ISSN 1725-2555

Official Journal of the European Union

L 183

English edition

Legislation

Volume 47

20 May 2004

Contents

(Continued overleaf)

Price: EUR 18,00

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Contents (continued)

EN

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 997/2004

of 17 May 2004

amending Commission Decision No 2730/2000/ECSC on imports of coke of coal in pieces with a diameter of more than 80 mm originating in the People's Republic of China and terminating the interim review of the anti-dumping measures imposed thereby

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], ('basic Regulation') and in particular Articles 9 and 11(3) thereof,

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

Whereas:

A. PROCEDURE

1. Previous procedure

(1) By Decision No 2730/2000/ECSC [2], the Commission imposed a definitive anti-dumping duty on imports of coke of coal in pieces with a diameter of more than 80 mm, falling within CN code ex 2704 00 19 (TARIC code 2704 00 19 10), originating in the People's Republic of China ('country concerned' or 'PRC'). The amount of the anti-dumping duty is equal to the fixed amount of EUR 32,6 per tonne of dry net weight.

(2) In view of the expiry of the Treaty establishing the European Coal and Steel Community on 23 July 2002, the Council, by Regulation (EC) No 963/2002 [3], decided that anti-dumping measures which had been adopted pursuant to Decision No 2277/96/ECSC and which were still in force on 23 July 2002 were to be continued and governed by the provisions of the basic Regulation with effect from 24 July 2002.

2. Current procedure

(3) On 11 December 2002, the Commission announced, by notice published in the *Official Journal of the European Communities* [4], the initiation of an interim review of the definitive anti-dumping measures applicable to imports of coke of coal in pieces with a diameter of more than 80 mm (hereafter 'coke 80+' or 'the product concerned') originating in the PRC in accordance with Article 11(3) of the basic Regulation and commenced an investigation.

(4) The proceeding was initiated following a request lodged by Eucoke-EEIG (the 'applicant') on behalf of producers representing a major proportion of the total Community production of coke of coal in pieces with a diameter of more than 80 mm. The applicant alleged that dumping in respect of the PRC had continued and even increased and that the existing measures would no longer be sufficient to counteract the injurious effects of dumping. The evidence contained in the request for a review was considered sufficient to justify the initiation of the investigation.

(5) The Commission officially advised the producers/exporters, the importers and the users known to be concerned, the representatives of the exporting country concerned, the applicant Community industry and the other known Community producers about the initiation of the interim review. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notice of initiation.

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 316, 15.12.2000, p. 30.
[3] OJ L 149, 7.6.2002, p. 3. Regulation as last amended by Regulation (EC) No 1310/2002 (OJ L 192, 20.7.2002, p. 9).
[4] OJ C 308, 11.12.2002, p. 2.

3. **Suspension of measures**

(6) It is recalled that during the investigation of the present proceeding a number of interested parties provided information on a change in market conditions after the end of the investigation period (1 October 2001 to 30 September 2002), thus fulfilling the conditions required under Article 14(4) of the basic Regulation to justify the suspension of the measures currently in force.

(7) The investigation showed that all requirements for suspending the anti-dumping measures were met. Therefore, by Commission Decision No 264/2004EC [1], the anti-dumping duty applicable to imports of coke of coal in pieces with a diameter of more than 80 mm originating in the PRC was suspended for a period of nine months.

4. **Withdrawal of the application**

(8) By letter of 15 December 2003 to the Commission, Eucoke-EEIG formally withdrew its application.

(9) With regard to the fact that the investigation has not brought to light any consideration showing that such termination would not be in the Community interest, it is considered that the present proceeding should be terminated in accordance with Article 9(1) of the basic Regulation.

5. **Form of the measures**

(10) However, during the investigation, it was found that there was a need to clarify the scope of application of the existing measures in view of the difficulties faced by an economic operator with respect to the application of the measures in force. Indeed, it was found that anti-dumping duties were being collected by the customs authorities of one Member State on shipments of coke destined for use in blast furnaces, which are not concerned by the anti-dumping measures, and comprise only a small part of the product concerned. In order to ensure a more efficient and uniform enforcement of the measures, the exemption provided for in Decision No 2730/2000/ECSC for exports which are a mixture of coke of coal in pieces of smaller size than the product concerned and coke of coal in pieces not exceeding 100 mm is replaced by an exemption covering a mixture in which the proportion of coke exceeding 80 mm does not constitute more than 20 % of the mixed shipment. In addition, the ISO standard should be used as the method of measurement.

6. **Conclusion**

(11) The interim review should be terminated. The scope of application of the existing measures should be clarified,

HAS ADOPTED THIS REGULATION:

[1] OJ L 81, 19.3.2004, p. 89.

Article 1

The interim review of the anti-dumping measures imposed by Decision No 2730/2000/ECSC on imports of coke of coal in pieces larger than 80 mm in maximum diameter, falling within CN code ex 2704 00 19 (TARIC code 2704 00 19 10) and originating in the People's Republic of China is hereby terminated.

Article 2

Article 1 of Decision No 2730/2000/ECSC shall be replaced by the following:

'*Article 1*

1. A definitive anti-dumping duty is hereby imposed on imports of coke of coal in pieces of a diameter of more than 80 mm, falling within CN code ex 2704 00 19 (Taric code 2704 00 19 10) and originating in the People's Republic of China. The diameter of the pieces shall be determined in accordance with the norm ISO 728: 1995.

2. The amount of the anti-dumping duty shall be equal to the fixed amount of EUR 32,6 per tonne of dry net weight.

3. The anti-dumping duty shall also apply to coke of coal in pieces with a diameter of more than 80 mm, when shipped in mixtures containing both coke of coal in pieces with a diameter of more than 80 mm and coke of coal in pieces with smaller diameters unless it is determined that the quantity of coke of coal in pieces with a diameter of more than 80 mm does not constitute more than 20 % of dry net weight of the mixed shipment. The quantity of coke of coal in pieces with a diameter of more than 80 mm contained in mixtures may be determined on the basis of samples in accordance with Articles 68 to 70 of Council Regulation (EEC) No 2913/92 (*). In cases where the quantity of coke of coal in pieces with a diameter of more than 80 mm is determined on the basis of samples, the sample shall be selected in accordance with the norm ISO 2309: 1980.

4. Member States' customs authorities may, upon receipt of a duly substantiated request from importers, reassess in the light of the above clarification, the situation of imports of the product concerned which took place between 16 December 2000 and 21 May 2004.

(*) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Commission Regulation (EC) No 60/2004 (OJ L 9, 15.1.2004, p. 8).'

Article 3

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

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

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

COUNCIL REGULATION (EC) No 998/2004

of 17 May 2004

amending Regulation (EC) No 950/2001 imposing a definitive anti-dumping duty on imports of certain aluminium foil originating in the People's Republic of China and Russia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Articles 8, 11(3) and 22 (c) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 950/2001 [2], the Council imposed a definitive anti-dumping duty on imports into the Community of certain aluminium foil ('the product concerned') originating among others in Russia. By Commission Decision (2001/381/EC) of 16 May 2001 [3], an undertaking was accepted for a Russian exporting producer 'United Company Siberian Aluminium'.

(2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, was set at 14,9 % for imports of the product concerned from Russia by Regulation (EC) No 950/2001.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [4], the initiation of a number of partial interim reviews of anti-dumping measures applicable to imports of certain products originating in the People's Republic of China, the Russian Federation, Ukraine and the Republic of Belarus pursuant to Articles 11(3) and 22 (c) of the basic Regulation. The anti-dumping measure imposed on imports of certain aluminium foil originating in Russia is one of the measures on which the review was initiated ('the measures').

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement'), it would be appropriate to adapt the measures.

(5) Since a certain quantity of the imports of the product concerned originating in Russia is currently subject to a price undertaking for a specific volume, the review of the measures was initiated in order to examine whether this undertaking, which was drawn up on the basis of data for a Community of 15 Member States, should be adapted to take account of the enlargement.

3. Parties concerned by the investigation

(6) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were informed of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

(7) In this regard, the following interested parties made their views known:

(a) Community Producers Association:

— Eurometaux, Brussels, Belgium

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 134, 17.5.2001, p. 1.
[3] OJ L 134, 17.5.2001, p. 67.
[4] OJ C 70, 20.3.2004, p. 15.

(b) Exporting producers:

— JSC 'United Company Siberian Aluminium', Moscow, Russia.

B. **PRODUCT CONCERNED**

(8) The product concerned is aluminium foil of a thickness of 0,009 mm or more up to not more than 0,018 mm, not backed, not further worked than rolled, presented in reels of a width not exceeding 650 mm, currently classifiable within CN code ex 7607 11 10. The product concerned is commonly known as aluminium household foil ('AHF').

(9) AHF is manufactured by rolling aluminium ingots or foil-stock up to the desired thickness. Once rolled, the foil is annealed by a thermal process to make it pliable. Once rolled and annealed the AHF is presented on reels of a width not exceeding 650 mm. The dimension of the reel is determinant for its use, since the users of this product ('spoolers' or 'rewinders') will mount the AHF onto small end-rolls destined for retail sale. The AHF rewound onto smaller rolls is then used for multi-purpose short-life wrapping (mostly in households, catering and food and floristry retail business).

C. **RESULTS OF THE INVESTIGATION**

1. **Claims made by interested parties**

(10) The Russian exporting producer subject to the price undertaking submitted that the volume of imports to which the price undertaking applies was established on the basis of its sales to the market of the EU15 and that, therefore, the undertaking should be revised in order to take due account of the market of the EU25. It claimed that such revision was essential in order to avoid discrimination in favour of the other exporters of the product concerned to the EU.

2. **Comments received from Member States**

(11) The Member States have made their views known and the majority of them support adapting the measures in order to take account of the enlargement.

3. **Assessment**

(12) An analysis was made of the available data and information which confirmed that the import volumes of the product concerned from Russia into the EU10 were significant. Considering that the volume of imports subject to the price undertaking currently in force was established on the basis of the imports into the Community of 15 Member States, it does not take into account the effect of the increase of the market following the enlargement.

4. **Conclusion**

(13) Considering the above, it is concluded that to take account of the enlargement it is appropriate to adapt the measures in order to cater for the additional volume of imports into the EU10 market.

(14) The original volume of imports subject to the price undertaking for the EU15 was calculated on the basis of the exports to the Community during the original investigation period of the Russian producer for whom an undertaking has been accepted. The amount of the increase of the volume of imports subject to the price undertaking has been calculated following the same calculation method.

(15) Accordingly, it is considered appropriate that the Commission may accept a proposal for a modified undertaking reflecting the situation after the enlargement and on the basis of the method described in recital 14,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission may accept a proposal for a modified undertaking increasing the volume of imports subject to the price undertaking accepted by Decision 2001/381/EC as regards imports of certain aluminium foil originating in Russia. The increase shall be calculated by using the same calculation method that was used when the original price undertaking was established for the Community of 15 Member States, that is on the basis of the exports to the Community of the Russian producer for whom an undertaking has been accepted.

Article 2

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

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

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

COUNCIL REGULATION (EC) No 999/2004

of 17 May 2004

on the application of Regulation (EC) No 1531/2002 imposing a definitive anti-dumping duty on imports of colour television receivers originating in the People's Republic of China, the Republic of Korea, Malaysia and Thailand and terminating the proceeding regarding imports of colour television receivers originating in Singapore

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], ('the basic Regulation'), and in particular Articles 8, 11(3) and 22 (c) thereof,

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

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 1531/2002 [2] the Council imposed a definitive anti-dumping duty on imports into the Community of colour television receivers ('the product concerned') originating i.a. in the People's Republic of China ('China'). By the Commission Decision 2002/683/EC [3], an undertaking was accepted for seven exporters in China: Haier Electrical Appliances Corporation Ltd, Hisense Import & Export Co. Ltd, Konka Group Co. Ltd, Sichuan Changhong Electric Co. Ltd, Skyworth Multimedia International (Shenzhen) Co., Ltd, TCL King Electrical Appliances (HuiZhou) Co. Ltd and Xiamen Overseas Chinese Electronic Co, Ltd.

(2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, was set at 44,6 % for imports of the product concerned from China by Regulation 1531/2002.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the Official Journal of the European Union [4] the initiation of a number of partial interim reviews of anti-dumping measures applicable to imports of certain products originating in the People's Republic of China, the Russian Federation, Ukraine and the Republic of Belarus pursuant to Articles 11(3) and 22 (c) of the basic Regulation. The anti-dumping measure imposed on imports of colour television receivers originating in China is one of the measures on which the review was initiated ('the measures').

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement'), it would be appropriate to adapt the measures.

(5) Since a certain quantity of the imports of the product concerned originating in China is currently subject to a price undertaking for a specific volume, the review of the measures was initiated in order to examine whether this undertaking, which was drawn up on the basis of data for a Community of 15 Member States, should be adapted to take account of the Enlargement.

3. Parties concerned by the investigation

(6) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were informed of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

(7) In this regard, the following interested parties made their views known:

(a) Community producer:

— Royal Philips Electronics, Eindhoven, Netherlands

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 231, 29.8.2002, p. 1.
[3] OJ L 231, 29.8.2002, p. 42.
[4] OJ C 70, 20.3.2004, p.15.

(b) Exporting producers:

— China Chamber of Commerce, Beijing, People's Republic of China; acting on behalf of the following exporting producers:

— Haier Electrical Appliances Corporation Ltd,

— Hisense Import & Export Co., Ltd,

— Konka Group Co., Ltd,

— Sichuan Changhong Electric Co. Ltd,

— Skyworth Multimedia International (Shenzhen) Co., Ltd,

— TCL King Electrical Appliances (HuiZhou) Co., Ltd,

— Xiamen Overseas Chinese Electronic Co, Ltd,

B. PRODUCT CONCERNED

(8) The product concerned is colour television receivers with a diagonal screen size of more than 15,5 cm, whether or not combined in the same housing with a radio broadcast receiver and/or clock. This product is currently classifiable within CN codes ex 8528 12 52, 8528 12 54, 8528 12 56, 8528 12 58, ex 8528 12 62 and 8528 12 66.

C. RESULTS OF THE INVESTIGATION

1. Claims made by interested parties

(9) The China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) acting on behalf of the companies for whom the undertaking was granted in conjunction with CCCME submitted that the volume of imports to which the price undertaking applies was established on the basis of a proportion of the apparent consumption of the EU of 15 Member States. It argued that, therefore, the undertaking should be revised in order to take due account of the market of the EU of 25 Member States. It claimed that such revision was essential in order to avoid discrimination in favour of the other exporters of the product concerned to the EU.

2. Comments received from Member States

(10) The Member States have made their views known and the majority of them support adapting the measures in order to take account of the Enlargement.

3. Assessment

(11) An analysis was made of the available data and information which confirmed that the import volumes of the product concerned from China into the EU10 were significant. Considering that the volume of imports subject to the price undertaking currently in force was established on the basis of the EU of 15 Member States, it does not take into account the effect of the increase of the market following the Enlargement.

4. Conclusion

(12) Considering the above, it is concluded that, to take account of Enlargement it is appropriate to adapt the measures in order to cater for the additional imports volume into the EU10 market.

(13) The original volume of imports subject to the price undertaking for the EU of 15 Member States was calculated as a growing amount that should reach a given proportion of apparent EU consumption for the fifth year of the undertaking. The amount of the increase of the volume of imports subject to the price undertaking may be calculated following the same calculation method.

(14) Accordingly, it is considered appropriate that the Commission may accept a proposal for a modified undertaking reflecting the situation after the Enlargement on the basis of the method described in recital 13,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission may accept a proposal for a modified undertaking increasing the volume of imports subject to the price undertaking accepted by Decision 2002/683/EC as regards imports of colour television receivers originating in the People's Republic of China. The increase shall be calculated by using the same calculation method that was used when the original price undertaking was established for the EU of 15 Member States, that is as a growing amount reaching a given proportion of apparent EU consumption for the fifth year of the undertaking.

Article 2

This Regulation shall enter into force the day after its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

COMMISSION REGULATION (EC) No 1000/2004

of 18 May 2004

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain grain oriented electrical sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in the Russian Federation and making imports of certain grain oriented electrical sheets originating in the Russian Federation subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 [2] (the 'basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) By Regulation (EC) No 990/2004 [3] the Council amended Regulation (EC) No 151/2003 [4] imposing anti-dumping measures on imports of certain grain oriented electrical sheets ('the product concerned') originating in the Russian Federation ('Russia'). The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set for imports of the product concerned at 40,1 % manufactured by the Novolipetsk Iron & Steel Corporation and at 14,7 % manufactured by the OOO Viz Stal.

2. Investigation

(2) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [5] the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.

(3) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

(4) All interested parties, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 ('the EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

3. Result of the investigation

(5) As set out in Council Regulation (EC) No 990/2004, the investigation concluded that it is in the Community interest to adapt the existing measures, provided that such adaptation does not significantly undermine the desired level of trade defence.

4. Undertakings

(6) In accordance with the conclusions of Regulation (EC) 990/2004 the Commission, in conformity with Article 8(2) of the basic Regulation, suggested undertakings to the companies concerned. As a result, undertakings were subsequently offered by (i) one exporting producer of the product concerned in Russia (Novolipetsk Iron & Steel Corporation) jointly with a company in Switzerland (Stinol AG) and (ii) a second exporting producer of the product concerned in Russia (OOO Viz Stal) jointly with its related company Duferco S.A. in Switzerland.

(7) It should be noted that, in application of Article 22(c) of the basic Regulation, these undertakings are considered as special measures since, in accordance with the conclusions of Regulation (EC) 990/2004, they are not directly equivalent to an anti-dumping duty.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ L 122, 19.5.2004, p. 5.
[4] OJ L 25, 30.1.2003, p. 7.
[5] OJ C 70, 20.3.2004, p. 15.

(8) Nevertheless, in conformity with Regulation (EC) 990/2004, the undertakings oblige each individual producing exporter to respect the import ceilings and, in order that the undertakings can be monitored, the exporting producers concerned have also agreed to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers are also aware that if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place, or it may adjust the level of the ceiling, or it may take other remedial action.

(9) It is also a condition of the undertakings that if they are breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in their place.

(10) The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.

(11) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Council Regulation (EC) 990/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

(12) In view of all the above, the offers of undertakings are considered acceptable.

(13) The acceptance of the undertakings is limited to an initial period of six months without prejudice to the normal duration of the measures and they shall lapse after this period, unless the Commission considers it is appropriate to extend period of application of special measures for next six months.

B. **REGISTRATION OF IMPORTS**

(14) In view of the unusual circumstances of this case and the inherent risk of breaches of undertakings caused by the price differences between the EU10 and the EU15 and their short term character, it is considered that sufficient grounds exist to make certain imports of the product concerned subject to registration for a maximum period of nine months in accordance with Article 14 (5) of the basic Regulation.

(15) Customs authorities are therefore directed to take the appropriate steps to register imports into the Community of the product concerned originating in Russia exported by the companies which have offered acceptable undertakings and for which benefit from the exemption to the anti-dumping duties is sought.

(16) In the event of a finding of a breach of the undertakings, duties may be levied retroactively on goods entered into free circulation in the Community from the date of the breach of the undertaking,

HAS ADOPTED THIS REGULATION:

Article 1

The undertakings offered by the exporting producers mentioned below, in connection with the anti-dumping proceeding concerning imports of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia are hereby accepted:

Country	Company	Taric Additional Code
Russian Federation	Produced by Novolipetsk Iron & Steel Corporation, Lipetsk, Russia, and sold by Stinol AG, Lugano, Switzerland, to its first customer in the Community acting as an importer	A524
Russian Federation	Produced by OOO Viz Stal, Ekaterinburg, Russia, and sold by Duferco SA, Lugano, Switzerland, to the first independent customer in the Community acting as an importer	A525

Article 2

The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96 to take the appropriate steps to register the imports into the Community of grain oriented cold-rolled sheets and strips of silicon-electrical steel with a width of more than 500 mm originating in Russia and falling within CN code 7225 11 00 (sheets of a width of 600 mm or more) and ex 7226 11 00 (sheets of a width of more than 500 mm but less than 600 mm) produced and sold by the companies listed in Article 1 for which an exemption to the anti-dumping duties imposed by Council Regulation (EC) No 990/2004 is sought.

Article 3

This Regulation shall enter into force on the day after its publication in the *Official Journal of the European Union* and shall remain in force for a period of six months.

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

Done at Brussels, 18 May 2004.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION REGULATION (EC) No 1001/2004

of 18 May 2004

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in the Russian Federation and Ukraine and making imports of ammonium nitrate originating in the Russian Federation or Ukraine subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 [2] (the 'basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Following an expiry and an interim review, by Regulation (EC) No 658/2002 [3], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate (the 'product concerned') originating in the Russian Federation ('Russia'). By Regulation (EC) No 132/2001 [4], the Council imposed a definitive anti-dumping duty on imports of ammonium nitrate originating in Ukraine. By Regulation (EC) No 993/2004 [5] the Council amended Regulations (EC) No 658/2002 and (EC) No 132/2001.

(2) The measures are specific duty of 47,07 EUR/tonne in the case of Russia and 33,25 EUR/tonne in the case of Ukraine.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [6] the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('Enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

(5) All interested parties, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the 10 new Member States which acceded to the European Union on 1 May 2004 (the 'EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

3. Result of the investigation

(6) As set out in Council Regulation (EC) No 993/2004, the investigation concluded that it is in the Community interest to adapt the existing measures, provided that such adaptation does not significantly undermine the desired level of trade defence.

4. Undertakings

(7) In accordance with the conclusions of Regulation (EC) No 993/2004, the Commission, in conformity with Article 8 (2) of the basic Regulation, suggested undertakings to the companies concerned. As a result, undertakings were subsequently proposed by, (i) one exporting producer of the product concerned in Ukraine (OJSC 'Azot'), (ii) an exporting producer in Russia (CJSC MCC Eurochem in respect of goods produced at its production facilities of JSC Nak Azot, Russia) jointly with its related company (Cumberland Sound Ltd, British Virgin Islands), (iii) two related exporting producers in Russia (OAO Kirovo — Chepetsky Chimkombinat and JSC 'Azot'), separately and (iv) two related exporting producers jointly (Joint Stock Company 'Acron', Russia and Joint Stock Company 'Dorogobuzh', Russia).

---

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ L 102, 18.4.2002, p. 1.
[4] OJ L 23, 25.1.2001, p. 1.
[5] OJ L 182, 19.5.2004, p. 28.
[6] OJ C 70, 20.3.2004, p. 15

(8) From the submissions of OAO 'Kirovo — Chepetsky Chimkombinat' and publicly available information on the Internet, it is known to the Commission that JSC 'Azot' and OAO 'Kirovo — Chepetsky Chimkombinat' are linked via Agrochemical Corporation 'Azot', which owns considerably more than 5 % of the capital of each of the companies. Therefore, in accordance with an Article 2 of the basic Regulation and the definition of related parties set out in the Article 143 of Commission Regulation (EEC) 2454/93 [1], as last amended by Regulation (EC) No 2286/2003 [2], the Commission considers JSC 'Azot' and OAO 'Kirovo — Chepetsky Chimkombinat' as related parties. It should be noted that the abnormal increases of the export volumes of one of these two exporting producers, OAO 'Kirovo — Chepetsky Chimkombinat', to the EU10 observed during the first months of 2004 were higher than the combined traditional export volumes to the EU10 of both JSC 'Azot' and OAO 'Kirovo — Chepetsky Chimkombinat'. Accordingly, the undertaking offers submitted by these two exporting producers are rejected because the undertaking ceiling for the two exporting producers taken together, calculated as traditional export volumes to the EU10 in 2001 and 2002 minus the abnormal increases in export volumes to the EU10 observed in the first months of 2004, is negative.

(9) It should be noted that, in application of Article 22(c) of the basic Regulation, any undertakings accepted by this Regulation are considered as special measures since, in accordance with the conclusions of Regulation (EC) No 993/2004, they are not directly equivalent to an anti-dumping duty.

(10) Nevertheless, in conformity with Regulation (EC) No 993/2004, the undertakings oblige each individual producing exporter to respect minimum import prices within the framework of import ceilings and, in order that the undertakings can be monitored, the exporting producers concerned have also agreed to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers are also aware that if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place, or it may adjust the level of the ceiling, or it may take other remedial action.

(11) It is also a condition of the undertakings that if they are breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in their place.

(12) The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.

(13) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Council Regulation (EC) No 993/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

(14) In view of all the above, the offers of undertakings submitted by OJSC 'Azot', CJSC MCC Eurochem in respect of goods produced at its production facilities of JSC Nak Azot, Russia, and Joint Stock Company 'Acron' together with Joint Stock Company 'Dorogobuzh' are considered acceptable.

(15) The acceptance of the undertakings is limited to an initial period of six months without prejudice to the normal duration of the measures. However, six months after acceptance of the undertakings, their continued acceptance will be subject to an appraisal by the Commission to verify whether the exceptional and negative conditions for end users in the EU10 which led to the acceptance of the undertakings still exist. In view of the short term character of the undertakings and the exceptional circumstances under which they are accepted the Commission services may, after consultation of the Advisory Committee, adapt some of the terms of the undertakings, if after a reasonable period of time it is established that the undertakings are not achieving their intended results in terms of allowing traditional export flows to the EU10 to continue. However, the adapted terms of the undertakings must continue to ensure a significant contribution to the removal of injury.

B. REGISTRATION OF IMPORTS

(16) In view of the unusual circumstances of this case and the inherent risk of breaches of undertakings caused by the price differences between the EU10 and the EU15 and their short term character, it is considered that sufficient grounds exist to make certain imports of the product concerned subject to registration for a maximum period of nine months in accordance with Article 14(5) of the basic Regulation.

(17) Customs authorities are therefore directed to take the appropriate steps to register imports into the Community of the product concerned originating in Ukraine and Russia exported by the companies which have offered acceptable undertakings and for which benefit from the exemption to the anti-dumping duties is sought.

(18) In the event of a finding of a breach of the undertakings, duties may be levied retroactively on goods entered into free circulation in the Community from the date of the breach of the undertaking,

[1] OJ L 253, 11.10.1993, p. 1.
[2] OJ L 343, 31.12.2003, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The undertakings offered by the exporting producers mentioned below, in connection with the anti-dumping proceeding concerning imports of ammonium nitrate originating in the Ukraine and the Russian Federation are hereby accepted.

Country	Company	Taric Additional Code
Ukraine	Produced and exported by OJSC 'Azot', Cherkassy, Ukraine to its first independent customer in the Community acting as an importer	A521
Russian Federation	Produced by OJSC MCC Eurochem, Moscow, Russia at its production facilities of JSC Nak Azot, Novomoskovsk, Russia and sold by Cumberland Sound Ltd, Tortola, British Virgin Islands to the first independent customer in the Community acting as an importer	A522
Russian Federation	Produced and exported by Joint Stock Company 'Acron', Veliky Novgorod, Russia or Joint Stock Company 'Dorogobuzh' Verkhnedneprovsky, Smolensk Region, Russia to the first independent customer in the Community acting as an importer	A532

Article 2

The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96 to take the appropriate steps to register the imports into the Community of ammonium nitrate originating in the Ukraine and the Russian Federation falling within CN codes 3102 30 90 and 3102 40 90 produced and sold or produced and exported by the companies listed in Article 1 for which an exemption to the anti-dumping duties imposed by Council Regulation (EC) No 993/2004 is sought.

Article 3

This Regulation shall enter into force on the day after its publication in the *Official Journal of the European Union* and shall remain in force for a period of six months.

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

Done at Brussels, 18 May 2004.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1002/2004

of 18 May 2004

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in the Republic of Belarus, the Russian Federation or Ukraine and making imports of potassium chloride originating in the Republic of Belarus and the Russian Federation subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 [2] (the 'basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Pursuant to Regulation (EC) No 969/2000 [3] the Council amended and extended the measures imposed by Regulation (EC) No 3068/92 [4], as amended by Regulations (EC) No 643/94 [5] and (EC) No 449/98 [6], on imports into the Community of potassium chloride (the 'product concerned') originating in the Republic of Belarus ('Belarus'), the Russian Federation ('Russia') and Ukraine. Pursuant to Regulation (EC) No 999/2004 [7] the Council amended Regulation (EC) No 969/2000.

(2) The measures are fixed duty amounts, established by category and grade of product, ranging from 19,51 EUR/tonne to 48,19 EUR/tonne in the case of Belarus, 19,61 EUR/tonne to 40,63 EUR/tonne in the case of Russia and 19,61 EUR/tonne to 48,19 EUR/tonne in the case of Ukraine.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [8] the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

(5) All interested parties known to the Commission, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the ten new Member States which acceded to the European Union on 1 May 2004 (the 'EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

3. Result of the investigation

(6) As set out in Council Regulation (EC) No 992/2004 the investigation concluded that it is in the Community interest to adapt the existing measures, provided that such adaptation does not significantly undermine the desired level of trade defence.

4. Undertakings

(7) In accordance with the conclusions of Regulation (EC) No 992/2004, the Commission, in conformity with Article 8(2) of the basic Regulation, suggested undertakings to the companies concerned. As a result, undertakings were subsequently offered by (i) one exporting producer of the product concerned in Belarus (Republican Unitary Enterprise Production Amalgamation Belaruskali) jointly with its related companies in Russia

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ L 112, 11.5.2000, p. 4.
[4] OJ L 308, 24.10.1992, p. 41.
[5] OJ L 80, 24.3.1994, p. 1.
[6] OJ L 58, 27.2.1998, p. 15.
[7] OJ L 182, 19.5.2004, p. 23.
[8] OJ C 70, 20.3.2004, p. 15.

(JSC International Potash Company), Austria (Belurs Handelsgesellschaft mbH) and Lithuania (UAB Baltkalis), (ii) an exporting producer in Russia (JSC Silvinit) jointly with its related companies in Russia (JSC International Potash Company) and Austria (Belurs Handelsgesellschaft mbH) and (iii) a second exporting producer in Russia (JSC Uralkali) jointly with a company in Cyprus (Fertexim Ltd).

(8) It should be noted that, in application of Article 22(c) of the basic Regulation, these undertakings are considered as special measures since, in accordance with the conclusions of Regulation (EC) No 992/2004, they are not directly equivalent to an anti-dumping duty.

(9) Nevertheless, in conformity with Regulation (EC) No 992/2004, the undertakings oblige each individual producing exporter to respect minimum import prices within the framework of import ceilings and, in order that the undertakings can be monitored, the exporting producers concerned have also agreed to broadly respect their traditional selling patterns to individual customers in the EU10. The exporting producers are also aware that if it is found that these traditional sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertaking resulting in definitive anti-dumping duties being imposed in its place, or it may adjust the level of the ceiling, or it may take other remedial action.

(10) It is also a condition of the undertakings that if they are breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in their place.

(11) The companies will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.

(12) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Regulation (EC) No 992/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

(13) In view of all the above, the offers of undertakings are considered acceptable.

(14) The acceptance of the undertakings is limited to an initial period of 12 months without prejudice to the normal duration of the measures. However, six months after acceptance of the undertakings, their continued acceptance will be subject to an appraisal by the Commission to verify whether the exceptional and negative conditions for end users in the EU10 which led to the acceptance of the undertakings still exist.

B. **REGISTRATION OF IMPORTS**

(15) In view of the unusual circumstances of this case and the inherent risk of breaches of undertakings caused by the price differences between the EU10 and the EU15 and their short-term character, it is considered that sufficient grounds exist to make certain imports of the product concerned subject to registration for a maximum period of nine months in accordance with Article 14(5) of the basic Regulation.

(16) Customs authorities are therefore directed to take the appropriate steps to register imports into the Community of the product concerned originating in Belarus and Russia exported by the companies which have offered acceptable undertakings and for which benefit from the exemption to the anti-dumping duties is sought.

(17) In the event of a finding of a breach of the undertakings, duties may be levied retroactively on goods entered into free circulation in the Community from the date of the breach of the undertaking,

HAS ADOPTED THIS REGULATION:

Article 1

The undertakings offered by the exporting producers mentioned below, in connection with the anti-dumping proceeding concerning imports of potassium chloride originating in the Republic of Belarus and the Russian Federation are hereby accepted.

Country	Company	TARIC additional code
Republic of Belarus	Produced by Republican Unitary Enterprise Production Amalgamation Belaruskali, Soligorsk, Belarus and sold by JSC International Potash Company, Moscow, Russia, or Belurs Handelsgesellschaft mbH, Vienna, Austria, or UAB Baltkalis, Vilnius, Lithuania, to the first independent customer in the Community acting as an importer	A518
Russian Federation	Produced by JSC Silvinit, Solikamsk, Russia and sold by JSC International Potash Company, Moscow, Russia, or Belurs Handelsgesellschaft mbH, Vienna, Austria to the first independent customer in the Community acting as an importer	A519
Russian Federation	Produced by JSC Uralkali, Berezniki, Russia and sold by Fertexim Ltd, Limassol, Cyprus to its first customer in the Community acting as an importer	A520

Article 2

The customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 384/96 to take the appropriate steps to register the imports into the Community of potassium chloride originating in the Republic of Belarus and the Russian Federation falling within CN codes 3104 20 10 (TARIC codes 3104 20 10 10 and 3104 20 10 90), 3104 20 50 (TARIC codes 3104 20 50 10 and 3104 20 50 90), 3104 20 90 (TARIC code 3104 20 90 00), ex 3105 20 10 (TARIC codes 3105 20 10 10 and 3105 20 10 20), ex 3105 20 90 (TARIC codes 3105 20 90 10 and 3105 20 90 20), ex 3105 60 90 (TARIC codes 3105 60 90 10 and 3105 60 90 20), ex 3105 90 91 (TARIC codes 3105 90 91 10 and 3105 90 91 20), ex 3105 90 99 (TARIC codes 3105 90 99 10 and 3105 90 99 20) produced and sold or produced and exported by the companies listed in Article 1 for which an exemption to the anti-dumping duties imposed by Regulation (EC) No 992/2004 is sought.

Article 3

This Regulation shall enter into force on the day after its publication in the *Official Journal of the European Union* and shall remain in force for a period of 12 months.

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

Done at Brussels, 18 May 2004.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION REGULATION (EC) No 1003/2004

of 19 May 2004

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 20 May 2004.

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

Done at Brussels, 19 May 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 19 May 2004 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	97,3
	204	64,3
	212	89,5
	999	83,7
0707 00 05	052	106,9
	096	64,5
	999	85,7
0709 90 70	052	93,6
	204	54,4
	999	74,0
0805 10 10, 0805 10 30, 0805 10 50	052	55,0
	204	45,7
	220	39,6
	388	49,5
	400	35,9
	624	58,5
	999	47,4
0805 50 10	388	73,7
	528	51,4
	999	62,6
0808 10 20, 0808 10 50, 0808 10 90	388	81,0
	400	125,2
	404	105,0
	508	60,7
	512	69,7
	524	68,7
	528	71,8
	720	101,4
	804	96,6
	999	86,7

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1004/2004

of 18 May 2004

establishing unit values for the determination of the customs value of certain perishable goods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1],

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation (EEC) No 2913/92 [2], and in particular Article 173 (1) thereof,

Whereas:

(1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation.

(2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173(2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173(1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 21 May 2004.

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

Done at Brussels, 18 May 2004.

For the Commission
Erkki LIIKANEN
Member of the Commission

---

[1] OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).
[2] OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Commission Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p, 1).

ANNEX

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
1.10	New potatoes 0701 90 50	49,70 171,61 455,44	29,13 32,41 33,49	1 587,72 21,15	369,80 236,92	777,61 11 868,03	12 745,21 1 997,64
1.30	Onions (other than seed) 0703 10 19	35,83 123,71 328,31	21,00 23,37 24,14	1 144,54 15,25	266,58 170,79	560,56 8 555,30	9 187,63 1 440,03
1.40	Garlic 0703 20 00	131,69 454,74 1 206,84	77,20 85,89 88,75	4 207,20 56,05	979,90 627,81	2 060,55 31 448,31	33 772,70 5 293,40
1.50	Leeks ex 0703 90 00	50,52 174,45 462,97	29,61 32,95 34,05	1 613,96 21,50	375,91 240,84	790,47 12 064,18	12 955,85 2 030,65
1.60	Cauliflowers 0704 10 00	—	—	—	—	—	—
1.80	White cabbages and red cabbages 0704 90 10	59,17 204,32 542,24	34,69 38,59 39,88	1 890,32 25,18	440,28 282,08	925,82 14 129,94	15 174,30 2 378,36
1.90	Sprouting broccoli or calabrese (*Brassica oleracea L. convar. botrytis (L.) Alef var. italica Plenck*) ex 0704 90 90	61,43 212,12 562,94	36,01 40,06 41,40	1 962,50 26,14	457,09 292,85	961,17 14 669,48	15 753,72 2 469,18
1.100	Chinese cabbage ex 0704 90 90	75,36 260,22 690,60	44,18 49,15 50,79	2 407,53 32,07	560,74 359,26	1 179,13 17 995,97	19 326,07 3 029,10
1.110	Cabbage lettuce (head lettuce) 0705 11 00	—	—	—	—	—	—
1.130	Carrots ex 0706 10 00	33,81 116,74 309,82	19,82 22,05 22,78	1 080,08 14,39	251,56 161,17	528,99 8 073,49	8 670,22 1 358,94
1.140	Radishes ex 0706 90 90	44,01 151,97 403,31	25,80 28,70 29,66	1 405,99 18,73	327,47 209,80	688,61 10 509,59	11 286,36 1 768,98
1.160	Peas (*Pisum sativum*) 0708 10 00	438,55 1 514,33 4 018,91	257,08 286,02 295,54	14 010,49 186,65	3 263,19 2 090,68	6 861,88 104 726,72	112 467,20 17 627,68

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
1.170	Beans:						
1.170.1	— Beans (*Vigna* spp., *Phaseolus* spp.) ex 0708 20 00	119,25 411,78 1 092,84	69,91 77,78 80,37	3 809,80 50,75	887,34 568,51	1 865,91 28 477,78	30 582,61 4 793,40
1.170.2	— Beans (*Phaseolus* spp., *vulgaris* var. *Compressus Savi*) ex 0708 20 00	240,35 829,93 2 202,57	140,89 156,76 161,97	7 678,46 102,29	1 788,40 1 145,80	3 760,66 57 395,58	61 637,76 9 660,87
1.180	Broad beans ex 0708 90 00	—	—	—	—	—	—
1.190	Globe artichokes 0709 10 00	—	—	—	—	—	—
1.200	Asparagus:						
1.200.1	— green ex 0709 20 00	363,83 1 256,31 3 334,14	213,28 237,29 245,19	11 623,28 154,85	2 707,19 1 734,45	5 692,71 86 882,65	93 304,25 14 624,15
1.200.2	— other ex 0709 20 00	330,76 1 142,13 3 031,13	193,89 215,72 222,90	10 566,93 140,77	2 461,15 1 576,82	5 175,34 78 986,56	84 824,56 13 295,08
1.210	Aubergines (eggplants) 0709 30 00	104,96 362,41 961,82	61,53 68,45 70,73	3 353,04 44,67	780,96 500,35	1 642,21 25 063,56	26 916,04 4 218,72
1.220	Ribbed celery (*Apium graveolens L., var. dulce (Mill.) Pers.*) ex 0709 40 00	101,77 351,41 932,62	59,66 66,37 68,58	3 251,25 43,31	757,25 485,16	1 592,35 24 302,68	26 098,92 4 090,65
1.230	Chantarelles 0709 59 10	994,91 3 435,42 9 117,36	583,22 648,88 670,47	31 784,39 423,43	7 402,93 4 742,93	15 566,96 237 584,51	255 144,67 39 990,41
1.240	Sweet peppers 0709 60 10	203,04 701,11 1 860,70	119,02 132,43 136,83	6 486,66 86,42	1 510,81 967,95	3 176,95 48 486,98	52 070,71 8 161,37
1.250	Fennel 0709 90 50	—	—	—	—	—	—
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	111,23 384,08 1 019,31	65,20 72,54 74,96	3 553,45 47,34	827,64 530,25	1 740,36 26 561,60	28 524,81 4 470,87
2.10	Chestnuts (*Castanea* spp.) fresh ex 0802 40 00	—	—	—	—	—	—
2.30	Pineapples, fresh ex 0804 30 00	98,90 341,51 906,35	57,98 64,50 66,65	3 159,65 42,09	735,92 471,49	1 547,50 23 618,04	25 363,67 3 975,41

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.40	Avocados, fresh ex 0804 40 00	133,44 460,77 1 222,85	78,22 87,03 89,93	4 263,04 56,79	992,91 636,14	2 087,90 31 865,71	34 220,94 5 363,66
2.50	Guavas and mangoes, fresh ex 0804 50	—	—	—	—	—	—
2.60	Sweet oranges, fresh:						
2.60.1	— Sanguines and semi-sanguines 0805 10 10	48,60 167,82 445,37	28,49 31,70 32,75	1 552,62 20,68	361,62 231,69	760,42 11 605,68	12 463,47 1 953,48
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	36,77 126,97 336,96	21,55 23,98 24,78	1 174,68 15,65	273,60 175,29	575,32 8 780,63	9 429,62 1 477,96
2.60.3	— Others 0805 10 50	48,60 167,82 445,37	28,49 31,70 32,75	1 552,62 20,68	361,62 231,69	760,42 11 605,68	12 463,47 1 953,48
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:						
2.70.1	— Clementines ex 0805 20	86,45 298,51 792,23	50,68 56,38 58,26	2 761,82 36,79	643,26 412,12	1 352,65 20 644,26	22 170,10 3 474,86
2.70.2	— Monreales and satsumas ex 0805 20	75,02 259,05 687,49	43,98 48,93 50,56	2 396,70 31,93	558,22 357,64	1 173,82 17 915,01	19 239,14 3 015,47
2.70.3	— Mandarines and wilkings ex 0805 20 50	71,22 245,92 652,66	41,75 46,45 48,00	2 275,27 30,31	529,93 339,52	1 114,35 17 007,34	18 264,37 2 862,69
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	34,35 118,60 314,76	20,13 22,40 23,15	1 097,29 14,62	255,57 163,74	537,57 8 202,11	8 808,34 1 380,59
2.85	Limes (*Citrus aurantifolia, Citrus latifolia*), fresh 0805 50 90	109,86 379,35 1 006,76	64,40 71,65 74,03	3 509,70 46,76	817,45 523,73	1 718,94 26 234,62	28 173,65 4 415,83
2.90	Grapefruit, fresh:						
2.90.1	— white ex 0805 40 00	58,01 200,31 531,60	34,01 37,83 39,09	1 853,23 24,69	431,64 276,54	907,65 13 852,64	14 876,51 2 331,69
2.90.2	— pink ex 0805 40 00	58,94 203,52 540,13	34,55 38,44 39,72	1 882,97 25,08	438,56 280,98	922,22 14 074,94	15 115,24 2 369,11

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.100	Table grapes 0806 10 10	165,36 570,80 1 515,33	96,93 107,85 111,43	5 282,67 70,38	1 230,39 788,29	2 587,28 39 487,30	42 405,85 6 646,53
2.110	Water melons 0807 11 00	50,05 172,82 458,66	29,34 32,64 33,73	1 598,95 21,30	372,41 238,60	783,11 11 951,94	12 835,32 2 011,76
2.120	Melons (other than water melons):						
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	49,91 172,35 457,40	29,26 32,55 33,64	1 594,56 21,24	371,39 237,94	780,96 11 919,13	12 800,09 2 006,24
2.120.2	— Other ex 0807 19 00	89,70 309,73 822,00	52,58 58,50 60,45	2 865,60 38,18	667,43 427,61	1 403,48 21 420,03	23 003,21 3 605,44
2.140	Pears						
2.140.1	— Pears — nashi (*Pyrus pyrifolia*), Pears — Ya (*Pyrus bretscheideri*) ex 0808 20 50	54,31 187,54 497,72	31,84 35,42 36,60	1 735,11 23,12	404,13 258,92	849,80 12 969,73	13 928,34 2 183,07
2.140.2	— Other ex 0808 20 50	79,81 275,57 731,36	46,78 52,05 53,78	2 549,61 33,97	593,83 380,46	1 248,71 19 058,01	20 466,61 3 207,86
2.150	Apricots 0809 10 00	608,11 2 099,80 5 572,72	356,47 396,61 409,81	19 427,29 258,81	4 524,82 2 898,98	9 514,85 145 216,67	155 949,81 24 442,98
2.160	Cherries 0809 20 95 0809 20 05	338,62	2 519,74	3 097,80	228,13	228,13	228,13
2.170	Peaches 0809 30 90	172,94 597,15 1 584,80	101,38 112,79 116,54	5 524,83 73,60	1 286,79 824,43	2 705,88 41 297,43	44 349,77 6 951,21
2.180	Nectarines ex 0809 30 10	209,78 724,38 1 922,45	122,97 136,82 141,37	6 701,93 89,28	1 560,95 1 000,08	3 282,39 50 096,16	53 798,82 8 432,22
2.190	Plums 0809 40 05	129,50 447,15 1 186,71	75,91 84,46 87,27	4 137,02 55,11	963,56 617,34	2 026,18 30 923,74	33 209,35 5 205,11
2.200	Strawberries 0810 10 00	890,35 3 074,38 8 159,17	521,92 580,69 600,01	28 444,01 378,93	6 624,92 4 244,48	13 930,95 212 615,58	228 330,26 35 787,62

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.205	Raspberries 0810 20 10	304,95 1 052,99 2 794,56	178,76 198,89 205,51	9 742,24 129,79	2 269,07 1 453,76	4 771,43 72 822,06	78 204,43 12 257,47
2.210	Fruit of the species *Vaccinium myrtillus* 0810 40 30	1 605,61 5 544,17 14 713,81	941,21 1 047,18 1 082,02	51 294,42 683,35	11 947,34 7 654,26	25 122,34 383 419,67	411 758,68 64 537,49
2.220	Kiwi fruit (*Actinidia chinensis Planch.*) 0810 50 00	124,51 429,95 1 141,04	72,99 81,21 83,91	3 977,84 52,99	926,48 593,58	1 948,22 29 733,87	31 931,54 5 004,83
2.230	Pomegranates ex 0810 90 95	241,37 833,45 2 211,91	141,49 157,42 162,66	7 711,05 102,73	1 795,99 1 150,66	3 776,62 57 639,16	61 899,34 9 701,87
2.240	Khakis (including sharon fruit) ex 0810 90 95	246,31 850,50 2 257,15	144,38 160,64 165,99	7 868,74 104,83	1 832,74 1 174,19	3 853,85 58 817,92	63 165,22 9 900,28
2.250	Lychees ex 0810 90	—	—	—	—	—	—

COMMISSION REGULATION (EC) No 1005/2004

of 19 May 2004

on a special intervention measure for oats in Finland and Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Oats are one of the products covered by the common organisation of the market in cereals. It is not, however, included among the basic cereals referred to in Article 4 of Regulation (EEC) No 1766/92 for which provision is made for intervention buying in.

(2) Oats is a major traditional crop in Finland and Sweden and is well suited to the weather conditions obtaining in those countries. Production far exceeds requirements in those countries with the result that they are required to dispose of surpluses by exporting them to third countries. Membership of the Community has not altered the previously existing situation.

(3) Any reduction in the quantity of oats grown in Finland and Sweden would be beneficial to other cereals qualifying for the intervention arrangements, especially barley. Production of barley is in surplus both in those countries and across the whole of the Community. A switch from oats to barley would only worsen the situation and create further surpluses. It is necessary therefore to ensure that exports of oats to third countries can continue.

(4) Refunds may be granted in respect of oats pursuant to Article 13 of Regulation (EEC) No 1766/92. The geographical situation of Finland and Sweden places those countries in a less favourable position from the point of view of exporting than other Member States. The fixing of refunds on the basis of Article 13 favours primarily those other Member States. It is anticipated therefore that the production of oats in Finland and Sweden will give way increasingly to that of barley. Consequently, in coming years, substantial quantities of barley must be expected to enter intervention storage in Finland and Sweden pursuant to Article 4 of Regulation (EEC) No 1766/92, the only possibility of disposal being export to third countries. Exports from intervention storage are more costly to the Community budget than direct exports.

(5) These additional costs can be avoided under a special intervention measure within the meaning of Article 6 of Regulation (EEC) No 1766/92. This intervention measure may be taken in the form of a measure intended to relieve the market in oats in Finland and Sweden. The grant of a refund by a tendering procedure, applicable only to oats produced and exported from those two countries, would be the most appropriate measure in the circumstances.

(6) The nature and objectives of the said measure make it appropriate to apply to it, mutatis mutandis, Article 13 of Regulation (EEC) No 1766/92 and the Regulations adopted for its implementation, in particular Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [2].

(7) Regulation (EC) No 1501/95 requires tenderers, among their other undertakings, to apply for an export licence and lodge a security. The amount of that security should be laid down.

(8) The cereals in question should actually be exported from the Member States for which a special intervention measure was implemented. It is necessary therefore to limit the use of export licences to exports from the Member State in which application for the licence was made and to oats produced in Finland and Sweden.

(9) In order to ensure equal treatment for all concerned, it is necessary to make provision that the licences issued have an identical period of validity.

[1] OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

[2] OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

(10) In order to ensure the smooth operation of the export tendering procedure, it is necessary to prescribe a minimum quantity and a time-limit and form for the submission of tenders to the competent agencies.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. A special intervention measure in the form of an export refund shall be implemented in respect of 100 000 tonnes of oats produced in Finland and Sweden and intended for export from Finland and Sweden to all third countries, except Bulgaria and Romania.

Article 13 of Regulation (EEC) No 1766/92 and the provisions adopted for the application of that Article shall apply, mutatis mutandis, to the said refund.

2. The Finnish and Swedish intervention agencies shall be responsible for implementing the measure referred to in paragraph 1.

Article 2

1. Tenders shall be invited in order to determine the amount of the refund referred to in Article 1(1).

2. The invitation to tender shall relate to the quantity of oats referred to in Article 1(1) for export to all third countries, except Bulgaria and Romania.

3. The invitation shall remain open until 15 July 2004. During its period of validity weekly awards shall be made, for which the time-limits for the submission of tenders shall be specified in the notice of invitation to tender.

Notwithstanding Article 4(4) of Regulation (EC) No 1501/95, the time-limit for the submission of tenders for the first invitation to tender shall be 27 May 2004.

4. Tenders must be submitted to the Finnish and Swedish intervention agencies named in the notice of invitation.

5. The tendering procedure shall take place in accordance with this Regulation and Regulation (EC) No 1501/95.

Article 3

A tender shall be valid only if:

(a) it relates to not less than 1 000 tonnes;

(b) it is accompanied by a written undertaking from the tenderer specifying that it relates solely to oats grown in Finland and Sweden which are to be exported from those countries.

Where the undertaking referred to in (b) is not fulfilled, the security referred to in Article 12 of Commission Regulation (EC) No 1342/2003 [1] shall be forfeited, except in cases of force majeure.

Article 4

Under the tendering procedure referred to in Article 2, one of the following entries shall be made in box 20 of applications and export licences:

— Asetus (EY) N:o …/2004 – Todistus on voimassa ainoastaan Suomessa ja Ruotsissa;

— Förordning (EG) nr …/2004 – Licensen giltig endast i Finland och Sverige.

Article 5

The refund shall be valid only for exports from Finland and Sweden.

Article 6

The security referred to in Article 5(3)(a) of Regulation (EC) No 1501/95 shall be EUR (12) per tonne.

Article 7

1. Notwithstanding Article 23(1) of Commission Regulation (EEC) No 1291/2000 [2], export licences issued in accordance with Article 8(1) of Regulation (EC) No 1501/95 shall, for the purpose of determining their period of validity, be deemed to have been issued on the day on which the tender was submitted.

2. Export licences issued under the tendering procedure referred to in Article 2 shall be valid from their date of issue, as defined in paragraph 1 of this Article, until the end of the fourth month following that of issue.

3. Notwithstanding Article 11 of Regulation (EC) No 1291/2000, export licences issued under the tendering procedure referred to in Article 2 of this Regulation shall be valid in Finland and Sweden only.

[1] OJ L 189, 29.7.2003, p. 12.
[2] OJ L 152, 24.6.2000, p. 1.

Article 8

Tenders submitted must reach the Commission via the Finnish and Swedish intervention agencies not later than one and a half hours following expiry of the deadline for the weekly submission of tenders as specified in the notice of invitation to tender. They must be communicated in accordance with the model shown in the Annex.

If no tenders are received, the Finnish and Swedish intervention agencies shall inform the Commission thereof within the period specified in the first subparagraph.

The times fixed for the submission of tenders shall be Belgian time.

Article 9

Regulation (EC) No 1814/2003 is hereby repealed.

Article 10

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

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

Done at Brussels, 19 May 2004.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

Tender for the refund for the export of oats from Finland and Sweden

(Regulation (EC) No 1005/2004 (*))

(Closing date for the submission of tenders)

1	2	3
Number of tender	Quantity in tonnes	Amount of export refund (in EUR per tonne)
1		
2		
3		
etc.		

(*) To be sent to the following e-mail address: agri-c1-revente-marche-ue@cec.eu.int

COMMISSION REGULATION (EC) No 1006/2004

of 19 May 2004

establishing the extent to which import licences applied for under subquota II for frozen meat of bovine animals, as provided for in Regulation (EC) No 780/2003, may be granted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 2341/2003 of 29 December 2003 derogating from Regulation (EC) No 780/2003 as regards a tariff subquota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 [2], and in particular Article 1(3) thereof,

Whereas:

Article 1(2)(a)(ii) of Commission Regulation (EC) No 2341/2003 sets at 5 742 tonnes the quantity for which approved operators may apply for import licences under subquota II during the period 3 to 7 May 2004. This quantity was reduced to 5 708,65929 tonnes by Article 1 of Regulation (EC) No 385/2004. Since the import licences applied for exceed the quantity available, a reduction coefficient should be fixed in accordance with Article 1(3) of Regulation (EC) No 2341/2003,

HAS ADOPTED THIS REGULATION:

Article 1

Each import licence application lodged in accordance with the first subparagraph of Article 12(2) of Regulation (EC) No 780/2003 [3] during the period 3 to 7 May 2004 shall be accepted up to a limit of 3,67984 % of the quantities requested.

Article 2

This Regulation shall enter into force on 20 May 2004.

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

Done at Brussels, 19 May 2004.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

---

[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

[2] OJ L 346, 31.12.2003, p. 33. Regulation amended by Regulation (EC) No 385/2004 (JO L 64, 2.3.2004, p. 24).

[3] OJ L 114, 8.5.2003, p. 8.

COMMISSION REGULATION (EC) No 1007/2004

of 19 May 2004

amending the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1],

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector [2], and in particular Article 4(1) thereof,

Whereas:

(1) Import duties in the rice sector have been fixed by Commission Regulation (EC) No 963/2004 [3].

(2) Article 4(1) of Regulation (EC) No 1503/96 provides that if during the period of application, the average import duty calculated differs by EUR 10 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 963/2004,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 963/2004 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 20 May 2004.

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

Done at Brussels, 19 May 2004.

For the Commission
Franz FISCHLER
Member of the Commission

---

[1] OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).
[2] OJ L 189, 30.7.1996, p. 71. Regulation as last amended by Regulation (EC) No 2294/2003 (OJ L 340, 24.12.2003, p. 12).
[3] OJ L 178, 13.5.2004, p. 8.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties [5]				
	Third countries (except ACP and Bangladesh) [3]	ACP [1] [2] [3]	Bangladesh [4]	Basmati India and Pakistan [6]	Egypt [8]
1006 10 21	[7]	69,51	101,16		158,25
1006 10 23	[7]	69,51	101,16		158,25
1006 10 25	[7]	69,51	101,16		158,25
1006 10 27	[7]	69,51	101,16		158,25
1006 10 92	[7]	69,51	101,16		158,25
1006 10 94	[7]	69,51	101,16		158,25
1006 10 96	[7]	69,51	101,16		158,25
1006 10 98	[7]	69,51	101,16		158,25
1006 20 11	247,13	82,16	119,23		185,35
1006 20 13	247,13	82,16	119,23		185,35
1006 20 15	247,13	82,16	119,23		185,35
1006 20 17	203,91	67,03	97,61	0,00	152,93
1006 20 92	247,13	82,16	119,23		185,35
1006 20 94	247,13	82,16	119,23		185,35
1006 20 96	247,13	82,16	119,23		185,35
1006 20 98	203,91	67,03	97,61	0,00	152,93
1006 30 21	402,53	128,49	186,36		301,90
1006 30 23	402,53	128,49	186,36		301,90
1006 30 25	402,53	128,49	186,36		301,90
1006 30 27	[7]	133,21	193,09		312,00
1006 30 42	402,53	128,49	186,36		301,90
1006 30 44	402,53	128,49	186,36		301,90
1006 30 46	402,53	128,49	186,36		301,90
1006 30 48	[7]	133,21	193,09		312,00
1006 30 61	402,53	128,49	186,36		301,90
1006 30 63	402,53	128,49	186,36		301,90
1006 30 65	402,53	128,49	186,36		301,90
1006 30 67	[7]	133,21	193,09		312,00
1006 30 92	402,53	128,49	186,36		301,90
1006 30 94	402,53	128,49	186,36		301,90
1006 30 96	402,53	128,49	186,36		301,90
1006 30 98	[7]	133,21	193,09		312,00
1006 40 00	[7]	41,18	[7]		96,00

[1] The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 348, 21.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 10.4.2003, p. 3).

[2] In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

[3] The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

[4] The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

[5] No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

[6] For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

[7] Duties fixed in the Common Customs Tariff.

[8] The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(1)	203,91	416,00	247,13	402,53	(1)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	340,32	227,43	321,29	404,74	—
(b) fob price (EUR/tonne)	—	—	—	296,25	379,70	—
(c) Sea freight (EUR/tonne)	—	—	—	25,04	25,04	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(1) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1008/2004

of 19 May 2004

imposing a provisional anti-subsidy duty on imports of certain graphite electrode systems originating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 of 8 March 2004 [2] ('the basic Regulation'), and in particular Article 12 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. GENERAL

(1) On 21 August 2003, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Union* [3], the initiation of an anti-subsidy proceeding with regard to imports into the Community of certain graphite electrode systems originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in July 2003 by the European Carbon and Graphite Association (ECGA), acting on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain graphite electrode systems. The complaint contained evidence of subsidisation of the said product and of material injury resulting there from, which was considered sufficient to justify the initiation of an anti-subsidy proceeding.

(3) Prior to the initiation of the proceeding, and in accordance with Article 10(9) of the basic Regulation, the Commission notified the Government of India ('GOI') that it had received a properly documented complaint alleging that subsidised imports of certain graphite electrode systems originating in India were causing material injury to the Community industry. The GOI was invited for consultation with the aim of clarifying the situation as regards the contents of the complaint and arriving at a mutually agreed solution. Whilst no request for consultations was made by the GOI, due note was taken of written comments made by the GOI with regard to the allegations contained in the complaint regarding subsidised imports and material injury being suffered by the Community industry.

(4) The initiation of a parallel anti-dumping proceeding concerning imports into the Community of the same product originating in India was announced by a notice published in the *Official Journal of the European Union* [4] on the same date.

(5) The Commission officially advised the complainant and other known Community producers, exporting producers, importers, users and suppliers known to be concerned of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(6) The two exporting producers in India, the GOI, as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted an opportunity to be heard.

---

[1] OJ L 288, 21.10.1997, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ C 197, 21.8.2003, p. 5.
[4] OJ C 197, 21.8.2003, p. 2.

2. SAMPLING

(7) In view of the large number of unrelated importers in the Community, it was considered appropriate, in conformity with Article 27 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, all known unrelated importers were requested, pursuant to Article 27(2) of the basic Regulation, to make themselves known within 15 days of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation, for the period from 1 April 2002 to 31 March 2003. Only two unrelated importers agreed to be included in the sample and provided the requested basic information within the deadline. Accordingly, sampling was not considered necessary in this proceeding.

3. QUESTIONNAIRES

(8) The Commission sent questionnaires to all parties known to be concerned, to the two unrelated importers referred to above and to all other companies who made themselves known within the deadlines set in the notice of initiation, as well as to the GOI.

(9) Replies were received from two Indian exporting producers, from the two complainant Community producers, from eight user companies and from the two unrelated importers referred to above. In addition, one user company made a written submission containing some quantitative information and two users' associations provided the Commission with written submissions.

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

Community producers:

— SGL Carbon GmbH, Wiesbaden and Meitingen, Germany;

— SGL Carbon SA, La Coruña, Spain;

— UCAR SNC, Notre Dame de Briançon, France (including its related company, UCAR SA, Etoy, Switzerland);

— UCAR Electrodos Ibérica SL, Pamplona, Spain;

— Graftech SpA, Caserta, Italy.

Unrelated importers in the Community:

— Promidesa SA, Madrid, Spain;

— AGC-Matov allied graphite & carbon GmbH, Berlin, Germany.

Users:

— ISPAT Hamburger Stahlwerke GmbH, Hamburg, Germany;

— ThyssenKrupp Nirosta GmbH, Krefeld, Germany;

— Lech-Stahlwerke, Meitingen, Germany;

— Ferriere Nord, Osoppo, Italy.

Exporting producers in India:

— Graphite India Limited (GIL), Kolkatta;

— Hindustan Electro Graphite (HEG) Limited, Bhopal.

(11) The investigation of subsidisation and injury covered the period from 1 April 2002 to 31 March 2003 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1999 to the end of the IP ('the period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. PRODUCT CONCERNED

(12) The product concerned is graphite electrodes and/or nipples used for such electrodes, whether imported together or separately. A graphite electrode is a ceramic-moulded or extruded column of graphite. At both ends of this cylinder, threaded tapered 'sockets' are machined so that two or more electrodes can be joined to build a column. A connecting part, also in graphite, is used to join two sockets. This part is called a 'nipple'. Both the graphite electrode and the nipple are usually supplied pre-set as a 'graphite electrode system'.

(13) Graphite electrodes and nipples used for such electrodes are produced using petroleum coke, a by-product of the oil industry; and coal tar pitch. The manufacturing process has six steps; namely forming, baking, impregnation, rebaking, graphitising and machining. During the graphitising phase the product is heated electrically to over 3 000 °C and is physically transformed into graphite, the crystalline form of carbon: a unique material with low electrical but high heat conductivity; and high strength and performance at high temperature; that makes it suitable for use in electric arc furnaces. The processing time for a graphite electrode system is approximately two months. There are no product substitutes for graphite electrode systems.

(14) Graphite electrode systems are used by steel producers in electric arc furnaces; also referred to as 'mini mills'; as current carrying conductors to produce steel from recycled scrap. Graphite electrodes and nipples used for such electrodes covered by this investigation are only those with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less. Graphite electrode systems which meet these technical parameters can carry a very high rate of power feed.

(15) One Indian exporter stated that, in some cases, he produced the product concerned without using 'premium needle coke', a top quality petroleum coke which, according to this company, was considered by the complainants to be indispensable for producing the product within the specifications as mentioned in recitals 12 to 14. This exporter therefore claimed that graphite electrodes, and nipples used for such electrodes, made without 'premium needle coke' should be excluded from the scope of the investigation. Indeed, different qualities of petroleum coke can be used for producing graphite electrode systems. However, it is the basic physical and technical characteristics of the end product and its end uses, irrespective of the raw materials used, which determine the product definition. If graphite electrodes and nipples used for such electrodes originating in India and imported into the Community meet the basic physical and technical characteristics as described in the product definition, they are considered product concerned. Therefore, the claim was rejected.

2. LIKE PRODUCT

(16) The product exported to the Community from India, the product produced and sold domestically in India as well as the one manufactured and sold in the Community by the Community producers were found to have the same basic physical and technical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(5) of the basic Regulation.

C. **SUBSIDISATION**

1. INTRODUCTION

(17) On the basis of the information contained in the complaint and the replies to the Commission's questionnaire, the following five schemes, which allegedly involve the granting of export subsidies by the GOI, were investigated:

(i) Duty Entitlement Passbook (DEPB) Scheme

(ii) Export Promotion Capital Goods (EPCG) Scheme

(iii) Advance Licence Scheme (ALS)

(iv) Export Processing Zones/Export Oriented Units (EPZ/EOU)

(v) Income Tax Exemption.

(18) Schemes (i), (ii), (iii), and (iv) specified above are based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy, summarised in the 'Export and Import Policy' documents, which are issued by the Ministry of Commerce every five years and updated regularly. The Export and Import Policy document relevant to the IP of this case is the five-year plan for the period 1 April 2002 to 31 March 2007. In addition, the GOI also sets out the procedures governing India's foreign trade policy in the 'Handbook of Procedures — 1 April 2002 to 31 March 2007' (Volume 1), and which is also updated on a regular basis.

(19) It is clear from the Export and Import Policy covering the period 1 April 2002 to 31 March 2007 that licences/certificates/permissions issued before the entry into force of this Policy shall continue to be valid for the purpose for which such licence/certificate/permission was issued, including during the IP, unless otherwise stipulated.

(20) Subsequent references in this text to the legal basis for the above-mentioned investigated schemes (i) to (iv) are hereinafter made in relation to the Export and Import Policy covering the period 1 April 2002 to 31 March 2007 and to the 'Handbook of Procedures — 1 April 2002 to 31 March 2007' (Volume 1).

(21) The Income Tax Exemption specified under (v) above is based on the Income Tax Act of 1961, which is amended annually by the Finance Act.

(22) Article 14(5)(b) of the basic Regulation provides that the 3 % de minimis subsidy threshold applying to imports from certain developing countries, i.e. developing countries which are members of the WTO and which are mentioned in Annex VII of the Agreement on Subsidies and Countervailing Measures ('ASCM') as well as for developing countries which are members of the WTO and which have completely eliminated export subsidies, shall expire eight years after the entry into force of the WTO Agreement. Given that the said Agreement entered into force on 1 January 1995, this subsidy threshold no longer applies. The de minimis threshold now applying to imports from all developing countries is 2 % as provided for in Article 14(5)(a) of the basic Regulation. In parallel with the application of the 3 % de minimis threshold which applied to countries mentioned in Annex VII of the ASCM, the EC practice had been to apply to said countries, a de minimis threshold of 0,3 % per individual subsidy scheme. As the specific de minimis threshold which had applied to countries mentioned in Annex VII of the ASCM is no longer applicable, it is considered that the threshold for individual schemes should no longer apply either.

2. DUTY ENTITLEMENT PASSBOOK SCHEME ('DEPB')

(a) *Legal Basis*

(23) The DEPB entered into force on 1 April 1997 by means of Customs Notification 34/97. Paragraphs 4.3.1 to 4.3.4 of the Export and Import Policy, and paragraphs 4.37 to 4.53 of the Handbook of Procedures contain a detailed description of the scheme. The DEPB is the successor to the Passbook Scheme which was terminated on 31 March 1997. From the outset, there were two types of the DEPB, DEPB on pre-export basis and DEPB on post-export basis.

(24) The GOI stressed that the DEPB on pre-export basis was abolished on 1 April 2000 and therefore the scheme is not relevant for the IP. It was established that none of the companies availed of any benefit under the DEPB on pre-export basis, and it is, therefore, not necessary to establish the countervailability of DEPB on pre-export basis. The following analysis of this scheme is thus based on the DEPB on post-export basis only.

(b) *Eligibility*

(25) The DEPB on post-export basis is available to manufacturer-exporters or merchant-exporters (i.e. traders).

(c) *Practical implementation of DEPB on post-export basis*

(26) Under the scheme, any eligible exporter can apply for credits, which are calculated as a percentage of the value of exported finished products. Such DEPB rates have been established by the Indian authorities for most products, including the product concerned, on the basis of Standard Input-Output Norms ('SION'). A licence stating the amount of credit granted is issued automatically upon receipt of the application.

(27) DEPB on post-export basis allows for the use of such credits to offset applicable customs duties on any subsequent imports, except for goods subject to import restrictions or prohibitions. Goods imported against such credits can then be sold on the domestic market (subject to sales tax) or otherwise used.

(28) DEPB licences are freely transferable and, as a consequence, are frequently sold. The DEPB licence, which is subject to an application fee of 0,5 % of the credit received, is valid for a period of 12 months from the date of issue. Accordingly, licences issued during the two-year period 01 April 2001 to 31 March 2003 were available during the IP either to be sold or to be used to off-set import duties.

(29) Prior to the IP, i.e. until 31 March 2002, the presentation of a DEPB licence allowed for an off-setting of normal import duty up to the face value of the licence. In addition, the DEPB licence also allowed for an exemption from another duty, the Special Additional Duty ('SAD'). The SAD is set at 4 % ad valorem of the duty inclusive customs value of most goods imported into India, including the product concerned. Whilst the exemption from the SAD under this scheme was contingent upon the presentation of a DEPB licence, the amount of SAD saved was not deducted from the amount of credit granted in the licence. In effect, therefore, an additional benefit, beyond the face value of the DEPB licence, accrued under the DEPB scheme.

(30) As from the beginning of the IP, i.e. 1 April 2002, the GOI abolished the exemption from SAD under the DEPB scheme. Therefore, during the IP any off-setting of SAD was directly deducted from the credit on the DEPB licence presented by the importer. To take account of this change to the scheme; and, in effect, to compensate exporters for the benefits previously available through exemption from SAD; the GOI increased the DEPB rates from 1 April 2002 by way of an amendment to the SION for the product concerned. The GOI also issued upon request, supplementary credits for extant licences issued prior to 1 April 2002 to increase the credit granted up to the level of the revised DEPB rate.

(d) *Conclusions on DEPB on post-export basis*

(31) When a company exports goods, it is granted a credit which can be used either to offset customs duties due on future imports of various goods or can simply be sold on the open market.

(32) The amount of credit is automatically calculated on the basis of SION rates, irrespective of whether inputs have been imported, duty has been paid on them or whether the inputs were actually used for export production and in what quantities. Indeed, a company can claim a licence on the basis of past exports irrespective of whether it makes any imports or purchases goods from other sources. The DEPB credits are considered to be a financial contribution because they are a grant. They involve a direct transfer of funds, as they can either be sold and converted into cash, or used to offset import duties, thus causing the GOI to forego revenue which is otherwise due.

(33) Article 2(1)(a)(ii) of the basic Regulation provides for an exception for, inter alia, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback).

(34) In this case, the exporter is under no obligation to actually consume the goods imported free of duty in the production process and the amount of credit is not calculated in relation to actual inputs used.

(35) Furthermore, there is no system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation.

(36) Lastly, exporters are eligible for the DEPB benefits regardless of whether they import any inputs at all. In order to obtain the benefit, it is sufficient for an exporter to simply export goods without demonstrating that any input material was imported. Thus, even exporters which procure all of their inputs locally and do not import any goods to be used as inputs are still entitled to the DEPB benefits. Hence, the DEPB on post-export basis does not fulfil the criteria of Annexes I to III of the basic Regulation.

(37) In the absence of (i) a requirement that imported inputs be consumed in the production process; and (ii) a system of verification as required under Annex II of the basic Regulation, the DEPB on post-export basis cannot be considered as a permitted drawback or substitution drawback scheme (Annex III) under Article 2(1)(a)(ii) of the basic Regulation.

(38) Since the above exception to the subsidy definition for drawback and substitution drawback schemes, referred to in recital (33), therefore does not apply, the issue of excess remission does not arise and the countervailable benefit is the remission of total import duties normally due on all imports.

(39) Therefore, since the financial contribution by the GOI confers a benefit upon the DEPB holder and since government revenue, which is otherwise due, is foregone, the scheme constitutes a subsidy. It is a subsidy contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation because, as explained above, it can only be obtained by exporting. It is therefore deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount for DEPB post-export basis*

(40) The benefit for the companies was calculated on the basis of the amount of credit granted in the licences, which have been utilised or transferred (sold) during the IP. In order to determine as accurately as possible the amount of revenue foregone it is necessary to draw a distinction between those licences issued and utilised during the IP, those licences issued and transferred during the IP, those licences issued prior to the IP and utilised during the IP, and those licences issued prior to the IP and transferred during the IP.

(41) Where a DEPB licence was issued and used during the IP by the co-operating exporting producer to import goods without payment of applicable duties (including SAD), the benefit was calculated on the basis of total import duties foregone, as deducted from the credit balance on the relevant DEPB licence.

(42) Where the DEPB licence was issued and transferred (sold) during the IP, the benefit was calculated on the basis of the amount of credit granted in the licence (face value), regardless of the sales price of the licence, since the sale of a licence is a pure commercial decision which does not alter the amount of benefit (equivalent to the GOI's transfer of funds) received from the scheme.

(43) Where the DEPB licence was issued prior to the IP and used during the IP by the co-operating exporting producer to import goods without payment of applicable duties, the benefit was calculated on the basis of total import duties foregone (including SAD), as deducted from the credit balance on the relevant licence. The supplementary licences issued for the increased DEPB credits, as outlined above, to the extent that they had been used to offset the duties, were also taken into account to determine the amount of revenue foregone by the GOI.

(44) Where the DEPB licence was issued prior to the IP and transferred (sold) during the IP, it was found that these licences were sold for a price which exceeded their nominal face value. This premium is explained by the additional exemption from SAD allowed by these licences, as explained above. Without knowing the products which were imported by the purchasers of these licences, it is not possible to determine the full amount of revenue foregone by the GOI. However, as a conservative estimate, this amount must have been at least equivalent to the sales price of the licence, as it makes no economic sense for the licence to sell for more than its true worth. The benefit was thus calculated on the basis of the sales price of the licence.

(45) As outlined in recital (26), the benefit under the DEPB scheme is based on the value of the exported finished products, and is not granted by reference to the quantities manufactured, produced, exported or transported. Therefore, the amount of subsidy calculated has been allocated over total export turnover during the IP, in accordance with Article 7(2) of the basic Regulation. In calculating the benefit, the fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation.

(46) The companies claimed that costs incurred by paying specialised agents, sales commissions and various other expenses should be deducted when calculating the benefit under this scheme. In this regard, it should be noted that using third parties for buying and selling licences is a purely commercial decision which does not alter the amount of credit granted in the licences. In any event, only costs necessarily incurred in order to obtain a subsidy are deductible in accordance with Article 7(1)(a) of the basic Regulation. Since the above costs are not necessary in order to qualify for the subsidy, the claims were rejected.

(47) The companies also claimed that the benefits from their DEPB licenses generated additional income, and thereby increased their overall tax liability, most notably their company income tax. Therefore, it was claimed that the benefit obtained from the DEPB scheme should be reduced by the amount of income tax actually payable.

(48) How a company chooses to use the benefit conferred under a subsidy scheme, in this case by either using the licenses to offset import duties or to sell the licenses, may have a different impact on the taxation situation of the company. It is not for the investigating authority to examine the possible effect such benefit will have on the taxation situation of that company. Consequently, the claim was rejected.

(49) Both co-operating companies benefited from this scheme during the IP and obtained subsidies ranging from 14,5 % to 20,4 %.

3. EXPORT PROMOTION CAPITAL GOODS SCHEME ('EPCG')

(a) *Legal basis*

(50) The EPCG Scheme was announced on 1 April 1992. During the IP the scheme was regulated by Customs Notification No 28/97 and 29/97 which entered into force on 1 April 1997. Details of the schemes are contained in Chapter 5 of the 2002/2007 Export and Import Policies and Chapter 5 of the Handbook of Procedures.

(b) *Eligibility*

(51) The scheme is available to manufacturers/exporters (i.e. every manufacturer in India which exports) or merchants/exporters (i.e. traders) 'tied' to supporting manufacturers.

(c) *Practical implementation*

(52) To benefit from the scheme, a company must provide to the relevant authorities details of the type and value of capital goods, which are to be imported. Depending on the level of export commitment which the company is prepared to undertake, the company will be allowed to import capital goods at either a zero or reduced rate of duty. In order to meet the export obligation, the imported capital goods must be used to produce exported goods. Upon application by the exporter, a licence authorising the import at preferential rates is issued. An application fee is payable to obtain the licence.

(53) The EPCG licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail of the benefit for duty free import of components required for the manufacture of such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of the supply of capital goods to an EPCG Licence holder.

(54) There is an export obligation in order to qualify for the EPCG Scheme. The export obligation must be fulfilled by exporting goods manufactured or produced by means of the capital goods, and the value of such exports must exceed the average level of exports of the same product achieved by the company in the preceding three licensing years.

(55) Recently, there has been a change in the conditions of the scheme in respect of the calculation of the export obligation. Under the new rules, the companies will have eight years to fulfil the export obligation (the amount of exports must be at least six times the value of the total duty exemption for imported capital goods). However, this change does not alter the fundamental operation of the scheme.

(d) *Conclusion on EPCG scheme*

(56) The payment by an exporter of a reduced or zero rate of import duty constitutes a financial contribution by the GOI, since revenue otherwise due is foregone and a benefit is conferred on the recipient by lowering or exempting the import duties normally payable. The licence cannot be obtained without a commitment to export goods. As such, the EPCG Scheme is a subsidy contingent in law upon export performance within the meaning of Article 3(4)(a) of the basic Regulation, and is deemed to be specific and thus countervailable.

(e) *Calculation of the subsidy amount*

(57) The benefit to the companies has been calculated on the basis of the amount of unpaid customs duty on imported capital goods spread over a period which reflects the normal depreciation period of such capital goods in the industry of the product concerned, pursuant to Article 7(3) of the basic Regulation. In accordance with established practice, the amount of the benefit which is attributable to the IP has been adjusted by adding interest during the IP in order to reflect the value of the benefit over time and thereby establish the full benefit of this scheme to the recipient. Given the nature of the subsidy, which is equivalent to a one-time grant, the company specific commercial interest rate during the IP was considered appropriate. As outlined in recital (54), the benefit under the EPCG scheme is dependant on the increased value of the exported finished products, and is not granted by reference to the quantities manufactured produced, exported or transported. Therefore, the amount of subsidy has been allocated over total export turnover during the IP, in accordance with Article 7(2) of the basic Regulation.

(58) Both co-operating exporters benefited from the EPCG scheme during the IP and obtained subsidies ranging from 0,1 % to 0,3 %.

4. ADVANCE LLICENCE SCHEME ('ALS')

(a) *Legal basis*

(59) The ALS has been in operation since 1977-78. The scheme is specified in paragraphs 4.1.1 to 4.1.7 of the Export and Import Policy and parts of chapter 4 of the Handbook of Procedures.

(b) *Eligibility*

(60) Advance Licences are available to exporters, manufacturer-exporters or merchant-exporters 'tied to' supporting manufacturer(s) for the duty-free import of inputs used in the production of goods for export.

(c) *Practical implementation*

(61) The volume of imports allowed under this scheme is determined as a percentage of the volume of exported finished products. The advance licences measure the units of authorised imports in terms of their quantity as well as in terms of their value. In both cases, the rates used to determine the allowable duty free purchases are established for most products, including the product concerned, on the basis of SION. The input items specified in the advance licences are items used in the production of the relevant finished products.

(62) Advance licences can be issued for:

(i) Physical exports: Advance Licences may be issued to a manufacturer exporter or merchant exporter 'tied to' supporting manufacturer(s) for import of inputs required in the manufacture of products for export.

(ii) Intermediate supplies: Advance Licences may be issued for intermediate supply to a manufacturer-exporter for the inputs required in the manufacture of goods to be supplied to the ultimate exporter/deemed exporter holding another Advance Licence. The Advance Licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against Advance Licences for intermediate supplies. In such cases, the quantities purchased on the domestic market are written off from the Advance Licences, and an intermediate Advance Licence is issued to the benefit of the domestic supplier. The holder of such intermediate Advance Licence is entitled to the benefit of importing duty free the goods needed to produce those inputs delivered to the final exporter.

(iii) Deemed exports: Advance Licences can be issued for deemed export to the main contractor for import of inputs required in the manufacture of goods to be supplied to the categories mentioned in paragraph 8.2 of the Export and Import Policy. According to the GOI, deemed exports refers to those transactions in which the goods supplied do not leave the country. A number of categories of supply is regarded as deemed exports provided the goods are manufactured in India, e.g. supply of goods to Export Oriented Units, supply of capital goods to holders of licences under EPCG.

(iv) Advance Release Orders ('ARO'): The Advance Licence holder intending to source the inputs from indigenous sources, in lieu of direct import, has the option to source them against AROs. In such cases, the Advance Licences are validated as AROs and are endorsed to the supplier upon delivery of the items specified therein. The endorsement of the ARO entitles the supplier to the benefits of deemed exports drawback and refund of terminal excise duty. In a way, the ARO mechanism refunds taxes and duties to the manufacturer supplying the product, instead of refunding the same to the exporter in the form of drawback/refund of duties. The refund of taxes/duties is available both for indigenous inputs as well as imported inputs.

(63) It was established during the verification that only the ALS referred to under (i) above (physical exports) was used by one manufacturing-exporter during the IP. It is therefore not necessary to establish the countervailability of the above-mentioned categories (ii), (iii) and (iv) of the ALS in the context of this investigation.

(d) *Conclusions on the scheme*

(64) Only exporting companies are granted licences which can be used to offset amounts of customs duties on imports. In this regard, the scheme is contingent upon export performance.

(65) As mentioned above, it was established that the ALS, in respect of 'physical exports', was used by one investigated company during the IP. The company used the ALS for duty-free imports of inputs for exported goods.

(66) The GOI claimed that the ALS is a quantity based scheme, and that the inputs allowed under this licence are with reference to the quantity of exports. It was also submitted that whatever inputs are imported under the ALS, the same inputs have to be used in the manufacturing of the exported products or for replenishment of the stock of inputs used in the products already exported. According to the GOI, the imported inputs have to be used by the exporter and no such inputs are allowed to be sold or transferred.

(67) However, it was noted that there was no system or procedure in place to confirm whether and which inputs are consumed in the production process of exported goods. The system only shows that the goods imported duty-free have been used in the production process, with no distinction between the destination of the goods (domestic or export market).

(68) Article 2(1)(a)(ii) of the basic Regulation provides for an exception for, inter alia, drawback and substitution drawback schemes which conform to the strict rules laid down in Annex I item (i), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation.

(69) In the absence of a system or procedure in place to confirm which inputs are consumed in the production process of the exported product or whether an excess payment of import duties occurred within the meaning of item (i) of Annex I and Annexes II and III of the basic Regulation, the ALS cannot be considered as a permitted drawback or substitution drawback scheme under Article 2(1)(a)(ii) of the basic Regulation.

(70) Since the above exception to the subsidy definition for drawback and substitution drawback schemes referred to in recital 68 does not apply, the issue of excess remission does not arise and the countervailable benefit is the remission of total import duties normally due on all imports.

(e) *Calculation of the subsidy amount*

(71) The benefit for the company was calculated on the basis of the amount of credit granted in the licences, which has been utilised during the IP. As outlined in recital 61, the benefit under the ALS scheme is based both on the quantity and on the value of the exported finished products. Therefore, the amount of subsidy calculated has been allocated over total export turnover during the IP, in accordance with Article 7(2) of the basic Regulation. In calculating the benefit, the fees necessarily incurred to obtain the subsidy were deducted, in accordance with Article 7(1)(a) of the basic Regulation. On this basis, the subsidy obtained was 0,2 %.

5. EXPORT PROCESSING ZONES ('EPZ') / EXPORT ORIENTED UNITS ('EOU')

(72) It was verified that neither exporting producer is located in either an EPZ or an EOU. Accordingly, no further analysis of this scheme was considered necessary for the purposes of this investigation.

6. INCOME TAX EXEMPTION

(a) *Legal basis*

(73) The Income Tax Act 1961 is the legal basis under which Income Tax Exemption operates. The Act, which is amended yearly by the Finance Act, sets out the basis for the collection of taxes as well as various exemptions/deductions which can be claimed. Among the exemptions which can be claimed by firms are those covered by sections 10A, 10B and 80HHC of the Act, which provide an income tax exemption on profits from export sales.

(b) *Practical implementation*

(74) The GOI stated that the Income Tax Exemption was abolished as of 31 March 2003 and provided evidence to that effect. While the scheme may have conferred benefits on the exporters concerned during the IP, the scheme will not confer any benefits to exporting companies after that date. In these circumstances, and in accordance with Article 15(1) of the basic Regulation, it is not necessary to establish the countervailability of the Income Tax Exemption.

7. AMOUNT OF COUNTERVAILABLE SUBSIDIES

(75) The amount of countervailable subsidies in accordance with the provisions of the basic Regulation, expressed ad valorem, for the investigated exporting producers are 14,6 % and 20,9 %. Given that the level of the overall co-operation for India was high (100 % of the exports of the product concerned from India to the Community), the residual subsidy margin for all other companies was set at the level for the company with the highest individual margin, i.e. 20,9 %.

Type of subsidy	DEPB	EPCGS	ALS	EPZ/EOU	ITE	TOTAL
Graphite India Limited (GIL)	14,5 %	0,1 %				14,6 %
Hindustan Electro Graphite (HEG) Limited	20,4 %	0,3 %	0,2 %			20,9 %
All others						20,9 %

D. **COMMUNITY INDUSTRY**

1. TOTAL COMMUNITY PRODUCTION

(76) Within the Community, the like product is manufactured by SGL AG ('SGL') and several subsidiaries of UCAR SA ('UCAR'), namely UCAR SNC, UCAR Electrodos Ibérica SL and Graftech SpA, on behalf of which the complaint was lodged. Production facilities of SGL and UCAR are located in Austria, Belgium, Germany, France, Italy and Spain.

(77) In addition to the two complainant Community producers, SGL and UCAR, the like product was manufactured in the Community by two other producers during the period 1999-IP. One of these two other producers went into insolvency and had to ask for judicial protection under the German bankruptcy law. This latter company stopped producing the like product as of November 2002. These two companies expressed their support in respect of the complaint but declined the Commission's invitation to co-operate actively in the investigation. It is concluded that all the above four producers constitute the Community production within the meaning of Article 9(1) of the basic Regulation.

2. DEFINITION OF THE COMMUNITY INDUSTRY

(78) The two complainant Community producers properly replied to the questionnaire and fully co-operated in the investigation. During the IP, they represented more than 80 % of the Community production.

(79) They are deemed to constitute the Community industry within the meaning of Article 9(1) and Article 10(8) of the basic Regulation and will hereafter be referred to as the 'Community industry'.

E. **INJURY**

1. PRELIMINARY REMARK

(80) Given that there are only two Indian exporting producers of the product concerned, and given that the Community industry also comprises only two producers, data relating to either imports of the product concerned into the Community originating in India, or to the Community industry had to be indexed in order to preserve confidentiality pursuant to Article 29 of the basic Regulation.

2. COMMUNITY CONSUMPTION

(81) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales volumes of the other Community producers on the Community market estimated on the basis of best available evidence, the sales volumes of the two Indian co-operating exporting producers on the Community market, the sales volumes imported from Poland obtained from the co-operation of SGL, and Eurostat data for the remaining imports in the Community, duly adjusted where appropriate.

(82) On this basis, between 1999 and the IP, Community consumption of the product concerned increased by 9 %. Specifically, it increased by 14 % between 1999 and 2000, declined by 7 percentage points in 2001, by a further 1 percentage point in 2002, before increasing by 3 percentage points in the IP. As the product concerned is primarily used in the electric steel industry, the development of consumption has to be seen against the economic trends of this particular sector, which displayed a sharp acceleration in 2000, followed by a downturn from 2001 onwards.

	1999	2000	2001	2002	IP
Total EC consumption (tonnes)	119 802	136 418	128 438	126 623	130 615
Index (1999 = 100)	*100*	*114*	*107*	*106*	*109*

3. IMPORTS FROM THE COUNTRY CONCERNED

(a) *Volume*

(83) The volume of imports of the product concerned from India into the Community increased by 76 % between 1999 and the IP. In detail, imports from India increased by 45 % between 1999 and 2000, by a further 31 percentage points in 2001 and remained almost stable at this level in 2002 and the IP.

	1999	2000	2001	2002	IP
Volume of subsidised imports (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*145*	*176*	*176*	*176*
Market share of subsidised imports	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*127*	*164*	*166*	*161*

(b) *Market share*

(84) The market share held by exporters in the country concerned increased by 3,4 percentage points (or 61 %) during the period considered to reach a level of 8 to 10 % during the IP. It first rose by 1,5 percentage point between 1999 and 2000, by a further 2 percentage points in 2001 and stayed relatively stable at this level through 2002 and the IP. It should be noted that over the period 1999 to the IP, the increase in imports and market shares from the country concerned coincided with an increase in consumption of 9 %.

(c) *Prices*

(i) Price evolution

(85) Between 1999 and the IP, the average price of imports of the product concerned originating in India increased by 2 % in 2000, by a further 8 percentage points in 2001 and then declined by 9 percentage points in 2002, a level at which it stabilised in the IP. In the IP, the average import price of the product concerned originating in India was 1 % higher than in 1999.

	1999	2000	2001	2002	IP
Prices of subsidised imports	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*102*	*110*	*101*	*101*

(ii) Price undercutting

(86) A comparison for comparable models of the product concerned was made between the exporting producers' and the Community industry's average selling prices in the Community. To this end, Community industry's ex-works prices to unrelated customers, net of all rebates and taxes have been compared with the CIF Community frontier prices of exporting producers of India, duly adjusted for post importation costs. The comparison showed that during the IP the product concerned originating in India sold in the Community undercut the Community industry's prices by between 6,5 % and 12,2 %.

(87) It should be noted that these price undercutting margins do not fully illustrate the effect of the subsidised imports on prices of the Community industry, given that both price depression and price suppression were observed, as evidenced by the relatively low profitability reached by the Community industry during the IP, whilst it could have expected a reasonably higher profit in the absence of subsidisation.

4. SITUATION OF THE COMMUNITY INDUSTRY

(88) Pursuant to Article 8(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(a) *Preliminary remarks*

(89) In order to make a meaningful assessment of certain injury indicators, it was necessary to consolidate adequately some data pertaining to UCAR together with those of its production subsidiaries in the Community (see recital 76 above).

(90) The Commission paid particular attention to all possible consequences on injury indicators arising from the past anti-competitive behaviour of the two complainant Community producers. The Commission notably ensured that the starting point for injury assessment (1999) was free from any anti-competitive practise (see recitals 121, 122, 125 below). Additionally, when establishing costs and profitability for the Community industry, the Commission explicitly requested and verified that the direct cost of the payments, or any indirect costs (including the financing charges) thereof, linked to penalties imposed by competition authorities were clearly excluded, so as to provide a profit picture excluding any of these extraordinary expenditures.

(b) *Production*

(91) Community industry's production increased by 14 % in 2000, declined by 16 percentage points in 2001, declined by a further 4 percentage points in 2002 and increased by 5 percentage points in the IP. The sharp increase observed in 2000 was due to the good economic climate, which also translated into a rising capacity utilisation rate that year.

	1999	2000	2001	2002	IP
Production (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*114*	*98*	*94*	*99*

(c) *Capacity and capacity utilisation rates*

(92) The production capacity decreased in 2000 by around 2 % and stayed at this level in 2001. In 2002 and the IP, production capacity further decreased by respectively 5 percentage points and 2 percentage points. In the IP, production capacity was 9 % lower than in 1999, principally as a result of the mothballing of a facility of a Community producer, effective during the whole IP.

(93) Capacity utilisation started from a level of 70 % in 1999, before increasing to 81 % in 2000 driven by strong demand, in particular from the electric steel industry. In 2001 and 2002, it fell back to a level of 70 % before rising to 76 % in the IP.

(94) The investigation found that there are several causes at the root of the economic problems facing the above mentioned mothballed facility, amongst which the two most noticeable are: (i) high production costs linked to the price of electricity in this particular country, and (ii) the competition from subsidised imports originating in India. Given the difficulty to disentangle one cause from the other, the Commission examined what would have been the trends for capacity and capacity utilisation in 2002 and the IP if this facility had not been mothballed. The volume of production was left unchanged in this simulation as other production facilities of this Community producer raised their output in order to fill the gap. As shown in the table below, if this facility had not been mothballed, both production capacity and capacity utilisation for the Community industry as a whole would have reached in the IP a level very close to that of 1999.

	1999	2000	2001	2002	IP
Production capacity (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*98*	*98*	*93*	*91*
Capacity utilisation	70 %	81 %	70 %	70 %	76 %
Index (1999 = 100)	*100*	*115*	*99*	*100*	*108*
	1999	2000	2001	2002	IP
Production capacity (tonnes) without mothballing	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*98*	*98*	*100*	*101*
Capacity utilisation without mothballing	70 %	81 %	70 %	65 %	69 %
Index (1999 = 100)	*100*	*115*	*99*	*93*	*98*

(d) *Stocks*

(95) During the IP, inventories of finished products represented around 3 % of Community industry's total production volume. The level of closing stocks of the Community industry increased globally during the period considered and was around five times higher in the IP compared to 1999. However, the investigation found that the development of inventories is not regarded a particularly relevant indicator of the economic situation of the Community industry, as Community producers generally produce to order and therefore stocks are usually goods awaiting dispatch to customers.

	1999	2000	2001	2002	IP
Closing stock (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*235*	*700*	*663*	*515*

(e) *Sales volume*

(96) Sales by the Community industry of its own production on the Community market to unrelated customers declined by 1 % between 1999 and the IP. More specifically, they rose sharply by 16 % in 2000, dropped by 17 percentage points in 2001 and by a further 5 percentage points in 2002, before rising again by 5 percentage points in the IP. The development of sales volume mirrors closely economic trends in the electric steel industry, which after the boom observed in 2000, suffered a downturn in 2001 and 2002.

	1999	2000	2001	2002	IP
EC sales volume to unrelated customers (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*116*	*99*	*94*	*99*

(f) *Market share*

(97) After a small initial gain of one percentage point in 2000, the market share held by the Community industry declined substantially until 2002. The Community industry lost 6,5 percentage points of market share in 2001 and further 2,8 percentage points in 2002, before recovering 1,9 percentage points during the IP. Compared with 1999, the market share held by the Community industry during the IP was 6,3 percentage points lower or 9 % in terms of indices.

	1999	2000	2001	2002	IP
Market share of Community industry	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*102*	*93*	*89*	*91*

(g) *Growth*

(98) Between 1999 and the IP, when Community consumption increased by 9 %, the sales volume of the Community industry on the Community market declined by 1 %. The Community industry lost 6,3 percentage points of market share, as seen above, whereas subsidised imports gained 3,4 percentage points of market share during the same period.

(h) *Employment*

(99) The employment level of the Community industry decreased by around 17 % between 1999 and the IP. The workforce declined by 1 % in 2000 and by 5 percentage points in 2001. In 2002 and the IP, drops of respectively 9 percentage points and 3 percentage points occurred, principally caused by the mothballing of a facility of a Community producer, and the re-allocation of part of the workforce to more profitable business segments.

	1999	2000	2001	2002	IP
Employment	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*99*	*95*	*86*	*83*

(i) *Productivity*

(100) Productivity of the Community industry's workforce, measured as output per person employed per year, first increased strongly by 15 % from 1999 to 2000, dropped by 12 percentage points in 2001, increased again by 5 percentage points in 2002 and by a further 11 percentage points during the IP. At the end of the period considered, productivity was 19 % higher than that observed at the start of the period, which reflects rationalisation efforts undergone by the Community industry in order to stay competitive. As a comparison, average labour productivity growth in the Community economy at large (all economic sectors) was just 1,5 % per year during the same period.

	1999	2000	2001	2002	IP
Productivity (tonnes per employee)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*115*	*103*	*108*	*119*

(j) *Wages*

(101) Between 1999 and the IP, the average wage per employee increased by 13 %. This figure is slightly below the rate of increase of the average nominal compensation per employee (14 %) observed during the same period in the Community economy at large (all sectors).

	1999	2000	2001	2002	IP
Annual labour cost per employee (000 EUR)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*104*	*105*	*111*	*113*

(k) *Sales prices*

(102) Unit prices for Community sales to unrelated customers of Community industry's own production decreased by 6 % between 1999 and 2000, rose by 9 percentage points in 2001, declined by 12 percentage points in 2002, and edged up by 1 percentage point in the IP. Altogether, between 1999 and the IP, the fall in unit sales prices amounted to 8 %. This relatively uneven development is explained by the following.

(103) Prices are driven by two major forces: the costs of production ('COP') and the supply and demand situation on the market. Whilst unit sales prices decreased by 8 % between 1999 and the IP, unit costs of production increased by 2 %. This relatively flat development of costs hides a jump by 10 percentage points observed in 2001, due to the lagged consequence of the 2000 increase in raw material prices. The two principal raw materials in the manufacturing of graphite electrode systems, namely petroleum coke and pitch, account for around 34 % of total costs of production. Energy, whose price is also very much linked to oil price fluctuations, represents a further 13 % of total production costs. Altogether, these three key cost items with a price directly influenced by oil price variations, account for close to 50 % of total costs of production of the like product. As Community industry's prices could not match increases in costs of production, because of the price suppression linked to subsidised imports, the Community industry experienced a drop in profitability.

	1999	2000	2001	2002	IP
Unit price EC market (EUR/tonne)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*94*	*103*	*91*	*92*
Unit COP (EUR/tonne)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*101*	*111*	*101*	*102*

(l) *Factors affecting Community prices*

(104) The investigation showed that subsidised imports were undercutting the depressed average sales price of the Community industry by 6 to 12 % on average in the IP (see recital 86 above). However, on a type-by-type basis it was found that in some instances prices offered by the exporting producers concerned were significantly lower than the above, average undercutting of the Community industry's prices. The combination of this undercutting established on a more individual product type level, together with the growing market share held by subsidised imports certainly affected the domestic prices of the Community industry.

(m) *Profitability and return on investments*

(105) During the period considered, profitability of sales in the Community of own production to unrelated customers in terms of return on net sales before taxes decreased by 50 % in 2000, by a further 3 percentage points in 2001, by a further 18 percentage points in 2002 and finally recovered by 4 percentage points during the IP. Between 1999 and the IP, the decline in profitability amounts to 66 %, i.e. from a range of 12 to 15 % in 1999 to a range of 3 to 6 % in the IP.

(106) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the above profitability trend over the whole period considered. It declined by 34 % in 2000, by 23 percentage points in 2001, by 26 percentage points in 2002 and by a further 8 percentage points in the IP. Compared with the situation prevailing in 1999, ROI had declined by around 90 % in the IP, i.e. from a range of 45 to 55 % in 1999 to a range of 3 to 10 % in the IP.

(107) The Commission isolated the impact of the above mothballing (see recital 94 above) on the Community industry's aggregated profitability during the IP. It was found that the Community industry's profitability would have been higher by 0,8 percentage points in 2002 and by 0,5 percentage points in the IP, which would not have substantially altered the trend of profitability since 1999.

	1999	2000	2001	2002	IP
Profitability of EC sales to unrelated (% of net sales)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*51*	*48*	*30*	*34*
ROI (profit in % of net book value of investments)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*66*	*43*	*17*	*9*
Profitability of EC sales to unrelated (% of net sales) without mothballing	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*51*	*48*	*35*	*39*

(n) *Cash flow and ability to raise capital*

(108) The net cash flow from operating activities declined in 2000 by 40 %, recovered by 24 percentage points in 2001, declined again by 12 percentage points in 2002 and declined further by 7 percentage points in the IP. Cash flow was 35 % lower in the IP than at the start of the period considered.

	1999	2000	2001	2002	IP
Cash flow (000 EUR)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*60*	*84*	*72*	*65*

(109) Both complainant Community producers have been fined by various national and regional competition authorities in the world for price and market fixings in the 1990s. In addition to these penalties, the two complainant Community producers have incurred further charges linked on the one hand to the settlement of class action lawsuits with customers and stockholders in the US and Canada, and on the other hand to the financing of these extraordinary expenses. As a result, the indebtedness of the two groups has dramatically increased and both their credit ratings and ability to raise capital have deteriorated. The practical consequence of this situation is that no distinct assessment, in respect of the ability to raise capital that would be limited to the scope of the sector manufacturing and selling the like product is possible in isolation of the anti-trust background. However, the evidence gathered above in respect of profitability, ROI and cash flow and below in respect of investments, which are relevant for the sole scope of the like product and for which any effects of this anti-competitive behaviour have been carefully eliminated, may certainly be regarded as an aggravating element, on top of the above, already tight, financial situation.

(o) *Investments*

(110) The Community industry's annual investments in the product concerned declined by around 50 % between 1999 and the IP. Specifically, it declined by 27 % in 2000, recovered by 4 percentage points in 2001, declined again by 18 percentage points in 2002 and decreased further by 8 percentage points during the IP.

	1999	2000	2001	2002	IP
Net investments (000 EUR)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*73*	*77*	*59*	*51*

(p) *Magnitude of countervailing margin*

(111) As concerns the impact on the Community industry of the magnitude of the actual margin of subsidisation, given the volume and the prices of the imports from the country concerned, this impact cannot be considered to be negligible.

(q) *Recovery from past subsidisation or dumping*

(112) In the absence of any information on the existence of subsidisation or dumping prior to the situation assessed in the present proceeding, this issue is considered irrelevant.

5. CONCLUSION ON INJURY

(113) Between 1999 and the IP, the volume of the subsidised imports of the product concerned originating in India increased significantly by 76 % and its share of the Community market increased by 3,4 percentage points. The average prices of subsidised imports from India were consistently lower than those of the Community industry during the period considered. Moreover, during the IP, the prices of the imports from the country concerned undercut those of the Community industry. On a weighted average basis, price undercutting was in the IP around 6 to 12 % on average, while on the basis of individual product types, price undercutting was in some cases significantly higher.

(114) A deterioration in the situation of the Community industry has been found over the period considered. Between 1999 and the IP, virtually all injury indicators developed negatively: production volume declined by 1 %, production capacity declined by 9 %, sales volumes in the Community decreased by 1%, and the Community industry lost 6,3 percentage points of market share. The unit sales price declined by 8 % while the unit cost of production increased by 2 %, the profitability declined by 66%, the return on investments and the cash-flow from operating activities followed the same negative trend. Employment decreased by 17 %, investment declined by 50 %.

(115) Some indicators experienced apparent positive developments: over the period considered wages increased by 13 %, which can be regarded as a normal rate of increase and productivity increased by 19 %. Together with the decrease in employment mentioned above, the latter illustrate the effort undergone by the Community industry to stay competitive in spite of competition from subsidised imports from India.

(116) In the light of the foregoing it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 8 of the basic Regulation.

F. **CAUSATION**

1. INTRODUCTION

(117) In accordance with Article 8(6) and (7) of the basic Regulation, the Commission examined whether subsidised imports have caused injury to the Community industry to a degree that enables it to be classified as material. Known factors other than the subsidised imports, which could at the same time be injuring the Community industry, were also examined to ensure that possible injury caused by these other factors was not attributed to the subsidised imports.

2. EFFECTS OF THE SUBSIDISED IMPORTS

(118) The significant increase in the volume of the subsidised imports by 76 % between 1999 and the IP, and of its corresponding share of the Community market, i.e. by around 3,5 percentage points, as well as the undercutting found (around 6 to 12 % on average during the IP) coincided with the deterioration of the economic situation of the Community industry. During the same period, the Community industry experienced a loss in sales volumes (- 1 %), in market shares (- 6,3 percentage points) and a deterioration of profitability (- 8,7 percentage points). This development should be seen against the background of the growing Community market during the years 1999-IP. In addition, subsidised prices were below those of the Community industry throughout the period considered and exerted a pressure on them. The resulting drop in Community industry's prices (by 8 %), at a time when the costs of production increased by almost 2 % triggered the observed drop in profitability. It is therefore provisionally considered that the subsidised imports had a significant negative impact on the situation of the Community industry.

3. EFFECTS OF OTHER FACTORS

(a) *Decline in demand linked to the slowdown in the steel market*

(119) Two interested parties claimed that any injury felt by the Community industry was linked to the downturn experienced in 2001 and early 2002 by the primary consumer of the like product, namely the steel industry.

(120) The 2001-2002 downturn in the steel industry is acknowledged and is indeed confirmed by the consumption trend of the product concerned and like product, which peaked in 2000, and subsequently declined in both 2001 and 2002. Indeed, the profitability of the Community industry declined steadily in the years 2000 to 2002. However, the argument has certainly no relevance regarding 2000, a year during which the Community industry could not benefit from the boom in the steel market, as witnessed by the major drops in sales price and profitability observed that year. The same year, by contrast, import volumes from India increased sharply by 45 % and their market share rose by 1,5 percentage point. It is also noted that consumption was from 2000 until the IP significantly above the 1999 level. Thus, a downturn in the steel industry did not translate into an overall reduced demand for the product concerned and the like product; although obviously the outstanding 2000 level was not reached in subsequent years. It is therefore provisionally concluded that the decline in demand linked to the slowdown in the steel market does not provide a satisfactory explanation for the injury felt by the Community industry, and only contributed to the injury suffered by the Community industry to a very limited extent, if at all. The effect was consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the subsidised imports from the country concerned and the material injury suffered by the Community industry.

(b) *Return to normal competition conditions after the dismantling of a cartel*

(121) Several interested parties claimed that any injury felt by the Community industry was merely the consequence of the return to normal competition conditions on the Community market for graphite electrode systems. More precisely, the said parties attribute the drop in Community industry's prices and profitability from 1999 onwards to the fact that the starting point was artificially high due to the existence of a cartel.

(122) In decision 2002/271/EC of 18 July 2001 [1], the Commission found that the two complainant Community producers had, together with other producers, practised a cartel between May 1992 and March 1998. The IP set in the present anti-subsidy proceeding covers the period from 1 April 2002 to 31 March 2003, whilst the period relevant for the assessment of injury trends covers the period starting on 1 January 1999 until the end of the IP. Therefore, both the IP and the period considered are substantially posterior to the operation of the cartel. The investigation has found that, although different kinds of agreements and contracts exist, the largest volumes of transactions are typically covered by an annual contract whereby a certain number of deliveries are guaranteed through the year at a certain price. Negotiations of annual contracts typically take place in October-November of the year preceding the entry into force of the contract. The investigation has found that in the period 1998-1999, annual contracts covered around 40 % of the transactions, six-month contracts covered around 35 % and three-month contracts or single orders covered around 25 %. Long-term contracts (e.g. three-year contracts) have been gaining ground relatively recently, but were, in the years 1997-98, marginal, if not totally non-existent, as would logically be expected in a market that was characterised by high prices. It was therefore found that virtually all the transactions actually invoiced and paid in 1999, and the ensuing prices examined under recitals (102) and (103) above result from agreements between sellers and purchasers set after the period during which market and price fixings had been found.

[1] OJ L 100, 16.4.2002, p. 1.

(123) As a supportive element to the above argument, the same interested parties drew the attention of the Commission to the development of prices of large diameter electrodes (i.e. with a diameter above 700 mm), a segment that is allegedly not served by Indian exporting producers. The investigation found that although the two Indian exporting producers did not export this range of product during the IP to the Community, they developed their technical capability to produce this range of product. The investigation further found that the Community industry's prices for this particular range of products had fallen relatively more between 1999 and the IP than the Community industry's average prices for the like product considered as a whole. This product range represents a limited share, around 8 %, of the Community industry's total sales volume on the Community market of the like product. This particular market segment has two more features. First, it is a relatively recent and growing market, which implies that this market has become increasingly competitive in the years 1999 to the IP. Second, it is characterised by the presence of a very small number of large customers, who also purchase smaller diameter electrodes. As one would logically expect, these larger-than-average customers use their leveraged purchasing power to obtain larger discounts than a 'normal' customer would obtain. The price trend for this particular segment is therefore distorted by the growing predominance of the above large customers. Finally, although Indian producers did not export this product range on a regular basis during the IP, the investigation found Indian price offers for this product range, which Community customers used as a further bargaining tool in their negotiations with the Community industry.

(124) The Commission requested and obtained long term price series (since the mid 1980s) from the Community industry, for representative sales of the like product on the Community market. This series shows that prices increased gradually during the 1990s and reached a peak in 1998. Between 1998 and 1999, a sharp decline in price by 14 % was observed, which clearly mirrors the end of the period of market and price fixing.

(125) In addition, the argument of the return to normal competition conditions after dismantling of the cartel provides no explanation for the loss in market share felt by the Community industry from 1999 until the IP, as symmetrically opposed to the gain in market share enjoyed by subsidised imports. It follows from the above that the return to normal competition conditions after dismantling the cartel might explain only a limited part of the injurious trend experienced by the Community industry, and that its effect was consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the subsidised imports from the country concerned and the material injury suffered by the Community industry.

(c) *Performance of other Community producers*

(126) No other Community producer not belonging to the Community industry co-operated in the investigation. It must be noted however that one of the two other known Community producers became insolvent and stopped producing as of November 2002 (see recital 77 above). Based on available evidence, the EC sales volume of the two other producers increased from around 15 000 tonnes in 1999 to around 21 000 tonnes in 2002, before declining to around 19 000 tonnes during the IP. As far as their market share is concerned, it went from 12,5 % in 1999 to 16,6 % in 2002, before declining to 14,4 % during the IP. If the investigation had covered 2003 as a whole, the market share of the sole remaining Community producer would have been 9,7 %. While it is true that the two other Community producers gained 1,9 percentage points of market share between 1999 and the IP, the fact that one producer became insolvent is, as with the Community industry, indicative of an injurious situation. It is therefore provisionally concluded that the performance of other Community producers only contributed to the injury suffered by the Community industry to a very limited extent, if at all, and that its effect was consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the subsidised imports from the country concerned and the material injury suffered by the Community industry.

(d) *Imports from other third countries*

(127) According to the available information, the total import volume of the like product originating in third countries other than India increased by 20 % from around 13 000 tonnes in 1999 to around 15 000 tonnes in the IP, and their market share increased from 10,7 % in 1999 to 11,8 % in the IP. As regards the weighted average CIF prices of these imports, they decreased by 8 % between 1999 and the IP, from around 2 400 EUR/tonne in 1999 to around 2 200 EUR/tonne in the IP. It should be noted that the prices of imports from third countries other than India remained substantially higher than the prices of the imports from the country concerned throughout the period considered.

(128) It was further found that only imports originating in three countries other than India had a share of the Community market above 1 % during the IP, i.e. Japan, Poland and the USA. It was found that (i) the market share of Japan rose from 2,1 % in 1999 to 2,6 % in the IP, (ii) the market share of Poland increased from 3,3 % in 1999 to 4,4 % in the IP and (iii) the market share of the USA declined from 5,3 % in 1999 to 4,7 % in the IP. From these three origins, the CIF import prices of Japan and the USA appear to undercut the Community industry's prices, whilst prices of imports originating in Poland were above the prices of the Community industry. In addition, CIF import prices of these three countries have always been above those of the country concerned. Furthermore, no evidence is available that would indicate that these imports were made at subsidised prices.

(129) The investigation established that the two facilities producing the like product in Poland and exporting it into the Community are both subsidiaries of one complainant Community producer. Therefore, all of the above import volumes from Poland during the IP have been made on behalf of the aforementioned Community producer. The investigation also established that approximately 40 % of the volumes of the like product imported from the USA have been actually imported by the other complainant Community producer for final sale in the Community. No indication was found that the corresponding re-sales were injurious to other Community producers or that these importing activities were made at the expense of own production in the Community. The two complainant Community producers own other facilities producing the like product in other third countries, however, the investigation established that these import volumes were individually and collectively negligible, i.e. below 1 % of the Community consumption.

(130) The two complainant Community producers are large companies operating on a global level. Their field of activity is not restricted to the Community alone. These companies not only import some limited quantities of the like product for final sale in the Community, but also export a substantial amount of their Community production outside the Community. The rationale behind these world shipments is an increasing tendency to specialise the various facilities by dimensions and grades of the like product, with the direct consequence that both complainant Community producers have, for certain dimensions and grades, to resort to imports from non-EC facilities in order to complement the range of products offered to the customer in the Community.

(131) Given the average prices, the small volume of these imports, their limited market share and the above considerations in terms of product range, no indications could be found that these third country imports, whether or not originating from facilities owned by the two complainant Community producers, contributed to the injurious situation suffered by the Community industry notably in terms of market shares, sales volumes, employment, investment, profitability, return on investment and cash flow.

(132) It was also claimed that this proceeding was discriminatory because it had overlooked the existence of imports of the like product originating in the People's Republic of China ('PRC'), as allegedly shown by relatively large import quantities from the PRC reported under CN code 8545 11 00. It should be first highlighted that CN code 8545 11 00 covers not only the product concerned and the like product, but also other items. It is therefore inappropriate to draw conclusions on the sole basis of the above CN code. Special attention was however paid to this issue during verification visits carried out at the premises of the co-operating users. Whilst several users had reported in their questionnaire replies volumes of the like product imported from the PRC, the on spot verification evidenced that none of these Chinese electrodes matched the parameters defining the product concerned. In addition, one of the two users' associations clearly stated in a written submission that the PRC was not in a situation to produce and export the like product into the Community during the period 1999-IP. The argument is therefore rejected.

(e) *Export performance of the Community industry*

(133) Pointing at the sizeable drop in the export prices of the Community industry, one interested party claimed that (i) this was indicative of the absence of causal link between subsidised imports and the injury suffered by the Community industry in the Community market and (ii) this could be regarded as self-inflicted injury.

(134) As explained above, the two complainant Community producers operate on a global level. The investigation found that the Community industry exports in volume some 15 % more than it sells in the Community. Starting from a level of around 100 000 tonnes in 1999, the volume of sales exported by the Community industry increased by 12 % in 2000, dropped by 20 percentage points in 2001, increased by 2 percentage points in 2002 and by a further 6 percentage points in the IP. During the IP, the volume of export sales was very close to that observed in 1999, and therefore no loss of economies of scale can be attributed to the export activity. The investigation found that prices of export sales dropped by around 14 % between 1999 and the IP. However, taken in isolation from other factors that might play a role at a world market level, this observation bears no relevance in respect of the present proceeding, which concerns the Community market and not the world market. It should also be noted that the profitability trend examined in the framework of the injury assessment refers exclusively to sales in the Community of the Community industry's own production. Although the profitability of export sales developed slightly worse than that of Community sales, this fact is also regarded as irrelevant in respect of the present proceeding. It is therefore considered that the export activity cannot have contributed in any way to the injury suffered by the Community industry.

	1999	2000	2001	2002	IP
Export sales volume (tonnes)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*112*	*91*	*93*	*99*
Export sales unit price (EUR/tonne)	cannot be disclosed (see recital 80 above)				
Index (1999 = 100)	*100*	*96*	*102*	*88*	*86*

4. CONCLUSION ON CAUSATION

(135) In conclusion, it is confirmed that the material injury of the Community industry, which is principally characterised by the decline between 1999 and the IP in market share; by the decline in unit sales price (by 8 %); by the unit cost of production increase by 2 %; by the ensuing drop in profitability, return on investments, and cash-flow from operating activities; and by the decline in investment and employment; was caused by the subsidised imports concerned.

(136) Indeed, the effect of the decline in demand linked to the slowdown in the steel market, of the return to normal competition conditions after dismantling of the cartel, of the performance of other Community producers, of the imports from other third countries, of the export performance of the Community industry was non-existent or only very limited and consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the subsidised imports from the country concerned and the material injury suffered by the Community industry.

(137) It is therefore provisionally concluded that the subsidised imports originating in India have caused material injury to the Community industry within the meaning of Article 8(6) of the basic Regulation.

G. **COMMUNITY INTEREST**

(138) The Commission examined whether, despite the conclusions on subsidisation, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 31(1) of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned.

1. INTEREST OF THE COMMUNITY INDUSTRY

(139) The Community industry is composed of two groups of companies, encompassing a total of nine production facilities spread over different Community countries, and 1 800 persons directly involved in the production, sales and administration of the like product. Following an imposition of measures, it is expected that both sales volumes and sales prices of the Community industry on the Community market will rise. However, Community industry's prices would certainly not increase by the level of any countervailing duty since competition will still remain amongst Community producers, imports originating in the country concerned made at non-subsidised prices and imports originating in other third countries. In conclusion, it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, combined with a moderate price increase, will allow the Community industry to improve its financial situation.

(140) On the other hand, should anti-subsidy measures not be imposed, it is likely that the negative trend of the Community industry will continue. The Community industry will likely continue to lose market shares and to experience a deterioration of its profitability. This will in all likelihood lead to cuts in production and investments, closure of certain production capacities and further job reduction in the Community.

(141) In conclusion, the imposition of anti-subsidy measures will allow the Community industry to recover from the effects of the injurious subsidisation found.

2. INTEREST OF UNRELATED IMPORTERS/TRADERS IN THE COMMUNITY

(142) During the IP, the two co-operating importers imported around 20 % of the EC total import volume of the product concerned originating in the country concerned. From the co-operation of the two Indian exporting producers, it appears that the importers/traders in the Community (i.e. the two above co-operating importers on the one hand, plus non-cooperating importers/traders on the other hand) account for about 40 % of the EC total import volume of the product concerned originating in India.

(143) Should countervailing measures be imposed, it is possible that the volume of imports originating in the country concerned may decrease. Furthermore, it cannot be excluded that the imposition of anti-subsidy measures may result in a moderate increase in the prices of the product concerned in the Community, thus affecting the economic situation of importers/traders. As far as the two co-operating importers are concerned, the activity of trading of the product concerned originating in India accounts for around 40 % of their total turnover. In terms of their workforce, out of a total of 10 employees, 4 are directly involved in the trading of the product concerned originating in India. The effect on importers of the increase in the import price of the product concerned will depend also on their ability to pass it on to their customers. The low proportion of the product concerned in users' total costs (see recital 147 below) might also make it easier for the importers to pass any price increase on to users.

(144) On this basis, it is provisionally concluded that the imposition of anti-subsidy measures is not likely to have a serious negative effect on the situation of importers in the Community.

3. INTEREST OF THE USER INDUSTRY

(145) The principal user industry, accounting for around 80 % of the total EC consumption of the product concerned and the like product, is the electric steel industry. During the IP, the eight co-operating final users consumed around 27 % of the EC total import volume of the product concerned originating in the country concerned, imported either directly from the two Indian exporting producers or via importers/traders. From the co-operation of the two Indian exporting producers, it appears that final users in the Community (i.e. the eight above co-operating users on the one hand, plus non-cooperating users on the other hand) account for about 56 % of the EC total direct import volume of the product concerned originating in India. The remaining part (4 %) has been imported by the Community industry.

(146) The co-operating users claim that the imposition of anti-subsidy measures would adversely affect their financial situation, directly via the increased price of their consumption sourced in India, and indirectly via the likely price increase implemented by Community producers for the share of their consumption sourced from Community producers.

(147) The investigation showed that consumption of the product concerned and like product represents on average 1 % of total costs of production of co-operating users. The possible cost impact on users is as follows. Should countervailing measures be applied, users' costs of production would rise by between 0,15 % (based on a worst case scenario whereby prices of both product concerned and like product would rise by the amount of the duty, irrespective of their origin) and 0,03 % (only the consumption sourced from India is affected by the price increase). On balance, it is estimated that the actual outcome is likely to stand in the middle of these two scenarios, for the following reasons. The Community industry might increase its prices to a certain extent, but it will also likely take advantage of the relief in price pressure to regain lost market share by pricing competitively vis-à-vis Indian prices. Spare capacities exist and the return to fair and more profitable market conditions would certainly raise potential supply from all origins and foster new investments. In addition, some 15 % of the EU consumption is sourced from alternative suppliers (i.e. other Community producers and imports from third countries other than India). Therefore, it is unlikely that a general price rise will happen. Finally, of the above very limited likely impact on users' costs of production, it might be possible to pass on at least a part of it to downstream customers, which would thus result in an even smaller final impact on users profits.

(148) The co-operating users also object to the imposition of countervailing measures on the ground that this would raise an obstacle to a competitive market, and de facto help re-instate the cartel found in 2001 by the Commission.

(149) The two complainant Community producers, which had practised a cartel between May 1992 and March 1998, were fined in 2001 by the Commission. The investigation confirmed that the two producers composing the Community industry had ceased their past behaviour of price and market fixing, and this point is not debated by any party. The situation at stake is to restore a level playing field that has been distorted by the unfair trade practises of Indian exporters. The aim of anti-subsidy measures is not to stop access to the Community of imports from the country concerned, but to eliminate the impact of distorted market conditions arising from the presence of subsidised imports. Restoring fair market conditions will not only benefit Community producers, but also alternative supply sources like for example non-subsidised imports. The fact that the Community industry had practised a cartel in the years 1992-98 should not deprive it of the right to obtain relief under the basic Regulation against unfair trade practises.

(150) In view of these findings, it may be provisionally concluded that the imposition of anti-subsidy measures (i) is unlikely to seriously affect the financial situation of the users; and (ii) is unlikely to have any negative effect on the overall competition situation on the Community market.

4. CONCLUSION ON COMMUNITY INTEREST

(151) The effects of the imposition of measures can be expected to afford the Community industry with the opportunity to regain lost sales and market shares and to improve its profitability. On the other hand, in view of the deteriorating situation of the Community industry, there is a risk that in the absence of measures, certain Community producers may close down production facilities and lay-off part of their workforce. Whilst some negative effects are likely to result in the form of decrease in the volumes imported and moderate price increases for the importers/traders and for the users, the extent of these may be reduced by passing the increase on to downstream customers. In the light of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures in the present case and that the application of measures would not be against the interest of the Community.

H. **PROPOSAL FOR PROVISIONAL COUNTERVAILING MEASURES**

(152) In view of the conclusions reached with regard to subsidisation, injury, causation and Community interest, provisional measures should be taken in order to prevent further injury to the Community industry by the subsidised imports.

1. INJURY ELIMINATION LEVEL

(153) The level of the provisional countervailing measures should be sufficient to eliminate the injury to the Community industry caused by the subsidised imports, without exceeding the subsidy margins found. When calculating the amount of duty necessary to remove the effects of the injurious subsidisation, it was considered that any measures should allow the Community industry to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of subsidised imports.

(154) On the basis of the information available, it was preliminarily found that a profit margin of 9,4 % of turnover could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious subsidisation. The complainant Community producers submitted that they could reasonably expect a profit margin of 10 % to 15 % in the absence of subsidised imports. The investigation found that the Community industry had reached a profit ranging between 12 to 15 % over turnover in 1999 (see recital 105 above), when the market share held by subsidised imports was the lowest. The Commission examined whether 1999 market conditions could be considered as representative of the normal conditions on the market for the product concerned. The investigation established that the return to normal competition conditions after the end of the price and market fixing period had an effect on prices and that the price of key raw materials had increased substantially between 1999 and the IP. In these circumstances, it is considered that there was no likelihood of the Community industry achieving a profitability ranging between 12 to 15 % during the IP. Finally, the Commission looked at company balance sheet statistics by sectors collected by the Central Banks of Germany, France, Italy, Japan and the USA. The database aggregating these data is maintained by the Commission. This examination showed that companies belonging to the nearest available sector in the above largest industrialised countries achieved on average a profit before extraordinary items of 9,4 % in 2002. Taking all circumstances and elements into account, the Commission considers that 9,4 % is a reasonable profit that the Community industry could achieve in the absence of subsidised imports.

(155) The necessary price increase was then determined on the basis of a comparison, on a transaction by transaction basis, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

(156) The above-mentioned price comparison showed the following injury margins:

Graphite India Limited (GIL)	20,3 %
Hindustan Electro Graphite (HEG) Limited	12,8 %

2. PROVISIONAL MEASURES

(157) In the light of the foregoing, it is considered that a provisional countervailing duty should be imposed at the level of the subsidy margin found, but should not be higher than the injury margin calculated above in accordance with Article 12(1) of the basic Regulation.

3. FINAL PROVISION

(158) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. SA provisional countervailing duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10), whether imported together or separately originating in India.

2. The rate of the provisional countervailing duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below in India shall be as follows:

Company	Provisional duty	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta – 700016, West Bengal	14,6 %	A530
Hindustan Electro Graphite (HEG) Limited, Bhilwara Towers, A-12, Sector-1, Noida – 201301, Uttar Pradesh	12,8 %	A531
All others	14,6 %	A999

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

4. The release for free circulation in the Community of the product referred to above shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 30 of Council Regulation (EC) No 2026/97, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

Pursuant to Article 31(4) of Council Regulation (EC) No 2026/97, the parties concerned may comment on the application of this Regulation within one month of the date of its entry into force.

Article 3

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

Article 1 of this Regulation shall apply for a period of four months.

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

Done at Brussels, 19 May 2004.

For the Commission

Pascal LAMY

Member of the Commission

COMMISSION REGULATION (EC) No 1009/2004

of 19 May 2004

imposing a provisional anti-dumping duty on imports of certain graphite electrode systems originating in India

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 [2] (the 'basic Regulation') and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PROCEDURE**

1. GENERAL

(1) On 21 August 2003, the Commission announced, by a notice ('notice of initiation') published in the *Official Journal of the European Union* [3], the initiation of an anti-dumping proceeding with regard to imports into the Community of certain graphite electrode systems originating in India.

(2) The proceeding was initiated as a result of a complaint lodged in July 2003 by the European Carbon and Graphite Association (ECGA), acting on behalf of producers representing a major proportion, in this case more than 50 %, of the total Community production of certain graphite electrode systems. The complaint contained evidence of dumping of the said product and of material injury resulting therefrom, which was considered sufficient to justify the initiation of an anti-dumping proceeding.

(3) The initiation of a parallel anti-subsidy proceeding concerning imports into the Community of the same product originating in India was announced by a notice published in the *Official Journal of the European Union* [4] on the same date.

(4) The Commission officially advised the complainant and other known Community producers, exporting producers, importers, users and suppliers known to be concerned as well as the representatives of India of the initiation of the proceeding. The parties directly concerned were given an opportunity to make their views known in writing and to request a hearing within the time limit set in the notice of initiation.

(5) The two exporting producers in India and the Government of India ('GOI'), as well as Community producers, users and importers/traders made their views known in writing. All parties who so requested within the above time limit and indicated that there were particular reasons why they should be heard were granted an opportunity to be heard.

2. SAMPLING

(6) In view of the large number of unrelated importers in the Community, it was considered appropriate, in conformity with Article 17 of the basic Regulation, to examine whether sampling should be used. In order to enable the Commission to decide whether sampling would indeed be necessary and, if so, to select a sample, all known unrelated importers were requested, pursuant to Article 17(2) of the basic Regulation, to make themselves known within two weeks of the initiation of the proceeding and to provide the Commission with the information requested in the notice of initiation, for the period from 1st April 2002 to 31st March 2003. Only two unrelated importers agreed to be included in the sample and provided the requested basic information within the deadline. Accordingly, sampling was not considered necessary in this proceeding.

---

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ C 197, 21.8.2003, p. 2.
[4] OJ C 197, 21.8.2003, p. 5.

3. QUESTIONNAIRES

(7) The Commission sent questionnaires to all parties known to be concerned, to the two unrelated importers referred to above and to all other companies who made themselves known within the deadlines set in the notice of initiation.

(8) Replies were received from two Indian exporting producers, from the two complainant Community producers, from eight user companies and from the two unrelated importers referred to above. In addition, one user company made a written submission containing some quantitative information and two users' associations provided the Commission with written submissions.

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

Community producers:

— SGL Carbon GmbH, Wiesbaden and Meitingen, Germany;

— SGL Carbon SA, La Coruña, Spain;

— UCAR SNC, Notre Dame de Briançon, France and its related company, UCAR SA, Etoy, Switzerland;

— UCAR Electrodos Ibérica SL, Pamplona, Spain;

— Graftech SpA, Caserta, Italy.

Unrelated importers in the Community:

— Promidesa SA, Madrid, Spain;

— AGC-Matov allied graphite & carbon GmbH, Berlin, Germany.

Users:

— ISPAT Hamburger Stahlwerke GmbH, Hamburg, Germany;

— ThyssenKrupp Nirosta GmbH, Krefeld, Germany;

— Lech-Stahlwerke, Meitingen, Germany;

— Ferriere Nord, Osoppo, Italy.

Exporting producers in India:

— Graphite India Limited (GIL), Kolkatta and Nasik;

— Hindustan Electro Graphite (HEG) Limited, Bhopal.

(10) The investigation of dumping and injury covered the period from 1 April 2002 to 31 March 2003 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1999 to the end of the IP ('the period considered').

B. **PRODUCT CONCERNED AND LIKE PRODUCT**

1. PRODUCT CONCERNED

(11) The product concerned is graphite electrodes and/or nipples used for such electrodes, whether imported together or separately. A graphite electrode is a ceramic-molded or extruded column of graphite. At both ends of this cylinder, threaded tapered 'sockets' are machined so that two or more electrodes can be joined to build a column. A connecting part, also in graphite, is used to join two sockets. This part is called a 'nipple'. Both the graphite electrode and the nipple are usually supplied pre-set as a 'graphite electrode system'.

(12) Graphite electrodes and nipples used for such electrodes are produced using petroleum coke, a by-product of the oil industry; and coal tar pitch. The manufacturing process has six steps; namely forming, baking, impregnation, rebaking, graphitising and machining. During the graphitising phase the product is heated electrically to over 3 000 °C and is physically transformed into graphite, the crystalline form of carbon: a unique material with low electrical but high heat conductivity; and high strength and performance at high temperature; that makes it suitable for use in electric arc furnaces. The processing time for a graphite electrode system is approximately two months. There are no product substitutes for graphite electrode systems.

(13) Graphite electrode systems are used by steel producers in electric arc furnaces; also referred to as 'mini mills'; as current carrying conductors to produce steel from recycled scrap. Graphite electrodes and nipples used for such electrodes covered by this investigation are only those with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less. Graphite electrode systems which meet these technical parameters can carry a very high rate of power feed.

(14) One Indian exporter stated that, in some cases, he produced the product concerned without using 'premium needle coke', a top quality petroleum coke which, according to this company, was considered by the complainants to be indispensable for producing the product within the specifications as mentioned in recital 11 to 13 above. This exporter therefore claimed that graphite electrodes, and nipples used for such electrodes, made without 'premium needle coke' should be excluded from the scope of the investigation. Indeed, different qualities of petroleum coke can be used for producing graphite electrode systems. However, it is the basic physical and technical characteristics of the end product and its end uses, irrespective of the raw materials used, which determine the product definition. If graphite electrodes and nipples used for such electrodes originating in India and imported into the Community meet the basic physical and technical characteristics as described in the product definition, they are considered product concerned. Therefore, the claim was rejected.

2. LIKE PRODUCT

(15) The product exported to the Community from India, the product produced and sold domestically in India as well as the one manufactured and sold in the Community by the Community producers were found to have the same basic physical and technical characteristics as well as the same uses and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

C. **DUMPING**

1. NORMAL VALUE

(16) As far as the determination of normal value is concerned, the Commission first established, for each exporting producer, whether its total domestic sales of the like product were representative in comparison with its total export sales to the Community. In accordance with Article 2(2) of the basic Regulation, domestic sales were considered representative when the total domestic sales volume of each exporting producer was at least 5 % of its total export sales volume to the Community.

(17) The Commission subsequently identified those types of graphite electrodes sold domestically by the companies having representative domestic sales that were identical or directly comparable to the types sold for export to the Community. The elements taken into account in defining the product types of graphite electrodes were i) whether they were sold with a nipple or not, ii) their diameter and iii) their length. The product types of the nipples sold alone were defined on the basis of their diameter and their length.

(18) It was then examined whether the domestic sales of each co-operating exporting producer were representative for each product type, i.e. whether the domestic sales of each product type constituted at least 5 % of the sales volume of the same product type to the Community. For these product types, it was then examined for each exporting producer whether such sales were made in the ordinary course of trade, in accordance with Article 2(4) of the basic Regulation.

(19) The examination as to whether the domestic sales of each product type, sold domestically in representative quantities, could be regarded as having been made in the ordinary course of trade was made by establishing the proportion of profitable sales to independent customers of the type in question. For both exporting producers, it was established that, in all cases where the domestic sales of a particular product type were made in sufficient quantities, more than 80 % by volume was sold at a profit on the domestic market, and the weighted average sales price of that type was above its weighted average unit cost. For these product types, therefore, normal value was based on the actual domestic price, calculated as a weighted average of the prices of all domestic sales of that type made during the IP.

(20) For the remaining product types where domestic sales were not representative, normal value was constructed in accordance with Article 2(3) of the basic Regulation. Normal value was constructed by adding to the manufacturing costs of the exported types, adjusted where necessary, a reasonable percentage for selling, general and administrative expenses ('SG&A') and a reasonable margin of profit, on the basis of actual data pertaining to production and sales, in the ordinary course of trade, of the like product, by the exporting producers under investigation in accordance with the first sentence of Article 2(6) of the basic Regulation.

2. EXPORT PRICE

(21) The investigation showed that the export sales of both co-operating Indian exporting producers were solely made directly to unrelated customers in the Community.

(22) Therefore, the export price was established in accordance with Article 2(8) of the basic Regulation, on the basis of export prices actually paid or payable.

3. COMPARISON

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

(24) Accordingly, allowances for differences in transport costs, ocean freight and insurance costs, handling, loading and ancillary costs, credit costs, commissions and discounts have been granted where applicable and supported by verified evidence.

(25) Both companies claimed a duty drawback adjustment pursuant to Article 2(10)(b) of the basic Regulation on the grounds that import charges were allegedly borne by the like product when intended for consumption in the exporting country but were refunded or not paid when the product was sold for export to the Community. The companies made use of the 'Duty Entitlement Passbook Scheme' ('DEPB') on post-export basis for that reason. In this regard, the investigation showed that no direct link could be established between the credits granted by the GOI to exporting producers under the DEPB Scheme and the raw materials purchased as the credits could be used against duties payable on any goods to be imported except for capital goods and goods subject to import restrictions or prohibitions. Moreover, the credits could also be sold on the domestic market or used in any other way and no restriction existed to use these for the importation of raw materials incorporated in the exported product. For these reasons, the claims were rejected.

(26) Alternatively, both companies claimed the same adjustment pursuant to Article 2(10)(k). However, because the companies failed to demonstrate that the DEPB on post-export basis affects price comparability, and in particular that customers consistently pay different prices on the domestic market because of the benefits of the above mentioned scheme, the adjustment could not be granted.

(27) Both companies claimed an adjustment for differences in the level of trade. As both companies were selling solely to end users on the domestic market, whereas their sales to the Community were made both to end-users and traders, they requested a special adjustment pursuant to Article 2(10)(d)(ii) of the basic Regulation. One company based its claim on the fact that its Community sales prices to the distributors were lower than prices charged to end-users, which would justify a special adjustment. In this regard, it was found that the company could not demonstrate that it performed different functions for different categories of customers. Moreover, it was established that the prices charged to distributors as compared to end-users were not consistently lower. Therefore, this adjustment could not be granted.

(28) The other company argued that its distributors' mark-up when re-selling the product concerned to end-users on the Community market justified a level of trade adjustment. In this regard it should be noted that the export price, as described in recitals 21 and 22 above, was established on the basis of export prices actually paid or payable. The alleged re-sales prices of distributors in the Community were therefore considered to be irrelevant. For this reason, this claim was rejected.

4. DUMPING MARGIN

(29) According to Article 2(11) of the basic Regulation, the adjusted weighted average normal value by product type was compared with the adjusted weighted average export price of each corresponding type of the product concerned.

(30) This comparison showed the existence of dumping. The provisional dumping margins expressed as a percentage to the CIF Community frontier price duty unpaid are as follows:

Graphite India Limited (GIL)	34,3 %
Hindustan Electro Graphite (HEG) Limited	24,0 %

(31) Since the level of cooperation was high (100 % of the exports of the product concerned from India to the Community), the residual provisional dumping margin was set at the level of the highest dumping margin established for a cooperating company, i.e. the level established for Graphite India Limited, namely 34,3 %.

D. **COMMUNITY INDUSTRY**

1. TOTAL COMMUNITY PRODUCTION

(32) Within the Community, the like product is manufactured by SGL AG ('SGL') and several subsidiaries of UCAR SA ('UCAR'), namely UCAR SNC, UCAR Electrodos Ibérica SL and Graftech SpA, on behalf of which the complaint was lodged. Production facilities of SGL and UCAR are located in Austria, Belgium, Germany, France, Italy and Spain.

(33) In addition to the two complainant Community producers, SGL and UCAR, the like product was manufactured in the Community by two other producers during the period 1999-IP. One of these two other producers went into insolvency and had to ask for judicial protection under the German bankruptcy law. This latter company stopped producing the like product as of November 2002. These two companies expressed their support in respect of the complaint but declined the Commission's invitation to co-operate actively in the investigation. It is concluded that all the above four producers constitute the Community production within the meaning of Article 4(1) of the basic Regulation.

2. DEFINITION OF THE COMMUNITY INDUSTRY

(34) The two complainant Community producers properly replied to the questionnaire and fully co-operated in the investigation. During the IP, they represented more than 80 % of the Community production.

(35) They are deemed to constitute the Community industry within the meaning of Article 4(1) and Article 5(4) of the basic Regulation and will hereafter be referred to as the 'Community industry'.

E. **INJURY**

1. PRELIMINARY REMARK

(36) Given that there are only two Indian exporting producers of the product concerned, and given that the Community industry also comprises only two producers, data relating to either imports of the product concerned into the Community originating in India, or to the Community industry had to be indexed in order to preserve confidentiality pursuant to Article 19 of the basic Regulation.

2. COMMUNITY CONSUMPTION

(37) Community consumption was established on the basis of the sales volumes of the Community industry on the Community market, the sales volumes of the other Community producers on the Community market estimated on the basis of available evidence, the sales volumes of the two Indian co-operating exporting producers on the Community market, the sales volumes imported from Poland obtained from the co-operation of SGL, and Eurostat data for the remaining imports in the Community, duly adjusted where appropriate.

(38) On this basis, between 1999 and the IP, Community consumption of the product concerned increased by 9 %. Specifically, it increased by 14 % between 1999 and 2000, declined by 7 percentage points in 2001, by a further 1 percentage point in 2002, before increasing by 3 percentage points in the IP. As the product concerned is primarily used in the electric steel industry, the development of consumption has to be seen against the economic trends of this particular sector, which display a sharp acceleration in 2000, followed by a downturn from 2001 onwards.

	1999	2000	2001	2002	IP
Total EC consumption (tonnes)	119 802	136 418	128 438	126 623	130 615
Index (1999 = 100)	*100*	*114*	*107*	*106*	*109*

3. IMPORTS FROM THE COUNTRY CONCERNED

(a) *Volume*

(39) The volume of imports of the product concerned from India into the Community increased by 76 % between 1999 and the IP. In detail, imports from India increased by 45 % between 1999 and 2000, by a further 31 percentage points in 2001 and remained almost stable at this level in 2002 and the IP.

	1999	2000	2001	2002	PI
Volume of dumped imports (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*145*	*176*	*176*	*176*
Market share of dumped imports	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*127*	*164*	*166*	*161*

(b) *Market share*

(40) The market share held by exporters in the country concerned increased by 3,4 percentage points (or 61 %) during the period considered to reach a level of 8 to 10 % during the IP. It first rose by 1,5 percentage point between 1999 and 2000, by a further 2 percentage points in 2001 and stayed relatively stable at this level through 2002 and the IP. It should be noted that over the period 1999 to the IP, the increase in imports and market shares from the country concerned coincided with an increase in consumption of 9 %.

(c) *Prices*

(i) Price evolution

(41) Between 1999 and the IP, the average price of imports of the product concerned originating in India increased by 2 % in 2000, by a further 8 percentage points in 2001 and then declined by 9 percentage points in 2002, a level at which it stabilised in the IP. In the IP, the average import price of the product concerned originating in India was 1 % higher than in 1999.

	1999	2000	2001	2002	IP
Prices of dumped imports	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*102*	*110*	*101*	*101*

(ii) Price undercutting

(42) A comparison for comparable models of the product concerned was made between the exporting producers' and the Community industry's average selling prices in the Community. To this end, Community industry's ex-works prices to unrelated customers, net of all rebates and taxes have been compared with the CIF Community frontier prices of exporting producers of India, duly adjusted for post importation costs. The comparison showed that during the IP the product concerned originating in India sold in the Community undercut the Community industry's prices by between 6,5 % and 12,2 %.

(43) It should be noted that these price undercutting margins do not fully illustrate the effect of the dumped imports on prices of the Community industry, given that both price depression and price suppression were observed, as evidenced by the relatively low profitability reached by the Community industry during the IP, whilst it could have expected a reasonably higher profit in the absence of dumping.

4. SITUATION OF THE COMMUNITY INDUSTRY

(44) Pursuant to Article 3(5) of the basic Regulation, the Commission examined all relevant economic factors and indices having a bearing on the state of the Community industry.

(a) *Preliminary remarks*

(45) In order to make a meaningful assessment of certain injury indicators, it was necessary to consolidate adequately some data pertaining to UCAR together with those of its production subsidiaries in the Community (see recital 32 above).

(46) The Commission paid particular attention to all possible consequences on injury indicators arising from the past anti-competitive behaviour of the two complainant Community producers. The Commission notably ensured that the starting point for injury assessment (1999) was free from any anti-competitive practise (see recitals 77, 78, 80 and 81 below). Additionally, when establishing costs and profitability for the Community industry, the Commission explicitly requested and verified that the direct cost of the payments, or any indirect costs (including the financing charges) thereof, linked to penalties imposed by competition authorities be clearly excluded, so as to provide a picture for profit, return on investment and cash flow excluding any of these extraordinary expenditures.

(b) *Production*

(47) Community industry's production increased by 14 % in 2000, declined by 16 percentage points in 2001, declined by a further 4 percentage points in 2002 and increased by 5 percentage points in the IP. The sharp increase observed in 2000 was due to the good economic climate, which also translated into a rising capacity utilisation rate that year.

	1999	2000	2001	2002	IP
Production (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*114*	*98*	*94*	*99*

(c) *Capacity and capacity utilisation rates*

(48) The production capacity decreased in 2000 by around 2 % and stayed at this level in 2001. In 2002 and the IP, production capacity further decreased by respectively 5 percentage points and 2 percentage points. In the IP, production capacity was 9 % lower than in 1999, principally as a result of the mothballing of a facility of a Community producer, effective during the whole IP.

(49) Capacity utilisation started from a level of 70 % in 1999, before increasing to 81 % in 2000 driven by strong demand, in particular from the electric steel industry. In 2001 and 2002, it fell back to a level of 70 % before rising to 76 % in the IP.

(50) The investigation found that there are several causes at the root of the economic problems facing the above mentioned mothballed facility, amongst which the two most noticeable are: (i) high production costs linked to the price of electricity in this particular country, and (ii) the competition from dumped imports originating in India. Given the difficulty to disentangle one cause from the other, the Commission examined what would have been the trends for capacity and capacity utilisation in 2002 and the IP if this facility had not been mothballed. The volume of production was left unchanged in this simulation as other production facilities of this Community producer raised their output in order to fill the gap. As shown in the table below, if this facility had not been mothballed, both production capacity and capacity utilisation for the Community industry as a whole would have reached in the IP a level very close to that of 1999.

	1999	2000	2001	2002	IP
Production capacity (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*98*	*98*	*93*	*91*
Capacity utilisation	70 %	81 %	70 %	70 %	76 %
Index (1999 = 100)	*100*	*115*	*99*	*100*	*108*
	1999	2000	2001	2002	PI
Production capacity (tonnes) without mothballing	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*98*	*98*	*100*	*101*
Capacity utilisation without mothballing	70 %	81 %	70 %	65 %	69 %
Index (1999 = 100)	*100*	*115*	*99*	*93*	*98*

(d) *Stocks*

(51) During the IP, inventories of finished products represented around 3 % of Community industry's total production volume. The level of closing stocks of the Community industry increased globally during the period considered and was around five times higher in the IP compared to 1999. However, the investigation found that the development of inventories is not regarded as a particularly relevant indicator of the economic situation of the Community industry, as Community producers generally produce to order and therefore stocks are usually goods awaiting dispatch to customers.

	1999	2000	2001	2002	IP
Closing stock (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*235*	*700*	*663*	*515*

(e) *Sales volume*

(52) Sales by the Community industry of its own production on the Community market to unrelated customers declined by 1 % between 1999 and the IP. More specifically, they rose sharply by 16 % in 2000, dropped by 17 percentage points in 2001 and by a further 5 percentage points in 2002, before rising again by 5 percentage points in the IP. The development of sales volume mirrors closely economic trends in the electric steel industry, which after the boom observed in 2000, suffered a downturn in 2001 and 2002.

	1999	2000	2001	2002	IP
EC sales volume to unrelated customers (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*116*	*99*	*94*	*99*

(f) *Market share*

(53) After an initial small gain of one percentage point in 2000, the market share held by the Community industry declined substantially until 2002. The Community industry lost 6,5 percentage points of market share in 2001 and further 2,8 percentage points in 2002, before recovering 1,9 percentage points during the IP. Compared with 1999, the market share held by the Community industry during the IP was 6,3 percentage points lower, or 9 % in terms of indices.

	1999	2000	2001	2002	IP
Market share of Community industry	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*102*	*93*	*89*	*91*

(g) *Growth*

(54) Between 1999 and the IP, when the Community consumption increased by 9 %, the sales volume of the Community industry on the Community market declined by 1 %. The Community industry lost 6,3 percentage points of market share, as seen above, whereas dumped imports gained 3,4 percentage points of market share during the same period.

(h) *Employment*

(55) The employment level of the Community industry decreased by around 17 % between 1999 and the IP. The workforce declined by 1 percentage point in 2000 and by 5 percentage points in 2001. In 2002 and the IP, drops of respectively 9 percentage points and 3 percentage points occurred, principally caused by the mothballing of a facility of a Community producer, and the re-allocation of part of the workforce to more profitable business segments.

	1999	2000	2001	2002	IP
Employment	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*99*	*95*	*86*	*83*

(i) *Productivity*

(56) Productivity of the Community industry's workforce, measured as output per person employed per year, first increased strongly by 15 % from 1999 to 2000, dropped by 12 percentage points in 2001, increased again by 5 percentage points in 2002 and by a further 11 percentage points during the IP. At the end of the period considered, productivity was 19 % higher than that observed at the start of the period, which mirrors rationalisation efforts undergone by the Community industry in order to stay competitive. As a comparison, average labour productivity growth in the Community economy at large (all economic sectors) was just 1,5 % per year during the same period.

	1999	2000	2001	2002	IP
Productivity (tonnes per employee)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*115*	*103*	*108*	*119*

(j) *Wages*

(57) Between 1999 and the IP, the average wage per employee increased by 13 %. This figure is slightly below the rate of increase of the average nominal compensation per employee (14 %) observed during the same period in the Community economy at large (all sectors).

	1999	2000	2001	2002	IP
Annual labour cost per employee (000 EUR)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*104*	*105*	*111*	*113*

(k) *Sales prices*

(58) Unit prices for Community sales to unrelated customers of Community industry's own production decreased by 6 % between 1999 and 2000, rose by 9 percentage points in 2001, declined by 12 percentage points in 2002, and edged up by 1 percentage point in the IP. Altogether, between 1999 and the IP, the fall in unit sales prices amounted to 8 %. This relatively uneven development is explained by the following.

(59) Prices are driven by two major forces: the costs of production ('COP') and the supply and demand situation on the market. Whilst unit sales prices decreased by 8 % between 1999 and the IP, unit costs of production increased by 2 %. This relatively flat development of costs hides a jump by 10 percentage points observed in 2001, due to the lagged consequence of the 2000 increase in raw material prices. The two principal raw materials in the manufacturing of graphite electrode systems, namely petroleum coke and pitch, account for around 34 % of total costs of production. Energy, whose price is also very much linked to oil price fluctuations, represents a further 13 % of total production costs. Altogether, these three key cost items with a price directly influenced by oil price variations, account for close to 50 % of total costs of production of the like product. As Community industry's prices could not match increases in costs of production, because of the price suppression linked to dumped imports, the Community industry experienced a drop in profitability.

	1999	2000	2001	2002	IP
Unit price EC market (EUR/tonne)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*94*	*103*	*91*	*92*
Unit COP (EUR/tonne)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*101*	*111*	*101*	*102*

(l) *Factors affecting Community prices*

(60) The investigation showed that dumped imports were undercutting the average depressed sales price of the Community industry by 6 to 12 % on average in the IP (see recital 42 above). However, on a type-by-type basis it was found that in some instances prices offered by the exporting producers concerned were significantly lower than the above average undercutting off the Community industry's prices. The combination of this undercutting established on a more individual product type level with the growing market share held by dumped imports certainly affected the domestic prices of the Community industry.

(m) *Profitability and return on investments*

(61) During the period considered, profitability of sales in the Community of own production to unrelated customers in terms of return on net sales before taxes decreased by 50 % in 2000, by a further 3 percentage points in 2001, by a further 18 percentage points in 2002 and finally recovered by 4 percentage points during the IP. Between 1999 and the IP, the decline in profitability amounts to 66 %, i.e. from a range of 12 to 15 % in 1999 to a range of 3 to 6 % in the IP.

(62) The return on investments (ROI), expressed as the profit in percent of the net book value of investments, broadly followed the above profitability trend over the whole period considered. It declined by 34 % in 2000, by 23 percentage points in 2001, by 26 percentage points in 2002 and by a further 8 percentage points in the IP. Compared with the situation prevailing in 1999, ROI had declined by around 90 % in the IP, i.e. from a range of 45 to 55 % in 1999 to a range of 3 to 10 % in the IP.

(63) The Commission isolated the impact of the above mothballing (see recital 50 above) on the Community industry's aggregated profitability during the IP. It was found that the Community industry's profitability would have been higher by 0,8 percentage point in 2002 and by 0,5 percentage point in the IP, which would not have substantially altered the trend of profitability since 1999.

	1999	2000	2001	2002	IP
Profitability of EC sales to unrelated (% of net sales)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*51*	*48*	*30*	*34*
ROI (profit in % of net book value of investments)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*66*	*43*	*17*	*9*
Profitability of EC sales to unrelated (% of net sales) without mothballing	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*51*	*48*	*35*	*39*

(n) *Cash flow and ability to raise capital*

(64) The net cash flow from operating activities declined in 2000 by 40 %, recovered by 24 percentage points in 2001, declined again by 12 percentage points in 2002 and declined further by 7 percentage points in the IP. Cash flow was 35 % lower in the IP than at the start of the period considered.

	1999	2000	2001	2002	IP
Cash flow (000 EUR)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*60*	*84*	*72*	*65*

(65) Both complainant Community producers have been fined by various national and regional competition authorities in the world for price and market fixings in the 1990s. In addition to these penalties, the two complainant Community producers have incurred further charges linked on the one hand to the settlement of class action lawsuits with customers and stockholders in the US and Canada, and on the other hand to the financing of these extraordinary expenses. As a result, the indebtedness of the two groups has dramatically increased and both their credit ratings and ability to raise capital have deteriorated. The practical consequence of this situation is that no distinct assessment, in respect of the ability to raise capital, that would be limited to the scope of the sector manufacturing and selling the like product is possible in isolation of the anti-trust background. However, the evidence gathered above in respect of profitability, ROI and cash flow and below in respect of investments, which are relevant for the sole scope of the like product and for which any effects of this anti-competitive behaviour have been carefully eliminated, may certainly be regarded as an aggravating element, on top of the above, already tight, financial situation.

(o) *Investments*

(66) The Community industry's annual investments in the product concerned declined by around 50 % between 1999 and the IP. Specifically, they declined by 27 % in 2000, recovered by 4 percentage points in 2001, declined again by 18 percentage points in 2002 and decreased further by 8 percentage points during the IP.

	1999	2000	2001	2002	IP
Net investments (000 EUR)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*73*	*77*	*59*	*51*

(p) *Magnitude of dumping margin*

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

(q) *Recovery from past dumping or subsidization*

(68) In the absence of any information on the existence of dumping or subsidization prior to the situation assessed in the present proceeding, this issue is considered irrelevant.

5. CONCLUSION ON INJURY

(69) Between 1999 and the IP, the volume of the dumped imports of the product concerned originating in India increased significantly by 76 % and their share of the Community market increased by 3,4 percentage points. The average prices of dumped imports from India were consistently lower than those of the Community industry during the period considered. Moreover, during the IP, the prices of the imports from the country concerned undercut those of the Community industry. On a weighted average basis, price undercutting was in the IP around 6 to 12 % on average, while on the basis of individual product types, price undercutting was in some cases significantly higher.

(70) A deterioration in the situation of the Community industry has been found over the period considered. Between 1999 and the IP, virtually all injury indicators developed negatively: production volume declined by 1 %, production capacity declined by 9 %, sales volumes in the Community decreased by 1 %, and the Community industry lost 6,3 percentage points of market share. The unit sales price declined by 8 % while the unit cost of production increased by 2 %, the profitability declined by 66 %, the return on investments and the cash-flow from operating activities followed the same negative trend. Employment decreased by 17 %, investment declined by 50 %.

(71) Some indicators experienced apparent positive developments: over the period considered, wages increased by 13 %, which can be regarded as a normal rate of increase and productivity increased by 19 %. Together with the decrease in employment mentioned above, the latter illustrate the effort undergone by the Community industry to stay competitive in spite of competition from dumped imports from India.

(72) In the light of the foregoing, it is provisionally concluded that the Community industry has suffered material injury within the meaning of Article 3 of the basic Regulation.

F. **CAUSATION**

1. INTRODUCTION

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

2. EFFECTS OF THE DUMPED IMPORTS

(74) The significant increase in the volume of the dumped imports by 76 % between 1999 and the IP, and of its corresponding share of the Community market, i.e. by around 3,5 percentage points, as well as the undercutting found (around 6 to 12 % on average during the IP) coincided with the deterioration of the economic situation of the Community industry. During the same period, the Community industry experienced a loss in sales volumes (- 1%), in market shares (- 6,3 percentage points) and a deterioration of profitability (- 8,7 percentage points). This development should be seen against the background of the growing Community market during the years 1999-IP. In addition, dumped prices were below those of the Community industry throughout the period considered and exerted a pressure on them. The resulting drop in Community industry's prices (by 8%), at a time when the costs of production increased by almost 2 % triggered the observed drop in profitability. It is therefore provisionally considered that the dumped imports had a significant negative impact on the situation of the Community industry.

3. EFFECTS OF OTHER FACTORS

(a) *Decline in demand linked to the slowdown in the steel market*

(75) Two interested parties claimed that any injury felt by the Community industry was linked to the downturn experienced in 2001 and early 2002 by the primary consumer of the like product, namely the steel industry.

(76) The 2001-2002 downturn in the steel industry is acknowledged and is indeed confirmed by the consumption trend of the product concerned and like product, which peaked in 2000, and subsequently declined in both 2001 and 2002. Indeed, the profitability of the Community industry declined steadily in the years 2000 to 2002. However, the argument has certainly no relevance regarding 2000, a year during which the Community industry could not fully benefit from the 2000 boom in the steel market, as witnessed by the major drops in sales price and profitability observed that year. The same year, by contrast, import volumes from India had sharply increased by 45 % and their market share had risen by 1,5 percentage point. It is also noted that consumption was from 2000 until the IP significantly above the 1999 level. Thus, a downturn in the steel industry did not translate in an overall reduced demand for the product concerned and the like product although obviously the outstanding 2000 level was not reached in subsequent years. It is therefore provisionally concluded that the decline in demand linked to the slowdown in the steel market does not provide a satisfactory explanation for the injury felt by the Community industry, and only contributed to the injury suffered by the Community industry to a very limited extent, if at all. The effect was consequently not such as to alter the finding that there is a genuine and substantial causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.

(b) *Return to normal competition conditions after the dismantling of the cartel*

(77) Several interested parties claimed that any injury felt by the Community industry was merely the consequence of the return to normal competition conditions on the Community market for graphite electrode systems. More precisely, the said parties attribute the drop in Community industry's prices and profitability from 1999 onwards to the fact that the starting point was artificially high due to the existence of the cartel.

(78) In decision 2002/271/EC of 18 July 2001 [1], the Commission found that the two complainant Community producers had, together with other producers, practised a cartel between May 1992 and March 1998. The IP set in the present anti-dumping proceeding covers the period from 1 April 2002 to 31 March 2003, whilst the period relevant for the assessment of injury trends covers the period starting on 1 January 1999 until the end of the IP. Therefore, both the IP and the period considered are substantially posterior to the operation of the cartel. The investigation has also found that, although different kinds of agreements and contracts exist, the largest volumes of transactions are typically covered by an annual contract whereby a certain number of deliveries are guaranteed through the year at a certain price. Negotiations of annual contracts typically take place in October-November of the year preceding the entry into force of the contract. The investigation has found that in the period 1998-1999, annual contracts covered around 40 % of the transactions, six-month contracts covered around 35 % and three-month contracts or single orders covered around 25 %. Long-term contracts (e.g. three-year contracts) have been gaining ground relatively recently, but were, in the years 1997-98, marginal, if not totally non-existent, as one could logically expect in a market that was characterised by high prices. It was therefore found that virtually all the transactions actually invoiced and paid in 1999, and the ensuing prices examined under recitals 58 and 59 above result from agreements between sellers and purchasers set after the period during which market and price fixings had been found.

(79) As a supportive element to the above argument, the same interested parties drew the attention of the Commission to the development of prices of large diameter electrodes (i.e. with a diameter above 700 mm), a segment that is allegedly not served by Indian exporting producers. The investigation found that although the two Indian exporting producers did not export this range of product during the IP to the Community, they developed their technical capability to produce this range of product. The investigation further found that the Community industry's prices for this particular range of product had fallen relatively more between 1999 and the IP than the Community industry's average prices for the like product considered as a whole. This product range represents a limited share, around 8 %, of the Community industry's total sales volume on the Community market of the like product. This particular market segment has two more features. First, it is a relatively recent and

[1] OJ L 100, 16.4.2002, p. 1.

growing market, which implies that this market has become increasingly competitive in the years 1999 to the IP. Second, it is characterised by the presence of a very small number of large customers, who purchase also smaller diameter electrodes. As one would logically expect, these larger-than-average customers utilise their leveraged purchasing power to obtain larger discounts than a 'normal' customer would obtain. The price trend for this particular segment is therefore distorted by the growing predominance of the above large customers. Finally, although Indian producers have not exported this product range on a regular basis during the IP, the investigation found Indian price offerings concerning this product range, which Community customers utilised as a further bargaining instrument in their negotiation with the Community industry.

(80) The Commission requested and obtained long term price series (since the mid 1980s) from the Community industry, representative of sales of the like product on the Community market. This series shows that prices increased gradually during the 1990s and reached a peak in 1998. Between 1998 and 1999, a sharp decline in price by 14 % was observed, which clearly reflects the end of the period of market and price fixing.

(81) In addition, the argument of the return to normal competition conditions after dismantling of the cartel bears no explanation in relation to the loss in market share felt by the Community industry from 1999 until the IP, as symmetrically opposed to the gain in market share enjoyed by dumped imports. It follows from the above that the return to normal competition conditions after dismantling of the cartel might explain only a limited part of the injurious trend experienced by the Community industry, and that its effect was consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.

(c) *Performance of other Community producers*

(82) No other Community producer not belonging to the Community industry co-operated into the investigation. It must be noted, however, that one of the two other known Community producers became insolvent and stopped producing as of November 2002 (see recital 33 above). Based on available evidence, the EC sales volume of the two other producers has increased from around 15 000 tonnes in 1999 to around 21 000 tonnes in 2002, before declining to around 19 000 tonnes during the IP. As far as their market share is concerned, it went from 12,5 % in 1999 to 16,6 % in 2002, before declining to 14,4 % during the IP. If the investigation had covered 2003 as a whole, the market share of the sole remaining other Community producer would have been 9,7 %. While it is true that the two other Community producers gained 1,9 percentage points of market share between 1999 and the IP, the fact that one producer became insolvent is, like for the Community industry, indicative of an injurious situation. It is therefore provisionally concluded that the performance of other Community producers only contributed to the injury suffered by the Community industry to a very limited extent, if at all, and that its effect was consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.

(d) *Imports from other third countries*

(83) According to the available information, the total import volume of the like product originating in third countries other than India increased by 20 % from around 13 000 tonnes in 1999 to around 15 000 tonnes in the IP, and their market share increased from 10,7 % in 1999 to 11,8 % in the IP. As regards the weighted average CIF prices of these imports, they decreased by 8 % between 1999 and the IP, from around 2 400 EUR/tonne in 1999 to around 2 200 EUR/tonne in the IP. It should be noted that the prices of imports from third countries other than India remained substantially higher than the prices of the imports from the country concerned throughout the period considered.

(84) It was further found that only imports originating in three countries other than India had a share of the Community market above 1 % during the IP, i.e. Japan, Poland and the USA. It was found that (i) the market share of Japan rose from 2,1 % in 1999 to 2,6 % in the IP, (ii) the market share of Poland increased from 3,3 % in 1999 to 4,4 % in the IP and (iii) the market share of the USA declined from 5,3 % in 1999 to 4,7 % in the IP. From these three origins, the CIF import prices of Japan and the USA appear to undercut the Community industry's prices, whilst prices of imports originating in Poland were above the prices of the Community industry. In addition, CIF import prices of these three countries have always been above those of the country concerned. Furthermore, no evidence is available that would indicate that these imports may have been made at dumped prices.

(85) The investigation established that the two facilities producing the like product in Poland and exporting it into the Community are both subsidiaries of one complainant Community producer. Therefore, all of the above import volumes from Poland during the IP have been made on behalf of the aforementioned Community producer. The investigation established also that approximately 40 % of the volumes of the like product imported from the USA have been actually imported by the other complainant Community producer for final sale in the Community. No indication was found that the corresponding resales were injurious to other Community producers or that these importing activities were made at the expense of own production in the Community. The two complainant Community producers own other facilities producing the like product in other third countries, however, the investigation established that these import volumes were individually and collectively negligible, i.e. below 1% of the Community consumption.

(86) The two complainant Community producers are large companies operating on a global level. Their field of activity is not restricted to the Community alone. These companies not only import some limited quantities of the like product for final sale in the Community, but also export outside of the Community a substantial amount of their Community production. The rationale behind these world shipments is an increasing tendency to specialise the various facilities by dimensions and grades of the like product, with the direct consequence that both complainant Community producers have, for certain dimensions and grades, to resort to imports from non-EC facilities in order to complement the range of products offered to the customer in the Community.

(87) Given the average prices, the small volume of these imports, their limited market share and the above considerations in terms of product range, no indications could be found that these imports, whether originating from facilities owned by the two complainant Community producers in third countries or not, contributed to the injurious situation suffered by the Community industry notably in terms of market shares, sales volumes, employment, investment, profitability, return on investment and cash flow.

(88) It was also claimed that this proceeding was discriminatory because it had overlooked the existence of imports of the like product originating in the People's Republic of China ('PRC'), as allegedly shown by relatively large import quantities from the PRC reported under CN code 8545 11 00. It should be first highlighted that CN code 8545 11 00 covers not only the product concerned and the like product, but also other items. It is therefore inappropriate to draw conclusions on the sole basis of the above CN code. Special attention was however paid to this issue during verification visits carried out at the premises of the co-operating users. Whilst several users had reported in their questionnaire replies volumes of the like product imported from the PRC, the on spot verification evidenced that none of these Chinese electrodes matched the parameters defining the product concerned. In addition, one of the two users' associations clearly stated in a written submission that the PRC was not in a situation to produce and export the like product into the Community during the period 1999-IP. The argument is therefore rejected.

(e) *Export performance of the Community industry*

(89) Pointing at the sizeable drop in the export prices of the Community industry, one interested party claimed that (i) this was indicative of the absence of causal link between dumped imports and the injury suffered by the Community industry in the Community market and (ii) this could be regarded as self-inflicted injury.

(90) As explained above, the two complainant Community producers operate on a global level. The investigation found that the Community industry exports in volume some 15 % more than it sells in the Community. Starting from a level of around 100 000 tonnes in 1999, the volume of sales exported by the Community industry increased by 12 % in 2000, dropped by 20 percentage points in 2001, increased by 2 percentage points in 2002 and by a further 6 percentage points in the IP. During the IP, the volume of export sales was very close to that observed in 1999, and therefore no loss of economies of scale can be attributed to the export activity. The investigation found that prices of export sales dropped by around 14 % between 1999 and the IP. However, taken in isolation from other factors that might play a role at a world market level, this observation bears no relevance in respect of the present proceeding, which concerns the Community market and not the world market. It should also be noted that the profitability trend examined in the framework of the injury assessment refers exclusively to sales in the Community of the Community industry's own production. Although the profitability of export sales developed slightly worse than that of Community sales, this fact is also regarded as irrelevant in respect of the present proceeding. It is therefore considered that the export activity cannot have contributed in any way to the injury suffered by the Community industry.

	1999	2000	2001	2002	IP
Export sales volume (tonnes)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*112*	*91*	*93*	*99*
Export sales unit price (EUR/tonne)	cannot be disclosed (see recital 36 above)				
Index (1999 = 100)	*100*	*96*	*102*	*88*	*86*

4. CONCLUSION ON CAUSATION

(91) In conclusion, it is confirmed that the material injury of the Community industry, which is principally characterised by the decline, between 1999 and the IP, in market share, in unit sales price (8 %) while the unit cost of production increased by 2 %, by the ensuing drop in profitability, in return on investments and cash-flow from operating activities, and by the decline in investment and employment was caused by the dumped imports concerned.

(92) Indeed, the effect of the decline in demand linked to the slowdown in the steel market, of the return to normal competition conditions after dismantling of the cartel, of the performance of other Community producers, of the imports from other third countries, of the export performance of the Community industry was non-existent or only very limited and consequently not such as to alter the provisional finding that there is a genuine and substantial causal link between the dumped imports from the country concerned and the material injury suffered by the Community industry.

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

G. **COMMUNITY INTEREST**

(94) The Commission examined whether, despite the conclusions on dumping, injury and causation, compelling reasons existed which would lead to the conclusion that it is not in the Community interest to adopt measures in this particular case. For this purpose, and pursuant to Article 21(1) of the basic Regulation, the Commission considered the likely impact of measures for all parties concerned.

1. INTEREST OF THE COMMUNITY INDUSTRY

(95) The Community industry is composed of two groups of companies, encompassing a total of nine production facilities spread over different Community countries, and 1 800 persons directly involved in the production, sales and administration of the like product. Following an imposition of measures, it is expected that both sales volumes and sales prices of the Community industry on the Community market would rise. However, Community industry's prices would certainly not increase by the level of any anti-dumping duty since competition will still remain amongst Community producers, imports originating in the country concerned made at non-dumped prices and imports originating in other third countries. In conclusion it is expected that the increase in production and sales volume, on the one hand, and the further decrease in unit costs, on the other hand, combined with a moderate price increase, will allow the Community industry to improve its financial situation.

(96) On the other hand, should anti-dumping measures not be imposed, it is likely that the negative trend of the Community industry will continue. The Community industry will likely continue to lose market shares and to experience a deterioration of its profitability. This will in all likelihood lead to cuts in production and investments, closure of certain production capacities and further job reduction in the Community.

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

2. INTEREST OF UNRELATED IMPORTERS/TRADERS IN THE COMMUNITY

(98) During the IP, the two co-operating importers imported around 20 % of the EC total import volume of the product concerned originating in the country concerned. From the co-operation of the two Indian exporting producers, it appears that the importers/traders in the Community (i.e. the two above co-operating importers on the one hand, plus non-cooperating importers/traders on the other hand) account for about 40 % of the EC total import volume of the product concerned originating in India.

(99) Should anti-dumping measures be imposed, it is possible that the volume of imports originating in the country concerned may decrease. Furthermore, it cannot be excluded that the imposition of anti-dumping measures may result in a moderate increase in the prices of the product concerned in the Community, thus affecting the economic situation of importers/traders. As far as the two co-operating importers are concerned, the activity of trading of the product concerned originating in India accounts for around 40 % of their total turnover. In terms of their workforce, out of a total of 10 employees, 4 are directly involved in the trading of the product concerned originating in India. The effect on importers of the increase in the import price of the product concerned will depend also on their ability to pass it on to their customers. The low proportion of the product concerned in users' total costs (see recital 103 below) might also make it easier for the importers to pass any price increase on to users.

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

3. INTEREST OF THE USER INDUSTRY

(101) The principal user industry, accounting for around 80 % of the total EC consumption of the product concerned and the like product, is the electric steel industry. During the IP, the eight co-operating final users consumed around 27 % of the EC total import volume of the product concerned originating in the country concerned, imported either directly from the two Indian exporting producers or via importers/traders. From the co-operation of the two Indian exporting producers, it appears that final users in the Community (i.e. the eight above co-operating users on the one hand, plus non-cooperating users on the other hand) account for about 56 % of the EC total direct import volume of the product concerned originating in India. The remaining part (4 %) has been imported by the Community industry.

(102) The co-operating users claim that the imposition of anti-dumping measures would adversely affect their financial situation, directly via the increased price of their consumption sourced in India, and indirectly via the likely price increase implemented by Community producers for the share of their consumption sourced from Community producers.

(103) The investigation showed that consumption of the product concerned and like product represents on average 1 % of total costs of production of co-operating users. The possible cost impact on users is as follows. Should anti-dumping measures be applied, users' costs of production could rise by between 0,15 % (based on a worst case scenario whereby prices of both product concerned and like product would rise by the amount of the duty, irrespective of their origin) and 0,03 % (only the consumption sourced from India is affected by the price increase). On balance, it is estimated that the actual outcome is likely to stand in the middle of these two scenarios, for the following reasons. The Community industry might increase its prices to a certain extent, but it will also likely take advantage of the relief in price pressure to regain lost market share by pricing competitively vis-à-vis Indian prices. Spare capacities exist and the return to fair and more profitable market conditions would certainly raise potential supply from all origins and foster new investments. In addition, some 15 % of the EC consumption is sourced from alternative suppliers (i.e. the other Community producer and imports from third countries other than India). Therefore, it is unlikely that a general price rise will happen. Finally, of the above very limited likely impact on users' costs of production, it might be possible to pass on at least a part of it to downstream customers, which would thus result in an even smaller final impact on users profits.

(104) The co-operating users also object to the imposition of anti-dumping measures on the ground that this would raise an obstacle to a competitive market, and de facto help re-instate the cartel found in 2001 by the Commission.

(105) The two complainant Community producers, which had practised a cartel between May 1992 and March 1998, were fined in 2001 by the Commission. The investigation confirmed that the two producers composing the Community industry had ceased their past behaviour of price and market fixing, and this point is not debated by any party. The situation at stake is to restore a level playing field that has been distorted by the unfair trade practises of Indian exporters. The aim of anti-dumping measures is not to stop access into the Community of imports from the country concerned, but to eliminate the impact of distorted market conditions arising from the presence of dumped imports. Restoring fair market conditions will not only benefit Community producers, but also alternative supply sources like for example non-dumped imports. The fact that the Community industry had practised a cartel in the years 1992-98 should not deprive it of the right to obtain relief under the basic Regulation against unfair trade practises.

(106) In view of these findings, it may be provisionally concluded that the imposition of anti-dumping measures (i) is unlikely to affect seriously the financial situation of the users; and (ii) is unlikely to have any negative effect on the overall competition situation on the Community market.

4. CONCLUSION ON COMMUNITY INTEREST

(107) The effects of the imposition of measures can be expected to afford the Community industry with the opportunity to regain lost sales and market shares and to improve its profitability. On the other hand, in view of the deteriorating situation of the Community industry, there is a risk that in the absence of measures, certain Community producers may close down production facilities and lay-off part of their workforce. Whilst some negative effects are likely to result in the form of decrease in the volumes imported and moderate price increases for the importers/traders and for the users, the extent of these may be reduced by passing the increase on to downstream customers. In the light of the above, it is provisionally concluded that no compelling reasons exist for not imposing measures in the present case and that the application of measures would be in the interest of the Community.

H. **PROPOSAL FOR PROVISIONAL ANTI-DUMPING MEASURES**

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

1. INJURY ELIMINATION LEVEL

(109) The level of the provisional anti-dumping measures should be sufficient to eliminate the injury to the Community industry caused by the dumped imports, without exceeding the dumping margins found. When calculating the amount of duty necessary to remove the effects of the injurious dumping, it was considered that any measures should allow the Community industry to obtain a profit before tax that could be reasonably achieved under normal conditions of competition, i.e. in the absence of dumped imports.

(110) On the basis of the information available, it was preliminarily found that a profit margin of 9,4 % of turnover could be regarded as an appropriate level which the Community industry could be expected to obtain in the absence of injurious dumping. The complainant Community producers submitted that they could reasonably expect a profit margin of 10 % to 15 % in the absence of dumped imports. The investigation found that the Community industry had reached a profit ranging between 12 % to 15 % of turnover in 1999 (see recital 61 above), when the market share held by dumped imports was at its lowest. The Commission examined whether 1999 market conditions could be considered as representative of the normal conditions on the market for the product concerned. The investigation established that the return to normal competition conditions after the end of the price and market fixing period had an effect on prices and that the price of key raw materials had increased substantially between 1999 and the IP. In these circumstances, it is considered that there was no likelihood of the Community industry achieving a profitability ranging between 12 % to 15 % during the IP. Finally, the Commission looked at company balance sheet statistics by sectors collected by the Central Banks of Germany, France, Italy, Japan and the USA. The database aggregating these data is maintained by the Commission. This examination showed that companies belonging to the nearest available sector in the above largest industrialised countries achieved on average a profit before extraordinary items of 9,4 % in 2002. Taking all circumstances and elements into account, the Commission considers that 9,4 % is a reasonable profit that the Community industry could achieve in the absence of dumped imports.

(111) The necessary price increase was then determined on the basis of a comparison, on a transaction by transaction basis, of the weighted average import price, as established for the price undercutting calculations, with the non-injurious price of the like product sold by the Community industry on the Community market. The non-injurious price has been obtained by adjusting the sales price of the Community industry in order to reflect the above mentioned profit margin. Any difference resulting from this comparison was then expressed as a percentage of the total CIF import value.

(112) The above-mentioned price comparison showed the following injury margins :

Graphite India Limited (GIL)	20,3 %
Hindustan Electro Graphite (HEG) Limited	12,8 %

2. PROVISIONAL MEASURES

(113) In the light of the foregoing, it is considered that a provisional anti-dumping duty should be imposed at the level of the dumping margin found, but should not be higher than the injury margin calculated above in accordance with Article 7(2) of the basic Regulation.

(114) In the parallel anti-subsidy proceeding, countervailing duties on graphite electrode systems originating in India are also imposed in accordance with Article 12(1) of Council Regulation (EC) No 2026/97 ([1]) (hereafter 'the basic anti-subsidy Regulation'). Since, in accordance with Article 14(1) of the basic Regulation, no product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping or export subsidisation, it is considered necessary to determine whether, and to what extent, the subsidy amounts and the dumping margins arise from the same situation.

([1]) OJ L 288, 21.10.1997, p. 1.

(115) The subsidy schemes investigated and found to be countervailable in the anti-subsidy proceeding, constituted export subsidies within the meaning of Article 3(4)(a) of the basic anti-subsidy Regulation. Therefore, the provisional dumping margins established for the exporting producers in India are partly due to the existence of the countervailed export subsidies and, thus, the provisional anti-dumping duty should be the lesser of the dumping margin and the injury margin found in this proceeding minus the provisional countervailing duty offsetting the effect of the export subsidies.

(116) Consequently, the provisional anti-dumping duties should be as follows:

Company	Injury elimination margin	Dumping margin	Provisional countervailing duty	Proposed anti-dumping duty
Graphite India Limited (GIL)	20,3 %	34,3 %	14,6 %	5,7 %
Hindustan Electro Graphite (HEG) Limited	12,8 %	24,0 %	12,8 %	0 %
All others	20,3 %	34,3 %	14,6 %	5,7 %

3. FINAL PROVISION

(117) In the interest of sound administration, a period should be fixed within which the interested parties which made themselves known within the time limit specified in the notice of initiation may make their views known in writing and request a hearing. Furthermore, it should be stated that the findings concerning the imposition of duties made for the purposes of this Regulation are provisional and may have to be reconsidered for the purposes of any definitive duty,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is hereby imposed on imports of graphite electrodes of a kind used for electric furnaces, with an apparent density of 1,65 g/cm^3 or more and an electrical resistance of 6,0 μΩ.m or less, falling within CN code ex 8545 11 00 (TARIC code 8545 11 00 10) and nipples used for such electrodes, falling within CN code ex 8545 90 90 (TARIC code 8545 90 90 10) whether imported together or separately originating in India.

2. The rate of the provisional anti-dumping duty applicable to the net free-at-Community-frontier price, before duty, for products produced by the companies listed below in India shall be as follows:

Company	Provisional duty	TARIC additional code
Graphite India Limited (GIL), 31 Chowringhee Road, Kolkatta — 700016, West Bengal	5,7 %	A530
Hindustan Electro Graphite (HEG) Limited, Bhilwara Towers, A-12, Sector-1, Noida — 201301, Uttar Pradesh	0 %	A531
All others	5,7 %	A999

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

4. The release for free circulation in the Community of the product referred to above shall be subject to the provision of a security equivalent to the amount of the provisional duty.

Article 2

Without prejudice to Article 20 of Council Regulation (EC) No 384/96, interested parties may request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted, make their views known in writing and apply to be heard orally by the Commission within 15 days of the date of entry into force of this Regulation.

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

Article 3

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

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

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

Done at Brussels, 19 May 2004.

For the Commission

Pascal LAMY

Member of the Commission

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 May 2004

on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection

(2004/496/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof, in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) On 23 February 2004 the Council authorised the Commission to negotiate, on behalf of the Community, an Agreement with the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection.

(2) The European Parliament has not given an Opinion within the time-limit which, pursuant to the first subparagraph of Article 300(3) of the Treaty, the Council laid down in view of the urgent need to remedy the situation of uncertainty in which airlines and passengers found themselves, as well as to protect the financial interests of those concerned.

(3) This Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community.

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

AGREEMENT

between the European Community and the United States of America on the processing and transfer of PNR data by air carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection

THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA,

RECOGNISING the importance of respecting fundamental rights and freedoms, notably privacy, and the importance of respecting these values, while preventing and combating terrorism and related crimes and other serious crimes that are transnational in nature, including organised crime,

HAVING REGARD to US statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to provide the Department of Homeland Security (hereinafter 'DHS'), Bureau of Customs and Border Protection (hereinafter 'CBP') with electronic access to Passenger Name Record (hereinafter 'PNR') data to the extent it is collected and contained in the air carrier's automated reservation/departure control systems,

HAVING REGARD to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and in particular Article 7(c) thereof,

HAVING REGARD to the Undertakings of CBP issued on 11 May 2004, which will be published in the Federal Register (hereinafter 'the Undertakings'),

HAVING REGARD to Commission Decision C (2004) 1799 adopted on 17 May 2004, pursuant to Article 25(6) of Directive 95/46/EC, whereby CBP is considered as providing an adequate level of protection for PNR data transferred from the European Community (hereinafter 'Community') concerning flights to or from the US in accordance with the Undertakings, which are annexed thereto (hereinafter 'the Decision'),

NOTING that air carriers with reservation/departure control systems located within the territory of the Member States of the European Community should arrange for transmission of PNR data to CBP as soon as this is technically feasible but that, until then, the US authorities should be allowed to access the data directly, in accordance with the provisions of this Agreement,

AFFIRMING that this Agreement does not constitute a precedent for any future discussions and negotiations between the United States and the European Community, or between either of the Parties and any State regarding the transfer of any other form of data,

HAVING REGARD to the commitment of both sides to work together to reach an appropriate and mutually satisfactory solution, without delay, on the processing of Advance Passenger Information (API) data from the Community to the US,

HAVE AGREED AS FOLLOWS:

(1) CBP may electronically access the PNR data from air carriers' reservation/departure control systems ('reservation systems') located within the territory of the Member States of the European Community strictly in accordance with the Decision and for so long as the Decision is applicable and only until there is a satisfactory system in place allowing for transmission of such data by the air carriers.

(2) Air carriers operating passenger flights in foreign air transportation to or from the United States shall process PNR data contained in their automated reservation systems as required by CBP pursuant to US law and strictly in accordance with the Decision and for so long as the Decision is applicable.

(3) CBP takes note of the Decision and states that it is implementing the Undertakings annexed thereto.

(4) CBP shall process PNR data received and treat data subjects concerned by such processing in accordance with applicable US laws and constitutional requirements, without unlawful discrimination, in particular on the basis of nationality and country of residence.

(5) CBP and the European Commission shall jointly and regularly review the implementation of this Agreement.

(6) In the event that an airline passenger identification system is implemented in the European Union which requires air carriers to provide authorities with access to PNR data for persons whose current travel itinerary includes a flight to or from the European Union, DHS shall, in so far as practicable and strictly on the basis of reciprocity, actively promote the cooperation of airlines within its jurisdiction.

(7) This Agreement shall enter into force upon signature. Either Party may terminate this Agreement at any time by notification through diplomatic channels. The termination shall take effect ninety (90) days from the date of notification of termination to the other Party. This Agreement may be amended at any time by mutual written agreement.

(8) This Agreement is not intended to derogate from or amend legislation of the Parties; nor does this Agreement create or confer any right or benefit on any other person or entity, private or public.

Signed at …, on …

This Agreement is drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic. In case of divergence, the English version shall prevail.

for the European Community

…

…

for the United States of America

Tom RIDGE

Secretary of the United States Department of Homeland Security

COMMISSION

COMMISSION DECISION

of 17 May 2004

repealing Commission Decision No 303/96/ECSC accepting an undertaking offered in connection with imports into the Community of certain grain-oriented electrical sheets originating in Russia

(2004/497/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1] ('the basic Regulation'), and in particular Articles 8 and 9 thereof,

After consulting the Advisory Committee,

Whereas:

A. **PREVIOUS PROCEDURE**

(1) On 19 February 1996, the Commission, by Decision No 303/96/ECSC [2], imposed a single country-wide definitive anti-dumping duty on imports of certain grain-oriented electrical sheets ('GOES'), originating in Russia. By the same Decision, the Commission accepted an undertaking combining a quantitative limitation and a pricing commitment offered by the Russian authorities in conjunction with the Russian exporters of GOES.

(2) Further to a request lodged by the European Confederation of Iron and Steel Industries ('Eurofer') on behalf of the Community industry of GOES, the Commission initiated an expiry review in accordance with Article 11 (2) of Commission Decision No 2277/96/ECSC [3] ('the basic Decision'). At the same time, the Commission also initiated on its own initiative an investigation in accordance with Article 11(3) of the basic Decision in order to examine the appropriateness of the form of the measures [4].

(3) In view of the expiry of the Treaty establishing the European Coal and Steel Community on 23 July 2002, the Council, by Regulation (EC) No 963/2002 [5], decided that anti-dumping proceedings initiated pursuant to the basic Decision and still in force shall be continued and be governed by the basic Regulation with effect from 24 July 2002. Likewise, any anti-dumping measures resulting from pending anti-dumping investigations shall be governed by the provisions of the basic Regulation from 24 July 2002.

(4) Further to a request by two exporting producers of GOES in Russia, namely OOO VIZ — STAL, ('VIZ-STAL') and Novolipetsk Iron and Steel Corporation ('NLMK'), the Commission initiated in August 2002 an investigation pursuant to Article 11(3) of the basic Regulation, with respect to VIZ STAL [6] and subsequently, in October 2002, an investigation pursuant to Article 11(3) of the basic Regulation with respect to NLMK [7]. Both reviews were limited in scope to the examination of dumping.

(5) As a result of the expiry review mentioned in recital 2, the Council, in January 2003, by Regulation (EC) No 151/2003 [8] confirmed the definitive anti-dumping duty imposed by Decision No 303/96/ECSC. However, the interim review limited to the form of the measures remained open at the conclusion of the expiry review.

(6) In both reviews mentioned in recital 4, the aspects of dumping had to be investigated, which could eventually affect the level of the measures subject to the *ex officio* review, mentioned in recital 2, limited to the form of the measure. Furthermore, the three reviews concerned the same anti-dumping measure. It was therefore considered appropriate, for reasons of sound administration, to conclude the three interim reviews together in order to be able to take into account the eventually changed

[1] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 461/2004 (OJ L 77, 13.3.2004, p. 12).
[2] OJ L 42, 20.2.1996, p. 7.
[3] OJ L 308, 29.11.1996, p. 11. Decision as last amended by Decision No 435/2001/ECSC (OJ L 63, 3.3.2001, p. 14).
[4] OJ C 53, 20.2.2001, p. 13.
[5] OJ L 149, 7.6.2002, p. 3. Regulation as amended by Regulation (EC) No 1310/2002 (OJ L 192, 20.7.2002, p. 9).
[6] OJ C 186, 6.8.2002, p. 15.
[7] OJ C 242, 8.10.2002, p. 16.
[8] OJ L 25, 31.1.2003, p. 7.

economic circumstances of the exporting producers concerned.

B. **WITHDRAWAL OF THE ACCEPTANCE OF AN UNDERTAKING**

(7) The Council, by Regulation (EC) No 990/2004 [1], concluded all three abovementioned reviews.

(8) As set out in recitals 89 to 100 of Regulation (EC) No 990/2004, and after having consulted all interested parties concerned, the undertaking in its current form is not appropriate anymore. On this basis, and also in accordance with the relevant clauses of the undertaking in question, which authorises the Commission unilaterally to withdraw the acceptance of the undertaking, the Commission has concluded to withdraw the acceptance of the undertaking.

(9) The Commission informed the Russian authorities and the Russian exporters concerned in January 2004 that it proposed to withdraw the acceptance of the current undertaking. The Russian authorities and one exporting producer objected to the above proposal and requested that a duty-free tariff quota should be maintained for imports of GOES originating in Russia, in particular in view of the enlargement of the European Union on 1 May 2004. These arguments could not be accepted for the reasons set out in recital 99 of Regulation (EC) No 990/2004.

C. **REPEAL OF DECISION No 303/96/ECSC**

(10) In view of the above, Article 2 of Decision No 303/96/ECSC should be repealed.

(11) In parallel to this Decision, the Council, by Regulation (EC) No 990/2004 has imposed a definitive anti-dumping duty on the exporters concerned,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Decision No 303/96/ECSC is hereby repealed.

Article 2

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 17 May 2004.

For the Commission

Pascal LAMY

Member of the Commission

[1] OJ L 182, 19.5.2004, p. 5.

COMMISSION DECISION

of 18 May 2004

accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of silicon carbide originating, *inter alia*, in Ukraine

(2004/498/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 461/2004 [2] (the 'basic Regulation'), and in particular Articles 8, 11(3), 21 and 22(c) thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

1. Measures in force

(1) Pursuant to Regulation (EC) No 1100/2000 [3] the Council imposed a definitive anti-dumping duty on imports into the Community of silicon carbide (the 'product concerned') originating in Ukraine. Pursuant to Regulation (EC) No 991/2004 [4] the Council amended Regulation (EC) No 1100/2000.

(2) The rate of the duty applicable to the net, free-at-Community-frontier price, before duty, is set at 24 % for imports of the product concerned originating in Ukraine.

2. Investigation

(3) On 20 March 2004 the Commission announced through the publication of a notice in the *Official Journal of the European Union* [5] the initiation of a partial interim review of the measures in force ('the measures') pursuant to Articles 11(3) and 22(c) of the basic Regulation.

(4) The review was launched at the initiative of the Commission in order to examine whether, as a consequence of the enlargement of the European Union on 1 May 2004 ('enlargement') and, bearing in mind the aspect of Community interest, there is a need to adapt the measures in order to avoid a sudden and excessively negative effect on all interested parties including users, distributors and consumers.

(5) All interested parties, including the Community industry, associations of producers or users in the Community, exporters/producers in the countries concerned, importers and their associations and the relevant authorities of the countries concerned as well as interested parties in the 10 new Member States which acceded to the European Union on 1 May 2004 (the 'EU10') were advised of the initiation of the investigation and were given the opportunity to make their views known in writing, to submit information and to provide supporting evidence within the time-limit set out in the notice of initiation. All interested parties who so requested and showed that there were reasons why they should be heard were granted a hearing.

3. Result of investigation

(6) As set out in Regulation (EC) No 991/2004, the investigation concluded that it is in the Community interest to adapt the existing measures, provided that such adaptation does not significantly undermine the desired level of trade defence.

4. Undertaking

(7) In accordance with the conclusions of Regulation (EC) No 991/2004, the Commission, in conformity with Article 8(2) of the basic Regulation, suggested undertakings to the company concerned. As a result, undertakings were subsequently offered by one exporting producer of the product concerned in Ukraine (Open Joint Stock Company Zaporozhsky Abrasivny Combinat).

(8) It should be noted that, in application of Article 22(c) of the basic Regulation, these undertakings are considered as special measures since, in accordance with the conclusions of Regulation (EC) No 991/2004, they are not directly equivalent to an anti-dumping duty.

(9) Nevertheless, in conformity with Regulation (EC) No 991/2004, the undertakings oblige producing exporter to respect the import ceilings and, in order that the undertakings can be monitored, the exporting producer concerned has also agreed broadly to respect their traditional selling patterns to individual customers in the EU10. The exporting producer is also aware that if it is found that these sales patterns change significantly, or that the undertakings become in any way difficult or impossible to monitor, the Commission is entitled to withdraw acceptance of the company's undertakings resulting in definitive anti-dumping duties being imposed in their place, or it may adjust the level of the ceiling, or it may take other remedial action.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 77, 13.3.2004, p. 12.
[3] OJ L 125, 26.5.2000, p. 3.
[4] OJ L 182, 18.5.2004, p. 18.
[5] OJ C 70, 20.3.2004, p. 15.

(10) It is also a condition of the undertakings that if they are breached in any way, the Commission will be entitled to withdraw acceptance thereof resulting in definitive anti-dumping duties being imposed in their place.

(11) The company will also provide the Commission with regular and detailed information concerning their exports to the Community, meaning that the undertakings can be monitored effectively by the Commission.

(12) In order that the Commission can monitor effectively the companies' compliance with the undertakings, when the request for release for free circulation pursuant to an undertaking is presented to the relevant customs authority, exemption from the duty will be conditional upon the presentation of an invoice containing at least the items of information listed in the Annex to Regulation (EC) No 991/2004. This level of information is also necessary to enable customs authorities to ascertain with sufficient precision that the shipment corresponds to the commercial documents. Where no such invoice is presented, or when it does not correspond to the product presented to customs, the appropriate anti-dumping duty will instead be payable.

(13) In view of all the above, the offer of undertakings is considered acceptable.

(14) The acceptance of the undertakings is limited to an initial period of six months without prejudice to the normal duration of the measures and it shall lapse after this period, unless the Commission considers it is appropriate to extend period of application of special measure for next six months,

HAS DECIDED AS FOLLOWS:

Article 1

The undertakings offered by the exporting producer mentioned below, in connection with the anti-dumping proceeding concerning imports of silicon carbide originating in Ukraine is hereby accepted.

Country	Company	TARIC additional code
Ukraine	Produced and exported by Open Joint Stock Company Zaporozhsky Abrasivny Combinat, Zaporozhye, Ukraine to the first independent customer in the Community acting as an importer	A523

Article 2

This Decision shall enter into force on the day after its publication in the *Official Journal of the European Union* and remain in force for a period of six months.

Done at Brussels, 18 May 2004.

For the Commission

Pascal LAMY

Member of the Commission