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Legislation

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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.

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 December 1979

on the conclusion of the Protocols extending for the first, second and third times the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement of 1971

(80/176/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the recommendation from the Commission,

HAS DECIDED AS FOLLOWS:

Article 1

The Protocols extending for the first, second and third times the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement of 1971 shall be approved on behalf of the European Economic Community.

Article 2

The President of the Council is hereby authorized to designate the person empowered to deposit the instrument of approval of the Protocols with the Government of the United States of America.

Done at Brussels, 10 December 1979.

For the Council

The President

T. HUSSEY

PROTOCOLS

for the extension of the Wheat Trade Convention and Food Aid Convention constituting the International Wheat Agreement, 1971

PREAMBLE

The Governments participating in the Conference to establish the texts of the Protocols for the extension of the Conventions constituting the International Wheat Agreement, 1971:

Considering that the International Wheat Agreement of 1949 was revised, renewed or extended in 1953, 1956, 1959, 1962, 1965, 1966, 1967, 1968 and 1971;

Considering that the International Wheat Agreement, 1971, consisting of two separate legal instruments, the Wheat Trade Convention, 1971 and the Food Aid Convention, 1971, will expire on 30 June 1974;

Have established the texts of Protocols for the extension of the Wheat Trade Convention, 1971 and for the extension of the Food Aid Convention, 1971.

PROTOCOL FOR THE EXTENSION OF THE WHEAT TRADE CONVENTION, 1971

THE GOVERNMENTS PARTY TO THIS PROTOCOL,

Considering that the Wheat Trade Convention, 1971 (hereinafter referred to as 'the Convention') of the International Wheat Agreement, 1971 expires on 30 June 1974,

HAVE AGREED AS FOLLOWS:

Article 1

Extension, expiry and termination of the Convention

Subject to the provisions of Article 2 of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1975, provided that, if a new International Agreement covering wheat enters into force before 30 June 1975, this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article 2

Inoperative provisions of the Convention

The following provisions of the Convention shall be deemed to be inoperative with effect from 1 July 1974:

(a) Article 19 (4);

(b) Articles 22 to 26 inclusive;

(c) Article 27 (1);

(d) Articles 29 to 31 inclusive.

Article 3

Definition

Any reference in this Protocol to a 'Government' or 'Governments' shall be construed as including a reference to the European Economic Community (hereinafter referred to as 'the Community'). Accordingly, any reference in this Protocol to 'signature' or to the 'deposit of instruments of ratification, acceptance, approval or conclusion' or 'an instrument of accession' or a 'declaration of provisional application' by a Government shall, in the case of the Community, be construed as including signature or declaration of provisional application on behalf of the Community by its competent authority and the deposit of the instrument required by the institutional procedures of the Community to be deposited for the conclusion of an International Agreement.

Article 4

Finance

The initial contribution of any exporting or importing member acceding to this Protocol, under Article 7 (1)

(b) thereof, shall be assessed by the Council on the basis of the votes to be distributed to it and the period remaining in the current crop year, but the assessments made upon other exporting and importing members for the current crop year shall not be altered.

Article 5

Signature

This Protocol shall be open for signature in Washington from 2 April 1974 until and including 22 April 1974 by Governments of countries party to the Convention, or which are provisionally regarded as party to the Convention, on 2 April 1974, or which are members of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, and are listed in Annex A or Annex B to the Convention.

Article 6

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory Government in accordance with its respective constitutional or institutional procedures. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1974, except that the Council may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article 7

Accession

1. This Protocol shall be open for accession:

(a) until 18 June 1974 by the Government of any member listed in Annex A or B to the Convention as of that date, except that the Council may grant one or more extensions of time to any Government that has not deposited its instrument by that date; and

(b) after 18 June 1974 by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency upon such conditions as the Council considers appropriate by not less than two-thirds of the votes cast by exporting members and two-thirds of the votes cast by importing members.

2. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

3. Where, for the purposes of the operation of the Convention and this Protocol, reference is made to members listed in Annex A or B to the Convention, any member the Government of which has acceded to the Convention on conditions prescribed by the Council, or to this Protocol in accordance with paragraph (1) (b) of this Article, shall be deemed to be listed in the appropriate Annex.

Article 8

Provisional application

Any signatory Government may deposit with the Government of the United States of America a declaration of provisional application of this Protocol. Any other Government eligible to sign this Protocol or whose application for accession is approved by the Council may also deposit with the Government of the United States of America a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article 9

Entry into force

1. This Protocol shall enter into force among those Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, in accordance with Articles 6, 7 and 8 of this Protocol by 18 June 1974, as follows:

(a) on 19 June 1974, with respect to all provisions of the Convention, other than Articles 3 to 9 inclusive and Article 21; and

(b) on 1 July 1974, with respect to Articles 3 to 9 inclusive, and Article 21 of the Convention,

if such instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application have been deposited not later than 18 June 1974 on behalf of Governments representing exporting members which held at least 60 % of the votes set out in Annex A and representing importing members which held at least 50 % of the votes set out in Annex B, or would have held such votes respectively if they had been parties to the Convention on that date.

2. This Protocol shall enter into force for any Government that deposits an instrument of ratification, acceptance, approval, conclusion or accession after 19 June 1974 in accordance with the relevant provisions

of this Protocol, on the date of such deposit, except that no part of it shall enter into force for such a Government until that part enters into force for other Governments under paragraph (1) or (3) of this Article.

3. If this Protocol does not enter into force in accordance with paragraph (1) of this Article, the Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, may decide by mutual consent that it shall enter into force among those Governments that have deposited instruments of ratification acceptance, approval, conclusion or accession, or declarations of provisional application.

Article 10

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding Governments of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to, this Protocol, as well as of each notification and notice received under Article 27 of the Convention and each declaration and notification received under Article 28 of the Convention.

Article 11

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article 12

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols to extend the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party and to the Executive Secretary of the Council.

PROTOCOL FOR THE EXTENSION OF THE FOOD AID CONVENTION, 1971

THE PARTIES TO THIS PROTOCOL,

Considering that the Food Aid Convention, 1971 (hereinafter referred to as 'the Convention' of the International Wheat Agreement, 1971 expires on 30 June 1974,

HAVE AGREED AS FOLLOWS:

Article I

Extension, expiry and termination of the Convention

Subject to the provisions of Article II of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1975, provided that, if a new Agreement covering food aid enters into force before 30 June 1975 this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article II

Inoperative provisions of the Convention

The provisions of Article II (1), (2) and (3), Article III (1), and of Articles VI to XIV, inclusive, of the Convention shall be deemed to be inoperative with effect from 1 July 1974.

Article III

International food aid

1. The parties to this Protocol agree to contribute as food aid to the developing countries, wheat, coarse grains or products derived therefrom, suitable for human consumption and of an acceptable type and quality, or the cash equivalent thereof, in the minimum annual amounts specified in paragraph 2 below.

2. The minimum annual contribution of each party to this Protocol is fixed as follows:

	tonnes
Argentina	23 000
Australia	225 000
Canada	495 000
Finland	14 000
Japan	225 000
Sweden	35 000
Switzerland	32 000
United States of America	1 890 000

3. For the purpose of the operation of this Protocol, any party which has signed this Protocol pursuant to Article V (2) thereof, or which has acceded to this Protocol pursuant to the appropriate provisions of Article VII thereof, shall be deemed to be listed in Article III (2) of this Protocol together with the minimum contribution of such party as determined in accordance with the relevant provisions of Article V or Article VII of this Protocol.

Article IV

Food Aid Committee

There shall be established a Food Aid Committee whose membership shall consist of the parties listed in Article III (2) of this Protocol and of those others that become parties to this Protocol. The Committee shall appoint a chairman and a vice-chairman.

Article V

Signature

1. This Protocol shall be open for signature in Washington from 2 April 1974 until and including 22 April 1974 by the Governments of Argentina, Australia, Canada, Finland, Japan, Sweden, Switzerland and the United States of America, provided that they sign both this Protocol and the Protocol to extend the Wheat Trade Convention, 1971.

2. This Protocol shall also be open for signature, on the same conditions, to parties to the Food Aid Convention, 1967 or to the Food Aid Convention, 1971, and to those provisionally regarded as parties to the Food Aid Convention, 1971, which are not enumerated in paragraph 1 of this Article, provided that their contribution is at least equal to that which they agreed to make in the Food Aid Convention, 1967 or, subsequently, in the Food Aid Convention, 1971.

Article VI

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory in accordance with its constitutional or institutional procedures, provided that it also ratifies, accepts, approves or concludes the Protocol to extend the Wheat Trade Convention, 1971. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1974, except that the Food Aid Committee may grant one or more extensions of time to any signatory that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article VII

Accession

1. This Protocol shall be open for accession by any party referred to in Article V of this Protocol, provided it also accedes to the Protocol to extend the Wheat Trade Convention, 1971 and provided further that in the case of parties referred to in Article V (2) their contribution is at least equal to that which they agreed to make in the Food Aid Convention, 1967 or, subsequently, in the Food Aid Convention, 1971. Instruments of accession under this paragraph shall be deposited not later than 18 June 1974, except that the Food Aid Committee may grant one or more extensions of time to any party that has not deposited its instrument of accession by that date.

2. The Food Aid Committee may approve accession to this Protocol, as a donor, by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, on such conditions as the Food Aid Committee considers appropriate, provided that the Government also accedes at the same time to the Protocol to extend the Wheat Trade Convention, 1971, if not already a party to it.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

Article VIII

Provisional application

Any party referred to in Article V of this Protocol may deposit with the Government of the United States of America a declaration of provisional application of this

Protocol, provided it also deposits a declaration of provisional application of the Protocol to extend the Wheat Trade Convention, 1971. Any other party whose application for accession is approved may also deposit with the Government of the United States of America a declaration of provisional application, provided that the party also deposits a declaration of provisional application of the Protocol to extend the Wheat Trade Convention, 1971, unless it is already a party to that Protocol or has already deposited a declaration of provisional application of that Protocol. Any such party depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article IX

Entry into force

1. This Protocol shall enter into force for those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession

(a) on 19 June 1974 with respect to all provisions other than Article II of the Convention and Article III of the Protocol; and

(b) on 1 July 1974 with respect to Article II of the Convention and Article III of the Protocol,

provided that all Governments listed in Article V (1) of this Protocol have deposited such instruments or a declaration of provisional application by 18 June 1974 and that the Protocol to extend the Wheat Trade Convention, 1971 is in force. For any other party that deposits an instrument of ratification, acceptance, approval, conclusion or accession after the entry into force of the Protocol, this Protocol shall enter into force on the date of such deposit.

2. If this Protocol does not enter into force in accordance with the provisions of paragraph 1 of this Article, the parties which by 19 June 1974 have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application may decide by mutual consent that it shall enter into force among those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, provided that the Protocol to extend the Wheat Trade Convention, 1971 is in force, or they may take whatever other action they consider the situation requires.

Article X

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding parties of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to this Protocol.

Article XI

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article XII

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols to extend the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall all be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party.

PROTOCOLS

for the further extension of the Wheat Trade Convention and Food Aid Convention constituting the International Wheat Agreement, 1971

PREAMBLE

The Conference to establish the texts of the Protocols for the further extension of the Conventions constituting the International Wheat Agreement, 1971:

Considering that the International Wheat Agreement of 1949 was revised, renewed or extended in 1953, 1956, 1959, 1962, 1965, 1966, 1967, 1968, 1971, and 1974;

Considering that the International Wheat Agreement, 1971, consisting of two separate legal instruments, the Wheat Trade Convention, 1971 and the Food Aid Convention, 1971, both of which were extended by Protocol in 1974, will expire on 30 June 1975;

Has established the texts of Protocols for the further extension of the Wheat Trade Convention, 1971 and for the further extension of the Food Aid Convention, 1971.

PROTOCOL FOR THE FURTHER EXTENSION OF THE WHEAT TRADE CONVENTION, 1971

THE GOVERNMENTS PARTY TO THIS PROTOCOL,

Considering that the Wheat Trade Convention, 1971 (hereinafter referred to as 'the Convention') of the International Wheat Agreement, 1971, which was extended by Protocol in 1974, expires on 30 June 1975,

HAVE AGREED AS FOLLOWS:

Article 1

Extension, expiry and termination of the Convention

Subject to the provisions of Article 2 of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1976, provided that, if a new International Agreement covering wheat enters into force before 30 June 1976, this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article 2

Inoperative provisions of the Convention

The following provisions of the Convention shall be deemed to be inoperative with effect from 1 July 1975:

(a) Article 19 (4);

(b) Articles 22 to 26 inclusive;

(c) Article 27 (1);

(d) Articles 29 to 31 inclusive.

Article 3

Definition

Any reference in this Protocol to a 'Government' or 'Governments' shall be construed as including a reference to the European Economic Community (hereinafter referred to as 'the Community'). Accordingly, any reference in this Protocol to 'signature' or to the 'deposit of instruments of ratification, acceptance, approval or conclusion' or 'an instrument of accession' or a 'declaration of provisional application' by a Government shall, in the case of the Community, be construed as including signature or declaration or provisional application on behalf of the Community by its competent authority and the deposit of the instrument required by the institutional procedures of the Community to be deposited for the conclusion of an International Agreement.

Article 4

Finance

The initial contribution of any exporting or importing member acceding to this Protocol under Article 7 (1) (b)

thereof, shall be assessed by the Council on the basis of the votes to be distributed to it and the period remaining in the current crop year, but the assessments made upon other exporting and importing members for the current crop year shall not be altered.

Article 5

Signature

This Protocol shall be open for signature in Washington from 25 March 1975 until and including 14 April 1975 by Governments of countries party to the Convention as extended by Protocol, or which are provisionally regarded as party to the Convention as extended by Protocol, on 25 March 1975, or which are members of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, and are listed in Annex A or Annex B to the Convention.

Article 6

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory Government in accordance with its respective constitutional or institutional procedures. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1975, except that the Council may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article 7

Accession

1. This Protocol shall be open for accession:

(a) until 18 June 1975 by the Government of any member listed in Annex A or B to the Convention as of that date, except that the Council may grant one or more extensions of time to any Government that has not deposited its instrument by that date; and

(b) after 18 June 1975 by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency upon such conditions as the Council considers appropriate by not less than two-thirds of the votes cast by exporting members and two-thirds of the votes cast by importing members.

2. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

3. Where, for the purposes of the operation of the Convention and this Protocol, reference is made to members listed in Annex A or B ot the Convention, any member the Government of which has acceded to the Convention on conditions prescribed by the Council, or to this Protocol in accordance with paragraph 1 (b) of this Article, shall be deemed to be listed in the appropriate Annex.

Article 8

Provisional application

Any signatory Government may deposit with the Government of the United States of America a declaration of provisional application of this Protocol. Any other Government eligible to sign this Protocol or whose application for accession is approved by the Council may also deposit with the Government of the United States of America a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article 9

Entry into force

1. This Protocol shall enter into force among those Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, in accordance with Articles 6, 7 and 8 of this Protocol by 18 June 1975, as follows:

(a) on 19 June 1975, with respect to all provisions of the Convention other than Articles 3 to 9 inclusive and Article 21; and

(b) on 1 July 1975, with respect to Articles 3 to 9 inclusive, and Article 21 of the Convention,

if such instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application have been deposited not later than 18 June 1975 on behalf of Governments representing exporting members which held at least 60 % of the votes set out in Annex A and representing importing members which held at least 50 % of the votes set out in Annex B, or would have held such votes respectively if they had been parties to the Convention on that date.

2. This Protocol shall enter into force for any Government that deposits an instrument of ratification, acceptance, approval, conclusion or accession after 19 June 1975 in accordance with the relevant provisions

of this Protocol, on the date of such deposit, except that no part of it shall enter into force for such a Government until that part enters into force for other Governments under paragraph 1 or 3 of this Article.

3. If this Protocol does not enter into force in accordance with paragraph 1 of this Article, the Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, may decide by mutual consent that it shall enter into force among those Governments that have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application.

Article 10

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding Governments of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to, this Protocol, as well as of each notification and notice received under Article 27 of the Convention and each declaration and notification received under Article 28 of the Convention.

Article 11

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article 12

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols for the further extension of the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party and to the Executive Secretary of the Council.

PROTOCOL FOR THE FURTHER EXTENSION OF THE FOOD AID CONVENTION, 1971

THE PARTIES TO THIS PROTOCOL,

Considering that the Food Aid Convention, 1971 (hereinafter referred to as 'the Convention') of the International Wheat Agreement, 1971, which was extended by Protocol in 1974, expires on 30 June 1975,

HAVE AGREED AS FOLLOWS:

Article I

Extension, expiry and termination of the Convention

Subject to the provisions of Article II of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1976, provided that, if a new Agreement covering food aid enters into force before 30 June 1976 this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article II

Inoperative provisions of the Convention

The provisions of Article II (1), (2) and (3), of Article III (1), and of Articles VI to XIV, inclusive, of the Convention shall be deemed to be inoperative with effect from 1 July 1975.

Article III

International food aid

1. The parties to this Protocol agree to contribute as food aid to the developing countries, wheat, coarse grains of products derived therefrom, suitable for human consumption and of an acceptable type and quality, or the cash equivalent thereof, in the minimum annual amounts specified in paragraph 2 below.

2. The minimum annual contribution of each party to this Protocol is fixed as follows:

	tonnes
Argentina	23 000
Australia	225 000
Canada	495 000
Finland	14 000
Japan	225 000
Sweden	35 000
Switzerland	32 000
United States of America	1 890 000

3. For the purpose of the operation of this Protocol, any party which has signed this Protocol pursuant to Article V (2) thereof, or which has acceded to this Protocol pursuant to the appropriate provisions of Article VII thereof, shall be deemed to be listed in Article III (2) of this Protocol together with the minimum contribution of such party as determined in accordance with the relevant provisions of Article V or Article VII of this Protocol.

Article IV

Food Aid Committee

There shall be established a Food Aid Committee whose membership shall consist of the parties listed in Article III (2) of this Protocol and of those others that become parties to this Protocol. The Committee shall appoint a chairman and a vice-chairman.

Article V

Signature

1. This Protocol shall be open for signature in Washington from 25 March 1975 until and including 14 April 1975 by the Governments of Argentina, Australia, Canada, Finland, Japan, Sweden, Switzerland and the United States of America, provided that they sign both this Protocol and the Protocol for the further extension of the Wheat Trade Convention, 1971.

2. This Protocol shall also be open for signature, on the same conditions, to parties to the Food Aid Convention 1967 or to the Food Aid Convention, 1971 as extended by Protocol, and to those provisionally regarded as parties to the Food Aid Convention, 1971 as extended by Protocol, which are not enumerated in paragraph 1 of this Article, provided that their contribution is at least equal to that which they agreed to make in the Food Aid Convention, 1967 or, subsequently, in the Food Aid Convention, 1971 as extended by Protocol.

Article VI

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory in accordance with its constitutional or institutional procedures, provided that it also ratifies, accepts, approves or concludes the Protocol for the further extension of the Wheat Trade Convention, 1971. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1975, except that the Food Aid Committee may grant one or more extensions of time to any signatory that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article VII

Accession

1. This Protocol shall be open for accession by any party referred to in Article V of this Protocol, provided it also accedes to the Protocol for the further extension of the Wheat Trade Convention, 1971 and provided further that in the case of parties referred to in Article V (2) their contribution is at least equal to that which they agreed to make in the Food Aid Convention, 1967 or, subsequently, in the Food Aid Convention, 1971 as extended by Protocol. Instruments of accession under this paragraph shall be deposited not later than 18 June 1975, except that the Food Aid Committee may grant one or more extensions of time to any party that has not deposited its instrument of accession by that date.

2. The Food Aid Committee may approve accession to this Protocol, as a donor, by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, on such conditions as the Food Aid Committee considers appropriate, provided that the Government also accedes at the same time to the Protocol for the further extension of the Wheat Trade Convention, 1971, if not already a party to it.

3. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

Article VIII

Provisional application

Any party referred to in Article V of this Protocol may deposit with the Government of the United States of America a declaration of provisional application of this Protocol, provided it also deposits a declaration of provisional application of the Protocol for the further extension of the Wheat Trade Convention, 1971. Any other party whose application for accession is approved may also deposit with the Government of the United States of America a declaration of provisional application, provided that the party also deposits a declaration of provisional application of the Protocol for the further extension of the Wheat Trade Convention, 1971, unless it is already a party to that Protocol or has already deposited a declaration of provisional application of that Protocol. Any such party depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article IX

Entry into force

1. This Protocol shall enter into force for those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession:

(a) on 19 June 1975 with respect to all provisions other than Article II of the Convention and Article III of the Protocol; and

(b) on 1 July 1975 with respect to Article II of the Convention and Article III of the Protocol

provided that all Governments listed in Article V (1) of this Protocol have deposited such instruments or a declaration of provisional application by 18 June 1975 and that the Protocol for the further extension of the Wheat Trade Convention, 1971 is in force. For any other party that deposits an instrument of ratification, acceptance, approval, conclusion or accession after the entry into force of the Protocol, this Protocol shall enter into force on the date of such deposit.

2. If this Protocol does not enter into force in accordance with the provisions of paragraph 1 of this Article, the parties which by 19 June 1975 have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application may decide by mutual consent that it shall enter into force among those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, provided that the Protocol for the further extension of the Wheat Trade Convention, 1971 is in force, or they may take whatever other action they consider the situation requires.

Article X

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding parties of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to this Protocol.

Article XI

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article XII

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols for the further extension of the International Wheat Agreement, 1971.

Declarations or reservations

DELEGATION OF THE COMMISSION OF THE EUROPEAN COMMUNITIES

18 June 1975

I have the honour to inform you that in connection with the Protocol for the further extension of the Wheat Trade Convention, 1971, the Council of Ministers of the European Community does not accept the reservation relating to the European Economic Community accompanying the signature of the Union of Soviet Socialist Republics of that Protocol on 8 April 1975, and repeated in the instrument of acceptance dated 23 April 1975, which was deposited on 6 May 1975, with the Government of the United States of America.

UNITED KINGDOM

18 June 1975

Her Britannic Majesty's Ambassador has the honour to inform the Secretary of State of the United States of America that in connection with the Protocol for the further extension of the Wheat Trade Convention, 1971, the Government of the United Kingdom of Great Britain and Northern Ireland does not accept the reservation relating to the European Economic Community accompanying the signature of the Union of Soviet Socialist Republics of that Protocol on 8 April 1975 and repeated in the instrument of acceptance dated 23 April 1975 which was deposited on 6 May 1975 with the Government of the United States of America.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall all be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party.

PROTOCOLS

for the third extension of the Wheat Trade Convention and the Food Aid Convention constituting the International Wheat Agreement, 1971

PREAMBLE

The Conference to establish the texts of the Protocols for the third extension of the Conventions constituting the International Wheat Agreement, 1971;

Considering that the International Wheat Agreement of 1949 was revised, renewed or extended in 1953, 1956, 1959, 1962, 1965, 1966, 1967, 1968, 1971, 1974 and 1975;

Considering that the International Wheat Agreement, 1971, consisting of two separate legal instruments, the Wheat Trade Convention, 1971 and the Food Aid Convention, 1971, both of which were further extended by Protocol in 1975, will expire on 30 June 1976;

Has established the texts of Protocols for the third extension of the Wheat Trade Convention, 1971 and for the third extension of the Food Aid Convention, 1971.

PROTOCOL FOR THE THIRD EXTENSION OF THE WHEAT TRADE CONVENTION, 1971

THE GOVERNMENTS PARTY TO THIS PROTOCOL,

Considering that the Wheat Trade Convention, 1971, (hereinafter referred to as 'the Convention') of the International Wheat Agreement, 1971, which was further extended by Protocol in 1975, expires on 30 June 1976,

HAVE AGREED AS FOLLOWS:

Article 1

Extension expiry and termination of the Convention

Subject to the provisions of Article 2 of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1978, provided that, if a new International Agreement covering wheat enters into force before 30 June 1978, this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article 2

Inoperative provisions of the Convention

The following provisions of the Convention shall be deemed to be inoperative with effect from 1 July 1976:

(a) Article 19 (4);

(b) Articles 22 to 26 inclusive;

(c) Article 27 (1);

(d) Articles 29 to 31 inclusive.

Article 3

Definition

Any reference in this Protocol to a 'Government' or 'Governments' shall be construed as including a reference to the European Economic Community (hereinafter referred to as 'the Community'). Accordingly, any reference in this Protocol to 'signature' or to the 'deposit of instruments of ratification, acceptance, approval or conclusion' or 'an instrument of accession' or 'a declaration of provisional application' by a Government shall, in the case of the Community, be construed as including signature or declaration of provisional application on behalf of the Community by its competent authority and the deposit of the instrument required by the institutional procedures of the Community to be deposited for the conclusion of an International Agreement.

Article 4

Finance

The initial contribution of any exporting or importing member acceding to this Protocol under paragraph (1)

(b) of Article 7 thereof, shall be assessed by the Council on the basis of the votes to be distributed to it and the period remaining in the current crop year, but the assessments made upon other exporting and importing members for the current crop year shall not be altered.

Article 5

Signature

This Protocol shall be open for signature in Washington from 17 March 1976 until and including 7 April 1976 by Governments of countries party to the Convention as further extended by Protocol, or which are provisionally regarded as party to the Convention as further extended by Protocol, on 17 March 1976, or which are members of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, and are listed in Annex A or Annex B to the Convention.

Article 6

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory Government in accordance with its respective constitutional or institutional procedures. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1976, except that the Council may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article 7

Accession

1. This Protocol shall be open for accession:

(a) until 18 June 1976 by the Government of any member listed in Annex A or B to the Convention as of that date, except that the Council may grant one or more extensions of time to any Government that has not deposited its instrument by that date; and

(b) after 18 June 1976 by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency upon such conditions as the Council considers appropriate by not less than two-thirds of the votes cast be exporting members and two-thirds of the votes cast by importing members.

2. Accession shall be effected by the deposit of an instrument of accession with the Government of the United States of America.

3. Where, for the purposes of the operation of the Convention and this Protocol, reference is made to members listed in Annex A or B to the Convention, any member the Government of which has acceded to the Convention on conditions prescribed by the Council, or to this Protocol in accordance with paragraph (1) (b) of this Article, shall be deemed to be listed in the appropriate Annex.

Article 8

Provisional application

Any signatory Government may deposit with the Government of the United States of America a declaration of provisional application of this Protocol. Any other Government eligible to sign this Protocol or whose application for accession is approved by the Council may also deposit with the Government of the United States of America a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article 9

Entry into force

1. This Protocol shall enter into force among those Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, in accordance with Articles 6, 7 and 8 of this Protocol by 18 June 1976, as follows:

(a) on 19 June 1976, with respect to all provisions of the Convention other than Articles 3 to 9 inclusive and Article 21; and

(b) on 1 July 1976, with respect to Articles 3 to 9 inclusive, and Article 21 of the Convention,

if such instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application have been deposited not later than 18 June 1976 on behalf of Governments representing exporting members which held at least 60 % of the votes set out in Annex A and representing importing members which held at least 50 % of the votes set out in Annex B, or would have held such votes respectively if they had been parties to the Convention on that date.

2. This Protocol shall enter into force for any Government that deposits an instrument of

ratification, acceptance, approval, conclusion or accession after 19 June 1976 in accordance with the relevant provisions of this Protocol, on the date of such deposit except that no part of it shall enter into force for such a Government until that part enters into force for other Governments under paragraph 1 or 3 of this Article.

3. If this Protocol does not enter into force in accordance with paragraph 1 of this Article, the Governments which have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, may decide by mutual consent that it shall enter into force among those Governments that have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application.

Article 10

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding Governments of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to, this Protocol, as well as of each notification and notice received under Article 27 of the Convention and each declaration and notification received under Article 28 of the Convention.

Article 11

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article 12

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols for the third extension of the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party and to the Executive Secretary of the Council.

PROTOCOL FOR THE THIRD EXTENSION OF THE FOOD AID CONVENTION, 1971

THE PARTIES TO THIS PROTOCOL,

Considering that the Food Aid Convention, 1971 (hereinafter referred to as 'the Convention') of the International Wheat Agreement, 1971, which was further extended by Protocol in 1975, expires on 30 June 1976,

HAVE AGREED AS FOLLOWS:

Article I

Extension, expiry and termination of the Convention

Subject to the provisions of Article II of this Protocol, the Convention shall continue in force between the parties to this Protocol until 30 June 1978, provided that, if a new Agreement covering food aid enters into force before 30 June 1978, this Protocol shall remain in force only until the date of entry into force of the new Agreement.

Article II

Inoperative provisions of the Convention

The provisions of Article II (1), (2) and (3), Article III (1), and of Articles VI to XIV, inclusive, of the Convention shall be deemed to be inoperative with effect from 1 July 1976.

Article III

International food aid

1. The Parties to this Protocol agree to contribute as food aid to the developing countries, wheat, coarse

grains or products derived therefrom, suitable for human consumption and of an acceptable type and quality, or the cash equivalent thereof, in the minimum annual amounts specified in paragraph 2 below:

2. The minimum annual contribution of each party to this Protocol is fixed as follows:

	tonnes
Argentina	23 000
Australia	225 000
Canada	495 000
European Economic Community	1 287 000
Finland	14 000
Japan	225 000
Sweden	35 000
Switzerland	32 000
United States of America	1 890 000

3. For the purpose of the operation of this Protocol, any party which has signed this Protocol pursuant to Article V (2) thereof, or which has acceded to this Protocol pursuant to Article VII (2) or (3) thereof, shall be deemed to be listed in Article III (2) of this Protocol together with the minimum contribution of such party as determined in accordance with the relevant provisions of Article V or Article VII of this Protocol.

Article IV

Food Aid Committee

There shall be established a Food Aid Committee whose membership shall consist of the parties listed in Article III (2) of this Protocol and of those others that become parties to this Protocol. The Committee shall appoint a chairman and a vice-chairman.

Article V

Signature

1. This Protocol shall be open for signature in Washington from 17 March 1976 until and including 7 April 1976 by the Governments of Argentina, Australia, Canada, Finland, Japan, Sweden, Switzerland and the United States of America, and by the European Economic Community and its Member States, provided that they sign both this Protocol and the Protocol for the third extension of the Wheat Trade Convention, 1971.

2. This Protocol shall also be open for signature, on the same conditions, to any party to the Food Aid Convention, 1967 which is not enumerated in paragraph (1) of this Article, provided that its contribution is at least equal to that which it agreed to make in the Food Aid Convention, 1967.

Article VI

Ratification, acceptance, approval or conclusion

This Protocol shall be subject to ratification, acceptance, approval or conclusion by each signatory in accordance with its constitutional or institutional procedures, provided that it also ratifies, accepts, approves or concludes the Protocol for the third extension of the Wheat Trade Convention, 1971. Instruments of ratification, acceptance, approval or conclusion shall be deposited with the Government of the United States of America not later than 18 June 1976, except that the Food Aid Committee may grant one or more extensions of time to any signatory that has not deposited its instrument of ratification, acceptance, approval or conclusion by that date.

Article VII

Accession

1. This Protocol shall be open for accession by any party referred to in Article V of this Protocol, provided it also accedes to the Protocol for the third extension of the Wheat Trade Convention, 1971 and provided further that in the case of any party referred to in Article V (2) its contribution is at least equal to that which it agreed to make in the Food Aid Convention, 1967. Instruments of accession under this paragraph shall be deposited not later than 18 June 1976, except that the Food Aid Committee may grant one or more extensions of time to any party that has not deposited its instrument of accession by that date.

2. The Food Aid Committee may approve accession to this Protocol, as a donor, by the Government of any member of the United Nations, of its specialized agencies or of the International Atomic Energy Agency, on such conditions as the Food Aid Committee considers appropriate, provided that the Government also accedes at the same time to the Protocol for the third extension of the Wheat Trade Convention, 1971, if not already a party to it.

3. Accession shall be effected by the desposit of an instrument of accession with the Government of the United States of America.

Article VIII

Provisional application

Any party referred to in Article V of this Protocol may deposit with the Government of the United States of America a declaration of provisional application of this Protocol, provided it also deposits a declaration of provisional application of the Protocol for the third extension of the Wheat Trade Convention, 1971. Any other party whose application for accession is approved

may also deposit with the Government of the United States of America a declaration of provisional application, provided that the party also deposits a declaration of provisional application of the Protocol for the third extension of the Wheat Trade Convention, 1971, unless it is already a party to that Protocol or has already deposited a declaration of provisional application of that Protocol. Any such party depositing such a declaration shall provisionally apply this Protocol and be provisionally regarded as a party thereto.

Article IX

Entry into force

1. This Protocol shall enter into force for those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession,

(a) on 19 June 1976 with respect to all provisions other than Article II of the Convention and Article III of the Protocol; and

(b) on 1 July 1976 with respect to Article II of the Convention and Article III of the Protocol,

provided that all parties listed in Article V (1) of this Protocol have deposited such instruments or a declaration of provisional application by 18 June 1976 and that the Protocol for the third extension of the Wheat Trade Convention, 1971 is in force. For any other party that deposits an instrument of ratification, acceptance, approval, conclusion or accession after the entry into force of the Protocol, this Protocol shall enter into force on the date of such deposit.

2. If this Protocol does not enter into force in accordance with the provisions of paragraph 1 of this Article, the parties which by 19 June 1976 have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application may decide by mutual consent that it shall enter into force among those parties that have deposited instruments of ratification, acceptance, approval, conclusion or accession, or declarations of provisional application, provided that the Protocol for the third extension of the Wheat Trade Convention, 1971 is in force, or they may take whatever other action they consider the situation requires.

Article X

Notification by depositary Government

The Government of the United States of America as the depositary Government shall notify all signatory and acceding parties of each signature, ratification, acceptance, approval, conclusion, provisional application of, and accession to this Protocol.

Article XI

Certified copy of the Protocol

As soon as possible after the definitive entry into force of this Protocol, the depositary Government shall send a certified copy of this Protocol in the English, French, Russian and Spanish languages to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations. Any amendments to this Protocol shall likewise be communicated.

Article XII

Relationship of preamble to Protocol

This Protocol includes the preamble to the Protocols for the third extension of the International Wheat Agreement, 1971.

In witness whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Protocol on the dates appearing opposite their signatures.

The texts of this Protocol in the English, French, Russian and Spanish languages shall all be equally authentic. The originals shall be deposited with the Government of the United States of America, which shall transmit certified copies thereof to each signatory and acceding party.

COUNCIL DECISION

of 18 December 1979

concerning the conclusion of the Agreement on a concerted action project in the field of physico-chemical behaviour of atmospheric pollutants (COST project 61a bis)

(80/177/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Decision 78/889/EEC of 9 October 1978 adopting a European Economic Community joint project in the field of physico-chemical behaviour of atmospheric pollutants [1] and in particular Article 6 (1) thereof,

Having regard to the draft Decision submitted by the Commission,

Whereas, pursuant to Article 6 (2) of Decision 78/889/EEC, the Commission has negotiated an Agreement with certain non-member States involved in European Cooperation in the field of Scientific and Technical Resarch (COST) with a view to ensuring that the Community project and the corresponding programmes of these States are harmonized;

Whereas, therefore, this Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Community-COST Concertation Agreement between the European Economic Community, Austria, and Sweden on a concerted action project in the field of physico-chemical behaviour of atmospheric pollutants (COST project 61a *bis*) is hereby approved on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in order to bind the Community.

Done at Brussels, 18 December 1979.

For the Council

The President

B. LENIHAN

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[1] OJ No L 311, 4. 11. 1978, p. 10.

COMMUNITY-COST CONCERTATION AGREEMENT

on a concerted action project in the field of physico-chemical behaviour of atmospheric pollutants (COST project 61a bis)

THE EUROPEAN ECONOMIC COMMUNITY,

hereinafter referred to as 'the Community',

AUSTRIA AND SWEDEN,

hereinafter referred to as the 'participating non-member States',

Whereas a research project on the physico-chemical behaviour of atmospheric pollutants, carried out pursuant to an Agreement concluded on 23 November 1971 in the framework of European Cooperation in the field of Scientific and Technical Research (COST project 61a), produced very encouraging results;

Whereas a European concerted research project in the abovementioned field continuing and extending COST project 61a, is likely to contribute effectively to the reduction of environmental pollution;

Whereas by its Decision of 9 October 1978 the Council of the European Communities adopted a Community concerted action project in the field of physico-chemical behaviour of atmospheric pollutants;

Whereas the Member States of the Community and the participating non-member States, hereinafter referred to as 'the States', intend, subject to the rules and procedures applicable to their national programmes to carry out the research described in Annex A and are prepared to integrate such research into a process of concertation which they consider will be of mutual benefit;

Whereas the implementation of the research covered by the concerted action project will require a financial contribution of approximately 9·5 million European units of account from the States,

HAVE AGREED AS FOLLOWS:

Article 1

The Community and the participating non-member States, hereinafter referred to as 'the Contracting Parties', shall participate for a period extending until 3 November 1982 in a concerted action project in the field of physico-chemical behaviour of atmospheric pollutants.

This project shall consist in concertation between the Community concerted action programme and the corresponding programmes of the participating non-member States. The programmes covered by this Agreement are listed in Annex A.

The States remain entirely responsible for the research executed by their national institutions or bodies.

Article 2

The concertation between the Contracting Parties shall be effected through a Community-COST Concertation Committee, hereinafter referred to as 'the Committee'.

The Committee shall draw up its rules of procedure. Its secretariat will be provided by the Commission of the European Communities, hereinafter referred to as 'the Commission'.

The terms of reference and the composition of this Committee are defined in Annex B.

Article 3

In order to ensure optimum efficiency in the execution of this concerted action project, a project leader shall be appointed by the Commission in agreement with the participating non-member States.

Article 4

The maximum financial contribution by the Contracting Parties to the coordination costs shall be:

— 500 000 European units of account from the Community for a four-year period beginning on 4 November 1978,

— 22 000 European units of account from each participating non-member State for the period referred to in the first paragraph of Article 1.

The European unit of account is as defined in the Financial Regulation in force applicable to the general budget of the European Communities and by the financing arrangements adopted pursuant thereto.

The rules governing the financing of the Agreement are set out in Annex C.

Article 5

1. Through the Committee, the States shall exchange regularly all useful information concerning the execution of the research covered by the concerted action project. They shall also endeavour to provide information on similar research planned or carried out by other bodies. Any information shall be treated as confidential if the State which provides it so requests.

2. In agreement with the Committee the Commission shall prepare yearly progress reports on the basis of the information supplied and shall forward them to the States.

3. At the end of the concertation period, the Commission shall, in agreement with the Committee, forward to the States a general report on the execution and results of the project. This report shall be published by the Commission six months after it has been forwarded, unless a State objects. In that case the report shall be treated as confidential and shall be forwarded on request and with the agreement of the Committee, solely to the institutions and undertakings whose research or production activities justify access to knowledge resulting from the performance of the research covered by the concerted action project.

Article 6

1. Each of the Contracting Parties shall, after signing this Agreement, notify the Secretary-General of the Council of the European Communities as soon as possible after completion of the procedures necessary under its internal provisions for the implementation of this Agreement.

2. For the Contracting Parties which have transmitted the notification provided for in paragraph 1, this Agreement shall enter into force on the first day of the month following that in which the Community and at least one of the participating non-member States transmitted these notifications.

For those Contracting Parties which transmit the notification after the entry into force of this Agreement, it shall come into force on the first day of the second month following the month in which the notification was transmitted.

Contracting Parties which have not yet transmitted this notification at the time of entry into force of this Agreement shall be able to take part in the work of the Committee without voting rights for a period of six months following the entry into force of this Agreement.

3. For a period of six months following its entry into force, this Agreement shall be open for accession by the other European States which took part in the Minsterial Conference held in Brussels on 22 and 23 November 1971. The instruments of accession shall be deposited with the Secretary-General of the Council of the European Communities. A State which accedes to this Agreement shall become a Contracting Party within the meaning of Article 1 on the date of deposit of the instrument of accession.

4. The Secretary-General of the Council of the European Communities shall notify each of the Contracting Parties of the deposit of the notifications provided for in paragraph 1, of the date of entry into force of this Agreement and of the deposit of the instruments of accession provided for in paragraph 3.

Article 7

This Agreement, drawn up in a single original in the Danish, Dutch, English, French, German and Italian languages, each text being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities which shall transmit a certified copy of each of the Contracting Parties.

For the European Economic Community,

For the Government of the Republic of Austria,

For the Government of the Kingdom of Sweden.

ANNEX A

Programmes covered by the Agreement

1. Studies on the conversion and transport of atmospheric pollutants:

   (a) laboratory studies;

   (b) field studies;

   (c) modelling.

2. Studies on the elimination and absorption of atmospheric pollutants.

ANNEX B

Terms of reference and composition of the Community — COST Concertation Committee on physico-chemical behaviour of atmospheric pollutants

1. The Committee shall:

1.1. contribute to the optimum execution of the concerted action project by giving its opinion on all of its aspects;

1.2. evaluate the results of the project and draw conclusions as to their application;

1.3. be responsible for the exchange of information referred to in Article 5 (1) of the Agreement;

1.4. suggest guidelines to the Project Leader.

2. The Committee's reports and opinions shall be forwarded to the States.

3. The Committee shall be composed of two delegates from the Commission, one representing the programme of direct action, the other one as coordinator of the Community concerted action, of one delegate from each participating non-member State, of one delegate from each Member State representing its national programme, and of the Project Leader. Each delegate may be accompanied by experts.

ANNEX C

Financing rules

I. These provisions lay down the financial rules referred to in Article 4 of the Agreement on a concerted action project in the field of physico-chemical behaviour of atmospheric pollutants (COST Project 61a *bis*).

II. At the beginning of each financial year, a call for funds shall be issued by the Commission to each of the participating non-member States. Such calls for funds shall express the contribution of the non-member State in question both in European units of account and in the currency of the participating non-member State, the value of the European unit of account being defined in the Financial Regulation applicable to the general budget of the European Communities and determined on the date of the call for funds.

Each participating non-member State shall pay the annual contribution under the Agreement at the beginning of each year and by 31 March at the latest. The maximum total contribution by each participating non-member State shall amount to 22 000 European units of account. Any delay in the payment of the annual contribution shall give rise to the payment of interest by the participating non-member States concerned at a rate equal to the highest rate of discount ruling in the States on the due date. That rate shall be increased by 0·25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

III. The funds accruing from the contributions of participating non-member States shall be credited to the concerted action project by being entered in the statement of revenue of the budget of the Commission as receipts within the meaning of the second subparagraph of Article 90 (4) of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

IV. The provisional timetable for the coordination costs referred to in Article 4 of the Agreement is annexed.

V. The Financial Regulation in force applicable to the general budget of the European Communities shall apply to the management of the appropriations; furthermore, the Commission shall ensure that such appropriations are managed in conformity with the rules of procedure for the implementation of the budget.

VI. At the end of each financial year, a statement of appropriations for the concerted action project shall be prepared and transmitted to the participating non-member States for information.

MULTIANNUAL TIMETABLE FOR THE CONCERTED ACTION PROJECT

Physico-chemical behaviour of atmospheric pollutants
(COST Project 61a bis)

Budget Item 3371 'Implementation of concerted action projects'

(in EUA)

	1979		1980		1981		1982		TOTAL	
	AC	AP	AC	AP	AC	AP	AC	AP	AC	AP
I. **Initial estimate** of overall requirements (figures appearing in the timetable of commitments and in the correspondence table shown in Annex II to the Commission budget):										
— Staff	87 100	87 100	} 125 000	} 125 000	} 135 000	} 135 000	} 140 000	} 140 000	} 500 000	} 500 000
— Administrative operating expenditure	12 900	12 900								
— Contracts										
Total (to be covered by appropriations entered in 3371)	100 000	100 000	125 000	125 000	135 000	135 000	140 000	140 000	500 000	500 000
II. **Revised estimate** of expenditure taking into account additional requirements arising from the accession of participating non-member States:										
— Staff	87 100	87 100	} 125 000	} 125 000	} 135 000	} 135 000	} 140 000	} 140 000	} 500 000	} 500 000
— Administrative operating expenditure	12 900	12 900								
— Contracts	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	44 000	44 000
	100 000	100 000	125 000	125 000	135 000	135 000	140 000	140 000	500 000	500 000
New total	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	44 000	44 000
III. Difference between I and II to be covered by contributions from participating non-member States	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	2 × 5 500	44 000	44 000

AC: Account credited
AP: Account paid

COUNCIL DECISION

of 18 December 1979

concerning the conclusion of the Agreement on a concerted action project in the field of analysis of organic micropollutants in water (COST project 64b bis)

(80/178/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Decision 78/888/EEC of 9. October 1978 adopting a European Economic Community concerted project in the field of analysis of organic micropollutants in water [1], and in particular Article 6 (1) thereof,

Having regard to the draft Decision submitted by the Commission,

Whereas, pursuant to Article 6 (2) of Decision 78/888/EEC, the Commission has negotiated an Agreement with certain non-member States involved in European Cooperation in the field of Scientific and Technical Research (COST) with a view to ensuring that the Community project and the corresponding programmes of these States are harmonized;

Whereas this Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Community-COST Concertation Agreement between the European Economic Community, Norway, Portugal, Sweden and Switzerland, on a concerted action project in the field of analysis of organic micropollutants in water (COST project 64b *bis*) is hereby approved on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in order to bind the Community.

Done at Brussels, 18 December 1979.

For the Council

The President

B. LENIHAN

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[1] OJ No L 311, 4. 11. 1978, p. 6.

COMMUNITY-COST CONCERTATION AGREEMENT

on a concerted action project in the field of analysis of organic micropollutants in water (COST project 64b bis)

THE EUROPEAN ECONOMIC COMMUNITY

hereinafter referred to as 'the Community',

NORWAY, PORTUGAL, SWEDEN AND SWITZERLAND,

hereinafter referred to as 'the participating non-member States',

Whereas a research project on the analysis of organic micropollutants in water, carried out pursuant to an Agreement concluded on 23 November 1971 in the framework of European Cooperation in the field of Scientific and Technical Research (COST project 64b), produced very encouraging results;

Whereas a European concerted research project in the abovementioned field, continuing and extending COST project 64b is likely to contribute effectively to the reduction of environmental pollution;

Whereas by its Decision of 9 October 1978 the Council of the European Communities adopted a Community concerted action project in the field of analysis of organic micropollutants in water;

Whereas the Member States of the Community and the participating non-member States, hereinafter referred to as 'the States', intend, subject to the rules and procedures applicable to their national programmes, to carry out the research described in Annex A and are prepared to integrate such research into a process of concertation which they consider will be of mutual benefit;

Whereas the implementation of the research covered by the concerted action project will require a financial contribution of about 11 million European units of account from the States,

HAVE AGREED AS FOLLOWS:

Article 1

The Community and the participating non-member States, hereinafter referred to as 'the Contracting Parties', shall participate for a period extending until 3 November 1982 in a concerted action project in the field of analysis of organic micropollutants in water.

This project shall consist in concertation between the Community concerted action programme and the corresponding programmes of the participating non-member States. The programmes covered by this Agreement are listed in Annex A.

The States remain entirely responsible for the research executed by their national institutions or bodies.

Article 2

Concertation between the Contracting Parties shall be effected through a Community-COST Concertation Committee, hereinafter referred to as 'the Committee'.

The Committee shall draw up its rules of procedure. Its Secretariat will be provided by the Commission of the European Communities, hereinafter referred to as 'the Commission'.

The terms of reference and the composition of this Committee are defined in Annex B.

Article 3

In order to ensure optimum efficiency in the execution of this concerted action project, a project leader shall be appointed by the Commission in agreement with the participating non-member States.

Article 4

The maximum financial contribution by the Contracting Parties to the coordination costs shall be:

— 480 000 European units of account from the Community for a four-year period beginning on 4 November 1978,

— 32 000 European units of account from each participating non-member State for the period referred to in the first paragraph of Article 1.

The European unit of account is as defined by the Financial Regulation in force applicable to the general budget of the European Communities and by the financial arrangements adopted pursuant thereto.

The rules governing the financing of the Agreement are set out in Annex C.

Article 5

1. Through the Committee, the States shall exchange regularly all useful information concerning the execution of the research covered by the concerted action project. They shall also endeavour to provide information on similar research planned or carried out by other bodies. Any information shall be treated as confidential if the State which provides it so requests.

2. In agreement with the Committee the Commission shall prepare yearly progress reports on the basis of the information supplied and shall forward them to the States.

3. At the end of the concertation period, the Commission shall, in agreement with the Committee, forward to the States a general report on the execution and results of the project. This report shall be published by the Commission six months after it has been forwarded, unless a State objects. In that case the report shall be treated as confidential and shall be forwarded on request and with the agreement of the Committee, solely to the institutions and undertakings whose research or production activities justify access to knowledge resulting from the performance of the research covered by the concerted action project.

Article 6

1. Each of the Contracting Parties shall, after signing this Agreement, notify the Secretary-General of the Council of the European Communities as soon as possible of the completion of the procedures necessary under its internal provisions for the implementation of this Agreement.

2. For the Contracting Parties which have transmitted the notification provided for in paragraph 1, this Agreement shall enter into force on the first day of the month following that in which the Community and at least one of the participating non-member States transmitted these notifications.

For those Contracting Parties which transmit the notification after the entry into force of this Agreement, it shall come into force on the first day of the second month following the month in which the notification was transmitted.

Contracting Parties which have not yet transmitted this notification at the time of entry into force of this Agreement shall be able to take part in the work of the Committee without voting rights for a period of six months following the entry into force of this Agreement.

3. For a period of six months following its entry into force, this Agreement shall be open for accession by the other European States which took part in the Ministerial Conference held in Brussels on 22 and 23 November 1971. The instruments of accession shall be deposited with the Secretary-General of the Council of the European Communities. A State which accedes to this Agreement shall become a Contracting Party within the meaning of Article 1 on the date of deposit of the instrument of accession.

4. The Secretary-General of the Council of the European Communities shall notify each of the Contracting Parties of the deposit of the notifications provided for in paragraph 1, of the date of entry into force of this Agreement and of the deposit of the instruments of accession provided for in paragraph 3.

Article 7

This Agreement, drawn up in a single original in the Danish, Dutch, English, French, German and Italian languages, each text being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities which shall transmit a certified copy to each of the Contracting Parties.

For the European Economic Community,

For the Government of the Kingdom of Norway,

For the Government of the Republic of Portugal,

For the Government of the Kingdom of Sweden,

For the Government of the Swiss Confederation.

ANNEX A

Programmes coverd by the Agreement

1. Sampling and sample treatment
   - — general development and evaluation of methods,
   - — methods for sampling sediments and indicator organisms
2. Gas chromatographic analysis
3. Coupling gas chromatographs and mass spectrometers
4. Other separation techniques
   - — development of methods for liquid chromatography,
   - — improvement of equipment,
   - — other separation techniques
5. Data collection and processing
   - — hard copy spectrum collection,
   - — establishment of a spectrum library
6. Establishment of inventories
   - — inventory of pollutants,
   - — collection of data on conversion

ANNEX B

terms of reference and composition of the Community-COST Concertation Committee on analysis of organic micropollutants in water

1. The Committee shall:

1.1. contribute to the optimum execution of the concerted action project by giving its opinion on all of its aspects;

1.2. evaluate the results of the project and draw conclusions as to their application;

1.3. be responsible for the exchange of information referred to in Article 5 (1) of the Agreement;

1.4. suggest guidelines to the Project Leader.

2. The Committee's reports and opinions shall be forwarded to the States.

3. The Committee shall be composed of two delegates from the Commission; one representing the programme of direct action, the other one as coordinator of the Community concerted action, one delegate from each participating non-member State, one delegate from each Member State representing its national programme, and the Project Leader. Each delegate may be accompanied by experts.

ANNEX C

Financing rules

I. These provisions lay down the financial rules referred to in Article 4 of the Agreement on a concerted action project in the field of analysis of organic micropollutants in water (COST project 64b *bis*).

II. At the beginning of each financial year, a call for funds shall be issued by the Commission to each of the participating non-member States. Such calls for funds shall express the contribution of the non-member State in question both in European units of account and in the currency of the participating non-member State, the value of the European unit of account being defined in the Financial Regulation applicable to the general budget of the European Communities and determined on the date of the call for funds.

Each participating non-member State shall pay the annual contribution under the Agreement at the beginning of each year and by 31 March at the latest. The maximum total contribution by each participating non-member State shall amount to 32 000 European units of account. Any delay in the payment of the annual contribution shall give rise to the payment of interest by the participating non-member States concerned at a rate equal to the highest rate of discount ruling in the States on the due date. That rate shall be increased by 0·25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

III. The funds accruing from the contributions of participating non-member States shall be credited to the concerted action project by being entered in the statement of revenue of the budget of the Commission as receipts within the meaning of the second subparagraph of Article 90 (4) of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

IV. The provisional timetable for the coordination costs referred to in Article 4 of the Agreement is annexed.

V. The Financial Regulation in force applicable to the general budget of the European Communities shall apply to the management of the appropriations; furthermore, the Commission shall ensure that such appropriations are managed in conformity with the rules of procedure for the implementation of the budget.

VI. At the end of each financial year, a statement of appropriations for the concerted action project shall be prepared and transmitted to the participating non-member States for information.

MULTIANNUAL TIMETABLE FOR THE CONCERTED ACTION PROJECT

Analysis of organic micropollutants in water
(COST project 64b bis)

Budget Item 3371 'Implementation of concerted action projects'

(in EUA)

	1979		1980		1981		1982		TOTAL	
	AC	AP	AC	AP	AC	AP	AC	AP	AC	AP
I. **Initial estimate** of overall requirements (figures appearing in the timetable of commitments and in the correspondence table shown in Annex II to the Commission budget)										
— Staff	63 100	63 100								
— Administrative operating expenditure	14 000	14 000	121 050	121 050	126 750	126 750	106 200	106 200	480 000	480 000
— Contracts	48 900	48 900								
Total (to be covered by appropriations entered in 3371)	126 000	126 000	121 050	121 050	126 750	126 750	106 200	106 200	480 000	480 000
II. **Revised estimate** of expenditure taking into account additional requirements arising from the accession of participating non-member States										
— Staff	63 100	63 100								
— Administrative operating expenditure	14 000	14 000	121 050	121 050	126 750	126 750	106 200	106 200	480 000	480 000
— Contracts	48 900	48 900								
	4×8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	128 000	128 000
	126 000	126 000	121 050	121 050	126 750	126 750	106 200	106 200	480 000	480 000
New total	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	128 000	128 000
III. Difference between I and II to be covered by contributions from participating non-member States	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	4 × 8 000	128 000	128 000

AC: Account credited
AP: Account paid

COUNCIL DECISION

of 18 December 1979

concerning the conclusion of the Agreement on a concerted action project in the field of the effect of processing on the physical properties of foodstuffs (COST project 90)

(80/179/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Decision 78/177/EEC of 20 February 1978 adopting a concerted action project of the European Economic Community on the effect of processing on the physical properties of foodstuffs [1], and in particular Article 6 (1) thereof,

Having regard to the draft Decision submitted by the Commission,

Whereas, pursuant to Article 6 (2) of Decision 78/177/EEC, the Commission has negotiated an Agreement with certain non-member States involved in European Cooperation in the field of Scientific and Technical Research (COST) with a view to extending the coordination which is the subject of the abovementioned Decision to research undertaken in these States;

Whereas, therefore, this Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Community-COST Concertation Agreement between the European Economic Community, Sweden and Switzerland, on a concerted action project in the field of the effect of processing on the physical properties of foodstuffs (COST project 90) is hereby approved on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement in order to bind the Community.

Done at Brussels, 18 December 1979.

For the Council

The President

B. LENIHAN

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[1] OJ No L 54, 25. 2. 1978, p. 25.

COMMUNITY-COST CONCERTATION AGREEMENT

on a concerted action project on the effects of processing on the physical properties of foodstuffs (COST project 90)

THE EUROPEAN ECONOMIC COMMUNITY,

hereinafter referred to as 'the Community'.

SWEDEN AND SWITZERLAND,

hereinafter referred to as the 'participating non-member States',

Whereas a European concerted research project in the field of food technology is likely to contribute effectively to a more economic use of national resources;

Whereas a programme of research in the field of food technology has been proposed by the Swedish delegation within the framework of European Cooperation in the field of Scientific and Technical Research (COST);

Whereas by its Decision of 20 February 1978 the Council of the European Communities adopted a Community concerted action project on the effect of processing on the physical properties of foodstuffs;

Whereas the Member States of the Community and the participating non-member States, hereinafter referred to as 'the States', intend, subject to the rules and procedures applicable to their national programmes, to carry out the research described in Annex A and are prepared to integrate such research into a process of concertation which they consider will be of mutual benefit;

Whereas the implementation of the research covered by the concerted action project will require a financial contribution of approximately nine million European units of account from the States,

HAVE AGREED AS FOLLOWS:

Article 1

The Community and the participating non-member States, hereinafter referred to as 'the Contracting Parties', shall participate for a period extending until 24 February 1981 in a concerted action project on the effect of processing on the physical properties of foodstuffs.

This project shall consist in concertation between the Community concerted action programme and the corresponding programmes of the participating non-member States. The programmes covered by this Agreement are listed in Annex A.

The States remain entirely responsible for the research executed by their national institutions or bodies.

Article 2

The concertation between the Contracting Parties shall be effected through a Community-COST Concertation Committee, hereinafter referred to as 'the Committee'.

The Committee shall draw up its rules of procedure. Its Secretariat will be provided by the Commission of the European Communities, hereinafter referred to as 'the Commission'.

The terms of reference and the composition of this Committee are defined in Annex B.

Article 3

In order to ensure optimum efficiency in the execution of this concerted action project, a project leader shall be appointed by the Commission in agreement with the participating non-member States.

Article 4

The maximum financial contribution by the Contracting Parties to the coordination costs shall be:

— 250 000 European units of account from the Community for a three-year period beginning on 25 February 1978,

— 10 000 European units of account from each participating non-member State for the period referred to in the first paragraph of Article 1.

The European unit of account is as defined by the Financial Regulation in force applicable to the general budget of the European Communities and by the financial arrangements adopted pursuant thereto.

The rules governing the financing of the Agreement are set out in Annex C.

Article 5

1. Through the Committee, the States shall exchange regularly all useful information concerning the execution of the research covered by the concerted action project. They shall also endeavour to provide information on similar research planned or carried out by other bodies. Any information shall be treated as confidential if the State which provides it so requests.

2. In agreement with the Committee the Commission shall prepare yearly progress reports on the basis of the information supplied and shall forward them to the States.

3. At the end of the concertation period, the Commission shall, in agreement with the Committee, forward to the States a general report on the execution and results of the project. This report shall be published by the Commission six months after it has been forwarded, unless a State objects. In that case the report shall be treated as confidential and shall be forwarded on request and with the agreement of the Committee, solely to the institutions and undertakings whose research or production activities justify access to knowledge resulting from the performance of the research covered by the concerted action project.

Article 6

1. Each of the Contracting Parties shall, after signing this Agreement, notify the Secretary-General of the Council of the European Communities as soon as possible of the completion of the procedures necessary under its internal provisions for the implemention of this Agreement.

2. For the Contracting Parties which have transmitted the notification provided for in paragraph 1, this Agreement shall enter into force on the first day of the month following that in which the Community and at least one of the participating non-member States transmitted these notifications.

For those Contracting Parties which transmit the notification after the entry into force of this Agreement, it shall come into force on the first day of the second month following the month in which the notification was transmitted.

Contracting Parties which have not yet transmitted this notification at the time of entry into force of this Agreement shall be able to take part in the work of the Committee without voting rights for a period of six months following the entry into force of this Agreement.

3. For a period of six months following its entry into force, the Agreement shall be open for accession by the other European States which took part in the Ministerial Conference held in Brussels on 22 and 23 November 1971. The instruments of accession shall be deposited with the Secretary-General of the Council of the European Communities. A State which accedes to this Agreement shall become a Contracting Party within the meaning of Article 1 on the date of deposit of the instrument of accession.

4. The Secretary-General of the Council of the European Communities shall notify each of the Contracting Parties of the deposit of the notifications provided for in paragraph 1, of the date of entry into force of this Agreement and of the deposit of the instruments of accession provided for in paragraph 3.

Article 7

This Agreement, drawn up in a single original in the Danish, Dutch, English, French, German and Italian languages, each text being equally authentic, shall be deposited in the archives of the General Secretariat of the Council of the European Communities which shall transmit a certified copy to each of the Contracting Parties.

For the European Community,

For the Government of the Kingdom of Sweden,

For the Government of the Swiss Confederation.

ANNEX A

Programmes covered by the Agreement

1. Rheology of liquid foods (viscosity)

   1.0. no particular product
   1.1. milk products
   1.2. sugar products
   1.3. cereal products
   1.4. fruit products

2. Sorption (water activity)

   2.0. no particular product
   2.2. sugar products
   2.4. fruit products
   2.6. meat products

3. Thermal properties

   3.0. no particular product
   3.4. fruit products
   3.5. vegetable products
   3.6. meat products
   3.7. fish products

ANNEX B

Terms of reference and composition of the Community-COST Concertation Committee on the effect of processing on the physical properties of foodstuffs

1. The Committee shall:

1.1. contribute to the optimum execution of the project by giving its opinion in all aspects of its progress;

1.2. evaluate the results of the project and draw conclusions regarding their application;

1.3. be responsible for the exchange of information referred to in Article 5 (1) of the Agreement;

1.4. suggest guidelines to the Project Leader;

1.5. have the right to set up, in respect of each of the three physical properties defined in Annex A, a sub-Committee to ensure that the programme is properly implemented.

2. The Committee's reports and opinions shall be forwarded to the States.

3. The Committee shall be composed of one delegate from the Commission, as coordinator of the Community concerted action project, one delegate from each participating non-member State, one delegate from each Member State representing its national programme, and the Project Leader. Each delegate may be accompanied by experts.

ANNEX C

Financing rules

I. These provisions lay down the financial rules referred to in Article 4 of the Agreement on a concerted action project in the field of processing on the physical properties of foodstuffs (COST project 90).

II. At the beginning of each financial year, a call for funds shall be issued by the Commission to each of the participating non-member States. Such calls for funds shall express the contribution of the non-member State in question both in European units of account and in the currency of the participating non-member State, the value of the European unit of account being defined in the Financial Regulation applicable to the general budget of the European Communities and determined on the date of the call for funds.

Each participating non-member State shall pay the annual contribution under the Agreement at the beginning of each year and by 31 March at the latest. The maximum total contribution by each participating non-member State shall amount to 10 000 European units of account. Any delay in the payment of the annual contribution shall give rise to the payment of interest by the participating non-member States concerned at a rate equal to the highest rate of discount ruling in the States on the due date. That rate shall be increased by 0·25 of a percentage point for each month of delay. The increased rate shall be applied to the entire period of delay.

III. The funds accruing from the contributions of participating non-member States shall be credited to the concerted action project by being entered in the statement of revenue of the budget of the Commission as receipts within the meaning of the second subparagraph of Article 90 (4) of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

IV. The provisional timetable for the coordination costs referred to in Article 4 of the Agreement is annexed.

V. The Financial Regulation in force applicable to the general budget of the European Communities shall apply to the management of the appropriations; furthermore, the Commission shall ensure that such appropriations are managed in conformity with the rules of procedure for the implementation of the budget.

VI. At the end of each financial year, a statement of appropriations for the concerted action project shall be prepared and transmitted to the participating non-member States for information.

MULTIANNUAL TIMETABLE FOR THE CONCERTED ACTION PROJECT

Effects of processing on the physical properties of foodstuffs
(COST project 90)

Budget Item 3371 'Implementation of concerted action projects'

(in EUA)

	1979		1980		1981		1982		TOTAL	
	AC	AP	AC	AP	AC	AP	AC	AP	AC	AP
I. **Initial estimate** of overall requirements (figures appearing in the timetable of commitments and in the correspondence table shown in Annex II to the Commission budget)										
— Staff	} 77 000	} 73 500	35 500	35 500	} 89 000	} 92 500			} 250 000	} 250 000
— Administrative operating expenditure			48 500	48 500						
— Contracts			2 × 5 000	2 × 5 000						
Total (to be covered by appropriations entered in 3371)	77 000	73 500	84 000	84 000	89 000	92 500			250 000	250 000
II. **Revised estimate** of expenditure taking into account additional requirements arising from the accession of participating non-member States										
— Staff			} 35 500	} 35 500	} 89 000	} 92 500			} 250 000	} 250 000
— Administrative operating expenditure			48 500	48 500						
— Contracts			2 × 5 000	2 × 5 000	2 × 5 000	2 × 5 000			20 000	20 000
New total			84 000	84 000	89 000	92 500			250 000	250 000
			2 × 5 000	2 × 5 000	2 × 5 000	2 × 5 000			20 000	20 000
III. Difference between I and II to be covered by contributions from participating non-member States			2 × 5 000	2 × 5 000	2 × 5 000	2 × 5 000			20 000	20 000

AC: Account credited
AP: Account paid

COUNCIL DECISION

of 20 December 1979

concerning the conclusion of the Agreement negotiated between the European Economic Community and Austria under Article XXVIII of the GATT concerning certain products of the agri-foodstuffs industry

(80/180/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the recommendation from the Commission,

Whereas, on the basis of Article XXVIII of the General Agreement on Tariffs and Trade (GATT), Austria indicated its intention of unbinding tariff concessions on certain products of which the European Economic Community is its principal supplier;

Whereas the Commission opened negotiations with Austria under Article XXVIII of the GATT and has reached an Agreement with that country; whereas the said Agreement is satisfactory,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement negotiated between the European Economic Community and Austria under Article XXVIII of the GATT concerning certain products of the agri-foodstuffs industry is hereby approved on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to sign the Agreement in order to bind the Community.

Article 3

The Contracting Parties to the General Agreement on Tariffs and Trade shall be notified of the result of the negotiations.

Done at Brussels, 20 December 1979.

For the Council

The President

J. TUNNEY

ANNEX

Agreement negotiated between the European Economic Community and Austria under Article XXVIII of the GATT concerning certain products of the agri-foodstuffs industry

The Delegations of Austria and of the Commission of the European Communities have concluded their negotiations under Article XXVIII for the modification or withdrawal of concessions provided for in Schedule XXXII-Austria as set out in the report attached.

Geneva, 2 October 1979.

(subject to ratification)

For the Delegation of Austria

For the Delegation of the Commission of the European Communities

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RESULTS OF NEGOTIATIONS UNDER ARTICLE XXVIII FOR THE MODIFICATION OR WITHDRAWAL OF CONCESSIONS IN THE SCHEDULE XXXII-AUSTRIA

CHANGES IN SCHEDULE XXXII-AUSTRIA

A. Concessions to be withdrawn

(aa) *Initially negotiated under the Geneva (1967) Protocol*

Tariff item number	Description of products	Rates of duty bound in existing schedule
		in % *ad val.* or in Schilling per 100 kg
ex 07.02	Potatoes (whether or not cooked), preserved by freezing	20 %
19.02	Malt extract; preparations of flour, meal, starch or malt extract, of a kind used as infant food or for dietetic or culinary purposes, containing less than 50 % by weight of cocoa:	
	B. Other:	
	1. Milk- or egg-based preparations	27 %
	2. Other	29 % but not less than Sch. 280 per 100 kg

Tariff item number	Description of products	Rates of duty bound in existing schedule
		in % *ad val.* or in Schilling per 100 kg
19.05	Prepared foods obtained by the swelling or roasting of cereals or cereal products (puffed rice, corn flakes and similar products)	20 %
20.02	Vetagables prepared or preserved otherwise by vinegar or acetic acid:	
	A. In airtight containers of a gross weight of 15 kg or less:	
	5. Other:	
	ex b) Potatoes	370
21.07	Food preparations not elsewhere specified or included:	
	B. Other, except	
	— sugar syrups containing added flavouring or colouring matter, and	
	— extracts mixed with other substances for the manufacture of foodstuffs	30 % but not less than Sch. 280 per 100 kg
ex 22.02	Lemonade, flavoured spa waters and flavoured aerated waters, and other non-alcoholic beverages, not including fruit and vegetable juices falling within heading No 20.07; except those with a basis of milk	22 %
22.03	Beet-pulp, bagasse and other waste of sugar manufacture; brewing and distilling dregs and waste; residues of starch manufacture and similar residues:	
	B. Other	Free

(bb) *Initially negotiated under the Torquay Schedules*

Tariff item number	Description of products	Rates of duty bound in existing schedule
		in % *ad val.* or in Schilling per 100 kg
ex 19.08	A. Biscuits, sweetened	980
	B. Biscuits, unsweetened	770

C. **Reduction or modification of rates bound in the existing schedules**

Tariff item number	Description of products	Rates of duty bound in existing schedule	Rates of duty to be bound
		in % *ad val.* or in Schilling per 100 kg	in % *ad val.* or in Schilling per 100 kg
09.01	Coffee, whether or not roasted or freed of caffeine; coffee husks and skins; coffee substitutes containing coffee in any proportion:		
	B. Roasted	30 %	15 %
18.04	Cocoa butter (fat or oil)	8 %	5 %
20.02	Vegetables prepared or preserved otherwise than by vinegar or acetic acid:		
	A. In airtight containers of a gross weight of 15 kg or less:		
	5. Other:		
	ex b) Potatoes	—	10 % + vc *
21.02	Extracts, essences or concentrates, of coffee, tea or maté and preparations with a basis of those extracts, essences or concentrates; roasted chicory and other roasted coffee substitutes and extracts, essences and concentrates thereof:		
	A. Extracts of coffee, solid	24 %	12 %

Note:
The abbreviation 'vc' indicates that Austria reserves the right to levy additionally a variable component determined from time to time under her regulations relating to goods processed from agricultural products.

D. **New concessions on items not in existing schedules**

Tariff item number	Description of products	Rates of duty bound in existing schedule	Rates of duty to be bound
		in % *ad val.* or in Schilling per 100 kg	in % *ad val.* or in Schilling per 100 kg
ex 23.07	Products falling within this subheading (sweetened forage; other preparations of a kind used in animal feeding) within an annual quota of 5 200 tonnes,		
	except:		
	— fish or marine mammal solubles,		
	— products with a total content of sugar of 40 % or more by weight, expressed as invert sugar, or with a starch content determined by the modified Ewers polarimetric method, of 40 % or more by weight, or with a lactose content of 2 % or more by weight	30 %	15 %
	The quota year begins on 1 January of each year.		

COUNCIL DIRECTIVE

of 20 December 1979

on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC

(80/181/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particluar Article 100 thereof,

Having regard to Council Directive 71/354/EEC of 18 October 1971 on the approximation of the laws of the Member States relating to units of measurement (1), as last amended by Council Directive 76/770/EEC (2),

Having regard to the proposal from the Commission (3),

Having regard to the opinion of the European Parliament (4),

Having regard to the opinion of the Economic and Social Committee (5),

Whereas units of measurement are essential in the use of all measuring instruments, to express measurements or any indication of quantity; whereas units of measurement are used in most fields of human activity; whereas it is necessary to ensure the greatest possible clarity in their use; whereas it is therefore necessary to make rules for their use within the Community for economic, public health, public safety or administrative purposes;

Whereas, however, there exist international conventions or agreements in the field of international transport which bind the Community or the Member States; whereas these conventions or agreements have to be respected;

Whereas the laws which regulate the use of units of measurement in the Member States differ from one Member State to another and as a result hinder trade; whereas, in these circumstances, it is necessary to harmonize laws, regulations and administrative provisions in order to overcome such obstacles;

Whereas units of measurement are the subject of international resolutions adopted by the General Conference of Weights and Measures (CGPM) set up by the Metre Convention signed in Paris on 20 May 1875, to which all the Member States adhere; whereas the 'International System of Units' (SI) was drawn up as a result of these resolutions;

Whereas the Council on 18 October 1971 adopted Directive 71/354/EEC on the approximation of the laws of the Member States in order to eliminate obstacles to trade by adopting the international system of units at Community level; whereas Directive 71/354/EEC was amended by the Act of Accession and by Directive 76/770/EEC;

Whereas these Community provisions have not overcome all the obstacles in this field; whereas Directive 76/770/EEC provides for the review before 31 December 1979 of the situation regarding units of measurement, names and symbols listed in Chapter D of the Annex thereto; whereas it has also proved necessary to review the situation regarding certain other units of measurement;

Whereas it is necessary, in order to avoid serious difficulties, to provide for a transitional period during which units of measurement which are not compatible with the international system can be phased out; whereas it is nevertheless essential to allow the Member States wishing to do so to bring into force as quickly as possible, on their territory, the provisions of Chapter I of the Annex; whereas it is therefore necessary to limit the duration of this transitional period at Community level while, at the same time, leaving the Member States free to curtail that period;

Whereas, during the transitional period, it is essential, particularly in order to protect the consumer, to maintain a clear position on the use of units of measurement in trade between the Member States; whereas the obligation on the Member States to allow use of supplementary indications on products and equipment imported from other Member States during this transitional period seems to serve this purpose well;

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(1) OJ No L 243, 29. 10. 1971, p. 29.
(2) OJ No L 262, 27. 9. 1976, p. 204.
(3) OJ No C 81, 28. 3. 1979, p. 6.
(4) OJ No C 127, 21. 5. 1979, p. 80.
(5) Opinion delivered on 24/25 October 1979 (not yet published in the Official Journal).

Whereas the systematic adoption of a solution of this kind for all measuring instruments, including medical instruments, is however not necessarily desirable; whereas the Member States should therefore be able to require that, on their territory, measuring instruments bear indications of quantity in a single legal unit of measurement;

Whereas this Directive does not affect the continued manufacture of products already on the market; whereas it does, however, affect the placing on the market and use of products and equipment bearing indications of quantity in units of measurement which are no longer legal units of measurement, when such products and equipment are necessary to supplement or replace components or parts of such products, equipment and instruments already on the market; whereas it is therefore necessary for Member States to authorize the placing on the market and the use of such products and equipment to complete and replace components, even when they bear indications of quantity in units of measurement which are no longer legal units of measurement, so that products, equipment or instruments already on the market may continue to be used;

Whereas the International Organization for Standardization (ISO) on 1 March 1974 adopted an international standard on the representation of SI and other units for use in systems with limited sets of characters; whereas it is advisable for the Community to adopt the solutions which have already been approved on a wider international level by ISO Standard 2955 of 1 March 1974;

Whereas Community provisions relating to units of measurement are to be found in several Community texts; whereas the question of units of measurement is so important that it is essential that reference may be made to a single Community text; whereas this Directive thereby consolidates all the Community provisions on the subject and repeals Directive 71/354/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The legal units of measurement within the meaning of this Directive which must be used for expressing quantities shall be:

(a) those listed in Chapter I of the Annex;

(b) those listed in Chapter II of the Annex, until a date to be fixed by the Member States; this date may not be later than 31 December 1985;

(c) those listed in Chapter III of the Annex only in those Member States where they were authorized on 21 April 1973 and until a date to be fixed by those Member States; this date may not be later than a date to be set by the Council before 31 December 1989 on the basis of Article 100 of the Treaty.

Article 2

(a) The obligations arising under Article 1 relate to measuring instruments used, measurements made and indications of quantity expressed in units of measurement, for economic, public health, public safety or administrative purposes.

(b) This Directive shall not affect the use in the field of air and sea transport and rail traffic of units, other than those made compulsory by the Directive, which have been laid down in international conventions or agreements binding the Community or the Member States.

Article 3

1. For the purposes of this Directive 'supplementary indication' means one or more indications of quantity expressed in units of measurement not contained in Chapter I of the Annex accompanying an indication of quantity expressed in a unit contained in that Chapter.

2. The use of supplementary indications shall be authorized until 31 December 1989.

3. However, Member States may require that measuring instruments bear indications of quantity in a single legal unit of measurement.

4. The indication expressed in a unit of measurement listed in Chapter I shall predominate. In particular, the indications expressed in units of measurement not listed in Chapter I shall be expressed in characters no larger than those of the corresponding indication in units listed in Chapter I.

5. The use of supplementary indications may be extended after 31 December 1989.

Article 4

The use of units of measurement which are not or are no longer legal shall be authorized for:

— products and equipment already on the market and/or in service on the date on which this Directive is adopted,

— components and parts of products and of equipment necessary to supplement or replace components or parts of the above products and equipment.

However, the use of legal units of measurement may be required for the indicators of measuring instruments.

Article 5

International standard ISO 2955 of 1 March 1974, 'Information processing — Representations of SI and other units for use in systems with limited character sets' shall apply in the field covered by paragraph 1 thereof.

Article 6

Directive 71/354/EEC shall be repealed on 1 October 1981.

However, by way of derogation from Directive 71/354/EEC, Member States shall authorize or continue to allow on the terms specified in Article 1 of this Directive the use of the following units of measurement after 31 December 1979:

millimetre of mercury	(Chapter II)
poise	(Chapter II)
stokes	(Chapter II)
yard	(Chapter III)
square yard	(Chapter III)
therm	(Chapter III).

Article 7

(a) Member States shall adopt and publish before 1 July 1981 the laws, regulations and administrative provisions necessary to comply with this Directive and shall inform the Commission thereof.

They shall apply these provisions from 1 October 1981.

(b) As from the date of notification of this Directive, Member States shall also ensure that the Commission is informed, in sufficient time to enable it to submit its comments, of any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

Article 8

This Directive is addressed to the Member States.

Done at Brussels, 20 December 1979.

For the Council

The President

J. TUNNEY

ANNEX

CHAPTER I

LEGAL UNITS OF MEASUREMENT REFERRED TO IN ARTICLE 1 (a)

1. SI UNITS AND THEIR DECIMAL MULTIPLES AND SUBMULTIPLES

1.1. **SI base units**

Quantity	Unit	
	Name	Symbol
Length	metre	m
Mass	kilogram	kg
Time	second	s
Electric current	ampere	A
Thermodynamic temperature	kelvin	K
Amount of substance	mole	mol
Luminous intensity	candela	cd

Definitions of SI base units:

Unit of length

The metre is the length equal to 1 650 763·73 wavelengths in vacuum of the radiation corresponding to the transition between the levels $2p_{10}$ and $5d_5$ of the krypton 86 atom.

(Eleventh CGPM (1960), resolution 6).

Unit of mass

The kilogram is the unit of mass; it is equal to the mass of the international prototype of the kilogram.

(Third CGPM (1901), page 70 of the conference report).

Unit of time

The second is the duration of 9 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground state of the caesium 133 atom.

(Thirteenth CGPM (1967), resolution 1).

Unit of electric current

The ampere is that constant current which if maintained in two straight parallel conductors of infinite length, of negligible circular cross-section and placed one metre apart in a vacuum, would produce between the conductors a force equal to 2×10^{-7} newton per metre of length.

(CIPM (1946), resolution 2, approved by the ninth CGPM (1948)).

Unit of thermodynamic temperature

The kelvin, unit of thermodynamic temperature, is the fraction 1/273·16 of the thermodynamic temperature of the triple point of water.

(Thirteenth CGPM (1967), resolution 4).

Unit of amount of substance

The mole is the amount of substance of a system which contains as many elementary entities as there are atoms in 0·012 kg of carbon 12.

When the mole is used the elementary entities must be specified and may be atoms, molecules, ions, electrons, other particles or specified groups of such particles.

(Fourteenth CGPM (1971), resolution 3).

Unit of luminous intensity

The candela is the luminous intensity, in a given direction, of a source which emits monochromatic rays with a frequency of 540×10^{12} hertz and whose energy intensity in that direction is 1/683 watt per steradian.

(Sixteenth CGPM (1979), resolution 3).

1.1.1. **Special name and symbol of the SI unit of temperature for expressing Celsius temperature**

Quantity	Unit	
	Name	Symbol
Celsius temperature	degree Celsius	°C

Celsius temperature t is defined as the difference $t = T - T_0$ between the two thermodynamic temperatures T and T_0 where $T_0 = 273{\cdot}15$ kelvins. An interval of or difference in temperature may be expressed either in kelvins or in degrees Celsius. The unit of 'degree Celsius' is equal to the unit 'kelvin'.

1.2. Other SI units

1.2.1. Suppelementary SI units

Quantity	Unit	
	Name	Symbol
Plane angle	radian	rad
Solid angle	steradian	sr

(Eleventh CGPM, 1960, resolution 12).

Definitions of supplementary SI units:

Plane angle unit

The radian is the plane angle between two radii which, on the circumference of a circle, cut an arc equal in length to the radius.

(International standard ISO 31 - I, December 1965).

Solid angle unit

The steradian is the solid angle which has its apex at the centre of a sphere and which describes on the surface of the sphere an area equal to that of a square having as its side the radius of the sphere.

(International standard ISO 31 - I, December 1965).

1.2.2. **Derived SI units**

Units derived coherently from SI base units and supplementary SI units are given as algebraic expressions in the form of products of powers of the SI base units and/or supplementary SI units with a numerical factor equal to 1.

1.2.3. **Derived SI units having names and symbols**

Quantity	Unit		Expression	
	Name	Symbol	In other SI units	In terms of base or supplementary SI units
Frequency	hertz	Hz		s^{-1}
Force	newton	N		$m \cdot kg \cdot s^{-2}$
Pressure, stress	pascal	Pa	$N \cdot m^{-2}$	$m^{-1} \cdot kg \cdot s^{-2}$
Energy, work; quantity of heat	joule	J	$N \cdot m$	$m^2 \cdot kg \cdot s^{-2}$
Power (1), radiant flux	watt	W	$J \cdot s^{-1}$	$m^2 \cdot kg \cdot s^{-3}$
Quantity of electricity, electric charge	coulomb	C		$s \cdot A$
Electric potential, potential difference, electromotive force	volt	V	$W \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-3} \cdot A^{-1}$
Electric resistance	ohm	Ω	$V \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-3} \cdot A^{-2}$
Conductance	siemens	S	$A \cdot V^{-1}$	$m^{-2} \cdot kg^{-1} \cdot s^3 \cdot A^2$
Capacitance	farad	F	$C \cdot V^{-1}$	$m^{-2} \cdot kg^{-1} \cdot s^4 \cdot A^2$
Magnetic flux	weber	Wb	$V \cdot s$	$m^2 \cdot kg \cdot s^{-2} \cdot A^{-1}$
Magnetic flux density	tesla	T	$Wb \cdot m^{-2}$	$kg \cdot s^{-2} \cdot A^{-1}$
Inductance	henry	H	$Wb \cdot A^{-1}$	$m^2 \cdot kg \cdot s^{-2} \cdot A^{-2}$
Luminous flux	lumen	lm		$cd \cdot sr$
Illuminance	lux	lx	$lm \cdot m^{-2}$	$m^{-2} \cdot cd \cdot sr$
Activity (of a radionuclide)	becquerel	Bq		s^{-1}
Absorbed dose, specific energy imported, kerma, absorbed dose index	gray	Gy	$J \cdot kg^{-1}$	$m^2 \cdot s^{-2}$
Dose equivalent	sievert	Sv	$J \cdot kg^{-1}$	$m^2 \cdot s^{-2}$

(1) Special names for the unit of power: the name volt-ampere (symbol 'VA') when it is used to express the apparent power of alternating electric current, and var (symbol 'var') when it is used to express reactive electric power. The 'var' is not included in CGPM resolutions.

Units derived from SI base units or supplementary units may be expressed in terms of the units listed in Chapter I.

In particular, derived SI units may be expressed by the special names and symbols given in the above table; for example, the SI unit of dynamic viscosity may be expressed as $m^{-1} \cdot kg \cdot s^{-1}$ or $N \cdot s \cdot m^{-2}$ or $Pa \cdot s$.

1.3. **Prefixes and their symbols used to designate certain decimal multiples and submultiples**

Factor	Prefix	Symbol	Factor	Prefix	Symbol
10^{18}	exa	E	10^{-1}	deci	d
10^{15}	peta	P	10^{-2}	centi	c
10^{12}	tera	T	10^{-3}	milli	m
10^{9}	giga	G	10^{-6}	micro	μ
10^{6}	mega	M	10^{-9}	nano	n
10^{3}	kilo	k	10^{-12}	pico	p
10^{2}	hecto	h	10^{-15}	femto	f
10^{1}	deca	da	10^{-18}	atto	a

The names and symbols of the decimal multiples and submultiples of the unit of mass are formed by attaching prefixes to the word 'gram' and their symbols to the symbol 'g'.

Where a derived unit is expressed as a fraction, its decimal multiples and submultiples may be designated by attaching a prefix to units in the numerator or the denominator, or in both these parts.

Compound prefixes, that is to say prefixes formed by the juxtaposition of several of the above prefixes, may not be used.

1.4. **Special authorized names and symbols of decimal multiples and submultiples of SI units**

Quantity	Unit		
	Name	Symbol	Value
Volume	litre	l or L (1)	1 l = 1 dm^3 = 10^{-3} m^3
Mass	tonne	t	1 t = 1 Mg = 10^3 kg
Pressure, stress	bar	bar (2)	1 bar = 10^5 Pa

(1) The two symbols 'l' and 'L' may be used for the litre unit.
(Sixteenth CGPM (1979), resolution 5).

(2) Unit listed in the International Bureau of Weights and Measures booklet as among the units to be permitted temporarily.

Note: The prefixes and their symbols listed in 1.3 may be used in conjunction with the units and symbols contained in Table 1.4.

2. UNITS WHICH ARE DEFINED ON THE BASIS OF SI UNITS BUT ARE NOT DECIMAL MULTIPLES OR SUBMULTIPLES THEREOF

Quantity	Unit		
	Name	Symbol	Value
Plane angle	revolution* (1) (a)		1 revolution = 2π rad
	grade* or gon*	gon*	1 gon = $\frac{\pi}{200}$ rad
	degree	°	$1° = \frac{\pi}{180}$ rad
	minute of angle	′	$1' = \frac{\pi}{10\,800}$ rad
	second of angle	″	$1'' = \frac{\pi}{648\,000}$ rad
Time	minute	min	1 min = 60 s
	hour	h	1 h = 3 600 s
	day	d	1 d = 86 400 s

(1) The character (*) after a unit name or symbol indicates that it does not appear in the lists drawn up by the CGPM, CIPM or BIPM. This applies to the whole of this Annex.

(a) No international symbol exists.

Note: The prefixes listed in 1.3 may only be used in conjunction with the names 'grade' or 'gon' and the symbol 'gon'.

3. UNITS DEFINED INDEPENDENTLY OF THE SEVEN SI BASE UNITS

The unified atomic mass unit is one-twelfth of the mass of an atom of the nuclide ^{12}C.

The electronvolt is the kinetic energy acquired by an electron passing in a vacuum from one point to another whose potential is one volt higher.

Quantity	Unit		
	Name	Symbol	Value
Mass	unifed atomic mass unit	u	1 u $\approx 1{\cdot}660\,565\,5 \times 10^{-27}$ kg
Energy	electronvolt	eV	1eV $\approx 1{\cdot}602\,189\,2 \times 10^{-19}$ J

The value of these units, expressed in SI units, is not known exactly.

The above values are taken from CODATA Bulletin No 11 of December 1973 of the International Council of Scientific Unions.

Note: The prefixes and their symbols listed in 1.3 may be used in conjunction with these two units and with their symbols.

4. UNITS AND NAMES OF UNITS PERMITTED IN SPECIALIZED FIELDS ONLY

Quantity	Unit		
	Name	Symbol	Value
Vergency of optical systems	dioptre*		1 dioptre = 1 m^{-1}
Mass of precious stones	metric carat		1 metric carat = 2×10^{-4} kg
Area of farmland and building land	are	a	1 a = 10^2 m^2
Mass per unit length of textile yarns and threads	tex*	tex*	1 tex = 10^{-6} kg · m^{-1}

Note: The prefixes listed in 1.3 may be used in conjunction with the above units. The multiple 10^2 a is, however, called a 'hectare'.

5. COMPOUND UNITS

Combinations of the units listed in Chapter I form compound units.

CHAPTER II

LEGAL UNITS OF MEASUREMENT REFERRED TO IN ARTICLE 1 (b)

QUANTITIES, NAMES OF UNITS, SYMBOLS AND VALUES

Quantity	Unit		
	Name	Symbol	Value
Blood pressure	millimetre of mercury (*)	mm Hg(*)	1 mm Hg = 133·322 Pa
Plane angle		g* (1)	$1\,g = \frac{\pi}{200}$ rad
Activity (of a radionuclide)	curie	Ci	1 Ci = $3{\cdot}7 \times 10^{10}$ Bq
Absorbed dose	rad	rad (2)	1 rad = 10^{-2} Gy
Equivalent dose	rem*	rem*	1 rem = 10^{-2} Sv
Exposure (X and γ rays)	röntgen	R	1 R = $2{\cdot}58 \cdot 10^{-4}$ C · kg^{-1}
Dynamic viscosity	poise	P	1 P = 10^{-1} Pa · s
Kinematic viscosity	stokes	St	1 St = 10^{-4} m^2 · s^{-1}

(1) Symbol for 'grade'.
(2) When there is risk of confusion with the symbol for radian, rd may be used as symbol for rad.

Note: The prefixes and their symbols listed in 1.3 of Chapter I may be used in conjunction with the units and symbols contained in this section, with the exception of millimetre of mercury and its symbol and the symbol 'g'.

Until the date indicated in Article 1 (b), the units listed in Chapter II may be combined with each other or with those in Chapter I to form compound units.

CHAPTER III

LEGAL UNITS OF MEASUREMENT REFERRED TO IN ARTICLE 1 (c)

QUANTITIES, NAMES OF UNITS, SYMBOLS AND APPROXIMATE VALUES

Length		
inch	1 in	= $2{\cdot}54 \times 10^{-2}$ m
foot	1 ft	= 0·3048 m
fathom (1)	1 fm	= 1·829 m
mile	1 mile	= 1 609 m
yard	1 yard	= 0·9144 m
Area		
square foot	1 sq ft	= $0{\cdot}929 \times 10^{-1}$ m²
acre	1 ac	= 4 047 m²
square yard	1 sq yd	= 0·8361 m²
Volume		
fluid ounce	1 fl oz	= $28{\cdot}41 \times 10^{-6}$ m³
gill	1 gill	= $0{\cdot}1421 \times 10^{-3}$ m³
pint	1 pt	= $0{\cdot}5683 \times 10^{-3}$ m³
quart	1 qt	= $1{\cdot}137 \times 10^{-3}$ m³
gallon	1 gal	= $4{\cdot}546 \times 10^{-3}$ m³
Mass		
ounce (avoirdupois)	1 oz	= $28{\cdot}35 \times 10^{-3}$ kg
troy ounce	1 oz tr	= $31{\cdot}10 \times 10^{-3}$ kg
pound	1 lb	= 0·4536 kg
Energy		
therm	1 therm	= $105{\cdot}506 \times 10^{6}$ J

(1) For marine navigation only.

Until the date to be fixed under Article 1 (c), the units listed in Chapter III may be combined with each other or with those in Chapter I to form compound units.

COMMISSION

COMMISSION DECISION

of 28 November 1979

relating to a proceeding under Article 85 of the EEC Treaty (IV/29.672 — Floral)

(Only the French and German texts are authentic)

(80/182/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 (1), and in particular Articles 3 and 15 thereof,

Having regard to the Commission Decision of 27 September 1978 to initiate proceedings in respect of the cooperation through Floral Düngemittel-verkaufsgesellschaft mbH between Générale des Engrais SA, Compagnie Française de l'Azote SA, and Société Chimique des Charbonnages SA and the German firm Franz Schiffer, which began on 10 May 1968 and was notified on 10 July 1978,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC (2),

Having regard to the opinion delivered on 25 July 1979 pursuant to Article 10 of Regulation No 17 by the Advisory Committee on Restrictive Practices and Dominant Positions,

I. THE FACTS

1. The products

This proceeding cernings cooperation between three leading French manufacturers of fertilizers in the export of compound fertilizers to the Federal Republic of Germany through Floral GmbH.

The fertilizers concerned are compound (nitrogen, phosphate, potassium) fertilizers, with the proportions of ingredients being either 13:13:21 or 15:15:15 (the remainder representing inactive ingredients).

2. The undertakings concerned

(a) Générale des Engrais SA (hereinafter GESA) is the legal successor to Société de Produits Chimiques Péchiney-Saint Gobain, which arose from the merger of the fertilizer businesses of Rhône-Poulenc and Péchiney-Ugine-Kuhlmann. GESA manufactures nitrogenous and compound fertilizers, with 1977 fertilizer sales of FF 1 500 million. GESA has seven compound fertilizer production plants, notably in Rouen/Grand Quevilly (Northwest France), la Madeleine and, until 1977, Chauny (Northern France), Riemst (Belgium) and, via its Dutch subsidiary Zuid-Chemie, Sas van Gent, (Netherlands).

In 1978 GESA acquired a majority of the shares in SOPAG, a holding company which controls 61 % of the capital of the Gardinier Group, a further 36 % being held by SOPIA. The shares in SOPIA are held as to 80 % by UGCA (3) and cooperatives and as to 20 % by the Gardinier family. Gardinier manufactures nitrogenous, phosphate and compound fertilizers.

(b) Compagnie Française de l'Azote (hereinafter COFAZ) came into existence as a result of

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.

(3) Union des Groupements de Coopératives agricoles.

agreements between Pierrefitte-Auby and the Total group. It manufactures nitrogenous and compound fertilizers, with 1977 fertilizer sales of FF 1 300 million. It has compound fertilizer production plants in Feuchy and Le Havre (Northern France).

(c) Société Chimique des Charbonnages SA (CdF) combines the fertilizer business of the State-owned Charbonnages de France and Houillères de Bassin. 37·5 % of the shares are held by Entreprise Minière et Chimique (EMC), which is in its turn controlled by Azote et Produits Chimiques (APC). EMC also holds 70 % of the shares in Société Commerciale de Potasse et d'Azote (SCPA), which manufactures potash fertilizers. APC and the German fertilizer manufacturer BASF each hold 50 % of the shares in Produits et Engrais Chimiques du Rhin (PEC Rhin), which has a compound fertilizer plant in Ottmarsheim, Alsace, that began producing in 1978. CdF has compound fertilizer plants in Mazingarbe, Grand Quevilly (Northwest France) and until 1975, Carling (Eastern France). It owns Chemische Werke Saar-Lothringen GmbH (CSL), which manufactures and sells fertilizers in the Saarland. CdF group sales in 1977 were FF 1 800 million.

The three undertakings concerned in this proceeding are the biggest fertilizer manufacturers in France. They are followed by Société Chimique de la Grande Paroisse, a subsidiary of Air Liquide; Atlantique d'Engrais Chimiques, a subsidiary of the American firm of Grace; Reno, a subsidiary of the German Oetker group; Société d'Engrais Chimiques et Organiques, a subsidiary of the Belgian manufacturers Prayon and Carbochimique; and Ets. Lecoester, a subsidiary of the Dutch manufacturer UKF.

3. The organization of distribution in general

Apart from their cooperation on exports of compound fertilizers to Germany (see below, heading 4) the three manufacturers currently sell their fertilizers in the Community individually. Until 1967, all the French manufacturers had placed the distribution of their straight nitrogenous fertilizers at home and abroad in the hands of the Comptoir Français de l'Azote (CFA), which they had set up. This joint sales agency was the subject of a statement of objections sent by the Commission to the CFA members — including the three companies concerned here or their legal predecessors Auby, Pierrefitte, and Péchiney-Ugine — on 15 March 1967, informing them that the agreement on the joint sale of straight fertilizers entered into by CFA and its members was caught by Article 85 (1) of the Treaty and did not qualify for an Article 85 (3) exemption. Having received this statement of objections the companies decided to terminate the offending practices on 28 July 1967. They cancelled CFA's concession for distribution in other Member States, which they thereafter handled themselves. By Decision of 6 November 1968 [1] the Commission gave negative clearance pursuant to Article 2 of Regulation No 17 for their cooperation thus confined to sales on the domestic market and outside the Community.

In 1969, the CFA members decided to handle their own sales of straight nitrogenous fertilizers in France individually, without working through CFA. Sales outside the Community were still made through CFA, and for certain countries Nitrex, a company established in Zurich, was also involved.

The CFA members continued to sell their compound fertilizers in the Community independently of each other. Trade between Member States in these fertilizers developed more slowly than trade in straight fertilizers. At the beginning of the 1970s Complexport was founded to handle exports outside the Community; its members include the three companies concerned in this proceeding. Complex, established in Zurich, is involved in supplies to certain non-member countries, and other European manufacturers also export through it to the same countries.

4. The organization of exports of compound fertilizers to Germany

On 10 May 1968 Alfa GmbH was formed by the following:

— Société des Produits Chimiques d'Auby (now COFAZ),

— Société Chimique des Charbonnages (CdF),

— Société Produits Chimiques Péchiney-Saint Gobain (now GESA),

— Pierrefitte, Société Générale d'Engrais et de Produits Chimiques (now COFAZ), and

— Mr F. Schiffer, in his capacity of fertilizer dealer.

The formation of Alfa was preceded by talks between Mr Schiffer and Auby on ways and means of promoting exports to Germany, and other manufacturers were brought in later.

On 6 July 1970 GESA, COFAZ and CdF agreed that Alfa would be renamed Floral GmbH, without any

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[1] OJ No L 276, 14. 11. 1968, p. 29.

change in the objects set out in its constitution. The object of the company remained the purchase or manufacture of fertilizers for resale in Germany.

At the present time GESA, COFAZ and CdF each hold 30 % of the shares in Floral, the remaining 10 % being held by Mr Schiffer. By an agreement on appointments made on 10 May 1968 Mr Schiffer was to be managing director of Alfa, and subsequently of Floral. The managing director is required to inform the members of all business dealings and must seek their approval for more important transactions (such as long-term business arrangements). Costs and profits are shared among the members in proportion to their shareholdings.

Distribution agreements were entered into between Alfa or Floral, as the case may be, and Mr Schiffer's firm Franz Schiffer (hereinafter 'Firma Schiffer') on 10 May 1968, 1 May 1972 and 1 May 1975. The agreements give Firma Schiffer the exclusive right to sell Floral products in southern and western Germany (south of the Münster area) and guarantee it supplies of the relevant products in specified quantities.

Lastly, the agreements provide that the Floral trademark will be registered for the use of Firma Schiffer and the products will be distributed under this trademark, the packaging also to bear the trademark of whichever French manufacturer provided the product.

5. Market shares of the relevant companies

In the Community, France is second only to the United Kingdom in production of compound fertilizers. In 1977/78 production — as can be seen from Annex I — ran to 547 500 tonnes N (quantity of nitrogen incorporated in compound fertilizers). GESA/Gardinier, COFAZ and the CdF/APC/EMC group are by far the largest producers, with more than two-thirds of total French production. This represents more than 10 % of total Community production (about three million tonnes N).

German production of coumpound fertilizers, largely accounted for by VEBA/Ruhrstickstoff, BASF and Hoechst, ran to 365 400 tonnes N in the same year (see Annex II), when 379 000 tonnes were consumed in Germany and 627 000 tonnes in France. Large quantities are imported into both countries, which are also, however, major exporters: between 1968/69 and 1977/78, Germany exported annually on average 120 000 tonnes N (29 % of output) and France 65 000 tonnes N (11·7 % of output). In both countries plants are working below capacity except at a few short exceptional periods.

Details of trade in compound fertilizers between France and Germany are shown in the table in Annex III. Exports from France to Germany increased sharply from 1969 to 1972, but have since grown only a little (102 000 tonnes in 1972 and 110 000 tonnes in 1977). By comparison, German exports to France are smaller, ranging between 38 000 tonnes in 1970 and 1974, and 84 000 tonnes in 1976.

French exports to Germany in 1976/77 accounted for two-thirds of French intra-Community exports and 38 % of total French exports. These exports to Germany amounted to about 110 000 tonnes, made up as follows: about half consisted of deliveries by PEC Rhin to BASF, one of its parent companies; about 40 000 tonnes represented shipments by the undertakings concerned from their French production plants (1); and a very small proportion consisted of exports by French dealers. No other French manufacturer exported to Germany.

In 1968/69 they supplied 12 000 tonnes of compound fertilizer, which rose in the following years to roughly 50 000 tonnes annually from 1976/77 onwards. Between 1968/69 and 1971/72 their deliveries to the German market had been made exclusively through Alfa/Floral or through Firma Schiffer. Since 1972/73 GESA and COFAZ have sold about 2 000 tonnes per annum (4·5 % of total exports) to another customer, Deutsche Raiffeisen Warenzentrale GmbH. Between 1972/73 and 1977/78 CdF sold exclusively via Floral or Firma Schiffer. Not until the 1978/79 marketing year — after the Commission opened investigations — did deliveries other than through Floral begin to increase markedly.

CdF accounted for 68 % of all supplies to Floral, GESA for 18 % and COFAZ for 14 %. Their respective shares of deliveries thus do not reflect their respective shareholdings in the company (30 % each).

There are no distinctions as to quality in the products supplied. They are delivered by road, whereas German manufacturers mostly supply by rail or ship to the nearest station or port. The packed goods bear the manufacturer's trademark together with the Floral trademark. The customers are 30 or so buying cooperatives and fertilizer wholesalers.

6. Prices

Although the three French manufacturers sell to Floral and Firma Schiffer at varying prices, the products are resold at uniform prices and on uniform terms. These

(1) The difference between these 40 000 tonnes and the quantities shown in Annex IV was supplied from GESA's Belgian plant.

are aligned on those of German manufacturers, whose list prices — like those of French manufacturers — vary from month to month and include transport costs. The rebates and discounts granted on these prices are identical, as are the terms of delivery. A 2 % rebate is normally given on imported fertilizers.

Prices for compound fertilizers containing equal proportions of nitrate, phosphate and potassium, which represent most of the business of the undertakings concerned, in Germany are, together with those in the Netherlands, the highest in the Community. They are 5 % to 10 %, and sometimes as much as 15 %, higher than in France (1). The comparison prepared by the Statistical Office of the European Communities (Annex V) shows that the differences at the retail level (in bags, including transport costs) are of the same order of magnitude. The only exception was in 1974/75, when demand and prices on the world market rose sharply as a result of the oil crisis, driving up prices in France more than in Germany. Nevertheless, this temporary rise in French prices brought not a drop, but an increase in exports to Germany. Since then world prices have fallen back and in general are appreciably (often as much as 20 %) lower than Community prices, although with considerable variation between different exporting countries.

The undertakings concerned have submitted calculations showing that their returns on German sales were smaller than could have been achieved by selling the same quantities on the French domestic market. However, this comparison is distorted, firstly because it includes additional transport costs and the commission paid to Mr Schiffer; if both of these are discounted, German prices were 11·4 % higher than the French in 1976/77 (the figure arrived at in Annex V was 11·4 % for 1977) and 7·7 % higher in 1977/78 (Annex V: 10·6 % for 1978). Secondly the French price used for the comparison was higher than the price which, according to the Commission's information, wholesalers actually pay after deduction of all hidden end-of-year 'competition discounts' and rebates.

7. Freight costs

Both in France and in Germany selling prices include freight costs to the nearest station or port (free delivered prices). In Germany freight costs are estimated to account for approximately DM 30 per tonne, corresponding to carriage by rail over an average distance of about 275 km; carriage by inland waterway is substantially cheaper, costing no more than half of that.

In France the average freight cost is estimated at about FF 55 (roughly DM 25 per tonne), corresponding to carriage by rail or lorry over an average distance of 310 km; here again, carriage by inland waterway is substantially cheaper. The cost of carriage by rail works out at an average DM 8 per 100 km in France and DM 10·90 in Germany. Average freight costs are thus over one-third higher in Germany than in France.

The average freight cost accounts for about 6·8 % of the retail price in Germany and about 6·6 % in France.

The companies concerned have submitted a comparison of the actual freight costs showing that carriage by rail over a distance of 300 km costs FF ... (2) in France and FF ... in Germany. For carriage by road the corresponding figures are FF ..... For a French manufacturer exporting to Germany the freight costs from the production plant to the German frontier are much less than for the same distance within Germany.

8. The arguments of the companies concerned

The companies concerned argue that Article 85 (1) is inapplicable, alternatively that the tests for exemption under Article 85 (3) are satisfied and that there can be no question of imposing fines. In particular they argue that at 2 % of German consumption of compound fertilizers their exports via Floral account for an insignificant share of the market.

They argue that the purpose of their cooperation was to promote their exports to Germany. Whereas earlier they had hardly exported at all, deliveries made as a result of their cooperation had risen to 50 000 tonnes. The cost of carriage from distant plants provided a natural barrier corresponding to the limits set by the distribution agreement between Floral and Firma Schiffer. Delivery by inland waterway, considerably cheaper than by rail or road, was out of the question as regards Floral's customers who, being generally inadequately served by railway stations, attach particular importance to having the products supplied

(1) As regards GESA's exports from its Belgian plant, it should be added that Belgian domestic prices are generally even lower than French ones.

(2) In the published version of this Decision, some data have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

by road at free delivered prices. Access to the German market, where production is far in excess of consumption and forces producers to export, is in any case very difficult.

They further argue that joint use of the Floral distribution network saves distribution costs. If they are in a position to export individually to other Community markets such as the Netherlands and Belgium, then this is because these are geographically easier countries and the manufacturers have their own plants either there or nearby. It is also necessary to have a permanent presence on the German market in view of specific consumption patterns (and particularly the habit of contracting for 90 % of annual requirements at the beginning of each year).

9. Change in ownership of Floral

On 19 October 1979 the three French manufacturers transferred all their shares in Floral to the fourth shareholder, Mr Schiffer, who has this become sole shareholder in Floral GmbH. In the light of this solution the three manufacturers have since the beginning of the marketing year 1979/80 increased their individual exports to Germany through other outlets than Floral.

Floral has consequently made an effort to obtain supplies of compound fertilizer from other sources too. However, by far the largest proportion of Floral's supplies in the current marketing year (1979/80) will still come from the three French manufacturers concerned.

II. APPLICABILITY OF ARTICLE 85 OF THE TREATY

Article 85 (1) of the Treaty establishing the European Economic Community prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

1. Agreements and concerted practices between undertakings

The cooperation between the relevant companies, expressed in the joint formation and management of Floral (formerly Alfa), is based on an agreement, or at least a concerted practice, consisting in exportation by the three French manufacturers to Germany via the distribution undertaking formed and controlled by them jointly. Before the joint subsidiary was formed there were talks between Auby (now COFAZ) and Mr Schiffer in the course of which it was agreed that it would be worth bringing in other manufacturers so as to set the cooperation on a broader footing. The equal participation of the three French manufacturers in Floral (Alfa) presupposes an understanding between them which need not necessarily be evidenced in writing.

The business activities of the companies concerned within the joint distribution undertaking also presupposes a standing agreement. While the French manufacturers may not have explicitly undertaken to channel all their exports to Germany exclusively through Floral (Alfa), they nevertheless did so until 1974/75, and since then they have channelled the bulk of their exports (with the exception of only small quantities supplied to only one other customer) through their joint venture. Not until the Commission opened investigations did they increase their individual exports to Germany. Even in the absence of any explicit exclusive rights clause, the three manufacturers as parent companies can hardly be expected to compete with their joint subsidiary. Inevitably, if they make any exports to Germany otherwise than through Floral, they will take account of the sales policy jointly determined with the other companies through Floral and align their sales activities on the common policy practised there.

The fact that the quantities sold by the three manufacturers through Floral do not correspond exactly to their shareholdings is immaterial for the purposes of Article 85 (1). Because the profits of the joint distribution subsidiary are distributed in proportion to their holdings they are obliged, even if no quotas are set, to coordinate their activities in the compound fertilizer export business.

2. Restriction of competition within the common market

The cooperation between the undertakings concerned restricts competition between them as regards exports of compound fertilizers to Germany.

In the absence of the joint distribution subsidiary they could offer compound fertilizers for sale in Germany in competition with each other. They have adequate output available for sale and have plant that is quite

capable of supplying for export to Germany. In 1968 Auby planned exports via Firma Schiffer although its plant was not so close to the German border as, for instance, CdF's plant. Following the closure of its Carling plant in 1975 and before taking up production at Ottmarsheim, CdF exported substantial quantities from more distant plants. Carriage costs in France are at least one-third lower than in Germany; carriage over greater distances within France would thus cause only a slight increase in total carriage costs.

There are favourably located plants, such as the CdF Ottmarsheim plant and the GESA plant at Riemst, Belgium, from which supplies can also be made by inland waterway, enabling northern Germany, which is excluded from Firma Schiffer's allotted sales territory, to be supplied. Certainly Floral's customers may attach particular importance to receiving supplies by road. But this is not to say that French manufacturers are incapable of making such deliveries by road or waterway outside Floral's regular clientele, whether or not situated in Floral's area of operations.

If the three French manufacturers unanimously refrain from so doing, this can only be attributed to their collective undertakings through Floral as their jointly-controlled sales subsidiary. If, as they argue, supplies by road account for a segment of the market that has been neglected by the German manufacturers, the fact that they make no supplies by inland waterway, where the French manufacturers would be in direct competition with the German manufacturers, can only be explained by a concerted decision of the French manufacturers to work through their joint subsidiary Floral in such a way as to refrain from competing directly with it and with their German competitors, so that there should be no interference by the German manufacturers with the joint subsidiary's sales policy.

The coordination of exports to Germany by the three French manufacturers is evidenced by the fact that German customers are confronted with uniform terms of supply: products of the French manufacturers are offered for sale by Floral or Firma Schiffer at identical prices and on identical terms. This is a result of the fact that in the case of bulk goods the products offered for sale are absolutely interchangeable, while packed goods all uniformly bear the additional Floral trademark.

In the face of this standardized supply German customers have virtually no opportunity of obtaining their requirements direct from the three manufacturers. On 6 July 1977 COFAZ refused to meet an order from a Cologne wholesaler on the grounds that the company already had a sales outlet and did not at that time wish to expand its sales, since its plants were at such a distance. This refusal is merely the logical consequence of the three French manufacturers' cooperation through Floral: so long as they are the controlling members of their joint sales subsidiary Floral, they cannot be expected to supply German customers outside Floral, and there is no doubt that, if they did, their prices and terms would not be more advantageous than those offered by Floral.

The three French manufacturers have not only channelled and standardized their supplies to Germany but also imposed geographical limits on them by requiring Firma Schiffer, via Floral, to sell their fertilizers only in a specified territory. This territory is not even predetermined by carriage costs, since for one thing it includes places that are further away from the French plants than what the companies concerned allegedly regard as the maximum tolerable distance of 310 km; and secondly, this calculation takes account neither of the lower cost for the part of the journey accomplished within France (which varies according to the production plant concerned) nor of the lower cost of waterway transport; and thirdly, if carriage costs were prohibitive above a certain distance, there would be no need to delimit expressly the sales territory.

The competitive intentions of the three French manufacturers are thus geographically confined by means of action concerted in advance without their being any real economic constraints militating in favour of this. Moreover, this geographically restricted supply, standardized by means of the jointly determined sales policy, is aligned on German domestic market prices. Finally, for the purposes of carriage the manufacturers do not use the particularly cheap mode of inland waterways but prefer road transport. The three French manufacturers have thus conceived their competitive intentions on the German market in agreement with each other and in such a way as to create only the minimum of conflict with the German manufacturers. This, combined with their agreement in practice to refrain from competing with each other outside Floral, is the nub of the anti-competitive effect of the cooperation between them.

3. Effect on trade between Member States

The cooperation between the undertakings concerned is liable adversely to affect trade between Member States. It regulates exports from France (or, as regards GESA, from Belgium) to Germany. Its effect is that the three French manufacturers refrain from exporting to Germany otherwise than through the Floral distribution network. In consequence, offers by the three French manufacturers for exports to another Member State are standardized and competition between them on the

German market is excluded. Trade between Member States is therefore conducted in conditions different from those which would prevail if the cooperation between the companies concerned did not exist.

4. **Appreciability of the restriction of competition and adverse effect on trade**

The companies concerned point out that exports by the three French manufacturers to Germany represent only about 2 % of total German consumption of compound fertilizers. The quantities actually delivered by the French manufacturers to the German market via Floral are however not necessarily the only yardstick for measuring the impact on the market.

The three manufacturers concerned are France's largest manufacturers. They are large manufacturers, even in relation to total Community production (more than 10 %). They have production facilities working below capacity, substantial exportable output and plants that are capable of exporting to Germany. For a large part of Germany, freight costs are no higher than for destinations within France, particularly if account is taken of the facilities for waterway transport which exist but are not used.

Moreover, account must be taken of the structure of competition on the market concerned, that is the German market. The number of competitors on the German market is very small. By far the largest are Ruhrstickstoff, BASF and Hoechst, which together have an exceptional position on the market, although, in terms of size, they are comparable as manufacturers of compound fertilizers with the three French manufacturers concerned.

On a market with such an oligopolistic structure, if three of the few suppliers (who despite their size have only a small share of that market) standardize their supply through a joint sales organization, the oligopoly merely becomes tighter. Even relatively small quantities can, if put on the market by the suppliers individually, have an appreciable impact on market conditions. The share of the market captured by the three French manufacturers seemed to them significant enough to warrant planning and effecting a scheme of cooperation to standardize their supplies, and there is no evidence that their influence on this market could not be increased through changes in competitive conditions, market structure and their own sales policy.

Contrary to what is argued by the undertakings concerned, the question of whether or not their exports to Germany were less profitable than would have been sales of similar quantities within France — which amounts to the question of whether German prices were higher or lower than French ones — is irrelevant to consideration of the appreciability of the effect upon competition. As the Court of Justice has found [1], this argument is based on a situation which can change from year to year as a result of changes in competitive conditions or of market structures in both the common market as a whole and individual national markets; whereas the concentration of supply for export, which has the effect of restricting competition, is meant to last.

Moreover, for an undertaking active on various markets, it is not the price obtained on a given market that is the determining factor, but the average price over all the markets in question. Accordingly, it would in any event be necessary also to make comparisons with exports to other Member States and, especially, to non-member countries, where — with the exception of the year 1974/75 — prices were much lower than in the Community. In comparison with these countries, exports to Germany were certainly more profitable, except in 1974/75. The price comparison submitted by the undertakings concerned also omits certain elements (see I.6, third paragraph) and therefore arrives at conclusions different from those of the Statistical Office; the latter's price comparison, notwithstanding reservations concerning currency conversions and product differences, gives representative results which agree with the Commission's findings.

The effects on their cooperation on competition and interstate trade are accordingly appreciable.

5. **Inapplicability of Article 85 (3)**

Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of:

— any agreement or category of agreements between undertakings,

— any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or

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[1] Judgment of 1 February 1978 in Case 19/77, 'Miller International', [1978] ECR 131, ground of judgment 14.

economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

1. The concerted practices underlying the cooperation between the companies concerned were notified to the Commission only after the Commission commenced investigations on 10 July 1978. There can be no question of exemption for the period preceding that date since, pursuant to Article 8 (1) of Regulation No 17, a decision giving exemption can be valid only with effect from the date of the notification, and none of the exceptions in Article 4 (2) of Regulation No 17 applies.

2. Nor are the tests for exemption satisfied in respect of the subsequent period:

(a) The practices that are the subject of this proceeding have no beneficial effects on production or distribution such as might offset the competitive disadvantages created by the restrictions of competition between the parties.

The production of goods is unaffected, since each of the companies concerned continues to manufacture the full range of its products. As regards distribution, there is no evidence of any improvement made by the joint selling arrangement in view of the tightly organized, integrated distribution system in the fertilizer industry in the Community (cooperatives, wholesalers, importers, etc). The undertakings concerned have provided the Commission with no evidence and the Commission has no evidence from other sources, indicating that in the Community in general and in Germany in particular there are difficulties in planning production, storage, carriage and resale which could not be solved individually by any company of the same size as the undertakings concerned here and which might make the introduction of a joint distribution system essential.

Indeed they have shown that they have the requisite know-how and resources to market their fertilizers in other Community countries independently of each other, albeit in somewhat smaller quantities. Whatever difficulties may have arisen during the launching period in 1968 and 1969 — when exports were low and had to be promoted — cannot be pleaded in support of the cooperation that is still going on today. CdF was quite capable of setting up its own subsidiary in the Saarland and of equipping it with a sales network working through the wholesale trade. In other Member States the companies concerned have also acquired their own independent sales contacts and sell straight nitrogenous fertilizers on their own, though only in small quantities. Undertakings of this size cannot argue that they are forced to cooperate with each other.

The Commission cannot accept the undertakings' argument that straight and compound nitrogenous fertilizers have to be sold through separate distribution networks. For years now, they have been sold by the same wholesalers and retailers. If economies in distribution costs are to be the decisive criterion, then this would have to apply primarily to the rationalization of distribution in one and the same firm and not to the rationalization of distribution by a series of competing firms.

(b) Apart from that, the consumer has not been allowed a fair share of the benefit that results from a reduction in buying prices, for the prices payable by German dealers and users have not in fact fallen as the prices charged by Floral on the German market are virtually as high as the prices charged by its domestic competitors. The German user, consequently, derives no benefit from the cooperation arrangement, and indeed has to bear the disadvantages in terms of quantities available and the prices charged for them resulting from the rigid channelling of standardized supplies.

The tests for exemption are accordingly not satisfied.

6. **Applicability of Article 3 of Regulation No 17**

It follows that both during the period from 10 May 1968 to 10 July 1978 (the date of notification) and during the period thereafter the cooperation between the companies concerned constituted an infringement of Article 85.

On 19 October 1979 the three French manufacturers concerned transferred their shares in Floral to Mr Schiffer, so relinquishing their joint control and management of the company, which is to become an independent wholesaler/importer. However, the Commission must ensure that the companies' existing anti-competitive cooperation is in fact terminated by the end of the 1979/80 marketing year. It must also ensure that their current cooperation is not replaced by other forms of concerted practice. The fact that the companies

concerned have terminated their participation in Floral does not obviate the need for the requirement set out in Article 3 of this Decision.

7. **Applicability of Article 15 (2) of Regulation No 17**

Under Article 15 (2) (a) of Regulation No 17 the Commission may impose fines from 1 000 to 1 000 000 units of account or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently, they infringe Article 85 (1) of the Treaty. In fixing the amount of the fine, regard must be had to the gravity and duration of the infringement.

(a) The three French manufacturers to which this Decision is addressed have been infringing Article 85 (1) since 10 May 1968. The infringement was committed either by them or by their legal predecessors, for whose conduct they remain accountable. COFAZ took over the business of AUBY and Pierrefitte, and GESA that of Péchiney-Saint Gobain, after the reconstruction of the undertakings concerned; and they assumed the benefit and the burden of the Alfa/Floral arrangements. They have at the very least negligently infringed Article 85 (1). They ought to have known that the coordination of their exports of compound fertilizers to German through a joint subsidiary was caught by Article 85 (1).

These French manufacturers or their legal predecessors knew that the Commission regarded fertilizer export cartels within the Community as prohibited by Article 85 and as not qualifying for exemption. The Commission had given them full information on the reasons for this in its proceeding against CFA shortly before Floral (Alfa) was formed, when it demanded termination of the infringement in that case (effective from 28 July 1967). At the Commission's insistence the manufacturers then involved withdrew their undertaking to export exclusively via CFA and even went so far as to take exports to other Member States right out of CFA's responsibilities. This meant that CFA members could no longer work through CFA when exporting to other Community countries. The Commission was thereby seeking to ensure that the exclusive rights clauses were not replaced by some informal concerted practice to the like effect.

The fact that the CFA proceeding concerned straight nitrogenous fertilizers rather than compound fertilizers does not shield the companies concerned against an accusation of negligence. They must have known that the selected procedure for the joint sale of their compound fertilizers would not be scrutinized for the purpose of Article 85 (1) in any different way than their stright fertilizer arrangement. Nor was it likely that the restriction of cooperation to a single export market in the Community would be regarded in a different light from the restriction of Community sales to a relatively small volume.

(b) As regards the gravity of the infringement regard must be had to the fact that the pooling of deliveries by the three largest manufacturers in one Member State on the market of another Member State virtually eliminates all the competition between them on that market. On the other hand, the effect of their cooperation on users was relatively small.

If they exported individually the three French manufacturers would be able to exert greater competitive pressure on quantities, price and mode of transport. Individual and independent activities by the French manufacturers would almost certainly have improved or helped to improve the competitive structure of a substantial part of the common market. It is of course impossible to quantify the influence upon competition of such individual exports. In fixing the amount of the fine the Commission must accordingly proceed on the basis of the relatively small turnover achieved by the manufacturers via Floral, without, however, ignoring completely their importance in the total market for compound fertilizers.

The Commission has taken into account the fact that the manufacturers concerned have, without waiting for the Commission's Decision, ended their involvement in Floral and so have taken the first step towards ending their infringement.

(c) As regards the duration of the infringement, the period to be taken into consideration runs from 10 May 1968 until 10 July 1978, the date of notification. The period following the date of notification is to be disregarded pursuant to Article 15 (5) of Regulation No 17.

(d) The three French manufacturers concerned benefited in equal proportions from the profits achieved from Floral. The fact that they shared equally in the profits prevails over the fact that they distributed different quantities via Floral. The difference in the total fertilizer sales of the various companies is not so great as to warrant differences in the amounts of the fines. It follows that each of the three French manufacturers should be required to pay a fine of 85 000 EUA (FF 493 944·35).

No fine need be imposed on Firma Schiffer, which is now the sole shareholder in Floral, since Firma Schiffer was only a minor instrument of the anti-competitive cooperation between the three French manufacturers,

HAS ADOPTED THIS DECISION:

Article 1

The agreement and concerted practice concerning the joint formation and management of Floral Düngemittelverkaufsgesellschaft mbH (formerly Alfa GmbH) by Générale des Engrais SA, Compagnie Française de l'Azote SA and Société Chimique des Charbonnages SA together with Mr Franz Schiffer and the joint export of compound fertilizers to the Federal Republic of Germany have since 10 May 1968 constituted an infringement of Article 85 (1) of the Treaty establishing the European Community.

Article 2

The application for exemption pursuant to Article 85 (3) of the Treaty with effect from 10 July 1978, made with the notification, is hereby refused.

Article 3

The undertakings specified in Article 6 shall terminate the infringement found in Article 1.

Article 4

The following fines are imposed:

1. on Générale des Engrais SA, eighty-five thousand (85 000) EUA, that is to say FF 493 944·35;
2. on Compagnie Française de l'Azote SA, eighty-five thousand (85 000) EUA, that is to say FF 493 944·35;
3. on Société Chimique des Charbonnages SA, eighty-five thousand (85 000) EUA, that is to say FF 493 944·35.

These sums shall be paid, within three months of notification of this Decision to the companies concerned, into the following account of the Commission of the European Communities: Société Générale, Direction de l'Étranger, Boîte Postale 317-09, 75454 Paris Cedex 09, Account No 5.770.006.5.

Article 5

This Decision shall be enforceable in the manner provided in Article 192 of the Treaty establishing the European Economic Community.

Article 6

This Decision is addressed to:

1. Compagnie Française de l'Azote SA,
   4, avenue Velasquez,
   Boîte Postale 198–08,
   F 75361 Paris Cedex 08;
2. Générale des Engrais SA,
   47 rue de Villiers,
   F 92527 Neuilly-sur-Seine;
3. CdF Chimie,
   Société Chimique des Charbonnages SA,
   Tour Aurore,
   Place des Reflets, Cedex 5,
   F 92080 Paris Défense 2;
4. Mr Franz Schiffer,
   Am Güterbahnhof,
   D 6601 Hanweiler;
5. Floral Düngemittelverkaufsgesellschaft mbH,
   D 6601 Kleinblittersdorf 2.

Done at Brussels, 28 November 1979.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX I

French compound fertilizer market

Year	Production	+ Imports	= Total supply	− Domestic consumption	= Surplus (exports)
1968/69	424·1	81·6	505·7	465·7	40
1969/70	479	75·1	554·1	503·5	50·6
1970/71	519	109·1	628·1	589·1	39
1971/72	554·5	118·6	673·1	633·1	40
1972/73	618·4	133·7	752·1	706	46·1
1973/74	693·1	135·4	828·5	760·9	67·6
1974/75	590·2	100	690·2	562·5	127·7
1975/76	491·4	145·4	636·8	573·7	63·1
1976/77	531·9	173·8	705·7	638·2	67·5
1977/78	547·5	173·2	720·7	626·6	94·1
	5 449·1				635·7

Source: Chambre syndicale nationale des Fabricants d'Engrais composes.

ANNEX II

German compound fertilizer market

Year	Production	+ Imports	= Total supply	− Domestic consumption	= Surplus (exports)
1968/69	412·4	23	435·4	290·6	144·8
1969/70	433·2	32	465·2	334·3	130·9
1970/71	430·8	28	458·8	367·6	91·2
1971/72	406·4	45·9	452·3	336·7	115·6
1972/73	458·2	29·7	487·9	321·2	166·7
1973/74	463·2	27·9	491·1	318	173·1
1974/75	466·8	36·3	503·1	367·1	136
1975/76	309·8	45·3	355·1	313·8	41·3
1976/77	371·4	78·6	450	361·7	88·3
1977/78	365·4	126·4	491·8	378·9	112·9
	4 117·6			1 200·8	

Source: Statistisches Bundesamt Wiesbaden.

ANNEX III

French and German exports of compound fertilizers

(tonnes product)

Year	French exports			German exports		
	Germany (*)	Community	World	France	Communitiy	World
1969	34 045 (29·8 %)	114 335	172 530	25 095	80 226	625 080
1970	41 659 (26·2 %)	158 967	277 306	37 650	74 590	510 525
1971	75 902 (45 %)	166 837	209 932	64 425	109 551	480 565
1972	102 047 (66·1 %)	154 489	220 248	45 065	89 411	430 652
1973	97 879 (55·3 %)	177 057	254 134	66 057	216 965	585 754
1974	146 395 (61·1 %)	239 794	426 926	38 424	206 687	560 003
1975	123 598 (72·4 %)	170 798	328 093	47 212	226 103	413 380
1976	111 989 (66·6 %)	168 246	291 879	84 092	210 977	355 429
1977	109 988 (54 %)	203 668	381 941	59 048	321 608	637 720

Source: Statistical Office of the European Communities.

(*) The percentages indicate the proportion of total exports within the Community accounted for by exports to Germany.

ANNEX IV

Exports by the manufacturers concerned to Germany (*)

(tonnes product)

Year	Straight N	NPK		
	Others	Floral (1)	Others	Total
1968/69				
1969/70				
1970/71				
1971/72				
1972/73				
1973/74				
1974/75				
1975/76			(2)	
1976/77				
1977/78				
1878/79				
1979/80 (3)				

(*) In the published version of this Decision, some data have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

Source: Figures supplied by the companies concernend.

(1) Including deliveries to Mr F. Schiffer.
(2) Including ... tonnes to a French exporter.
(3) Export orders.

ANNEX V

Comparison of prices for compound fertilizers 17:17:17

(Price in u.a. per 100 kg product, before tax)

Year	Germany	Belgium	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom	Variations % D/F
1969	—	—	8·77	—	11·07	—	8·95	—	(*) + 2·1
1970	—	—	7·99	—	10·83	7·34	8·86	—	(*) + 10·9
1971	—	8·38	8·19	8·73	10·49	7·90	9·27	—	(*) + 13·2
1972	—	9·69	8·35	9·24	10·51	9·72	9·84	10·62	(*) + 5·2
1973	11·31	9·99	10·33	8·71	9·12	9·27	10·61	9·99	+ 9·5
1974	14·71	13·05	15·96	13·88	13·09	13·06	14·02	14·28	− 8·5
1975	17·50	15·49	17·91	16·34	15·32	15·13	17·18	16·66	− 2·3
1976	18·46	17·78	17·03	16·33	15·69	17·51	18·11	15·25	+ 8·4
1977	18·87	16·36	16·94	16·61	15·87	17·54	18·60	15·71	+ 11·4
1978	19·64	17·43	17·75	16·58	16·22	16·09	18·73	16·98	+ 10·6

(*) % calculated on the basis of the Dutch figures which closely resemble those for Germany.
Source: EUROSTAT.

COMMISSION DECISION

of 7 December 1979

relating to a proceeding under Article 85 of the EEC Treaty in case No IV/29.266 and others (Cane Sugar Supply Agreements)

(Only the English text is authentic)

(80/183/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1] and in particular Article 2 thereof,

Having regard to the applications for negative clearance and notifications made to the Commission on 16 July 1976, 15 February 1977 and 26 August 1977 by Tate & Lyle Refineries Ltd, England, and Manbré Sugars Ltd, England in accordance with Articles 2 and 4 of the said Regulation No 17 in respect of agreements which both companies had jointly entered into with producers of cane sugar in certain African, Caribbean and Pacific (ACP) States, overseas countries and territories (OCT) and India,

Having regard to the publication of the summary of the notifications in *Official Journal of the European Communities* No C 229 of 27 September 1978, pursuant to Article 19 (3) of the said Regulation No 17,

Having regard to the Commission Decision of 8 November 1978 to commence proceedings,

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions dated 14 February 1979 and delivered in accordance with Article 10 of the said Regulation No 17,

Whereas:

I. THE FACTS

The undertakings

1. Tate & Lyle Refineries Ltd is a subsidiary of Tate & Lyle Ltd, a compagny incorporated in the United Kingdom. Manbré Sugars Ltd is a subsidiary of Manbré and Garton Ltd, a company also incorporated in the United Kingdom. Between 16 July 1976 and 26 August 1977 Tate & Lyle Refineries Ltd and Manbré Sugars Ltd notified to the Commission and sought either a negative clearance or exemption pursuant to the provisions of Article 85 (3) of the EEC Treaty for 14 Agreements which they had jointly made with 14 States, 11 of whom are amongst the signatories to the ACP-EEC Convention of Lomé which had been concluded between African, Caribbean and Pacific States (ACP) and the EEC. The remaining three were divided — two overseas territories and India.

The Agreements

2. Tate & Lyle Ltd have since acquired a controlling interest in Manbré and Garton Ltd. In view of the fact that Tate & Lyle Refineries Ltd, and Manbré Sugars Ltd had previously jointly entered into each of the said agreements, they are hereinafter referred to as 'the purchasing companies'. The names of the States with whom these Agreements were made and the case numbers assigned in the Commission to each individual notification are as set out hereunder in alphabetical order:

No of case	*State*
29.266	Barbados
29.267	Belize
29.506	Congo
29.270	Fiji
29.268	Guyana
29.271	India
29.272	Jamaica
29.381	Malawi
29.273	Mauritius
29.274	St Kitts
29.275	Swaziland
29.276	Tanzania
29 269	Trinidad and Tobago
29 277	Uganda

The Agreements are dealt with jointly in this Decision as their object and effect should be considered collectively.

The product

3. Sugar is obtained by refining raw sugar obtained from either sugar cane or sugar beet. The mode of

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[1] OJ No 13, 21. 2. 1962, p. 204/62.

production can be divided into two stages: (1) the production of the raw sugar from either cane or beet; and (2) the refining of that raw sugar into commercial brown or white sugar. At the first stage the processing of the cane or the beet to the state of raw sugar involves different techniques whilst the second or refining stage involves similar techniques. The first stage, namely the production of raw sugar is usually carried out close to the actual growing area. This means that cane sugar goes through this first stage in the African, Caribbean or Pacific region in which it is actually grown and the raw sugar is then shipped overseas to the refinery close to the actual market where the commercial sugar is to be sold. The two processes are thus distinct. In the case of raw sugar derived from beet both processes are usually carried out in the same factory which is normally situated close to the place where the sugar beet is grown. The location of the refining facilities for the processing of raw sugar has been developed as a consequence of the traditional trade patterns. Thus the raw sugar produced from sugar cane is produced within the producing State whilst the refining of that raw sugar is carried out close to the marketing area and in so far as the Agreements with which this Decision is concerned in the United Kingdom, these refining facilities are situated at or near seaports (London, Liverpool, etc.).

This Decision is concerned with the first stage of the production of sugar, namely the raw sugar processed from the sugar cane grown in the 14 States mentioned in paragraph 2 thereof (and hereinafter called 'the exporting States' and the relationship of that raw sugar to the total Community market for raw sugar. The Agreements under consideration in this Decision are designed to secure supplies of such raw sugar for refining by the purchasing companies in the United Kingdom. Their refineries, which are, as mentioned, situated at or near seaports, have traditionally relied on raw sugar from the exporting States as their raw material. In each of the other EEC Member States (other than Italy and France) market requirements are almost entirely met from beet grown within the States and processed and refined within the State. The Decision of the Court of Justice in the case Coöperatieve Vereniging 'Suiker Unie' UA and others v. Commission [1] has analysed the Community sugar market.

4. In so far as France is concerned, some 350 000 tonnes of raw cane sugar are received each year from the French overseas departments of Guadaloupe, Guyana, Martinique and Réunion for refineries in Nantes, Bordeaux and Marseilles. The production and the processing of sugar cane represents an essential element in the economy of these French overseas departments. Therefore special Community provisions apply to them [2]:

(a) the raw sugar produced by these territories is sold within the Community according to the principle of Community preference and without discrimination between the enterprises concerned;

(b) the production of these departments has a special mention within the total French quota (for example, as far as the marketing year 1974/75 was concerned, France had a total quota of 2 996 000 tonnes of white sugar, with 2 530 000 tonnes for Metropolitan France and 446 000 tonnes (white equivalent) for the French overseas departments);

(c) the provisions concerning the Guarantee Section of the European Agricultural Guidance and Guarantee Funds apply to them;

(d) where there is a difference between, on the one hand, the raw sugar refining margin taken into account in the determination of the intervention and threshold prices for raw sugar and, on the other hand, the margin necessary for the refining of raw preferential sugar, a differential charge fixed for the sugar marketing year in question is made on the latter sugar when it is put into free circulation except when it is imported for direct consumption or refined in a beet factory. A differential amount equal to that charge is granted for the raw sugar which is produced in the French overseas departments within the maximum quota and refined in a refinery or other production unit situated in the Community. In addition, a subsidy is paid from the guarantee section of the agricultural fund (EAGGF) for the refining of French overseas department sugar.

(e) France is authorized to grant the territories temporary adaptation aid as a contribution to the improvement of productivity.

II. ECONOMIC AND LEGAL APPRECIATION

Economic background

5. From 1951 until the date of accession to the European Economic Community (1 January 1973) most of the requirements for raw cane sugar for the United Kingdom were met by British Commonwealth countries under the terms of the Commonwealth Sugar Agreement of 1951 (hereinafter called 'CSA'). This was

(1) Joined cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, 3 ECR [1975], 1663, pp. 2022-2923, Grounds 613 to 621.

(2) See Council Regulation (EEC) No 2623/75 of 13 October 1975 (OJ No L 268, 17. 10. 1975, p. 1).

a collective Agreement entered into between sugar producers in the British Commonwealth and the British Government. It provided for long-term access to the UK of specific quantities of raw cane sugar from each producing country at a negotiated price ('negotiated price quotas'). The raw cane sugar was purchased by the Sugar Board, an agency of the British Government which then resold it to the purchasing companies for refining into commercial sugar and other by-products.

The CSA assured the United Kingdom of an annual supply of raw cane sugar amounting to about 1·74 million tonnes. This Agreement and certain other UK domestic measures led to the development of a substantial British cane sugar refining industry employing approximately 6 500 people. The existence of such an industry which could refine raw cane sugar and then market it, assured to the cane sugar producing countries a long-term stability of outlets for raw cane sugar produced from their cane sugar crops.

6. Pursuant to Protocol 17 annexed to the Act of Accession to the EEC, the UK was authorized in both 1973 and 1974 to import from the exporting countries, parties to the CSA, quantities of sugar equal to the amount of the negotiated price quotas under that Agreement. This authorization allowed the continuing operation of the CSA until the beginning of 1975. However, as a result of Accession, the purchasing companies were no longer allowed to import 'free' sugar (i.e. Commonwealth sugar not committed under the CSA), and with which formerly they could make up the balance of their requirements without paying an EEC import levy. This meant an immediate reduction in supplies to them for those years of about 70 000 tonnes. In order that this reduction could be shared equitably, the Sugar Board allocated the raw cane sugar supplies they got to each of the companies in proportion to their market share for the sale of sugar.

7. The UK in 1975 made, under the authority of the Council of the European Economic Community, special advance arrangements for the 1975 season with certain cane sugar producing countries.

8. The ACP-EEC Convention of Lomé was entered into on 28 February 1975. Protocol 3 annexed to that Convention [1] is designed to secure certain benefits to sugar exporting ACP States by giving them access at preferential rates to Community markets for specified quantities of cane sugar. The EEC, in Article 25 of the said Convention, undertook to purchase and import at guaranteed prices specific quantities of cane sugar, either raw or white, originating in ACP States and which those States undertook to deliver to the Community. The said Protocol 3 determines the conditions for implementation which are contained in Regulation (EEC) No 3330/74 [2], as amended by Regulation (EEC) No 1487/76 [3]. Further, by virtue of a Council Decision on overseas countries and territories (OCT) (entered into force on 28 February 1975 [4] (including Belize and St Kitts)), the provisions of the Protocol have been extended to include those countries. And again, an Agreement was entered into between the EEC and the Republic of India on 18 July 1975 [5] by which provisions analogous to those in the Lomé Convention were agreed for the purchase, import and delivery of sugar to the EEC from India at preferential rates for a specified quantity.

9. The preferential arrangements under the terms of the ACP-EEC Lomé Convention permit the entry into the EEC in each year from 1975 to 1980 of 1·42 million tonnes of raw cane sugar which are not subject to an import levy. This figure represents a serious diminution of the supplies of raw cane sugar available. Previously — under the CSA — the annual imports announted to 1·74 million tonnes, a figure on which the present capacity of this very capital intensive industry in the UK was based. The Agreements, the subject of this case, have been negotiated with sugar exporters in 11 ACP States, two overseas territories and India for the supply to the purchasing companies until 1980 of 1 134 000 tonnes annually. As can be seen from the chart in paragraph 11 many of the States involved retained an option quantity which they could sell elsewhere if they wished. Whilst the purchasing companies might be able to buy some or all of this option quantity they also might not be able to do so.

10. The commitment to supply under the Lomé Convention is to the Community as a whole and no longer specifically to the United Kingdom. The purchasing companies negotiated the Agreements being considered in this Decision as a matter of economic necessity for their continued commercial existence. They are nonetheless left with a considerable gap between their capacity to refine and the quantity of raw material secured by the Agreements. Their capacity is nearly 1·7 million tonnes whilst 1·1 million tonnes is secured by the Agreements under consideration.

The legal background

11. Each of the Agreements with which this case is concerned have been freely negotiated between the

(1) OJ No L 25, 30. 1. 1976, pp. 1 to 40 and pp. 114 and 115.

(2) OJ No L 359, 31. 12. 1974, p. 1.
(3) OJ No L 167, 26. 6. 1976, pp. 9 and 10
(4) OJ No L 268, 17. 10. 1975, pp. 43 and 44.
(5) OJ No L 190, 23. 7. 1975, p. 36.

producer and the purchaser. As an example of the type of Agreement involved, Agreement No 29.266 dated 29 April 1976 between Tate & Lyle and Manbré Sugars Ltd (the buyer) and the Barbados Sugar Producers Association Inc., the Barbados Sugar Factories Ltd and the Barbados Sugar Exporters Association Inc. (the seller) can be taken as a representative example. Agreements in the form of exchanges of letters concerning the guaranteed prices for the marketing years 1976/77 and 1977/78 have been entered into between the EEC and Barbados (among other ACP States) [1]. The main features of the principal Agreement as negotiated between the parties include the following provisions:

(a) the seller agrees to sell and the buyer agrees to buy sugar for shipment to the United Kingdom in accordance with the terms of the Agreement, and subject to such EEC Regulations as might from time to time be applicable during the period of the Agreement;

(b) by the definition section of the Agreement:

— the 'delivery period' means each period of 12 months commencing 1 July and ending 30 June in each year during the continuance of the Agreement,

— the 'agreed quantity' means the agreed quantity prescribed in respect of Barbados by Article 3 (1) of the Protocol adjusted (as the case may require) in accordance with Article 7 of the Protocol,

— 'ACP sugar' means cane sugar, raw or white, originating in sugar exporting ACP States, the marketing of which is presently regulated by the Protocol,

— 'the representative rate' means at any time the rate then applicable under the rules of the EEC Common Agricultural Policy for converting the United Kingdom intervention prices for sugar from units of account to sterling,

— 'the monetary compensatory amount' means the monetary compensatory amount received or paid in accordance with EEC Regulations, in respect of each cargo imported into the UK;

(c) during the period of the Agreement (which is deemed to have commenced on 28 February 1975) the seller undertakes to sell Barbados raw ACP sugar in bulk to the buyer in the quantities and on the terms set out in the Agreement and the buyer undertakes to import and refine the sugar in the UK for consumption there or elsewhere in the EEC. Sugar sold under the Agreement is to be of fair average quality from the current or immediately preceding crop at the time of shipment;

(d) the quantity of sugar to be shipped under the terms of the Agreement during the period ending 30 June 1975 is the quantity prescribed by Article 3 (3) of the Protocol (29 600 tonnes white value less the quantity in tonnes white value of special sugars shipped during that period);

(e) for all deliveries made under the Agreement up to 31 December 1975 the price of £ 260 sterling per long ton was to be paid. Deliveries in that case were deemed to have comprised all sugar shipped under the terms of the Agreement in vessels sailing from Barbados on or before 31 December 1975;

(f) for all subsequent deliveries made under the Agreement after 31 December 1975, the price, expressed in sterling per long ton, is the guaranteed price for raw sugar negotiated for the delivery period in question pursuant to Articles 5 and 4 (3) of the Protocol;

(g) from 1 July to 31 December 1975 the buyer undertakes to accept shipment of a maximum quantity of sugar such as to bring the total quantity shipped by Barbados under the Protocol during 1975 to the agreed quantity;

(h) payment is to be in sterling in London to a bank or agent nominated by the seller;

(i) the provisions relating to quantities and timing of deliveries are subject to modification within the range of tolerances allowed under the EEC rules and regulations applicable from time to time;

(j) the buyer undertakes that if terms for the purchase of ACP sugar more favourable to the seller than those accorded to him in the Agreement are agreed by the buyer with any other supplier of ACP sugar, similar terms must be immediately offered to the seller. Further, if any premium in excess of the guaranteed price (pursuant to Articles 5 and 4 (3) of the Protocol) other than a special premium of a fixed amount, is paid by the buyer to any other ACP sugar producer in the light of market conditions, the same premium is to be offered to the seller;

(k) from 1 January 1976, the Agreement does not bind the parties in such a way as to derogate from arrangements to be made between the United Kingdom Government and sugar exporting ACP States under the EEC Council Decision of

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[1] The first, dated 14 July 1976, was published in OJ No L 176, 1. 7. 1976, p. 3, as an Annex to Council Regulation (EEC) No 1654/76, and the second, dated 6 July 1977, was published in OJ No L 168, 6. 7. 1977, p. 43, as an Annex to Council Regulation (EEC) No 1508/77.

19 November 1974 in order to secure — if market conditions make it appropriate — either a supplement to the guaranteed price or an alternative price, on a basis comparable to the one in force in 1975, to ensure a smooth and adequate supply of ACP sugar to the UK;

(l) the Agreement continues in force until 30 June 1980 unless the seller, by notice given in writing to the buyer not later than 1 July 1979, elects to extend its duration to 30 June 1982;

(m) if during any extension of the Agreement the Protocol is reviewed the parties consult together and if necessary, make appropriate adjustments.

The annual agreed quantities prescribed by the Protocol subsequent to June 1975 and the annual quantities to be delivered to the purchasing companies by the exporters in each State under the separate Agreements are as follows:

(in tonnes white value (1))

No of case	States in alphabetical order	Agreed quantity	Quantity for purchasing companies	Option quantity	Special sugars
29.266	Barbados	49 300	19 299	—	5 609
29.267	Belize	39 400	35 460	3 940	—
29.506	Congo	10 000	10 000	—	—
29.270	Fiji	163 600	163 600	—	—
29.268	Guyana	157 700	129 311	14 368	14 021
29.271	India	25 000	25 000	—	—
29.272	Jamaica	118 300	106 470	11 830	—
29.381	Malawi	20 000	5 000	—	—
29.273	Mauritius	487 200	440 464	64 736	—
29.274	St Kitts	14 800	13 320	1 480	—
29.275	Swaziland	116 400	116 400	—	—
29.276	Tanzania	10 000	10 000	—	—
29.269	Trinidad & Tobago	69 000	54 528	6 059	8 413
29.277	Uganda	5 000	5 000	—	—

(1) The white value is calculated by means of a formula applied to raw sugar.

(The above list contains all the Agreements covered by this Decision)

12. As may be seen, two States have contracted to sell less than half their annual agreed quantity; six States have retained an 'option quantity', amounting to approximately 10 % of their agreed quantity, which they may, if they wish, sell to other buyers; three States have retained a further quantity for delivery of traditional special sugars to the EEC and six States have contracted to sell the total of their agreed quantity to the UK refiners. Whether the sellers who have stipulated an option to sell 10 % elsewhere in the Community will do so, depends on the balance of commercial advantage to them.

13. The price to be paid to the sugar producers by the purchasing companies for shipments made up to 31 December 1975 was £ 260 per long ton, the price guaranteed to the producing countries by the UK Government with the authorization of the Community. For shipments made thereafter the price to be paid under the Agreements was to be based on the guaranteed price for raw sugar negotiated under Article 5 (4) of Protocol 3. The price in fact is to be composed of three elements:

(i) an amount not exceeding the price guaranteed by the Community to the exporting States. (This price — expressed in units of account — is negotiated annually between the Community and the ACP countries involved 'within the price range obtaining

in the Community, taking into account all relevant economic factors');

(ii) in certain cases, a small special premium expressed as either a single sum per tonne of sugar supplied in 1975, or as a smaller amount per tonne supplied during each of the five years of the guarantee; and

(iii) a share of any 'market premium' which the purchasing companies may secure in marketing sugar after the deduction of a refining margin.

14. The parties have not fixed the resale prices. Subject to the applicable national and Community rules, the selling prices for sugar refined from the raw cane sugar depend on market conditions in the Community. The price structure involved in the Agreements (see paragraph 13) enables the exporting States to benefit from market prices in excess of the price guaranteed by the Community.

15. The Agreements date from 28 February 1975, with the exception of the Malawi Agreement, which dates from 1 July 1976, and that with the People's Republic of the Congo from 15 July 1977. They are all valid until 30 June 1980 with provision in all cases, except that of the Congo, for a two year extension. This period of validity corresponds to the term of the Lomé Convention, namely five years from the date of its entry into force expiring on 1 March 1980. Negotiations are to be opened 18 months before this date to examine what provisions are to take its place. However Protocol 3, with which this Decision is concerned, was concluded for an 'indefinite period' (Article 1 (1)), and in the event that the Convention ceases to be operative, the sugar supplying States and the Community have agreed to adopt appropriate institutional provisions to ensure a continued application of the provisions of Protocol 3. After 1 March 1980, the Protocol shall remain in force or may be denounced by the Community with respect to each ACP State and by each ACP State with respect to the Community, subject to two years' notice (Article 10).

16. The fact that this Protocol is of indefinite duration (Article 1 (1)), and the fact that the general safeguard clause of the Lomé Convention (Article 10) is not applicable (Article 1 (2)) to it demonstrates the importance attached to it by both the subscribing States and the EEC.

17. This Protocol was concluded by the Community against the background of the EEC sugar policy as applied within the terms of the common agricultural policy. Guaranteed prices and production quotas for beet sugar within the Member States form part of that sugar policy.

Article 39 of the Treaty names, as amongst the specific objectives of the common agricultural policy, the stabilizing of markets, an assurance of the availability of supplies, and ensuring that supplies reach consumers at reasonable prices. The provisions of the Lomé Convention implemented by the provisions of Regulation (EEC) No 3330/74 assist in achieving these objectives by securing an additional source of raw sugar outside the territory of the Community for manufacturers of sugar products situated within the territory of the Community.

18. In so far as the system within the Community is concerned there are three categories of 'quota' within which the sugar producing industry in each Member State must operate. Each Member State is allowed an 'A quota' fixed by the Council of Ministers in each year which the national Government divides up amongst the sugar producers in the State. Each producer is guaranteed the full intervention price — as fixed each year by the Council of Ministers of Agriculture — in respect of his A quota. There is also allocated to each producer a 'B Quota', fixed annually by the Council and expressed as a percentage of the A quota, in respect of which the producer is also entitled to receive the full intervention price but he is in turn obliged to pay a measured percentage of that price — or 'production levy' — back to the Community to assist in meeting the losses incurred in the marketing of such sugar.

The third category is the so-called 'C' sugar and whilst no quantity is mentioned this term applies to all sugar produced over and above the quantities of A quota and B quota sugar in respect of which he is guaranteed an intervention price. C sugar must be sold by the producer outside the Community before a certain date in each year.

A producer who wishes to export A and B quota sugar outside the Community may be entitled to 'export refunds' under the system prescribed in Regulation (EEC) No 3330/74. These export refunds are paid to an exporter successful in a competitive tender for refunds from the EAGGF funds.

III. NON-APPLICABILITY OF ARTICLE 85 (1) OF THE EEC TREATY

19. Article 85 (1) of the EEC Treaty prohibits as incompatible within the common market all Agreements between undertakings and concerted practices which

may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

20. Each of the Agreements concluded between the purchasing companies and the companies in the exporting States are Agreements between undertakings. In order that a proper assessment may be made of their effect within the terms of Article 85 (1) of the Treaty, it is necessary to consider them collectively, as together they effectively harness a significant proportion of the source of supply of raw sugar derived from sugar cane available for refineries within the EEC and which would not be subject to an import levy. These Agreements were each concluded for a period of five years, and, with one exception, were renewable by the seller for a further two years. They are for sale and purchase and their object is to ensure long-term outlets in the Community to the producing countries and long-term supplies for the UK purchasers. There is a provision in all of them for an upward revision of price should any of the sellers obtain a more favourable price than the others.

21. However, there is no indication that the buyer was in any position to exercise a monopoly power. The 'protocol quantity' of raw sugar has to be accepted by the Community, but need not have entered the Community through the existing refineries. These Agreements have been freely entered into by the sellers; there is no restrictive effect going beyond the normal commercial obligations of sellers and buyers to each other contained in this type of long-term contract.

22. There appears to be some interest on the part of sugar beet factories within the Community to acquire part of the preferential sugar and it should be noted in this regard that the Agreements do not prevent supplies being available for other undertakings interested in refining raw sugar. Such supplies remain available from:

(a) approximately 170 000 tonnes of preferential sugar not formally committed under the Agreements (option and other quantities); and

(b) raw cane sugar produced in the French Overseas Departments which are not committed under certain long-term contracts entered into with French refineries.

23. The Agreements have, it should be noted, been concluded under circumstances replacing the earlier arrangements, under which such raw sugar was imported into the Community. These types of long-term contracts are as requested by the developing territories and are considered to be the best mode of continuing traditional patterns of trade in the context of changed circumstances and they are within the objectives contemplated by Article 39 of the Treaty.

24. Considering the matters herein set out, the Agreements of themselves do not have as their object or effect the prevention, restriction or distortion of competition within the common market. Thus they do not fall within the scope of Article 85 (1) of the EEC Treaty.

Application of Article 2 of Regulation No 17

25. The Commission may certify that on the basis of the facts in its possession and having regard to the legal position there are no grounds under Article 85 (1) of the Treaty for action on its part and that a negative clearance — to continue for so long as the position as to fact and law remains as at the date of this Decision — may be given to the Agreements in question.

26. One observation was submitted to the Commission on the part of a third party after publication pursuant to Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 229 of 27 September 1978. It concerned the interest of a Community sugar beet factory to obtain limited supplies of white sugar and does not affect the factual or legal appreciation set forth in this Decision in respect of the Agreements involved.

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the facts in its possession the Commission has no grounds for action under Article 85 (1) of the Treaty establishing the European Economic Community in respect of the 14 Agreements made by Tate & Lyle Refineries Ltd and Manbré Sugars Ltd with the undertakings listed in the Annex to this Decision and notified on the dates therein set out for the long-term supply of raw sugar derived from sugar cane.

Article 2

The Decision is addressed to each of the undertakings listed in the Annex to this Decision and also to:

— Tate & Lyle Refineries Ltd, Leon House, High Street, Croydon, United Kingdom,

— Manbré Sugars Ltd, Winslow Road, Hammersmith, London W6, United Kingdom.

Done at Brussels, 7 December 1979.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX

Date of notification	*Undertaking*	
16. 7. 1976	Barbados Sugar Producers' Association Inc., Eagle Hall, 13 Barbados Barbados Sugar Factories Ltd Inc., Eagle Hall, 13 Barbados Barbados Sugar Exporters' Association, Bridgetown, Barbados	acting jointly and severally
16. 7. 1976	Belize Sugar Industries Ltd, 21 Great Tower Street, London	
16. 7. 1976	The Fiji Sugar Corporation Ltd, Suva, Fiji	
16. 7. 1976	Bookers Sugar Company Ltd (Guyana), 83 Cannon Street, London	
16. 7. 1976	The Sugar Industry Authority of Jamaica, Kingston 10, Jamaica	
16. 7. 1976	The Mauritius Sugar Syndicate, Plantation House, Port Louis, Mauritius	
16. 7. 1976	The St Kitts (Basseterre) Sugar Factory Ltd, Basse Terre, St Kitts	
16. 7. 1976	The Swaziland Sugar Association, Mbabane, Swaziland	
16. 7. 1976	Sugar Development Corporation Tanzania, Dar-es-Salaam, Tanzania	
16. 7. 1976	Caroni Ltd (Trinidad and Tobago), Couva, Trinidad	
16. 7. 1976	Food and Beverages Ltd of Uganda, Kampala, Uganda	
19. 7. 1976	The State Trading Coporation of India Ltd, Chandralok, 36 Yanbath, New Delhi, India	
15. 2. 1977	The Sugar Corporation of Malawi Ltd, Limbe, Malawi	
26. 8. 1977	Société Congolaise Agro-Industrielle, Nkayi, People's Republic of the Congo	

COMMISSION DECISION

of 12 December 1979

relating to a proceeding under Article 85 of the EEC Treaty (IV/223 — Transocean Marine Paint Association)

(Only the English text is authentic)

(80/184/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Articles 4, 6 and 8 thereof,

Having regard to the Decision of 27 June 1967 [2], whereby the Commission gave an exemption pursuant to Article 85 (3) of the Treaty to the Transocean Marine Paint Association, valid until 31 December 1972,

Having regard to the Commission Decision of 21 December 1973 [3], as amended on 23 October 1975 [4], extending the exemption until 31 December 1978,

Having regard to the application for further extension made on 7 December 1978,

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC [5],

Having regard to the notice setting out the main points of the application for extension published in accordance with Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 252 on 6 October 1979,

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 10 of Regulation No 17 on 28 November 1979,

Whereas:

I

1. The Transocean Marine Paint Association ('Transocean') is an association of medium-sized marine paint manufacturers formed in 1959 with the object of manufacturing marine paints of identical composition and distributing and advertising them under the same trademark in a large number of countries so as to establish a world-wide distribution and after-sales service network and hence improve the prospects for competition with other, substantially larger, marine paint manufacturers.

2. The following firms are currently members of the association (listed in chronological order of membership):

Glasurit SA (formerly Urruzola)	— Spain
Astral SA	— France
F. A. C. van der Linden & Co.	— Germany
Pacific Products, Inc.	— Philippines
Spartan Paints Pty Ltd	— Australia
Croda Paints Ltd	— United Kingdom
Veneziani Zonca Vernici SpA	— Italy
North Brunswick Coatings & Chemicals	— USA
Nippon Paint (Singapore) Co. Pte Ltd	— Singapore
Sadolin Industri A/S	— Denmark
Durmus Yasar & Sons	— Turkey
P. T. United Transocean Marine Paint Co.	— Indonesia
Pars Sadolin Chemical Co.	— Iran
Merethe Ring	— Norway
Galleon Paints (SA) Pty Ltd	— South Africa
Copalin SA	— Greece
Toa Paint Co. Ltd	— Japan
Sikkens B.V.	— Netherlands
Consolidated Chemicals Ltd	— New Zealand

The following firms have licensing agreements with the association:

Nippon Paint (Malaysia) Sdn. Bhd.	— Malaysia
Oy Sadolin A.B.	— Finland
Sadolins Paints (E.A.) Ltd	— Kenya
Antillian Paint Factory Ltd	— Netherlands Antilles
Zorka Industries	— Yugoslavia
Montedison (Portugal) Ltd	— Portugal
Copalin Paint Factory	— Egypt

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(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 163, 20. 7. 1967, p. 10/67.
(3) OJ No L 19, 23. 1. 1974, p. 18.
(4) OJ No L 286, 5. 11. 1975, p. 24.
(5) OJ No 127, 20. 8. 1963, p. 2268/63.

3. The departure of the Japanese manufacturer Nippon Paint Co. Ltd has had the effect of substantially reducing Transocean's world-wide sales of marine paints. The Community market share is still below 10 %. Market shares in the individual Member States vary between 5 and 13 %; only in Italy is it as high as 25 %. Even if account is also taken of firms that have economic links with Transocean Members (see Commission Decision of 21 December 1973, OJ No L 19, 23. 1. 1974, p. 18), the picture is still much the same. Montedison has an interest in Veneziani, but its only marine paint business is a distribution firm in Portugal. AKZO, Astral's parent company, does business on the marine paint market through a further subsidiary, Şikkens, which has now become a member of Transocean. Urruzola, a former Transocean member belonging to the BASF Group, has merged with another BASF subsidiary, Glasurit; BASF's only marine paint business is done through Glasurit SA in Spain.

4. Transocean's main competitors are International Red Hand, Hempel, Jotun, Sigma-Coatings and Berger Paints, which are more important than Transocean both in aggregate terms and on individual markets.

5. The main provisions of the Transocean Charter and By-laws are described in the Commission Decision of 21 December 1973; Articles 5 and 8 of the Agreement have been amended as required by Article 2 of the Decision.

Third parties have made no objections subsequent to the publication made under Article 19 (3) of Regulation No 17.

II

6. The exemption given by the Commission can be extended pursuant to Article 8 (2) of Regulation No 17, as the tests of Article 85 (3) are still satisfied. The pooling and coordination of the individual distribution networks of member firms is a suitable and indeed necessary means of enriching the range of goods on offer, improving sales structures in the marine paint industry and promoting intensive competition with the major marine paint manufacturers. The expansion in recent years of the sales and service network for Transocean paints has increased the availability of the products, with a resultant benefit to consumers.

7. The restrictions of competition resulting from the current version of the Transocean charter and By-laws are indispensable for the attainment of these objectives. The territorial protection earlier agreed has now been removed; commission is now payable only where a Transocean member supplies services for another member, and this is acceptable in the special case of cooperation between medium-sized firms competing with large, internationally organized manufacturers. Without this commission arrangement Transocean members would not be ready actively to promote the sale of marine paints under the jointly-owned Transocean trademark instead of under their own trademarks, when for instance the whole or a part of the contract, in the event of ships being built and subsequently repaired, is carried out by another member or involves subsequent contracts in favour of other countries.

8. A share of less than 10 % of a market where there are many other larger and more powerful suppliers does not give the power to eliminate competition in respect of a substantial part of the relevant goods.

9. Experience of the Commission's earlier Decision of 21 December 1973, as amended by the Decision of 23 October 1975, has shown that the obligations therein imposed are appropriate in order to enable the Commission to assess the effects of cooperation between Transocean members in a rapidly changing market for compatibility with the rules on competition in the Treaty.

10. The declaration of exemption should accordingly be extended for eight years to 31 December 1986 and the obligations of the Decisions of 21 December 1973 and 23 October 1975 should again be attached,

HAS ADOPTED THIS DECISION:

Article 1

The declaration of exemption in accordance with Article 85 (3) of the Treaty establishing the European Economic Community, which the Commission issued by its Decisions of 27 June 1967 and 21 December 1973 concerning the Agreement of 1 January 1959 establishing the Transocean Marine Paint Association is hereby extended from 1 January 1979 to 31 December 1986.

Article 2

This Decision is subject to the following obligations:

1. The Commission shall be informed without delay of the following matters:

   (a) any amendment or addition to the Agreement;

   (b) any decision taken by the Board of Directors or the result of any arbitration held, pursuant to the restrictive provisions of the Agreement, and in particular Articles 3 and 9 thereof;

   (c) any change in the composition of membership;

   (d) any link and any changes in such links, present or future, constituted by means of a financial participation amounting to 25 % or more of the share capital or by way of common directors or managers:

      (aa) between members of the Association; or

      (bb) a member of the Association and another enterprise in the paint sector, provided that such non-member carries on business directly or indirectly within the Community in the paint sector, that is to say undertakes business in one or more Member States directly or through a subsidiary undertaking or by means of a joint venture.

2. A report is to be submitted by the Association annually to the Commission on the activities of the Association and in particular on improvements in the production and marketing of marine paint products achieved.

Article 3

This Decision is addressed to the Transocean Marine Paint Association for the attention of the Secretary-General, Mr. W. G. van Aalst, Mathenesserlaan 300, 3021 HV Rotterdam, the Netherlands, and to its members as follows:

Sikkens B.V.
Zevenakkersweg 4,
8191 AA Wapenveld
Netherlands

Astral, Société de Peintures
164, rue Ambroise Croizat
PO Box 140
93204 Saint-Denis, Cedex 1
France

F.A.C. van der Linden & Co.
Fritz-Reuter-Straße 32
2153 Hamburg — Neu Wulmstorf
Germany

Croda Paints Ltd
Bankside
Hull HU5 1SQ
Yorkshire
England

Veneziani Zonca Vernici S.p.A.
Via Malaspina 8
PO Box 550
Trieste 34147
Italy

Sadolin Industri A/S
Industrigrenen 4
PO Box 180
DK - 2635 Ishøj
Denmark

Glasurit SA
Apartado de Correos 17. 001
Embajadores 225/233
Madrid - 5
Spain

Pacific Products, Inc.
Box 406 MCC
Makati, Rizal
Manila
Philippines

Spartan Paints Pty Ltd
594 St Kilda Road
Melbourne 3004
Victoria, Australia

Nippon Paint (Singapore) Co Pte. Ltd
1, First Lokyang Road
Jurong Industrial Estate
Singapore 22
Republic of Singapore

North Brunswick Coatings & Chemicals
PO Box 494
New Brunswick, NJ 08903
USA

Durmus Yasar & Sons
Sanayi Caddesi No 37, Bornova
PO Box 594
Izmir
Turkey

P. T. United Transocean Marine Paint Co. Ltd
Jalan Ancol Barat I/A5/C No 12
Jakarta
Indonesia

Pars Sadolin Chemical Co.
PO Box 314-1658
Teheran
Iran

Merethe Ring Company
Tollbodgaten 23
PO Box 611 — Sentrum
Oslo 1
Norway

Galleon Paints (SA) (Pty) Ltd
PO Box 121
Parow 7500
South Africa

Copalin SA
16, Salaminias Street
Rouf — Athens (T. T. 301/1)
Greece

Toa Paint Co., Ltd
1-29, 2-chome, Dojima-Hama
Kita-ku
Osaka 530
Japan

Consolidated Chemicals Ltd
686 Rosebank Road, Avondale
(Private Bag), Rosebank
Auckland 7
New Zealand

Done at Brussels, 12 December 1979.

For the Commission

Raymond VOUEL

Member of the Commission