

**FEDERAL COURT OF CANADA
(TRIAL DIVISION)**

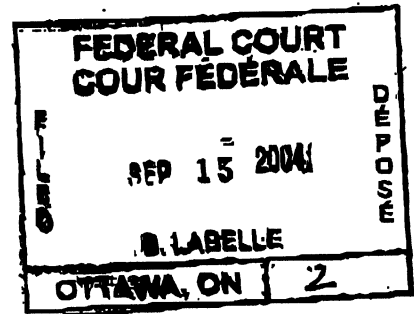
BETWEEN:

HER MAJESTY THE QUEEN

and

VAW Carbon GmbH

ACCUSED



AGREED STATEMENT OF FACTS

I. The Accused

1. During the period covered by the indictment, VAW Carbon GmbH ("VAW CARBON") was a corporation incorporated under the laws of Germany with its principal place of business in Grevenbroich, Germany. VAW CARBON was one of a limited number of companies engaged in the production, manufacture, distribution, sale and supply of carbon cathode block ("the Product"), throughout the world, including Canada.

2. On or about July 1, 1998, VAW CARBON sold all its assets to Erftcarbon GmbH & Co. KG ("Erftcarbon") and all employees of VAW CARBON became employees of Erftcarbon. VAW CARBON has no current operations and no officers, directors, or employees other than two managing directors who are empowered to conclude its affairs.
3. During 1996 and 1997 (the "relevant period") VAW CARBON directly or indirectly through its US agent, Graphite Sales Inc., engaged in the sale and supply of the Product in Canada.

II. OTHER CORPORATIONS

4. In Canada and worldwide, the production and supply of cathode block is concentrated. Together with VAW CARBON, other significant participants in the manufacture, production, distribution, sale and supply of the Product during the relevant period included SGL Carbon Aktiengesellschaft, UCAR International Inc., Carbone Savoie S.A.S., Nippon Electrode Company, Ltd., Hepworth Refractories Inc. and SEC Corporation.

5. Alcan Aluminum Limited was also a manufacturer of carbon cathodes during the relevant period, however its production generally was for internal consumption rather than the commercial market.

III. CATHODE BLOCK

6. Cathode blocks are commonly used in the production of primary aluminium. Cathodes are manufactured from carbon material in amorphous, graphitic or graphitized form. Carbon has unique properties, including corrosion-resistance and superior electric current conductivity, making it ideal as a lining for the cells, or 'pots' in which the aluminium electrolysis occurs.

III. CANADIAN MARKET FOR CATHODE BLOCK

7. Canada ranks third after the United States and Russia in terms of world production of primary aluminium.
8. During the relevant period, VAW CARBON sold, either directly or indirectly through its agent Graphite Sales Inc., at least (US) \$2.6 million (CND \$3.57 million) of carbon cathodes into Canada.

IV. THE AGREEMENT

9. During the relevant period, representatives of VAW CARBON and certain of the other producers met together and entered into an anti-competitive conspiracy, combination, agreement or arrangement to fix the prices of carbon blocks sold in Canada and elsewhere.
10. The conspiracy consisted of a continuing agreement and collaborative action by certain producers having the effect of lessening competition unduly in Canada and elsewhere.
11. At various times during the period, representatives of VAW CARBON engaged in conversations and attended meetings in Asia and Europe with representatives of certain of the other producers. As a result of these conversations and meetings, certain producers agreed to charge prices at levels corresponding to each of the three types of cathode.
12. Periodically during the relevant period, and in accordance with their agreement, certain producers communicated for the purposes of implementing and maintaining price increases relating to the sale and supply of cathode blocks in Canada and elsewhere, and to resolve specific price, marketing, supply or production issues.

VI. OTHER CONSIDERATIONS

13. VAW CARBON has agreed to cooperate and to plead guilty to an offence contrary to section 45(1)(c) of the *Competition Act*, thereby saving the costs of further investigation and trial which would otherwise have been incurred by the Government of Canada.

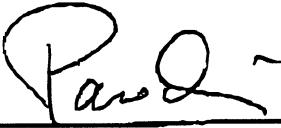
14. Because of the complex nature of the industry, its international ramifications and jurisdictional considerations, this cooperation will assist the Government of Canada in its investigation of other individuals and corporations for violations of the *Competition Act* in relation to the manufacture, production, distribution, sale and supply of cathode blocks.

VII. CONCLUSION

15. VAW CARBON admits the foregoing pursuant to section 655 of the *Criminal Code* solely for the purpose of dispensing with their proof at trial in this proceeding.


16. VAW CARBON acknowledges, on the basis of the facts set out herein with respect to the agreement alleged in the indictment, all constituent elements of an indictable offence under section 45(1)(c) of the *Competition Act* have been established.

VAW Carbon GmbH
By its duly authorized officer



(Pawlik)

Her Majesty the Queen



For the Attorney General of
Canada by her Counsel
D.D. Graham Reynolds, Q.C.

This 30 day of July, 2004.

This 5th day of August, 2004.

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Court No. T-

CAS -- SATJ
OTTAWA, ON

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