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.

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[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