated as well. The results of this meeting were presented by Ferdofin at the meeting of the Poutrelles Committee on 18 October 1988.

A fax from TradeArbed to Norsk Jernverk dated 5 October 1988 notes:

'Re: HE sections for the Italian market

Further to our telephone conversation, I enclose details of the prices for HE sections on the Italian market which were set in Milan on Monday, 3 October.'

- (170) The next meeting concerning the Italian market of which the Commission is aware was held in Milan on 15 May 1990, on the eve of the meeting of the Poutrelles Committee.

The minutes of the meeting of the Poutrelles Committee on 16 May 1990 contain a short paragraph which lists the prices which — as the minutes claim — were actually obtained on the Italian market at that time. An internal memo dated 18 May 1990 which was prepared by the secretariat of the Poutrelles Committee shows that the version given in the official minutes is rather misleading:

'On 15 May 1990 there was a working dinner dealing with the Italian market. The results of this meeting are as follows (quoted in full session on 15 May 1990): (...)'

The memo goes on to list the prices 'planned' for the Italian market.

- (171) TradeArbed, Peine-Salzgitter, Saerstahl, Valor (i.e. Unimétal), Thyssen and the Walzstahl-Vereinigung have confirmed that they participated in the meeting on 15 May 1990. It is not conceivable that Ferdofin which was represented at the meeting on 16 May had not attended the meeting on the Italian market on the night before, which was also held in Milan, or that this price-fixing agreement had been concluded without Ferdofin's participation. This conclusion is confirmed by a telex dated 9 July 1990 from Ferdofin to Peine-Salzgitter and has not been contested by the parties.

4. INDIVIDUAL AGREEMENTS

4.1. *British Steel — Ensidesa/Aristrain*

- (172) A file note of British Steel on a meeting between Ensidesa, Aristrain and British Steel which took place in Spain on 14 September 1988 shows that the three companies were trying to find an agreement in so far as the tonnages were concerned which each of them should be entitled to deliver on the Spanish and British market respectively. No agreement was reached at that meeting.

A British Steel memo on a meeting in Madrid on 25 April 1990 shows that the negotiations between the parties continued. Again no agreement was reached but both sides agreed to review their positions.

- (173) The evidence shows that British Steel, Aristrain and Ensidesa reached an agreement at an unspecified date between 25 April and 16 May 1990. A confidential note of Usinor Sacilor dated 18 May 1990 which was prepared by the secretariat of the Poutrelles Committee and which reports on the results of the meeting of the Poutrelles Committee in Milan on 16 May 1990 confirms this:

'It was pointed out during the meeting that BSC and the Spaniards had concluded an agreement under which "each was to stay on his home patch", the objective being to raise prices in Spain and the United Kingdom.

Ensidesa suggested extending this agreement to all Eurofer companies. Participants are asked not to take advantage of this "anglo-hispanic" truce by increasing their deliveries to Spain.'

- (174) A telex from Ensidesa to British Steel dated 17 September 1990 reveals certain particulars of the agreement. It emerges that British Steel had agreed to restrict its sales in Spain to 18 000 tonnes in the period until the end of the year and that an agreement on prices for the first quarter of 1991 had also been reached.

British Steel responded by telex on 3 October 1990 and confirmed that it would comply with the agreement.

4.2. *British Steel — Ferdofin*

- (175) An internal memo of British Steel dated 11 November 1987 shows that British Steel had reached an agreement with Ferdofin pursuant to which the latter would not export to the United Kingdom.

The statistics confirm that FerdoFin did not export to the United Kingdom period from the fourth quarter of 1987 until and including the third quarter of 1990 (the last quarter for which figures for FerdoFin were found by the Commission).

- (176) The evidence set out in the previous paragraph shows that this agreement must have remained in force until and beyond the end of 1990. This is confirmed by a British Steel memo dated 14 December 1990 which reports on a meeting between British Steel and FerdoFin on 6 December 1990 and a letter sent by British Steel to FerdoFin on 4 January 1991.

5. EUROFER/SCANDINAVIA MEETINGS

5.1. General

- (177) Producers and distributors of beams and merchant bar (and some of their associations) regularly met their Scandinavian counterparts at the so-called 'Eurofer/Scandinavia meetings'. For the purposes of this Decision, only cooperation in the field of beams will be considered.

- (178) Meetings of this group were held four times a year. The Commission has information about the following meetings:

5 February 1986	Berlin
22 April 1986	Copenhagen
30 July 1986	Luxembourg
28 October 1986	Stockholm
3 February 1987	London
28 April 1987	Paris
4 August 1987	Helsinki
4 November 1987	Brussels
2 February 1988	Luxembourg
26 April 1988	Fredensborg
25 July 1988	Hamburg
3 November 1988	Oslo
1 February 1989	Luxembourg
25 April 1989	Stockholm
31 July 1989	London
30 October 1989	Copenhagen
31 January 1990	Paris
24 April 1990	Helsinki
31 July 1990	Düsseldorf
31 October 1990	Milan.

- (179) A representative of the Walzstahl-Vereinigung was the chairman of these meetings at least since 1986. In November 1988 the chairmanship passed to TradeArbed. The French group (originally CPS and later on Usinor Sacilor) acted as the secretariat of

this group. The secretariat *inter alia* sent out invitations to the meetings and prepared and distributed the minutes of the meetings.

- (180) The following companies which produce or distribute beams ⁽¹⁾ regularly attended the meetings of the Eurofer/Scandinavia group:

British Steel

Unimétal

TradeArbed

Steelinter

Thyssen

Peine-Salzgitter

Saarstahl

Norsk Jernverk

Ovako

SSAB

Smedjebacken/Fundia Steel AB.

- (181) Some of the above companies confirmed that they had participated in all or some of the meetings of the Eurofer/Scandinavia group: TradeArbed and Peine-Salzgitter informed the Commission that they had attended all the meetings listed above. Saarstahl confirmed that it had attended all the meetings from 2 February 1988 onwards whilst Thyssen indicated that it had attended all the meetings listed above apart from the one on 25 July 1988. British Steel informed the Commission that it had attended all the meetings listed above apart from three (4 August and 4 November 1987 and 2 February 1988); the evidence shows that British Steel was also present at the meeting on 4 August 1987. Unimétal confirmed that it had attended all the meetings listed above until and including 30 October 1989 apart from those on 3 February 1987, 2 February and 26 April 1988.

Unimétal denied having been present at the meeting on 5 February 1986 and 28 April 1987 but the evidence in the possession of the Commission shows (lists of participants at the Eurofer-Scandinavian long products meetings found at the Walzstahl-Vereinigung) that the company had indeed attended these meetings.

- (182) Steelinter confirmed that it had attended the first three meetings in 1989. The evidence shows that Steelinter must have participated in these meetings or at least in the cooperation concomitant to these

⁽¹⁾ The meetings were also attended by companies producing or distributing merchant bar which are not mentioned here.

meetings at least since 1986: the list of the participants of the meeting on 5 February 1986 shows that the delegate of Steelinter had sent his apologies whilst the company was represented at the meeting on 28 April 1987.

- (183) The evidence shows that the meetings of the Eurofer/Scandinavia group were used to fix prices for the Scandinavian markets, that is to say Norway, Sweden, Finland and Denmark. Only the arrangements with regard to the Danish market will be considered here.

5.2. Details of the infringements

5.2.1. Meeting on 5 February 1986

- (184) The minutes of this meeting note that the 'programmation' for the first quarter of 1986 had not been completely achieved. The meeting decided to leave the prices for the first quarter unchanged in the second quarter of 1986.

5.2.2. Meeting on 22 April 1986

- (185) The minutes of this meeting note that the Eurofer mills had agreed on a price for the Danish market.

5.2.3. Meeting on 30 July 1986

- (186) The minutes of this meeting note:

'Price fixing for quarter 4

The examination of the market and the considerations about prices to fix for the quarter 4 have the following results:

(...)

Denmark

The last agreement is: Application of the lowest EEC-list-price plus freight.

As it is planned to change list prices an information is given later.'

- (187) A table (dated 1 August 1986) setting out the 'Prices for quarter 4/86' which appears to have been prepared by the Walzstahl-Vereinigung confirms this:

'Information is given after new price-fixing in EEC-countries.'

- (188) An Annex attached to this document shows the prices which were subsequently fixed. It emerges that apart from category 1 (where no price was fixed) the German prices were to be applied for deliveries to Denmark.

5.2.4. Meeting on 28 October 1986

- (189) The minutes of this meeting note that the increase targets had not been achieved and that market prices 'were at best at the level of those obtained in Q3 1986'.

In so far as Denmark was concerned, prices were fixed for categories 2b and 2c for application in the first quarter of 1987. With regard to categories 1, 2a and 3 the minutes note that the 'price levels would be set by the Eurofer works subsequently.'

- (190) A note dated 31 October 1986 and prepared by the secretariat which sets out the 'prices decided for the first quarter 1987 in Scandinavia' confirms this. The document sets out the prices for categories 2b and 2c on the Danish market and notes that the prices for category 1, 2a and 3 'will be fixed soonest'.

5.2.5. Meeting on 3 February 1987

- (191) A document prepared by the secretariat and sent to the Walzstahl-Vereinigung on 6 February 1987 which reports about 'price policy for second quarter 1987 in Scandinavia' sets out the prices for all the categories on the Danish market. In respect of category 3 it was noted that prices were 'to be fixed after decision to be made in Eurofer'.

5.2.6. Meeting on 28 April 1987

- (192) The minutes of this meeting note that the prices programmed for the second quarter had not been obtained. The meeting therefore decided to leave the prices for beams on the Danish market unchanged. The price of category 3 would be fixed later on by the Eurofer companies.

5.2.7. Meeting on 4 August 1987

- (193) Again the minutes note that the application of programmed prices was not satisfactory. The minutes set out the programmed prices for the fourth quarter of 1987 (which are identical with the prices programmed for the third quarter). No price is given for category 3.

5.2.8. Meeting on 4 November 1987

- (194) The minutes set out the 'Prices for quarter 1/88'. The prices for categories 1 and 2 on the Danish market were increased by DM 20.

5.2.9. Meeting on 2 February 1988

- (195) The minutes note that the application of prices programmed for the first quarter of 1988 was not satisfactory. The situation in Denmark, however, appears to have been different since the prices which were fixed for the second quarter of 1988 were considerably higher than the prices of the previous quarter.

5.2.10. Meeting on 25 July 1988

- (196) The prices for the fourth quarter of 1988 are set out in a table labelled 'Prix de marché T4-88 (Forges CECA)' which was attached to the minutes of this meeting. A comparison shows that some of these prices are higher than those which were agreed on at the meeting on 2 February 1988.
- (197) On 27 July 1988 the Walzstahl-Vereinigung sent a telex to TradeArbed, British Steel, Unimétal, Norsk Jernverk, Thyssen, Peine-Salzgitter, the Jernkontoret (a Swedish steel trade association) and the secretariat the title of which was 'Beams prices for Denmark'. The prices set out in this telex are (apart from one slight difference) the same as those which are contained in the table mentioned before.
- (198) A fax dated 7 October 1988 which was sent to the Walzstahl-Vereinigung by TradeArbed sheds light on the purpose of these meetings:

'Scandinavian customers have been trying for several days to place orders for the first quarter, both for HE profiles and merchant bar. TradeArbed is not willing to accept orders or quote prices before the Eurofer mills and the Scandinavian mills agree their pricing policy for Scandinavia on 3 November.

On my behalf, please reiterate to all participants in the Eurofer/Scandinavia meeting that no-one should quote first quarter tonnages or prices before the meeting, otherwise we can spare ourselves this discussion.'

- (199) A telex dated 24 October 1988 from TradeArbed shows that Eurofer producers had made a proposal for the new prices to be adopted and lists the proposed prices.

5.2.11. Meeting on 3 November 1988

- (200) The minutes of this meeting note that the prices expected for the fourth quarter of 1988 had been achieved and that increases of between DM 10 to 40 were planned for the first quarter of 1989.

A telex dated 17 November 1988 which was sent to the Walzstahl-Vereinigung by TradeArbed comments:

'Re: Scandinavia — merchant bar and sections

According to the latest information, the prices set at the meeting in Oslo have now been achieved.

Please notify the participants in the Eurofer/Scandinavia meeting accordingly so that all keep their nerve and adhere to the conditions.'

- (201) A telex dated 20 January 1989 which was sent by one of TradeArbed's salesmen to the administration in Luxembourg shows that the companies attending the Eurofer/Scandinavia meetings refused to quote prices for a specific quarter before they had been agreed at these meetings.

This is confirmed by a telex sent out by the Walzstahl-Vereinigung on 23 January 1989:

'Sales to Scandinavia

On behalf of the chairman of the Eurofer/Scandinavia working party, we would ask you not to quote second quarter prices or tonnages for any Scandinavian markets until after the next meeting on 1 February 1989.'

5.2.12. Meeting on 1 February 1989

- (202) The minutes of this meeting note that further increases of the prices for beams on the Danish market had been agreed. This is confirmed by an internal memo dated 2 February 1989 prepared by British Steel which notes in respect of the Danish market:

'This market continues to be quiet. However, Q4 target prices were achieved and a further increase of DM 20 was targeted for Q1.'

This document also sets out the 'price target' for January/March, the price obtained in this period and the 'price target' for April/June.

5.2.13. Meeting on 25 April 1989

- (203) The minutes of this meeting note that the prices expected for the second quarter had been achieved. It emerges that no price increase was intended for the third quarter of 1989.

5.2.14. Meeting on 31 July 1989

- (204) The minutes of this meeting note with regard to Denmark that it was not intended to increase basis prices in the fourth quarter of 1989.

An internal British Steel memo dated 3 August 1989 which reports on the Eurofer/Scandinavia meeting on 31 July 1989 notes:

'Although the tonnes booked were limited July/September prices were achieved and it was agreed that the levels would remain the same October/December.'

The note, also includes a table setting out the 'price target July/September', the prices achieved during the third quarter and the 'price target' for the fourth quarter.

5.2.15. Meeting on 30 October 1989

- (205) A confidential telex which was sent to the participants by the secretariat on 2 November 1989 notes that basis prices were to remain unchanged but that the new extras should be applied.

5.2.16. Meeting on 31 January 1990

- (206) A note which the chairman of the Eurofer/Scandinavia meeting wrote on 1 February 1990 and in which he summarized what he had said at the meeting the day before includes the following:

'(...) To date, we have had positive reactions to our meetings and a number of representatives for other products are even envious of our club's results and understanding.

I am not saying this for nothing, for during the first quarter not everyone played the game, especially in the merchant bar sector. In view of this I am asking you, as representatives of the Eurofer/Scandinavia club, and for the good of our companies, to do your utmost so that we can leave this room with the firm resolve to stabilize the market and thereby save the honour of our club.'

5.2.17. Meeting on 24 April 1990

- (207) An undated letter (or fax) from the secretariat which summarizes the decisions taken at the Eurofer/Scandinavia meeting on 24 April 1990 shows that basis prices were to remain unchanged.

5.2.18. Meeting on 31 July 1990

- (208) A confidential report summarizing the results of the meeting which was prepared by the secretariat notes that basis prices were again to remain unchanged.

An undated document prepared by the secretariat with the heading 'Supputation de prix pour le 4ème trimestre 1990 (Forges CECA)' sets out the prices for all categories in (*inter alia*) Denmark.

5.2.19. Meeting on 31 October 1990

- (209) The minutes of this meeting contain no reference to the Danish market. As the agenda shows, however, the prices to be charged on this market must have been discussed during the meeting. An undated table prepared by the secretariat with the heading 'Supputation de prix pour le 1er trimestre 1991 (Forges CECA)' lists the prices for categories 1, 2a, 2b1, 2b2, 2b3 and 2c on the Danish market.

II. LEGAL APPRAISAL

K. ARTICLE 65 (1)

1. GENERAL

- (210) Article 65 (1) of the ECSC Treaty prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices tending directly or indirectly to prevent, restrict or distort normal competition within the common market, particularly those tending:

- (a) to fix or determine prices;
- (b) to restrict or control production, technical development or investment;
- (c) to share markets, products, customers or sources of supply.

2. SUMMARY OF INFRINGEMENTS

- (211) The present case is characterized by the presence of a number of schemes, arrangements and practices restricting competition engaged in by a number of companies and associations of undertakings from the ECSC and Scandinavia. Each of these infringements contributed to the overall effect, namely that competition on the market for beams was considerably reduced. In view of the diversity (both in terms of participants and scope) of these

infringements it is appropriate, however, to distinguish between three main components each of which will be considered separately:

- the Poutrelles Committee and related activities,
- other restrictive measures, and
- the Eurofer/Scandinavia meetings.

3. ACTIVITIES OF THE POUTRELLES COMMITTEE

3.1. *The nature and structure of the Committee*

(212) Since 1986 at the latest producers and distributors of beams in the ECSC and some of their associations have participated in a number of schemes and arrangements adopted in the framework of a system of regular meetings and continuous contact.

(213) The most important forum for this cooperation was the meetings of the Poutrelles Committee. The following companies regularly attended these meetings and took part in the cooperation concomitant to them:

- Peine-Salzgitter,
- Thyssen,
- Saerstahl,
- TradeArbed,
- Cockerill Sambre (at least since 1988 and until the end of 1989),
- Unimétal,
- British Steel,
- Ferdofin (at least since 1987),
- Ensidesa,
- Aristrain (at least since 1987).

Two further companies (Hoesch and Neue Maxhütte) participated in one of the activities of this Committee, namely the exchange of information. Several associations of undertakings and Usinor Sacilor (which provided the secretariat) also participated in these activities. None of these seems to have made a substantial and individual contribution which would make it necessary to adopt a decision not only against their members (or, in the case of Usinor Sacilor, subsidiary) but also against themselves.

The note of the Walzstuhl-Vereinigung of 4 October 1990 (recitals 33 and 34) indicates that Mr Masserdotti acted on behalf of Italian producers other than Ferdofin. Mr Masserdotti

claims to have acted as a representative of Federacciai, an Italian association of companies engaged in producing or selling steel. Several members of Federacciai produce and/or distribute beams, notably Stefana, Nuova Sidercamuna SpA. and Lucchini Siderurgica SpA.

Federacciai supplied aggregated figures for the Italian producers. This is a legitimate activity. The only direct evidence linking any specific Italian company (except Ferdofin) in the activities of the Poutrelles Committee is the letter written by Mr Masserdotti on Stefana's letterhead (see recital 136) and this does not implicate any of the other Italian companies in an illegal practice. In the absence of more specific evidence the Commission considers that there must be considerable doubt as to the involvement of individual Italian companies (except Ferdofin) in the Poutrelles Committee and therefore this aspect of their behaviour will not be considered in this Decision.

(214) These meetings dealt with the situation on the major markets for beams in the ECSC. They were prepared or supplemented by meetings and arrangements between all or some of the above companies which focused on individual markets as follows:

- meetings concerning the Italian market where prices were fixed and quotas agreed were held on a regular basis (recitals 156 to 171),
- agreements and concerted practices concerning the German market (recitals 147 to 154),
- prices were fixed on the French market (recital 155),
- agreements between individual companies concerning certain markets (recitals 172 to 176).

(215) The Poutrelles Committee performed certain functions which were perfectly legal such as the preparation of meetings with the Commission and the exchange of general information on the market. However, the activities of the parties also comprised the following which are contrary to Article 65 (1) of the ECSC Treaty:

- the fixing of target prices,
- the harmonization of extras,
- the sharing of markets, and
- the exchange of detailed information on their individual activities of a kind normally considered a business secret so as to facilitate the coordination of their behaviour.

3.2. *Agreements and concerted practices*

- (216) The concepts of 'agreements' and 'concerted practices' are distinct, but cases may arise where collusion presents some of the elements of both forms of prohibited cooperation.
- (217) It is not necessary, in order for a restriction to constitute an 'agreement' within the meaning of Article 65 (1), for the agreement to be intended as legally binding upon the parties. An agreement exists if the parties reach a consensus on a plan which limits or is likely to limit their commercial freedom by determining the lines of their mutual action or abstention from action in the market. No contractual sanctions or enforcement procedures are required. Nor is it necessary for such an agreement to be made in writing.
- (218) A concerted practice relates to a form of cooperation between undertakings which, without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation for the risks of competition.
- (219) The object of the Treaty in creating a separate concept of concerted practice is to forestall the possibility of undertakings evading the application of Article 65 (1) by colluding in an anti-competitive manner falling short of a definite agreement by (for example) informing each other in advance of the attitude each intends to adopt, so that each could regulate its commercial conduct in the knowledge that its competitors would behave in the same way.

The Court of Justice so held in its judgment of 14 July 1972 in *Imperial Chemical Industries Ltd v. Commission* (Case 48/69, [1972] ECR, p. 619). This case concerns the interpretation of Article 85 (1) of the EC Treaty. Since this provision and Article 65 (1) of the ECSC Treaty are identical in this respect, the interpretation given by the Court of Justice (and the Court of First Instance) to the concept of concerted practices also applies in the context of Article 65 (1) of the ECSC Treaty.

It goes without saying that the scope of this concept is determined by the provisions of the ECSC Treaty (in particular Article 60) which will be discussed below (see recital 239 *et seq.*).

- (220) In its judgment of 16 December 1975 in relation to the European Sugar Cartel (*Suiker Unie and other v. Commission*, Joined Cases 40 to 48, 50, 54 to

55, 111, 113 and 114/73, [1975] ECR, p. 1663) the Court of Justice held that the criteria of coordination and cooperation laid down by the case law of the Court must be understood in the light of the concept inherent in the provisions of the Treaty relating to competition that each economic operator must determine independently the commercial policy which he intends to adopt in the common market. This requirement of independence does not deprive undertakings of the right to adapt themselves intelligently to the existing or anticipated conduct of their competitors but it does strictly preclude any direct or indirect contact between them, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market.

Thus conduct may fall within Article 65 (1) as a 'concerted practice' even where the parties have not reached agreement in advance on a common plan defining their action in the market but adopt or adhere to collusive devices which facilitate the coordination of their commercial behaviour.

The above definition of the Court of Justice is particularly apt to apply to the price increases implemented in the United Kingdom in 1990 (see recitals 111, 112 and 115), and the harmonization of size extras at the end of 1990 (see recitals 139 to 142). It has also to be taken into account that, in a complex cartel, some participants at one time or another might not express their definite assent to a particular course of action agreed by the others but nevertheless indicate their general support for the scheme in question and conduct themselves accordingly.

The importance of the concept of a concerted practice does not thus result so much from the distinction between it and an 'agreement' as from the distinction between forms of collusion falling under Article 65 (1) and mere parallel behaviour with no element of concertation.

This interpretation was endorsed by the Court of First Instance in its recent judgments in the polypropylene cases (see for example its judgment of 24 October 1991, *Rhône-Poulenc SA v. Commission*, Case T-1/89, [1991] ECR II, p. 867, paragraph 124).

Nothing therefore turns in the present case upon the precise form taken by the collusive arrangements.

3.3. *The object and effect of the cartel*

- (221) In the present case, the basic purpose behind the continuing collusion of the parties was to balance supply and demand and to increase and harmonize prices in the different Member States of the ECSC, thereby cementing the traditional pattern of trade.
- (222) It is not strictly necessary, for the application of Article 65 (1), given the overtly anti-competitive object of the cartel, for an adverse effect upon competition to be demonstrated.

The economic analysis submitted by Mr Bishop suggests that the effect of the incriminated practices was limited. It has to be pointed out, however, that this effect was far from negligible. Firstly, the participants include all the most important producers of beams in the ECSC. Secondly it has to be noted that the minutes of the meetings often record the parties' view that the respective price increases had been achieved.

3.4. *Particulars of the cartel and its operation*

3.4.1. *Poutrelles Committee*

3.4.1.1. *Price-fixing arrangements*

(a) *Agreements and concerted practices*

- (223) Agreements on prices were reached on several occasions in 1986 and 1987 (see recitals 80 to 86).
- (224) At an unspecified date prior to 2 February 1988 an agreement was reached at a meeting to increase prices in Germany and France (see recital 87).

Further target prices (for the fourth quarter of 1988) were agreed prior to 25 July 1988 (see recital 88).

- (225) The meeting on 18 October 1988 agreed on target prices to be achieved for the first quarter of 1989 (see recital 89 to 93).

The minutes of this meeting refer in this context to 'estimated' prices, thereby suggesting that these were the prices which the participants expected to prevail on the markets concerned. It has to be borne in mind, however, that the meetings of the Poutrelles Committee were attended by the most important producers of beams in the Community which together accounted for at least two-thirds of

deliveries in the ECSC. A discussion on future prices between such parties cannot therefore *prima facie* be regarded as neutral conduct with no impact on competition between these parties. Furthermore there is sufficient circumstantial evidence which confirms that the prices set out in the minutes in reality were the prices which the companies concerned by common agreement endeavoured to achieve:

- the background shows that prices had been fixed at prior meetings of the Poutrelles Committee and similar meetings,
- the participants of the Poutrelles Committee managed to harmonize basis prices on continental ECSC markets to a large extent (recital 7), a result which had been on the agenda at least since 1987 (see recital 82),
- the minutes set out in minute detail, for each category and market and also for different classes of customers, the prices 'expected' for the first quarter of 1989. Such precision would hardly have been possible if the parties concerned had indeed only made estimates of future prices,
- the wording of the minutes ('The price increases ... result in the following level of prices') supports this conclusion,
- the telex from Thyssen to TradeArbed of 22 September 1988 (recital 91) reveals the existence of intentions on the part of participants of the Poutrelles Committee to increase prices by amounts corresponding to the 'estimates' set out in the minutes of the meeting on 18 October 1988. This document also shows that prices had been discussed — and agreed — between participants of the Poutrelles Committee beforehand,
- similar or identical terminology was used for the prices discussed at the Eurofer/Scandinavia meetings of which it is abundantly clear that they had been fixed (see, for example, the telex quoted at recital 200),
- agreements were made to increase prices by harmonizing and increasing extras (see 3.4.1.2). It would be surprising if in such circumstances the parties should have let the free play of competition decide on the amount of the basis prices,
- uniform figures are given also for markets with more than one local producer (such as Germany).

- (226) These considerations also apply to the subsequent discussions on prices at the meetings of the group.

Some of the parties alleged that they did not consider themselves to be bound to apply these prices. Even assuming that this should have been the case, none of the minutes and other documents exchanged between the parties mention that these parties ever informed the other participants accordingly. The parties concerned therefore at least gave the impression that they would apply these prices (see the judgement of the Court of First Instance of 17 December 1991 in Case T-7/89, *Hercules v. Commission*, [1991] ECR I, p. 1711, paragraph 232). It is significant to note that the parties on various occasions expressed the view that these prices had been applied (see recital 98).

Saarstahl claimed, in its reply to the Statement of Objections, that 'target price' denoted the maximal price which could be obtained in view of the objective conditions prevailing on the market. As this implies that that price could be ascertained by each company independently on the basis of objective criteria it is significant that the companies still found it necessary to meet and discuss these prices.

- (227) At the meeting on 10 January 1989, target prices were agreed for deliveries to France, Germany, the Benelux countries and Italy (see recitals 95 and 96).

Further target prices for the Italian market and the Spanish market respectively were adopted at the meeting of the Poutrelles Committee on 7 February 1989 (see recital 98).

- (228) Target prices to be applied in the third quarter of 1989 on the markets of Germany, France Belgium/Luxembourg, Italy and Spain were agreed at the meeting on 19 April 1989 (see recital 99). These prices were practically identical with the target prices for the second quarter of 1989. This does not necessarily imply that the participating companies had problems in achieving these prices on the markets concerned since the parties agreed, at the same meeting, on an increase of dimension extras.

- (229) At the same meeting British Steel informed its competitors of the increase in prices it intended to introduce on the United Kingdom market and asked these competitors to charge equivalent prices for their exports to the United Kingdom (see recital 100). It has to be borne in mind that prices in the United Kingdom were considerably higher than on the continental markets of the ECSC. British Steel thus requested its competitors to concert prices for deliveries to the United Kingdom. This incitation occurred in the context of the cooperation between

the undertakings participating in the Poutrelles Committee which had — as shown above — already resulted in a number of price-fixing agreements in respect of continental ECSC markets to which British Steel had been a party. These factors distinguish British Steel's action from a situation where a company informs a competitor with which it has not previously had contacts or cooperative links of the prices it intends to apply in the future.

- (230) The price increases which British Steel subsequently introduced were accepted by the market in the United Kingdom without difficulties (recital 102). It is therefore fair to conclude that British Steel's competitors had in fact complied with British Steel's request and concerted their prices with British Steel.

- (231) At the meeting of the Poutrelles Committee on 11 July 1989 it was agreed that the same target prices as in the third quarter of 1989 should be applied in the fourth quarter of 1989 in Germany (see recital 102).

- (232) At the meeting on 12 December 1989 it was decided to apply the same target prices which had been used in the fourth quarter of 1989 also in the first quarter of 1990 (see recital 107).

- (233) At the meeting on 14 February 1990, Unimétal announced that it would increase the price of category 2c in France. The evidence shows that this was not a unilateral decision taken by Unimétal:

— both Peine-Salzgitter (on several occasions) and TradeArbed had urged Unimétal to make an increase (see recitals 109 and 110),

— the increase was announced at a meeting of the Poutrelles Committee where these (and other) competitors were present,

— at the time of the increase, the market was weak, as is shown by the fact that basis prices in France had not been increased for more than a year. In these circumstances the increase in the price of one single category cannot be explained by economic considerations but must be attributed to the common will of the companies concerned to harmonize prices.

- (234) Shortly after the meeting on 14 February 1990, British Steel informed TradeArbed, Peine-Salzgitter, Thyssen, Saarstahl and Unimétal of the prices for deliveries to the United Kingdom which it did not consider 'disruptive' (see recital 112).

- (235) This action cannot be regarded as unilateral behaviour on the part of British Steel. It forms part of the constant dialogue between this company and its competitors in other Member States, which was carried on notably on the occasion of the meetings of the Poutrelles Committee. The fact that this was indeed a concerted practice — and not unilateral conduct — is for example evidenced by the correspondence between British Steel and Peine-Salzgitter on the subject of quantities (see recital 55).
- (236) Although British Steel mentioned certain offers below the British Steel price list on the United Kingdom market at the meeting of the Poutrelles Committee on 21 March 1990, it is fair to assume that the companies concerned did increase their prices as suggested by British Steel. This is evidenced by the fact that British Steel increased its prices only a few months later (see recital 115). It is not conceivable that it would have done so if the companies which it had contacted had disregarded its suggestions as to prices.
- (237) On 7 June 1990 British Steel informed TradeArbed, Peine-Salzgitter, Saerstahl, Thyssen, Ensidesa, Unimetal and Aristrain of the new prices it intended to apply and asked them to respect this price level (see recital 115). At an unspecified date British Steel entered into an agreement with TradeArbed which appears to have set out the prices to be charged for deliveries in the United Kingdom (see recital 117).

Initially British Steel's efforts to convince the other companies to respect its price level had little success (see recital 117). At the meeting of the Poutrelles Committee on 10 July 1990 British Steel stressed that the support of all the Eurofer companies exporting to the United Kingdom was 'necessary to underpin the new price structure'. Since British Steel informed the meeting of the Poutrelles Committee on 11 September 1990 that the price increase had been accepted by the customers in the United Kingdom, it is fair to conclude that this support was forthcoming.

British Steel claims that its behaviour is justified by the price rules laid down in Article 60 of the ECSC Treaty which require a company to inform, on request, interested parties of its prices. British Steel does not claim that it supplied the information concerned as a result of a request from its competitors. In any event, such information on

prices may be given only once these prices have been notified to the Commission. Furthermore British Steel has not explained how Article 60 of the ECSC Treaty could legitimize its urging of competitors to apply its prices for exports to the United Kingdom.

In addition British Steel relies on discussions with Commission officials on proposed changes to the price rules which took place in 1989 as showing that the Commission was aware of and supported the bilateral or central exchange of prices. The minutes of the meeting between representatives of the Commission and Eurofer on 20 July 1989, prepared by Eurofer, state clearly that the Commission officials

'... stressed the proposal presented still has to be considered as a "reflexion" and that it needs to be completed and examined by other Commission departments.'

The matter did not progress beyond the proposal stage and cannot therefore be relied upon by British Steel.

(b) *Article 65 (1)*

- (238) All of these agreements and concerted practices tended to restrict competition and are therefore contrary to Article 65 (1).

(c) *Articles 60 and 46 et seq.*

- (239) Article 65 refers to 'normal' competition within the common market. It is understood that this concept has to be interpreted in the light of the ECSC Treaty as a whole. Contrary to the claims of the parties, however, none of the other provisions of the Treaty renders the conduct of the parties described above legal.

Article 60 obliges the undertakings to publish their price lists and conditions of sale in the manner prescribed by the Commission. These prices and conditions have to be decided upon autonomously by each individual company. Article 60 does not allow the undertakings to concert and fix prices among each other.

- (240) It has been claimed by most of the parties that the communication to competitors of prices which the undertakings concerned intended to apply in the future was made legitimate or even necessary by the principle of transparency laid down in Articles 46 et seq. and 60. Even assuming for a moment that the submission that the parties only

communicated their future prices to each other (and did not concert and fix these prices) were correct, the argument would be of no avail. The principle of transparency — important as it is — cannot be understood as allowing or still less requiring the undertakings to behave as they have in this case.

Article 60 of the ECSC Treaty does, to a certain extent, limit competition between undertakings in so far as prices are concerned by requiring these undertakings to publish their prices and to abstain from applying dissimilar conditions to comparable transactions.

It is therefore all the more important to ensure that the remaining competition, the existence of which the ECSC Treaty presupposes, is not restricted by agreements or concerted practices between undertakings. The creation of artificial market conditions in which abnormal standards of information and market stability eliminate certain competitive risks is at variance with the undistorted competition which the ECSC Treaty strives to protect. This is all the more so where the benefits of this artificial improvement in information are, as in this case, reserved to the producers and their distributors while they are withheld from the buyers.

- (241) Some of the parties argued that their actions were only aimed at combating conduct which was incompatible with Article 60, that is to say sales which did not respect the rules on pricing laid down in that provision. The argument put forward was to the effect that an agreement with the exclusive purpose of preventing actions which are not covered by the concept of 'normal' competition within the meaning of the ECSC Treaty would not infringe Article 65. Even if this argument were accepted, the companies would not be able to benefit from it. It is clear that this was not the purpose behind the price arrangements between the parties. In any event, the enforcement of the provisions of Article 60 is the responsibility of the Commission. The companies cannot disregard the official prices published by them and agree on — unpublished — target prices between themselves instead.

(d) Participation of the parties

- (242) The prices discussed at the meetings of the Poutrelles Committee or in their context were the prices to be applied for deliveries to the respective market. In principle, all the parties concerned were exporting to the markets covered by the arrangements. The responsibility for the agreements and concerted practices described

above therefore has to be borne by all the companies for the period during which they participated in the meetings and the concomitant cooperation.

Since the cartel was continuing over a number of years, the fact that some participants may have missed certain meetings is of no practical relevance. In any case absentees were informed of what had been decided at meetings.

- (243) The individual behaviour of each of the companies will be considered below.

3.4.1.2 Harmonization of extras

(a) Agreements

- (244) At the meeting on 15 November 1988 an agreement was reached to harmonize quality extras. The object and effect of this agreement was not only to harmonize extras but also to increase them by adopting the levels of quality extras in use in Germany at that time as the target to be attained (see recital 122).
- (245) At the meeting on 19 April 1989 an agreement was reached to harmonize size extras the object of which was not only to harmonize but also to increase dimension extras (see recital 125 to 128 and — for the background — recital 124).

The evidence shows that the new dimension extras were indeed applied by the participants as from 1 October 1989. However, their application had some negative repercussions on basis prices.

- (246) At the meeting on 6 June 1989 a further agreement to harmonize quality extras was reached (see recital 129). The object and effect of this agreement was not only to harmonize extras but also to increase them.
- (247) At the meeting on 16 May 1990 a further agreement to harmonize size extras was reached (see recitals 132 to 134). The fact that these increases were indeed the subject of an agreement is confirmed by a report prepared by the Walzstahl-Vereinigung and the confidential note dated 17 May 1990 drawn up by the secretariat of the Poutrelles Committee (see recitals 133 and 135).
- (248) At the meeting on 4 December 1990 an agreement to harmonize size extras was reached. The fact that there was indeed an agreement can be deduced from the following circumstances:

- the issue had been discussed at meetings of the Poutrelles Committee and elsewhere at least since 11 September 1990 (see recitals 138 and 119),
- the Italian group had already tabled a proposal for the harmonization of size extras on 11 September 1990 (see recital 138),
- in November 1990 the Walzstahl-Vereinigung circulated a proposal which was clearly meant to be adopted by all producers in the ECSC (recital 139),
- the minutes of the meeting on 4 December 1990 and the fax sent by the Walzstahl-Vereinigung to British Steel on 13 December 1990 (see recital 141) confirm that there had been an agreement to harmonize size extras. The purpose underlying this step — namely to increase overall prices without raising basis prices — is set out in unambiguous terms in the fax sent to Ferdofin by the Walzstahl-Vereinigung on 19 December 1990 (see recital 121).

(b) *Article 65 (1)*

- (249) Since extras form part of the ultimate price to be paid for the products in question on the continental markets of the ECSC these agreements to harmonize extras were agreements to fix prices contrary to Article 65 (1).
- (250) The evidence shows that the purpose of these agreements was not (as some of the parties claim) to further transparency, but to increase prices. In order to make the market more transparent in accordance with Article 60 of the ECSC Treaty, it would have sufficed to harmonize the structures (and not the actual amounts) of the extras.

(c) *Participation of the companies*

- (251) The evidence shows that all the parties concerned were a party to these agreements. This also applies to British Steel. Although the agreements only concerned continental markets and not the United Kingdom market (due to the fact that extras are not used there) British Steel agreed to respect the new extras for deliveries on the continent.
- (252) For the reasons set out at recital 313, Ensidesa and Aristrain will not be held responsible for their participation in the agreement of 15 November

1988. As to the period after 1 January 1989, whilst it is true that the Spaniards did not harmonize their own extras in Spain (but only promised to do so), they agreed with the others to apply the harmonized extras in the other ECSC markets concerned.

3.4.1.3. Market-sharing arrangements

(a) *Ferdofin*

- (253) As described above (recital 61) a market-sharing agreement was concluded on 14 July 1988 under the terms of which Ferdofin was to restrict its sales to Germany, the Benelux countries, France and Denmark/Ireland/Greece respectively.

The wording of Ferdofin's telex of 4 August 1988 (see recital 62) confirms that the limitation of Ferdofin's exports to the relevant markets had been the subject of an agreement and did not represent a unilateral action. As the identity of the other parties to the agreement could not be ascertained, only Ferdofin will be held responsible for this agreement.

(b) *'Traverso methodology'*

- (254) A system under which the participating companies strove to match supply and demand was in operation for the fourth quarter of 1988 and the first quarter of 1990 (see recitals 72 to 79). The evidence shows that this system was set up shortly before 19 July 1988 (recital 72).
- (255) The following companies participated in this system: Peine-Salzgitter, Thyssen, Klöckner, Saerstahl, Unimetal, Ferdofin, Cockerill Sambre, TradeArbed and British Steel (see recital 75).
- (256) The companies concerned notified their delivery plans to the chairman of the CDE. These figures were then circulated among the participating companies (see recital 74). The chairman of the CDE was in a position to approach any of these companies and suggest modifications if he thought fit to do so.
- (257) The chairman of the CDE regarded the delivery plans which were thus distributed among the participants as recommendations which should not be exceeded. The evidence shows that the participating companies, at least in principle, shared this view (see recital 77).

These 'recommendations' laid down specific figures for each of the companies and each of the markets

concerned. Companies which disregarded these figures were approached by the chairman of the CDE and Eurofer and requested to respect the traditional pattern of trade (see recital 72).

As a result the participating companies knew the conduct as to deliveries which their competitors proposed to adopt in the future.

(258) By disclosing their delivery plans to each other and by putting into effect the recommendations of the chairman of the CDE the companies concerned removed the uncertainty which each of them would normally have had to bear concerning the future behaviour of their competitors. Such conduct therefore tends to have as its object or effect the restriction of competition. It therefore represents a concerted practice prohibited by Article 65 (1) of the ECSC Treaty.

(259) The fact that the system described above had only limited success and that it was of a voluntary nature does not invalidate this conclusion.

(c) *France*

(260) An agreement under which the participants concerted their deliveries on the French market for the fourth quarter of 1989 was reached at the meeting on 21 September 1989 or shortly before or after this meeting.

The following companies participated in this agreement: Peine-Salzgitter, Thyssen, Saarstahl, Ferdofin, Cockerill Sambre, TradeArbed, British Steel, Ensidesa and Unimétal (see recitals 63 to 71). Ensidesa was not actively involved in the elaboration of the scheme but complied with it.

(261) The telex from the Walzstahl-Vereinigung dated 26 September 1989 which sets out the tonnages which the participating companies intended to deliver (see recital 67) does not itself show that these companies were concerting their sales on the French market. However, the fact that these delivery plans had indeed been concerted and did not represent the result of individual decisions taken independently by each company is sufficiently proven by the following circumstances:

- Peine-Salzgitter, Thyssen, Saarstahl, British Steel, Cockerill Sambre, Unimétal and TradeArbed had held discussions prior to the meeting on 21 September 1989 with a view to finding a formula for dividing up the French market (see recitals 63 and 64),
- at the meeting on 21 September 1989, Unimétal had clearly specified the sum of

deliveries to the French market in the fourth quarter of 1989, the quantities which it intended to deliver itself and the tonnages for non-Eurofer companies from the ECSC and non-ECSC countries respectively. By doing so it necessarily implied that the balance (some 33 000 tonnes/month) was to be shared among the other companies participating in the Poutrelles Committee,

- the note of the Walzstahl-Vereinigung dated 25 September 1989 (see recital 66) confirms that companies delivering to France were concerting their sales,

- the wording of the fax which the secretariat sent out on 7 November 1989 confirms (see recital 68) that a 'system' for deliveries to France in the fourth quarter of 1989 had been established.

(262) Most of the participating companies acted accordingly or even delivered less than envisaged (see recital 69). Only three companies (Thyssen, Ferdofin and British Steel) delivered substantially more than they had announced previously.

3.4.1.4. Exchange of information

(a) *Monitoring of orders and deliveries*

(263) The following companies engaged in an exchange of information concerning their orders and deliveries of beams (see recitals 39 to 46): Peine-Salzgitter, Thyssen, Saarstahl, Hoesch, Neue Maxhütte, TradeArbed, Cockerill Sambre, British Steel, Unimétal, Ferdofin, Aristrain und Ensidesa.

The figures exchanged under the order-monitoring system showed the orders which each individual company had received for delivery in France, Germany, Belgium/Luxembourg, the Netherlands, the United Kingdom, Italy, Spain, Portugal and Greece/Ireland/Denmark. The figures exchanged under the monitoring of deliveries were those for deliveries to Germany, France, the United Kingdom, the Benelux countries, Italy, Greece/Ireland/Denmark, Portugal and Spain. Figures were exchanged for a considerable period of time, beginning in 1984 or before (monitoring of orders) and in the fourth quarter of 1988 (monitoring of deliveries) respectively. The exchange of individual figures for each company was temporarily suspended at the end of July or in the beginning of August 1990. The exchange of individual figures for orders was resumed — at least between TradeArbed, Ensidesa, Unimétal, Ferdofin and Aristrain — in October 1990 at the

latest. Thyssen, Saarstahl, Peine-Salzgitter, Neue Maxhütte and Hoesch resumed participation in the exchange of individual information, through the intermediary of the Walzstahl-Vereinigung, in December 1990 at the latest (recital 46). The exchange of individual information on deliveries was continued in the third quarter of 1990 between TradeArbed, Unimétal, Ensidesa and Aristrain.

(264) The system for the exchange of information on orders is the result of an agreement between those taking part in it. The establishment of the monitoring system for deliveries owes its origin to an agreement which was first reached on 18 October 1988 (see recital 41) and (expressly or tacitly) renewed several times on the occasion of meetings of the Poutrelles Committee. In so far as the companies actively participating in the Poutrelles Committee are concerned (that is to say all the companies involved in this exchange of information apart from Hoesch and Neue Maxhütte) there is abundant evidence that these parties knew of and agreed to the exchange of this information. That Hoesch and Neue Maxhütte knew of this arrangement and adhered to it is proven by the fact that all the companies contributing figures to this monitoring received a copy of the tables which were prepared by Usinor Sacilor on the basis of this information.

(265) All the companies contributing their figures to this exchange of information therefore knew that their figures were circulated to their competitors. It is not conceivable that they would have made their figures available if they had not agreed to their being disclosed to competitors.

(266) In order to be able to compete effectively on a given market, companies need information about that market and developments on it. The preparation and distribution of collated output, sales or other statistics within an industry is a task which may legitimately be undertaken by statistical offices and trade associations. The provision of such statistics can improve the companies' knowledge of the market in which they operate and thereby increase competition. The Commission does not therefore object where national trade associations representing the same economic interests in different countries exchange statistics which set out production and sales figures for the industry in question without identifying individual companies ⁽¹⁾.

(267) In the present case, however, the parties concerned have gone beyond what is admissible. The figures exchange showed the deliveries and the orders

received by each individual company for delivery to the respective markets. Such information is normally regarded as strictly confidential by undertakings. The figures on orders were updated every week and circulated rapidly among the participants.

The delivery figures were circulated shortly after the end of the quarter concerned. Each of the participating companies had thus a comprehensive and detailed knowledge about the deliveries which their competitors intended to carry out and their actual deliveries. These companies were consequently in a position to ascertain the behaviour which their competitors proposed to adopt or had adopted on the market and act accordingly. The evidence shows (see in particular recital 59) that this was the very reason why the parties concerned engaged in this exchange of information.

(268) The information thus exchanged served as the basis of discussions on trade flows (see recitals 49 to 60) which were one of the main topics on the agenda of the meetings of the Poutrelles Committee (recital 57). Companies whose orders exceeded the 'normal' level were taken to task (see for example recital 51).

Companies from countries whose exports exceeded certain levels were requested to explain the reasons for these increases (see for example recital 51). On occasions certain companies were directly criticized over their deliveries to other Member States (see, in particular recitals 53 and 60).

The monitoring of deliveries and the monitoring of orders complemented each other, thereby improving the effectiveness of this exchange of information. The participating companies closely followed these figures and checked whether the deliveries matched the orders previously announced by the companies. In case of discrepancies the companies concerned were asked to provide an explanation (see recitals 49 to 60). The parties thus indeed managed to bring about a remarkable degree of transparency as between themselves.

The exchange was not limited to figures of a merely historical value with no possible impact on competition. If this had been the case, the extensive discussions on these figures would be inexplicable.

(269) This exchange of information therefore resulted in the establishment of a system of solidarity and cooperation designed to coordinate business activities. The parties participating in this exchange

⁽¹⁾ Seventh Report on Competition Policy, point 7.

of information thereby replaced the normal risks of competition by practical cooperation, resulting in conditions of competition differing from those obtaining in a normal market situation. In this context proper account has to be taken of the fact that the market for beams in the Community is an oligopolistic market where a very limited number of suppliers offers homogeneous products to the consumer.

- (270) The exchange of individual information between undertakings is not necessarily a breach of the competition rules. Each case must be examined separately and all the relevant factors including the nature of the information, its degree of aggregation and the market concerned should be taken into account when determining whether the exchange constitutes an illegal restriction of competition. The exchange of individual information which is not likely to influence the behaviour of the undertakings in the market because it is of only historical interest may therefore be permitted. In view of the negative effects on competition between the participating companies a system for the exchange of information such as the one in the present case is not covered by the Commission notice on cooperation between undertakings ⁽¹⁾, particularly paragraph II.1 thereof.

- (271) The fact that this system for the exchange of information had the effect of creating transparent market conditions in no way invalidates the conclusion that this system infringes Article 65 (1) of the ECSC Treaty.

In Decisions 87/1/EEC (Fatty Acids) ⁽²⁾ and 92/157/EEC (United Kingdom Agricultural Tractor Registration Exchange) ⁽³⁾ the Commission took the view that the exchange of detailed information enabling the behaviour of the individual companies in narrow oligopolies to be identified constituted an infringement of the competition rules. The Commission does not however object to the exchange of aggregated historical information. In this case the information exchanged included accurate and up-to-date information about orders and deliveries of individual companies.

None of the provisions of the ECSC Treaty relied on by the parties (in particular Articles 46, 47, 48 and 60) requires or allows the exchange of sensitive information such as figures on orders and

deliveries among competitors. This 'transparency' was in any event limited to the producers themselves; consumers (see Article 48(3) of the Treaty) did not benefit from it.

The wording of Article 65 (2) of the ECSC Treaty is narrower than that of Article 85 (3) of the EC Treaty. The scope for exempting (or authorizing) agreements is therefore less under the ECSC Treaty. However, this difference could only be used as an argument for excluding the present system for the exchange of information from Article 65 (1) if it also produced substantial advantages or improvements. Even at the hearing and with the benefit of the assistance of eminent economists the parties were not able to explain why an exchange of individual figures was necessary and why the exchange of aggregated historical information (to which the Commission does not object) would not have been sufficient.

A degree of uncertainty as to the behaviour which competitors propose to adopt on the market is essential for the maintenance of competition.

(b) *Exchange of information through the Walzstahl-Vereinigung*

- (272) The above considerations apply *mutatis mutandis* to the exchange of information in which Thyssen, Peine-Salzgitter, Hoesch, Neue Maxhütte, Saarstahl and TradeArbed engaged, via the Walzstahl-Vereinigung, at least in the third and fourth quarter of 1990 (see recitals 47 and 48). It is not credible that the Walzstahl-Vereinigung could have obtained and circulated the figures for orders received and deliveries carried out by the participating companies without the knowledge and approval of these companies. The only difference between this exchange of information and the monitoring system operated by the secretariat of the Poutrelles Committee lay in the smaller number of participants.

3.4.2. Restrictive practices on the German market

- (273) As described above the following companies engaged in restrictive practices on the German market:

— Peine-Salzgitter, Thyssen and TradeArbed entered in various price-fixing agreements, beginning in December 1986 (see recitals 147 and 148),

⁽¹⁾ OJ No C 75, 29. 7. 1968, p. 3.

⁽²⁾ OJ No L 3, 6. 1. 1987, p. 17.

⁽³⁾ OJ No L 68, 13. 3. 1992, p. 19.

- Peine-Salzgitter and TradeArbed attended two meetings in June 1987 which resulted in concerted price increases (see recital 149),
- at a meeting in January 1988, Peine-Salzgitter, TradeArbed, Hoesch, Saarstahl and Thyssen adopted common recommendations as to prices and agreed on major aspects of their future price policy (see recital 150),
- prices were fixed between TradeArbed and Hoesch at some stage prior to 18 April 1989 (see recital 152),
- on at least two occasions in 1989 several producers agreed to restrict their deliveries to the German market with a view to stabilizing this market. Of these undertakings only Peine-Salzgitter can be identified as taking part in the first of these agreements (see recital 153) whilst on the second occasion only Peine-Salzgitter, Saarstahl and TradeArbed can be identified as having agreed to limit their deliveries (see recital 154).

3.4.3. Restrictive practices on the French market

- (274) In 1987, at least Unimétal, Cockerill Sambre and TradeArbed were concerting the prices they charged on the French market (see recital 155).

3.4.4. Restrictive practices on the Italian market

- (275) Agreements or concerted practices for the fixing of prices or the sharing of markets in Italy were entered into on various occasions as follows:

- at the meeting on 7 April 1987, target prices for the Italian market which had previously been fixed were renewed or confirmed between Ferdofin, TradeArbed, Peine-Salzgitter and Unimétal (see recital 155),
- further price agreements were concluded at an unspecified date some time after this meeting (see recitals 157 to 159). The evidence shows that at least Peine-Salzgitter and Ferdofin must have been a party to these agreements,
- an agreement on prices for the first quarter of 1988 was reached between TradeArbed, Peine-Salzgitter, Unimétal, British Steel, Aristrain, Ensidesa, Ferdofin, Stefana, Thyssen, Saarstahl and Cockerill Sambre at a meeting on

25 November 1987 (see recitals 160 and 161). For the reasons set out below (recital 313) Aristrain and Ensidesa will not be held responsible for this agreement,

- prices for the second quarter of 1988 were fixed between TradeArbed, British Steel, Peine-Salzgitter, Saarstahl, Thyssen, Unimétal, Cockerill Sambre, Ferdofin and Stefana at a meeting on 13 March 1988. The same companies (with the exception of Stefana) also entered into a market-sharing agreement pursuant to which quotas for deliveries to Italy were attributed (see recitals 162 to 165),
- price increases for the third quarter of 1988 were agreed at some unspecified date prior to 28 June 1988. At least Ferdofin and Peine-Salzgitter were a party to this agreement (see recital 166),
- on 21 June 1988 a decision was taken to renew the market-sharing arrangement for the third quarter of 1988 (see recitals 167 and 168). It follows that this agreement was entered into by Ferdofin, TradeArbed, British Steel, Cockerill Sambre, Peine-Salzgitter, Saarstahl, Thyssen and Unimétal,
- further target prices were agreed on between TradeArbed, British Steel, Peine-Salzgitter, Unimétal and Ferdofin at a meeting on 3 October 1988 (see recital 169),
- prices were fixed between TradeArbed, Peine-Salzgitter, Saarstahl, Unimétal, Thyssen and Ferdofin at a meeting on 15 May 1990 (see recitals 170 and 171).

3.4.5. Individual agreements

3.4.5.1. British Steel-Ensidesa/Aristrain

- (276) At an unspecified date early in 1990 an agreement was reached between British Steel, Ensidesa and Aristrain under the terms of which British Steel was to limit its sales in Spain. Price increases for the first quarter of 1991 were also agreed (see recitals 172 to 174).

3.4.5.2. British Steel-Ferdofin

- (277) Since late 1987, at least, an agreement existed between British Steel and Ferdofin pursuant to which the latter undertook not to sell in the United Kingdom (see recitals 175 and 176).

3.4.6. Conclusions

- (278) All of these agreements and concerted practices set out in recitals 273 to 277 tended to restrict competition and are therefore contrary to Article 65 (1).

4. EXCHANGE OF INFORMATION THROUGH EUROFER

- (279) A separate system for the exchange of information was organized and run by Eurofer as described above (recitals 143 to 146). Eurofer circulated information on deliveries by companies which were, directly or indirectly, members of Eurofer.

- (280) Eurofer is an association of undertakings for the purposes of Article 65 of the ECSC Treaty. This conclusion is not affected by the fact that most of its members are themselves associations of undertakings. In order to be able to apply the competition rules of the ECSC Treaty both properly and effectively the Commission is required to look at the economic substance rather than the legal form in a given case. Furthermore it has to be pointed out that an entity the members of which (both undertakings and associations of undertakings) are themselves subject to the provisions of Article 65 of the ECSC Treaty cannot itself be exempted from the scope of application of this provision.

- (281) Article 65 (1) of the ECSC Treaty refers to decisions by associations of undertakings which may restrict competition. The existence of such a decision may be inferred from the actual conduct of an association of undertakings, its bodies or its subsidiary organs.

According to Eurofer's articles of association the exchange of information is one of the tasks which this association has to carry out (Article 2, fourth indent). It has to be assumed that Eurofer did not act without the express or tacit approval of its members. This is confirmed by the fact that the figures exchanged were those of the companies that were (directly or indirectly) members of Eurofer.

- (282) This interpretation is in accordance with the letter, the spirit and the purpose of Article 65 which prohibits all agreements, decisions and concerted practices tending to restrict competition.

- (283) The circulation of information through Eurofer tended to have the same detrimental effects on competition as the systems for the exchange of information described above (see recitals 263 to 272). Eurofer provided the companies which were (directly or indirectly) its members with

information on the deliveries made by their competitors. The circulation of such information which is normally regarded as a trade secret made it possible for each company to establish what form of conduct its competitors were engaging in on individual markets. This exchange of information thereby resulted in the normal risks of competition being replaced by practical cooperation and in conditions of competition different from those obtaining in a normal market. Such conduct is contrary to Article 65 (1) of the ECSC Treaty.

5. ACTIVITIES OF THE EUROFER/SCANDINAVIA GROUP

5.1. *The nature and structure of the group*

- (284) From 1986 onwards, at the latest, producers and distributors of beams from the ECSC and from Scandinavia and some of their associations have participated in a series of agreements or concerted practices decided in the framework of a system of regular meetings and continuous contact.

- (285) The following companies regularly attended these meetings and/or took part in the agreements and concerted practices:

— Peine-Salzgitter,
— Thyssen,
— Saerstahl (since 1988),
— TradeArbed,
— Steelinter,
— Unimétal,
— British Steel,
— Norsk Jernverk,
— Ovako (at least since 1 September 1988),
— SSAB (until 31 August 1988),
— Smedjebacken/Fundia Steel AB.

Several associations of undertakings and Usinor Sacilor (which provided the secretariat) also participated in these activities. It appears that none of these made a substantial and individual contribution which would make it necessary to adopt a decision not only against their members (or, in the case of Usinor Sacilor, a subsidiary) but also against themselves.

- (286) These meetings related to the situation on the markets for merchant bar and beams in

Scandinavia, that is to say in Norway, Sweden, Finland and Denmark. Only the aspects concerning the market for beams in Denmark are considered here.

(287) The overall plan of the parties was to meet and reach agreement on the prices to be charged for exports to Denmark. As a result of regular contacts these arrangements were continually modified or updated so as to take account of changing conditions and market reactions.

(288) The Commission considers that the whole complex of schemes and arrangements decided in the context of a system of regular and institutionalized meetings between the producers mentioned in recital 285 constituted a single continuing 'agreement' within the meaning of Article 65 (1).

It is not necessary, in order for a restriction to constitute an 'agreement' within the meaning of Article 65 (1) for the agreement to be intended as legally binding upon the parties. An agreement exists if the parties reach a consensus on a plan which limits or is likely to limit their commercial freedom by determining the lines of their mutual action or abstention from action in the market. No contractual sanctions or enforcement procedures are required. Nor is it necessary for such an agreement to be made in writing.

(289) In the present case the companies, by subscribing to a common plan to regulate prices in the beams market in Denmark, participated in an overall framework agreement which was implemented by a series of more detailed sub-agreements worked out from time to time which will be summarized below.

(290) The conclusion that there is one continuing agreement is not affected by the fact that some companies were not present at every meeting. Since the cartel existed for a number of years, the fact that some participants may have missed certain meetings is of no practical relevance. In any case absentees were informed of what had been decided at meetings.

5.2. Agreements and concerted practices

(291) The Commission considers that the operation of the cartel constituted an 'agreement' within the meaning of Article 65 (1).

The concepts of 'agreements' and 'concerted practices' are distinct, but cases may arise where collusion presents some of the elements of both forms of prohibited cooperation.

As set out above (see recitals 219 and 220) the importance of the concept of a concerted practice does not result so much from the distinction between it and an 'agreement' as from the distinction between forms of collusion falling within Article 65 (1) and mere parallel behaviour with no element of concertation. Nothing therefore turns in the present case upon the precise form taken by the collusive arrangements.

5.3. The object and effect of the agreement

(292) In the present case, the basic purpose behind the institution of the system of regular meetings and the continuing collusion of the parties was to agree on prices to be charged for deliveries to the Danish market.

In pursuit of this objective, the parties were aiming at the organization of the market on a basis which substituted for the free operation of competitive forces an institutionalized and systematic collusion between producers and distributors.

(293) It is not strictly necessary, for the application of Article 65 (1), given the overtly anti-competitive object of the agreement, for an adverse effect upon competition to be demonstrated.

The economic analysis submitted by Mr Bishop suggests that the effect of the practices in question was limited. The Commission accepts that this effect decreased towards the end of the period under consideration, the year 1990 in particular is marked by efforts to prevent the prices from slipping. However, there are clear indications that the cartel nevertheless produced an appreciable effect upon competitive conditions:

firstly the participants include all the most important producers of beams from the ECSC exporting to Denmark and all the important beams producers from Norway, Sweden and Finland; secondly it has to be noted that the minutes of the meetings regularly record the parties' view that the various price increases had been achieved.

5.4. *Particulars of the cartel and its operation*

- (294) The evidence shows that target prices for beams on the Danish market were regularly fixed at the meetings of the Eurofer/Scandinavia group throughout the period under consideration.

The participants from the ECSC generally appear to have played the more active part in this cooperation (see recital 191). This is confirmed by the fact that on several occasions (see for example the meetings on 30 July and 28 October 1986) it was agreed that, for all or certain categories, the prices would be set by the participants from the ECSC after the respective meetings. By accepting this approach all the parties attending the Eurofer/Scandinavia meetings marked their agreement with the prices which were fixed later.

- (295) The Scandinavian companies put forward an argument to the effect that the prices were actually set or dictated by the Eurofer companies. Although it is clear that the Eurofer companies exerted considerable influence (see above), this argument would appear to understate the role of the Scandinavian participants. The evidence shows that the prices were fixed by the Eurofer companies and the Scandinavian producers acting together (see for example recitals 198 and 206).

- (296) The minutes of the meetings in the last years of the period under consideration appear to have been drafted in a rather cautious way and employ terms like 'forecasts' where prices are concerned. It is abundantly clear, however, that these so-called 'forecasts' were in fact also target prices. This conclusion is supported by the words of the chairman of these meetings himself (see recital 201).

At the oral hearing the representative of SSAB and Ovako confirmed that the prices agreed at the meetings were the prices to be applied by the participants.

L. INAPPLICABILITY OF ARTICLE 65 (2)

- (297) Pursuant to Article 65 (2) the Commission is to authorize specialization agreements or joint-buying or joint-selling agreements or agreements which are strictly analogous in nature and effect if they satisfy certain specified conditions. In the present case the restrictive practices concerned would never

have qualified for authorization since they do not come within the types of agreements which can be authorized. On the contrary, they were designed to share markets and to fix or determine prices, all of which activities are incompatible with the common market for coal and steel.

No application for authorization has ever been made in respect of any of the agreements or arrangements dealt with in this Decision. Furthermore none of the parties have attempted to justify their behaviour by claiming that it could be authorized under Article 65 (2).

M. APPLICABILITY OF ARTICLE 65 (5)

1. SCOPE OF ARTICLE 65 (5)

- (298) Pursuant to Article 65 (5) the Commission may impose fines or periodic penalty payments on any undertaking which has entered into an agreement which is automatically void, or has enforced or attempted to enforce an agreement or decision which is automatically void, or has engaged in practices prohibited by Article 65 (1).

- (299) The Commission may impose fines or periodic penalty payments not exceeding twice the turnover on the products which were the subject of the agreement, decision or practice prohibited by Article 65 (1); if, however, the purpose of the agreement, decision or practice is to restrict production, technical development or investment, this maximum may be raised to 10 % of the annual turnover of the undertakings in question in the case of fines, and 20 % of the daily turnover in the case of periodic penalty payments.

- (300) The agreements and concerted practices described in this Decision involved all the major producers of beams in the Community. The behaviour complained of included price fixing and market sharing. These are serious infringements justifying the imposition of large fines. It also involved exchanges of confidential information.

2. ECONOMIC SITUATION OF THE STEEL INDUSTRY

- (301) Steel producers are not generally making profits at the present time. However, according to their

annual accounts four of the major producers of beams, namely British Steel, Arbed, Peine-Salzgitter and Usinor Sacilor, made substantial profits⁽¹⁾ from their steel-making activities between 1988 and 1990.

3. ECONOMIC IMPACT OF THE INFRINGEMENTS

- (302) The economic effect of an infringement is frequently difficult to identify. There must always be some doubt as to the extent to which a given price rise is the result of normal market forces and how much it is due to the concerted action of the undertakings. In times of falling prices it becomes even more difficult to identify the effects of anti-competitive practices.

- (303) It is possible to obtain an idea of the order of magnitude of the benefits accruing to the participants by examining the effect of the price increases in the first quarter of 1989 which according to the evidence were accepted by customers. Price rises of DM 20 to 40 in Germany, FF 50 to 100 in France and Bfrs 200 to 800 in Benelux were obtained.

The additional revenue of producers selling into these markets was (on the basis of apparent consumption in these markets) at least ECU 7 million (calculated on the basis of the lowest price increases). In the second quarter further price rises in Germany, France, Benelux and Italy resulted in an additional increase in revenue of ECU 6 million. The total increase in revenue was at least ECU 20 million over six months (ECU 7 million in the first quarter and a total of ECU 13 (7 + 6) million in the second). Although the proportion of the overall benefit which is due to the price fixing and other concerted practices cannot be accurately established it is clear that the economic effects were substantial. A large part of the benefit accrued to the undertakings which took part in the price fixing because they supply over two-thirds of Community consumption.

- (304) Be that as it may, it is clear that the undertakings intended to restrict competition. It is not therefore necessary to attempt to ascertain the exact effect of the infringements.

(1) British Steel (1987/88 to 1989/90): ECU 2 240 million; Arbed (1988 to 1990): ECU 942 million; Usinor Sacilor (1988 to 1990): ECU 2 056 million; Peine-Salzgitter (1987/88 to 1989/90): ECU 181 million.

4. AGGRAVATING FACTORS

- (305) The Commission press release of 2 May 1988 made at the time of the inspection in the stainless steel case leading to Decision 90/417/ECSC, gave a clear warning that the Commission would not tolerate illegal arrangements organized by the industry.
- (306) In addition, some of the undertakings involved (British Steel, Thyssen and Usinor Sacilor) were fined for their participation in the stainless steel flat products cartel in that Decision which was published in the *Official Journal of the European Communities* in August 1990 and was widely discussed in both the specialized and general press. The attitude of the Commission towards illegal agreements and concerted practices had therefore been clear from at least May 1988.
- (307) There is evidence that some at least of the undertakings and their associations were aware that their behaviour was or could have been contrary to Article 65 of the ECSC Treaty.

This evidence includes the internal memorandum, prepared by Usinor Sacilor, setting out possible ways of evading the competition rules (see recital 105), the remark made by Eurofer's Head of Legal Affairs that the competition rules would be infringed 'if firms jointly decided to alter their lists of extras in line with this model, or if the coordinated changes to their extras in accordance with it.' (see recital 140) and an internal note prepared by Peine-Salzgitter (recital 59) which states, *inter alia*, 'A system of mutual exchange of statistics which extends to the backflow of individualized company data to competitors is at least suggestive of effects which restrict competition.'

5. THE CRISIS REGIME

- (308) During a significant part of the period dealt with in this Decision, the Commission used its powers pursuant to Article 58 of the ECSC Treaty to impose delivery or production quotas on steel undertakings. This system began in October 1980 and ended for beams on 30 June 1988. The Commission had also imposed minimum prices between 1984 and 1986 pursuant to the provisions of Article 61 of the ECSC Treaty. These anti-crisis measures were initiated and operated by the Commission.

(309) A number of companies argued that the application of these measures in the period of manifest crisis in some way suspended or modified the operation of Article 65 of the ECSC Treaty. The fact that competition has been limited in certain respects by the action of the Community does not permit undertakings to impose additional restrictions or restrict competition in other respects. It is essential, in such circumstances, that the undertakings and their associations do nothing further to reduce competition. At no time during the crisis did the Commission ever say anything to suggest that Article 65 was inoperative. This would in any event have been incompatible with the common market as expressed in Article 4. Article 65 is part of the ECSC Treaty and cannot be set aside or made inapplicable.

(310) Articles 58 and 61 do nothing to limit the application of Article 65 beyond the measures envisaged in the quota and price regimes. Only the Commission itself, as a temporary and exceptional measure, has the power to impose quotas and set minimum prices. The ECSC Treaty allows undertakings no latitude whatsoever to fix prices or share markets.

(311) However, in view of the possible misunderstandings about the operation of Article 65 during the period of manifest crisis and the operation of the quota system, the Commission has decided not to impose fines on companies for their behaviour up to 30 June 1988. This is the date when the quota regime ended.

From this date onwards the undertakings and their associations could not have doubted that the ECSC competition rules and in particular Article 65 applied.

6. INVOLVEMENT OF THE COMMISSION

(312) Most of the parties alleged that the Commission was aware of the existence of the restrictive practices concerned. This allegation is not

supported by any concrete evidence. The Commission's own thorough investigation has not produced any evidence which would support the allegations of the parties.

At the hearing it was nevertheless agreed in view of the importance of this argument that the parties should have the possibility of submitting further evidence. None of the documents which were subsequently supplied by the parties supported their claim. These documents consist mainly of papers prepared by Eurofer as a basis for the regular consultation between the Commission and the industry. They contain only general information which does not indicate that the companies were indulging in restrictive practices. It is significant that some of the parties went as far as to try to rely on a non-paper prepared by the Commission which contained an express *proviso* that Article 65 (1) must not be infringed.

7. SPANISH PRODUCERS

(313) The provisions of Protocol 10 of the Act of Accession of Spain and Portugal did not exempt the Spanish companies from the application of Community competition law. However, it must be taken into consideration that the freedom of Aristrain and Ensidesa to sell into the other Member States was clearly restricted by the Act of Accession by the quantitative export limits imposed during the transitional period. For this reason neither Aristrain nor Ensidesa will be fined for their participation in infringements up to 31 December 1988, the date of the expiry of the transitional measures.

8. FINES

(314) The Commission considers that fines should be imposed for anti-competitive behaviour after 1 July 1988 (1 January 1989 in the case of Aristrain and Ensidesa) because the infringements were serious and of long duration. The participation of the various companies in the different infringements for which fines are imposed is summarized in the tables below:

Price fixing

Company	Poutrelles Committee		Germany	Italy	Denmark
	Basis prices	Harmonization of extras			
TradeArbed	X	X	X	X	X
British Steel	X	X	—	X	X
Unimétal	X	X	—	X	X
Saarstahl	X	X	X	X	X
Ferdofin	X	X	—	X	—
Thyssen	X	X	X	X	X
Peine-Salzgitter	X	X	X	X	X
Ensidesa	X	X	—	—	—
Aristrain	X	X	—	—	—
Cockerill Sambre	X	X	—	—	X
Hoesch	—	—	X	—	—
Norsk Jernverk	—	—	—	—	X
Ovako	—	—	—	—	X

Market Sharing

Company	Traverso system	France	Germany	Italy	British Steel / Aristrain / Ensidesa	British Steel / Ferdofin	Ferdofin / Eurofer
TradeArbed	X	X	X	X	—	—	—
British Steel	X	X	—	X	X	X	—
Unimétal	X	X	—	X	—	—	—
Saarstahl	X	X	X	X	—	—	—
Ferdofin	X	X	—	X	—	X	X
Thyssen	X	X	—	X	—	—	—
Peine-Salzgitter	X	X	X	X	—	—	—
Ensidesa	—	X	—	—	X	—	—
Aristrain	—	—	—	—	X	—	—
Cockerill Sambre	X	X	—	X	—	—	—

Information exchange

Company	Poutrelles Committee	Walzstahl-Vereinigung
TradeArbed	X	X
British Steel	X	—
Unimétal	X	—
Saarstahl	X	X
Ferdofin	X	—
Thyssen	X	X
Peine-Salzgitter	X	X
Ensidesa	X	—
Aristrain	X	—
Cockerill Sambre	X	—
Hoesch	X	X
Neue Maxhütte	X	X

(315) In Decision 90/417/ECSC (stainless flat products) the Commission considered that it would not be correct to impose the large fines which would otherwise have been appropriate because:

- Article 58 crisis measures involving production and delivery quotas and price regimes organized by the Commission were in operation in most other sectors of the steel industry,
- there was a 'possibility of a misunderstanding about the effects of Article 65',
- the companies had contacted some Commission officials about the agreement.

The present case is distinguished from the stainless steel case because fines are imposed only for those infringements which took place after 30 June 1988. After this date there were no manifest crisis measures in operation for beams or for any other steel product. The companies therefore can have been in no doubt that Article 65 applied in full. The companies did not formally notify any of the agreements and concerted practices set out in this Decision with a view to their authorization (recital 297) nor has any evidence been produced to indicate that the companies or their associations informed any Commission officials informally of the practices complained of. None of the reasons for reduced fines which applied in Decision 90/417/ECSC are valid in the present case.

(316) In setting the level of fines for individual companies the Commission has taken into account, *inter alia*, the severity of the infringements and their duration (see Article 1). The Commission does not consider it appropriate to impose fines of less than ECU 100.

(317) Contrary to what some parties have argued in this case, associations of undertakings can infringe the competition rules of the ECSC Treaty (see Article 48, first paragraph). Article 65 (1) contains a prohibition applicable to decisions of associations of undertakings. While Article 65 (5) only provides for fines to be imposed upon undertakings, an infringement committed by an association will expose the undertakings which belong to it to the risk of a fine. In the absence of special circumstances undertakings must take responsibility for the actions of an association under their control, in proportion to their influence over the association.

In this case, Eurofer facilitated the implementation of infringements of Article 65 of the ECSC Treaty by its members, by organizing an exchange of some of the necessary confidential information. However, since those members are already being fined in respect of the infringements, including exchanges of confidential information in connection with price fixing and market sharing, the Commission does not consider it necessary to impose any additional fines on them for the behaviour of their association.

N. TERMINATION OF INFRINGEMENTS

(318) Where the Commission finds that there is an infringement of Article 65, it may require the undertakings concerned to bring such infringement to an end. Nearly all the undertakings have denied that any infringement of Article 65 occurred. It is not known whether in fact all the anti-competitive practices have ceased. It is therefore necessary to include in this Decision a formal requirement that those undertakings still engaged in the production and distribution of beams terminate all infringements and refrain in future from any collusive arrangements having a similar object or effect.

O. ADDRESSEES

(319) Where more than one company in a group has been involved in the infringements outlined above, this Decision is addressed to the production company as it is the production companies that have most to gain from advance knowledge of prices and volumes. The special cases of TradeArbed and Aristrain require a different approach, as is explained below.

(320) A fine is therefore imposed on Cockerill Sambre and not on Steelinter, its marketing and distributing subsidiary. This fine however takes into account the behaviour of Steelinter.

(321) Unimétal is the Usinor Sacilor subsidiary which produces beams. The fines imposed on Unimétal take into account the behaviour of its parent company in providing administrative support to the Poutrelles Committee.

(322) Only TradeArbed took part in the various arrangements and agreements. However TradeArbed is a sales company that sells, *inter alia*, beams on a commission basis for its parent company Arbed SA. TradeArbed receives a small percentage of the sales price for its services. To

ensure equality of treatment, this Decision is addressed to Arbed SA, the beams-producing company in the Arbed group, and the turnover in the relevant products is the turnover of Arbed and not of TradeArbed.

(323) In the case of the two Aristrain companies, both of which produce beams, this Decision is addressed to one of them, Siderurgica Aristrain, Madrid SL, formerly José Maria Aristrain, Madrid SA. The fine imposed also takes into account the behaviour of Siderurgica Aristrain Olaberria SL, formerly José Maria Aristrain SA.

(324) In the case of Ovako, this decision is addressed to Inexa Profil AB, which, according to a letter dated 16 November 1993 from lawyers acting for Ovako, is its commercial successor,

HAS ADOPTED THIS DECISION:

Article 1

The following undertakings have participated, to the extent described in this Decision, in the anti-competitive practices listed under their names which prevented, restricted and distorted normal competition in the common market. Where fines are imposed, the duration of the infringement is given in month except in the case of the harmonization of extras where participation in the infringement is indicated by 'x'.

TradeArbed

- (a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (30)
- (b) Price fixing in the Poutrelles Committee (30)
- (c) Price fixing in the German market (3)
- (d) Price fixing in the Italian market (6)
- (e) Price fixing in the Danish market (30)
- (f) Market sharing, 'Traverso system' (3 + 3)
- (g) Market sharing, France (3)
- (h) Market sharing, Germany (6)
- (i) Market sharing, Italy (3)
- (j) Harmonization of extras (x)
- (k) Price fixing on the French market

British Steel

- (a) Exchange of confidential information through the Poutrelles Committee (25)
- (b) Price fixing in the Poutrelles Committee (27)
- (c) Price fixing in the Italian market (3)
- (d) Price fixing in the Danish market (30)
- (e) Market sharing, 'Traverso system' (3 + 3)
- (f) Market sharing, France (3)
- (g) Market sharing, Italy (3)
- (h) Market sharing British Steel, Ensidesa and Aristrain (8)
- (i) Market sharing British Steel and Ferdofin (30)
- (j) Harmonization of extras (x)

Unimétal

- (a) Exchange of confidential information through the Poutrelles Committee (30)
- (b) Price fixing in the Poutrelles Committee (30)
- (c) Price fixing in the Italian market (6)
- (d) Price fixing in the Danish market (16)
- (e) Market sharing, 'Traverso system' (3 + 3)
- (f) Market sharing, France (3)
- (g) Market sharing, Italy (3)
- (h) Harmonization of extras (x)
- (j) Price fixing on the French market

Saarstahl

- (a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (30)
- (b) Price fixing in the Poutrelles Committee (30)
- (c) Price fixing in the German market (3)
- (d) Price fixing in the Italian market (3)
- (e) Price fixing in the the Danish market (30)

(f) Market sharing, 'Traverso system'	(3 + 3)	(c) Price fixing in the German market	(3)
(g) Market sharing, France	(3)	(d) Price fixing in the Italian market	(9)
(h) Market sharing, Germany	(6)	(e) Price fixing in the the Danish market	(30)
(i) Market sharing, Italy	(3)	(f) Market sharing, 'Traverso system'	(3 + 3)
(j) Harmonization of extras	(x)	(g) Market sharing, France	(3)

Ferdofin

(a) Exchange of confidential information through the Poutrelles Committee	(30)
(b) Price fixing in the Poutrelles Committee	(30)
(c) Price fixing in the Italian market	(9)
(d) Market sharing, 'Traverso system'	(3 + 3)
(e) Market sharing, France	(3)
(f) Market sharing, Italy	(3)
(g) Market sharing, British Steel and Ferdofin	(30)
(h) Market sharing, Ferdofin/Eurofer	(3)
(i) Harmonization of extras	(x)

Thyssen

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung	(30)
(b) Price fixing in the Poutrelles Committee	(30)
(c) Price fixing in the German market	(3)
(d) Price fixing in the Italian market	(3)
(e) Price fixing in the the Danish market	(30)
(f) Market sharing, 'Traverso system'	(3 + 3)
(g) Market sharing, France	(3)
(h) Market sharing, Italy	(3)
(i) Harmonization of extras	(x)

Peine-Salzgitter

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung	(30)
(b) Price fixing in the Poutrelles Committee	(30)

(h) Market sharing, Germany	(6)
(i) Market sharing, Italy	(3)
(j) Harmonization of extras	(x)

Ensidesa

(a) Exchange of confidential information through the Poutrelles Committee	(24)
(b) Price fixing in the Poutrelles Committee	(24)
(c) Market sharing, France	(3)
(d) Market sharing, British Steel, Ensidesa and Aristrain	(8)
(e) Harmonization of extras	(x)

Aristrain

(a) Exchange of confidential information through the Poutrelles Committee	(24)
(b) Price fixing in the Poutrelles Committee	(24)
(c) Market sharing, British Steel, Ensidesa and Aristrain	(8)
(d) Harmonization of extras	(x)

Cockerill Sambre

(a) Exchange of confidential information through the Poutrelles Committee	(18)
(b) Price fixing in the Poutrelles Committee	(18)
(c) Price fixing in the Danish market	(12)
(d) Market sharing, 'Traverso system'	(3)
(e) Market sharing, France	(3)
(f) Market sharing, Italy	(3)
(g) Harmonization of extras	(x)
(h) Price fixing on the French market	
(i) Price fixing on the Italian market	

Hoesch

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (monitoring systems) (27)

(b) Price fixing on the German market (3)

Neue Maxhütte

(a) Exchange of confidential information through the Poutrelles Committee and the Walzstahl-Vereinigung (monitoring systems) (27)

Stefana

(a) Price fixing on the Italian market

Norsk Jernverk

(a) Price fixing in the Danish market (30)

Ovako

(a) Price fixing in the Danish market (28)

SSAB

(a) Price fixing in the Danish market

Smedjebacken/Fundia Steel AB

(a) Price fixing in the Danish market

Article 2

Eurofer has infringed Article 65 of the ECSC Treaty by organizing an exchange of confidential information in connection with the infringements committed by its members and listed in Article 1.

Article 3

The undertakings and associations of undertakings mentioned in Articles 1 and 2 shall henceforth bring to an end the infringements referred to in Articles 1 and 2 to the extent that they have not already done so. To this end, the undertakings and associations of undertakings shall refrain from repeating or continuing any of the acts or behaviour specified in Article 1 or as the case may be Article 2 and shall refrain from adopting any measures having equivalent effect.

Article 4

For the infringements described in Article 1 which took place after 30 June 1988 (31 December 1988 in the case of Aristrain and Ensidesa) the following fines are imposed:

Arbed SA	ECU 11 200 000
British Steel plc	ECU 32 000 000
Unimétal SA	ECU 12 300 000
Saarstahl AG	ECU 4 600 000
Ferdofin SpA	ECU 9 500 000
Thyssen Stahl AG	ECU 6 500 000
Preussag AG	ECU 9 500 000
Empresa Nacional Siderurgica SA	ECU 4 000 000
Siderurgica Aristrain Madrid SL	ECU 10 600 000
SA Cockerill Sambre	ECU 4 000 000
Krupp-Hoesch Stahl AG	ECU 13 000
NMH Stahlwerke GmbH	ECU 150 000
Norsk Jernverk AS	ECU 750
Inexa Profil AB	ECU 600.

Article 5

The fines imposed pursuant to Article 4 shall be paid within three months of the date of notification of this Decision to the following bank accounts:

Address	Account number for	
	National currency	ECU
Germany Dresdner Bank AG (BLZ 300 800 00) Düsseldorf	2 114 628	2 114 628 00
Belgium Société Générale de Banque SA B-1000 Brüssel	210-0000107-62	210-0000107-62
Spain Banco Espanol de Crédito Direccion Central de Extranjero Calle Mesena nº 80 Torre de Operaciones 4º planta 28033 Madrid	137.003-270	394.002-278
France Société générale Agence Centrale F-75794 Paris Cedex 16	30003-03010- 00067030000/22	30003-03010- 00077001001/73

Address	Account number for	
	National currency	ECU
Italy Banca Commerciale Italiana I-20121 Milano	961794/02/09	961794/49/56
Luxembourg Banque et Caisse d'Epargne de l'Etat Luxembourg	1002/9911-5	0050/6016-0
United Kingdom Lloyds Bank UK-London SE1 2HA Barclays Bank Int. Ltd UK-London SW1X 7LW	50350974 sort-code 20-47-35	59010501 sort-code 30-96-34

One the expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i. e. 9,75 %.

Fines in excess of ECU 20 000 may, however, be paid in five equal annual instalments:

- the first to be paid within three months of the date of notification of this Decision;
- the second, third, fourth and fifth instalments to be paid respectively one, two, three and four years after the date of notification of this Decision. Each instalment shall be increased by the interest, calculated on the total amount remaining to be paid by applying the interest rate used by the European Monetary Cooperation Fund in its operations in ecu in the month preceding the due date of each annual payment. This facility is granted on condition that by the date provided for in the first indent, a bank guarantee acceptable to the Commission, covering the remaining principal and interest has been presented.

In the case of late payment this interest rate shall be increased by 3,5 percentage points.

The companies shall inform the Commission, within the three months mentioned above of their choice of payment method.

Should payment be made in the national currency of the Member State in which the bank nominated for payment is situated, the exchange rate applicable shall be the official exchange rate published by the Commission prevailing on the day preceding payment.

Article 6

This Decision is addressed to:

- Arbed SA
19, avenue de la Liberté
L-2930 Luxembourg
- British Steel plc
9 Albert Embankment
UK-London SE1 7 SN
- Unimétal
29, Le Parvis
Cedex 35
F-92072 Paris La Défense 4
- Saarstahl AG
Bismarckstraße, 57-59
D-66333 Völklingen
- Ferdofin SpA
Via Pastrengo, 29
I-10128 Torino
- Krupp Hoesch Stahl AG
Postfach 10 50 42
D-44120 Dortmund
- NMH Stahlwerke GmbH
Postfach 1344
D-92231 Sulzbach-Rosenberg
- Fundia Norsk Jernverk AS
Svenskveien 20
N-8601 MO
- Inexa Profil AB
Box 954
S-951 29 Luleå
- SSAB Svenskt Stål
Birger Jarlsgatan 58
Box 16344
S-10326 Stockholm
- Acciaierie de Ferriere Stefana F.lli fu Girolamo SpA
Via Bologna 19
I-25075 Nave (Brescia)
- Thyssen Stahl AG
Kaiser-Wilhelm-Straße 100
D-47166 Duisburg
- Preussag Stahl AG
Eisenhüttenstraße, 99
Postfach 41 11 80
D-38223 Salzgitter
- Empresa Nacional Siderurgica SA
Velazquez 134
E-28006 Madrid
- Siderúrgica Aristrain Madrid, SL
Ctra. de Toledo km 9
E-28021 Villaverde

— Cockerill Sambre SA
187 chaussée de la Hulpe
B-1170 Bruxelles

In accordance with Article 92 of the Treaty, this Decision is enforceable.

— Fundia Steel AB
S-777 80 Smedjebacken

Done at Brussels, 16 February 1994.

— Eurofer asbl
211 rue du Noyer
B-1040 Bruxelles

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX I

1. **Monitoring No 20:** Orders for delivery in the first quarter of 1989 as at 1 April 1989.
Fax from Usinor Sacilor of 12 April 1989.
2. **Monitoring No 14:** Orders for delivery in the second quarter of 1989 as at 3 June 1989.
Fax from Usinor Sacilor to Peine-Salzgitter.
3. **Monitoring No 1:** Orders for delivery in the third quarter of 1989 as at 3 June 1989.
The copy of this table found by the Commission was sent by fax from Usinor Sacilor to Peine-Salzgitter on 13 June 1989.
4. **Monitoring No 13:** Orders for delivery in the third quarter of 1989 as at 26 August 1989.
A copy of this table was found at Thyssen.
5. **Monitoring No 8:** Orders for delivery in the first quarter of 1990 as at 26 January 1990 (dated 5 February 1990).
The copy in the possession of the Commission was sent by fax from Usinor Sacilor to Peine-Salzgitter on 6 February 1990.
6. **Monitoring No 9:** Orders for delivery in the first quarter of 1990 as at 2 February 1990 (dated 19 February 1990).
The Commission found a copy of this table which had been sent by fax from Usinor Sacilor to British Steel on 20 February 1990.
7. **Monitoring No 17:** Orders for delivery in the first quarter of 1990 as at 30 March 1990 (dated 13 April 1990).
A copy of this table was found at British Steel.
8. **Monitoring No 18:** Orders for delivery in the second quarter of 1990 as at 29 June 1990 (dated 9 July 1990).
A copy of this document was sent by fax from Usinor Sacilor to the Walzstahl-Vereinigung on 9 July 1990.
9. **Monitoring No 4:** Orders for delivery in the third quarter of 1990 as at 29 June 1990 (dated 9 July 1990).
A copy of this table was sent by fax from Usinor Sacilor to the Walzstahl-Vereinigung on 9 July 1990.
10. **Monitoring No '18b':** Orders for delivery in the second quarter of 1990 as at 13 July 1990 (dated 19 July 1990).
The copies of this table discovered by the Commission were sent by fax from Usinor Sacilor to Peine-Salzgitter and British Steel respectively on 20 July 1990.
11. **Monitoring No 6:** Orders for delivery in the third quarter of 1990 as at 13 July 1990 (dated 19 July 1990).
A copy of this table was found at British Steel.
12. Fax from Peine-Salzgitter to Usinor Sacilor of 16 January 1989 containing the figures for deliveries by Peine-Salzgitter in the fourth quarter of 1988.

13. Note dated 1 March 1990 from the secretariat together with tables comparing orders and deliveries for each quarter of 1989.

A copy of this note and the tables attached (with the exception of the table setting out the figures for the Spanish market) was found at Peine-Salzgitter where it had been received on 16 March 1990.

14. Fax dated 2 June 1989 from the secretariat (with figures for deliveries in the first quarter of 1989).
15. Table dated 27 July 1989 showing the figures for the deliveries in the second quarter of 1989. The table also shows the orders received for delivery in the second quarter of 1989 by each of the companies and a figure (for each company and each market) showing the percentage of deliveries calculated on the basis orders. A copy of this table was found at Valor.
16. Fax dated 7 December 1989 from the secretariat found at Peine-Salzgitter with a table dated 5 December 1989 which lists the aggregate deliveries of the 'forges italiennes' in the third quarter of 1989. The figures show the deliveries to each of the 12 Member States of the ECSC for July, August and September 1989 respectively.
17. Fax sent by the Walzstahl-Vereinigung to the secretariat of the Poutrelles Committee concerning the monitoring of deliveries in the fourth quarter of 1989. The document bears no date but it is clear that it must have been sent sometime in January or early February 1990. It contains amended figures for the deliveries of Saarstahl, Thyssen, Peine-Salzgitter, Hoesch and Neue Maxhütte in the fourth quarter of 1989.
18. Internal memo prepared for Mr Meyer (Peine-Salzgitter) dated 12 February 1990 concerning deliveries in the fourth quarter of 1989.
19. Minutes of the meeting of the Poutrelles Committee in Milan on 16 May 1990 (noting that a table comparing orders for delivery in the first quarter of 1990 with actual deliveries in that period and another table comparing deliveries in the fourth quarter of 1989 with deliveries in the first quarter of 1990 were distributed at that meeting).
20. **Monitoring No 7:** Orders for delivery in the third quarter of 1990 as at 20 July 1990.

The copy in the possession of the Commission was sent by fax from Usinor Sacilor to British Steel on 3 August 1990.

21. Several documents concerning the monitoring of deliveries in the second quarter of 1990 prepared by the secretariat of the Poutrelles Committee and dated 7 September 1990 (discovered at Peine-Salzgitter).
22. **Monitoring No 15:** Orders for delivery in the third quarter of 1990 as at 14 September 1990 (dated 25 September 1990).

The copy in the possession of the Commission was sent by fax from Usinor Sacilor to the Walzstahl-Vereinigung on 27 September 1990.

23. **Monitoring No 1:** Orders for delivery in the fourth quarter of 1990 (the table itself erroneously refers to the third quarter) as at 7 September 1990 (dated 25 September 1990).
24. Fax from the Walzstahl-Vereinigung to Mrs S. (Usinor Sacilor) setting out the deliveries of the German producers in the third quarter of 1990 (dated 15 November 1990).
25. Agenda for the meeting of the Poutrelles Committee on 4 December 1990 (sent by fax from Usinor Sacilor to British Steel on 20 November 1990).
26. Tables dated 3 December 1990 showing deliveries by Arbed, Ensidesa, the German producers, Unimétal, Aristrain and the Italian producers.

27. **Monitoring No 10:** Orders for delivery in the fourth quarter of 1990 as at 16 November 1990.

This document is dated 23 November 1990 and was sent by fax from Usinor Sacilor to the Walzstahl-Vereinigung.

28. Faxes sent by the Walzstahl-Vereinigung to Usinor Sacilor, Thyssen, Saarstahl, Peine-Salzgitter, Neue Maxhütte and Hoesch. Each of these documents contains a table which sets out the orders received by Thyssen, Peine-Salzgitter, Hoesch, Saarstahl and Neue Maxhütte. The first of these faxes is dated 11 December 1990 and shows orders for delivery in the fourth quarter of 1990 as at 8 December 1990. The second document is also dated 11 December 1990 and sets out orders for delivery in the first quarter of 1991 as at 8 December 1990. The last table is dated 11 January 1991 and lists orders for delivery in the fourth quarter of 1990 as at 5 January 1991.
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ANNEX II

1. Computer printout labelled 'Eurofer' and bearing the title 'Art. 58 — Realizations 2/89'. At the top left-hand side of the table — underneath the word 'Eurofer' — is a line which reads 'Bru.05/09/89(16:08)'. Peine-Salzgitter received this information by way of automatic data transmission. In any event it is clear that Peine-Salzgitter was in the possession of this information on or prior to 13 September 1989. This is evidenced by a table dated 13 September 1989 which was prepared by Peine-Salzgitter and which lists the deliveries to the ECSC as a whole in the first and in the second quarter of 1989 of all the companies whose figures are contained in the Eurofer table.
 2. Eurofer table dated 12 June 1989 which lists deliveries ('Art. 58 — Realizations') in the first quarter of 1989, found at Peine-Salzgitter. The companies and markets covered by this table are the same as those in the above table.
 3. Internal note of Peine-Salzgitter dated 4 December 1989 which sets out the deliveries of certain companies.
 4. Tables dated 16 March 1990 (found at British Steel) which show the 'Eurofer deliveries' of beams (in tonnes per quarter) to Germany, the United Kingdom, France, Spain, Italy, the Benelux countries and the ECSC as a whole as well as the sum of Eurofer deliveries within the Community and exports to countries outside the Community. Figures are given for 1986, 1987, the first and second half of 1988 and each quarter of 1989.
 5. Table dated 14 March 1990 drawn up by Usinor Sacilor which shows deliveries to the ECSC as a whole (in 1 000 tonnes per quarter) for 1986, 1987, 1988, 1989, the first and second half of 1988 and the first and second half of 1989.
 6. Two Eurofer documents dated 11 May 1990 (found at Valor). These documents show deliveries ('Art. 58 — Realizations') in January and February 1990 respectively.
 7. Letter from Eurofer dated 30 July 1990.
 8. Tables (found at Usinor Sacilor) showing the average monthly deliveries of the Eurofer companies in 1986, 1987, 1988 and 1989, in each quarter of 1989 and in the first and second quarter of 1990. These tables are undated but appear to have been prepared some time in summer or early autumn 1990.
 9. Document labelled 'Delivery & Production' and dated 5 December 1990 (found at the Walzstahl-Vereinigung) showing the deliveries by the Eurofer companies to each of the Member States of the ECSC (with the exception of Belgium and Luxembourg for which a combined figure is given) in the third quarter of 1990.
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