COMMISSION DECISION

of 23 December 1977

relating to a proceeding under Article 85 of the EEC Treaty (IV/29.176 — Vegetable parchment)

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

(78/252/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 Decision taken by the Commission on 25 April 1977 to open proceedings of its own initiative in this matter under Article 3 of Regulation No 17,

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

Having regard to the opinion delivered on 9 November 1977 pursuant to Article 10 of Regulation No 17 by the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

A. THE MARKET

1. Production

(1) Vegetable parchment is obtained by immersing high-quality paper in sulphuric acid. This gives translucent paper which is far stronger than the original and is impermeable to fatty substances and, to a substantial extent, water and gas.

(2) Vegetable parchment is used as a protective wrapper for fatty substances (such as butter and lard), other foodstuffs and even dynamite. It is used as a membrane for osmosis and dialysis, as paper for diplomas, as drawing paper, and for greeting cards, etc. There is also a variety of parchment paper which has been processed on one side only and is used in the manufacture of certain wallpapers. However, all these uses represent only secondary, or even marginal uses. The main market is a wrapper for fatty foods, especially butter, and it is with this market only that this Decision is concerned.

(3) Vegetable parchment is often rendered more supple and more translucent by adding small quantities of glycerine, glucose, etc., in the final stages of production. Before it can be used for wrapping butter or other foodstuffs, it has to undergo a number of other processes (coating, printing, cutting, etc.) which are generally carried out by processing companies, printers or wrapping manufacturers.

(4) The most important competitor of vegetable parchment is greaseproof paper, which is obtained by a particular method of refinement of the pulp (normally bisulphite). This paper is also translucent and to a large extent impermeable to fatty substances. It resembles vegetable parchment, but is less water-resistant. It is used for the same purposes but, since it is cheaper, it is particularly popular as a wrapper for greasy foodstuffs.

(5) Official statistics do not give specific figures on vegetable parchment output, which is aggregated with output of other wrapping papers, such as greaseproof and crystal paper [3]. However, output figures can be obtained from national or international trade associations. The table below, showing production trends in Community countries between 1967 and 1973, was produced by the Genuine Vegetable Parchment Association (GVPA) [4].

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

[3] Crystal paper is a transparent paper used chiefly for wrapping flowers.
[4] See paragraph 16 below.

Vegetable parchment output for packaging

(tonnes)

	1967	1968	1969	1970	1971	1972	1973
Belgium	862	—	—	—	—	—	—
Germany	18 540	19 616	19 836	18 336	16 259	15 570	16 357
France	11 890	12 700	12 802	12 378	11 600	12 849	14 305
United Kingdom	15 128	15 086	14 010	13 864	7 475	5 599	6 028
Italy (1)	3 273	2 803	3 563	3 375	3 032	3 935	3 902
Total EEC	49 693	50 205	50 211	47 953	38 366	37 953	40 592
Australia	—	—	—	—	2 476	2 542	2 536
Finland	5 464	6 260	6 249	7 017	7 026	6 876	6 738
Total (GVPA)	55 157	56 465	56 460	54 970	47 868	47 371	49 866

(1) As regards Italy, these figures concern only Burgo, a member of the GVPA, until 1975; they do not include the output of the two other Italian producers (CIMA and CRDM) which have never been GVPA members and whose combined output is 3 000 tonnes.

(*Source:* GVPA)

(6) From 1966 to 1969 the output of vegetable parchment for packaging in the Community remained stable at about 50 000 tonnes. After 1970, Community production decreased gradually, largely because of competition from other wrapping products (greaseproof and polyethylene films, used for certain products hitherto wrapped in vegetable parchment). The increase in production recorded in 1973 was due entirely to the special economic circumstances at that time. From the incomplete facts so far available since 1973 it is nevertheless possible to conclude that this tendency towards a decline in the market is persisting.

(7) Only four Community countries produce vegetable parchment, France, Germany, Italy and the United Kingdom. In 1973 Germany produced some 16 000 and France some 14 000 tonnes of vegetable parchment for wrapping food products. Italy produced some 7 000 tonnes, while the United Kingdom produced only 6 000 tonnes. It can also be seen that after 1967 Belgium ceased producing altogether and that in 1971 British production fell sharply from 13 864 to 7 475 tonnes (see table above).

2. Trade within the Community

(8) The foreign trade statistics published by the Statistical Office of the European Communities (Annexes A 1 to A 3) give a reasonably representative view of trade within the Community in vegetable parchment intended for wrapping food products, even if these statistics do not distinguish between the various kinds of paper and board treated with sulphuric acid. From these tables it can be seen that only the two most important manufacturing countries in the Community, France and Germany, export significant quantities of vegetable parchment. The bulk of these exports is to certain Community countries (Belgium, Denmark, the Netherlands and the United Kingdom) whereas there is virtually no trade between France, Germany and Italy.

3. The undertakings

(9) The description given below of the undertakings concerned is accompanied by an indication of the production of vegetable parchment for packaging. Owing to the statistical difficulties presented by the distinction between various types of parchment, the figures are based on estimates (average production of 1974 and 1975).

(10) In Germany there are four producers of vegetable parchment: Feldmühle AG, 4 P Nicolaus Kempten GmbH, 4 P Rube Göttingen and Schleipen & Erkens AG (hereinafter respectively: Feldmühle, Nicolaus, Rube, Schleipen & Erkens). These undertakings are members of a national trade association which they themselves created: the 'Vereinigung Echt Pergament'.

(11) Output is divided among these manufacturers as follows: Feldmühle: 5 000 tonnes; Nicolaus: 5 000 tonnes; Rube: 2 000 tonnes; Schleipen & Erkens: 8 000 tonnes. Henkel was also manufacturing vegetable parchment before 1973 but is no longer doing so.

(12) Until 1970 there were four vegetable parchment manufacturers in France: Canson & Montgolfier, Dalle & Lecomte, Les Papeteries Alamigeon & Lacroix (hereinafter Alamigeon) and Vizille. Vizille ceased to produce vegetable parchment in 1970. In 1974 Canson & Montgolfier, which only produced about 1 000 tonnes a year, likewise ceased production. Accordingly there are now only two vegetable parchment manufacturers in France — Alamigeon, with an annual output of between 2 000 and 3 000 tonnes, and Dalle & Lecomte, with an output of around 10 000 tonnes.

(13) The French manufacturers have also formed a trade association, the Syndicat des Fabricants de Papiers Sulfurisés, to which they have all belonged in the past; the two remaining producers are still members.

(14) In the United Kingdom there is currently only one manufacturer of vegetable parchment, Wiggins Teape Ltd. Its annual output is around 6 000 tonnes. Before 1971 the Inveresk group also produced vegetable parchment, and the two firms were producing similar quantities. In 1971 Inveresk abandoned production of vegetable parchment.

(15) In Italy three undertakings manufactured vegetable parchment up to 1975. They were CIMA and CRDM, which together produce around 2 000 tonnes and Cartiere Burgo, which ceased production in 1975, when its annual output was no more than 1 500 to 1 800 tonnes.

(16) All manufacturers, except CIMA and CRDM and since 12 February 1975 Wiggins Teape are members of the Genuine Vegetable Parchment Association (GVPA) or were members until they stopped producing vegetable parchment. This international trade association has its headquarters in Sweden and its members also include the Finnish firm G. A. Serlachius OY, whose Kangas factory produces some 7 000 tonnes of vegetable parchment, and, since 1971, the Australian undertaking Associated Pulp and Paper Mills Ltd., which has an annual output of some 2 500 tonnes.

B. THE CONDUCT OF THE MANUFACTURERS

1. **Supply to the British market**

(17) On February 4, 1971 a general meeting of GVPA members was held in Paris at the request of the British manufacturers. Page 2, paragraph 3 of the record of the meeting drawn up by the GVPA Secretariat states:

(18) 'The Chairman informed the meeting of the background for this meeting, which had been called upon a request from British members. It was reported that British Vegetable Parchment Mills Ltd (Inveresk) will cease the production of vegetable parchment at the Northfleet mill in March 1971. Wiggins Teape will thereafter service the entire markets in the UK as well as in the Irish Republic. From May 1971 and onwards Wiggins Teape will need to supplement their own production by quantities acquired from other producers of vegetable parchment'.

(19) On 22 March 1971, a month-and-a-half after the Paris meeting, Wiggins Teape sent all its customers and Inveresk's former customers a letter informing them that following Inveresk's decision to cease production Wiggins Teape accepted the responsibility of ensuring continuity of supplies to all users in the United Kingdom and had secured adequate additional supplies from other European producers. The letter further states that the 18% import duty [1] would be averaged across all UK supplies, including those from Wiggins Teape's own mill.

(20) In this connection, consideration of the import statistics drawn up by Wiggins Teape, which were obtained in the course of investigations into the firm, shows that since January 1972 Wiggins Teape has received vegetable parchment from the following manufacturers: Alamigeon, Dalle & Lecomte, Feldmühle, Nicolaus, Schleipen & Erkens, Serlachius (Kangas). This last producer made one single delivery of only six tonnes in

[1] At Wiggins Teape's request these customs duties were suspended on 1 January 1972.

1972. The total tonnage supplied to Wiggins Teape was 1 240 in 1972, 1 374 in 1973 and 1 168 in 1974. The breakdown of these figures by country of origin gives the following table:

(tonnes)

	France	Germany	Finland	Total
1972	542	691·7	6·3	1 240
1973	792·6	581	—	1 373·6
1974	695	473·2	—	1 168·2

(21) Apart from the quantities delivered to Wiggins Teape, French and German manufacturers imported no other vegetable parchment into the UK. (It should be stated that the GVPA does not consider deliveries to Wiggins Teape by other European countries as genuine exports and therefore does not enter them in its export records (see paragraph 38 below)). This absence of other purchasers than Wiggins Teape is not contradicted by European external trade statistics (Annexes A 1 to A 3); the differences in the statistics may be accounted for by deliveries by French and German distributors or processors.

(22) On the Irish market, as can be seen from GVPA export statistics, roughly 90% of the vegetable parchment used in 1973 and 1974 came from Wiggins Teape, the remaining 10% being supplied by Schleipen & Erkens.

(23) As far as access to the British market is concerned it should be noted that a duty of 18% on imported vegetable parchment and different manufacturing standards could be regarded as obstacles to the direct supply of this market by continental producers.

2. The absence of trade between national markets

(24) On 6 September 1966 the GVPA held an extraordinary general meeting in Hamburg to consider Wiggins Teape's proposal to abandon production of vegetable parchment at the Nivelles Mill in Belgium, belonging to Wiggins Teape Belgium, in return for compensation for the market share thus released for other member producers.

(25) The record of this meeting, drawn up by the Burgo representative, states that, following a review of the situation in the Belgian and Dutch markets, the GVPA members reached agreement on the following points:

(26) 1. With the closure of production at Wiggins Teape's Belgian mill, the Belgian market, hitherto reserved for Wiggins Teape Belgium, was henceforth a free export market, open to all other producers on the following terms:

— for three years, sales to Belgian customers would have to be made through Wiggins Teape Belgium's sales organization,

— for three years, firms exporting to Belgium would be required to pay 15 % commission to Wiggins Teape;

(27) 2. The Dutch market, which had been shared until 1966 between Belgian and German manufacturers, was to become a free export market and no compensation was payable to Wiggins Teape; the same applied to Wiggins Teape Belgium's quota on the other export markets;

(28) 3. GVPA would calculate price schedules for Belgium and the Netherlands as had already been done for the other export markets (see below, paragraphs 40 to 52).

(29) The export tables drawn up by the GVPA showing all quantities of vegetable parchment exported by member manufacturers to the various countries (see below, paragraph 38) mention no exports by member producers to their respective competitors' countries (France, Germany, and Italy).

(30) The fact that, with the exception of supplies to Wiggins Teape from other European producers, there is no trade in vegetable parchment between the four Community manufacturing countries is generally confirmed by official external trade statistics (Appendix A1 to A3), bearing in mind the fact that the latter also include the exports of processors and distributors which are not members of the GVPA.

(31) On 27 March 1972 the GVPA wrote to Burgo informing it that, at the request of the German manufacturers, an extraordinary meeting of the French and German members of the GVPA would be held in Düsseldorf on 19 April 1972 to consider a problem arising from increased vegetable parchment sales to Germany, apparently from a non-member French undertaking (Papeteries de Montévrain).

(32) On 19 June 1973 the French and German manufacturers informed the 25th GVPA general meeting that 63 tonnes of vegetable parchment had been exported from Italy to France in April that year and that there also appeared to have been exports from Italy to Germany. Samples had indicated that the vegetable parchment may have been manufactured by CIMA, and therefore 'the members concerned asked that action be taken, if possible, against CIMA so as to prevent these exports or at least to have them notified to the countries concerned' (1).

(33) Trade between the four countries in the Community which produce vegetable parchment is also characterized by the following factors:

(a) More exacting German standrads (DIN standards and the particular requirements of the Deutsches Milch-Kontor);

(b) In France and Italy the price levels for this product are generally lower than the German producers' cost price.

3. The exchange of information on export quantities and prices

(June 1973 to end of 1974)

(34) Article 1 (c) of the most recent version of the statutes of the GVPA, dated 26 September 1962, requires members to exchange 'information on production, research, development, consumption and terms of sale relating to genuine vegetable parchment'.

(35) In practice information is exchanged in two stages: first, individual information is supplied by each company to the GVPA Secretariat; second, the same information, whether collated or not, is then sent to all member undertakings.

(a) *Notification of export quantities and prices to the GVPA*

(36) GVPA members regularly sent copies of all invoices for export sales to the GVPA secretariat. This practice is mentioned at Item 1 (c) of the record of the GVPA meeting of 6 September 1966 drawn up by the Burgo representative, where it is indicated that: 'as the export invoices of all members have been sent to the GVPA it will be easy to do the necessary accounts' (2). It is also mentioned in the annex to the minutes of the 25th GVPA general meeting held at Evian on 19 June 1973, drawn up by the GVPA Secretariat, the text of which reads: 'Ref. 19 June 1973:

(1) As hitherto copies of invoices and a monthly report of the tonnage exported are to be sent to the secretariat.

(2) Copies of order confirmations are to be sent personally to Mr H. Wittefeldt without any accompanying letter'

(37) Furthermore, member manufacturers who are traditional 'price leaders' in those markets described by the GVPA as 'free export markets' (see below, paragraphs 40 to 52) sent price schedules which they applied in those markets to the GVPA secretariat. Nicolaus, for instance, calculated and sent the schedules applicable in the Netherlands each time a decision to raise prices was taken within the GVPA, while Dalle & Lecomte did the same for Belgium, as did Serlachius for Denmark and the other Scandinavian countries.

(1) Translated from the minutes of the meeting on 19 June 1973. The original reads: 'I partecipanti interessati hanno chiesto se è possibile intervenire presso la CIMA per fermare queste esportazioni o almeno per ottenere che le stesse vengano segnalate ai paesi interessati'.

(2) *Original text:* 'Poiché copia delle singole fatture di esportazione di tutte le cartiere associate vengono da sempre già inviate regolarmente alla GVPA, sarà agevole fare in conteggi relativi'.

(b) *The sending of this information to member undertakings*

(38) From export invoices regularly sent to it, the GVPA secretariat established statistical tables setting out the tonnages exported by each producer. More particularly the tables set out the monthly tonnages of vegetable parchment exported to the various countries by each member manufacturer and the aggregates for each year beginning on 1 January. They were sent regularly to all member manufacturers by the GVPA secretariat.

(39) In addition, as soon as the GVPA secretariat received the price schedules established by manufacturers and described in paragraph 37 above, it sent them to the other member manufacturers, as can be seen from the actual examples enumerated below in relation to the export price-fixing procedure.

4. Export price-fixing

(40) An increase in prices for 'free export markets', i.e. for countries in which no member manufacturer is established, was generally effected in two stages. First, the GVPA members at their general meeting fixed the rate of increase and the date on which the new prices were to become applicable; secondly, the price-leaders in each market would send to the GVPA secretariat for circulation to the other members the price schedules based on the rate of increase previously decided.

(41) Although certain manufacturers (Alamigeon, Burgo and Wiggins Teape) participated in the meetings where it was decided to increase prices for certain Community export markets, they made hardly any sales to such markets either because of insufficient capacity or because their product was too poor a quality for customers in Belgium, Luxembourg, Denmark or the Netherlands.

(42) At the 25th GVPA general meeting held at Evian on 19 June 1973 the members of the association informed each other of the prices in each of their countries; they agreed the percentage increases that would apply from 2 July that year to export prices for Community markets. These increases are mentioned in the minutes of the meeting drawn up by the Burgo representative and are 6 % for Belgium, 8 % for Denmark and 8 % for the Netherlands.

(43) On 5 and 9 July 1973 the GVPA sent all members price lists applying in European markets and dollar markets (countries of Eastern Europe and overseas); these lists, from Dalle &Lecomte (for BLEU), from Nicolaus (for the Netherlands), from Serlachius (for Denmark) and the GVPA itself (for the other markets), incorporated the increases decided at the meeting of 19 June, the rates of which were indicated in the minute made by the Burgo representative, being moreover clearly marked on the flyleaf of the forwarding document.

(44) The GVPA members, at a meeting in Copenhagen on 20 September 1973, according to the minute made by the Burgo representative, decided after a long discussion of price levels to increase their dollar export prices by 10% with immediate effect and all export prices by a further 10% with effect from 1 January 1974.

(45) The price-lists sent by the GVPA to its members confirm these increases:

(a) a note dated 20 September 1973 transmitted the Nicolaus price list applicable in the Netherlands, incorporating with effect from 1 January 1974 the 10 % increase which had been decided at the meeting of 20 September 1973;

(b) a note dated 27 September 1973 transmitted:

— the price lists applicable in the dollar area, including those European countries which quoted their exports in dollars; this list included the 10% increase decided upon in Copenhagen on 20 September and an additional 10% increase to take effect from 1 January 1974,

— the price lists applicable in Northern Europe, Austria, Switzerland and the franc area, the latter two of which incorporated the 10% increase decided on

in Copenhagen to take effect from 1 January 1974;

(c) a note dated 16 November 1973 gave the price list of Dalle & Lecomte for Belgium, incorporating an increase of approximately 9%. Here it should be mentioned that, as can be seen from the minutes of the meeting drawn up by the Burgo representative, Mr Dalle was not entirely in agreement with the 10% increase for Belgium and reserved his right to make a smaller increase;

(d) the price list of Serlachius applicable in Denmark was transmitted on 2 April 1974. It also incorporated the 10% increase decided on 20 September 1973.

(46) At the meeting in Copenhagen on 31 January 1974 the delegates, after informing each other of the prices charged in their respective countries, decided to apply a surcharge of $ 79 per tonne to offset the rise in energy costs. It was also recommended that supplies be restricted so that maximum advantage could be taken of the increases which were due to be decided at the meeting of 1 March and put into effect in April. The GVPA's covering note of 4 February drew attention to the decision to apply the surcharge and specified 1 April as the effective date.

(47) At the meeting in Copenhagen on 1 March 1974 the decision to apply the $ 79 surcharge from 1 April was confirmed and it was further decided that export prices would be raised by 5%.

(48) The price list of Serlachius of 1 March 1974 for Denmark incorporated these increases. Similarly the price lists transmitted by GVPA on 8 March for markets outside the EEC, on 15 March for the franc area, and on 18 March for the BLEU incorporated the increases decided at the meeting of 1 March 1974. The price schedule calculated by Nicolaus for the Netherlands included, in addition to the above surcharge, an increase of 8% in price rather than the 5% which had been agreed. In this connection Nicolaus indicated at the top of its new list for prices applicable to the Netherlands from 1 April 1974 which was sent to GVPA that, owing to the increase in raw material and manpower costs, it had been forced to raise its prices to the present levels.

(49) At the general meeting held on 16 May 1974 in Cascais, Portugal, GVPA members informed each other of the prices charged on their domestic markets and decided that prices on all export markets would be raised by 15% plus an additional increase averaging between 7 and 8%, with a minimum of 5% for those countries where prices were lowest.

(50) These increases are confirmed by the GVPA note dated 27 May 1974 to its members and by the price lists drawn up by:

— Serlachius on 16 May 1974 for Denmark,

— Dalle & Lecomte on 1 July 1974 for Belgium,

— Nicolaus on 28 May 1974 for the Netherlands.

(51) Finally, at the Promotion Committee meetings in Munich on 30 October 1974 it was decided that export prices would be raised from 1 January 1975 by:

— $ 125 per tonne for overseas countries,

— 10% for Scandinavian countries,

— 8% for other countries in Europe.

(52) These increases are confirmed by notes and price lists sent out by GVPA dated:

— 4 November 1974, in a note transmitting the Serlachius price lists for Denmark, the other Scandinavian countries, Austria and Switzerland,

— 19 November 1974, in a note transmitting the price lists for the Netherlands,

— 26 November 1974, in a note transmitting the price lists for Belgium and the franc area.

II. APPLICABILITY OF ARTICLE 85 (1) OF THE EEC TREATY

(53) Article 85 (1) of the EEC Treaty 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.

(54) Some of the facts outlined above relate to past acts in respect of which the limitation period for the imposition of fines has lapsed. Furthermore,

the Commission can only find that there have been infringements where the facts in its possession furnish sufficient proof. The Commission has accordingly confined itself to those infringements considered below:

1. The conduct of GVPA members in relation to the British market

(55) The extract from the record of the GVPA meeting of 4 February 1971 cited above (paragraph 18) makes it clear that, following the ending of production at Inveresk, Wiggins Teape wished to reserve the entire British and Irish markets for itself and proposed making up for any shortfalls in its own output by placing orders with other GVPA member manufacturers.

(56) The letter dated 22 March 1971 from Wiggins Teape to all its customers and to former customers of Inveresk shows that other European manufacturers agreed to supply Wiggins Teape with the quantities of vegetable parchment which it required in order fully to meet British demand.

(57) Consideration of the official external trade statistics (see above, paragraphs 20 and 21) indicates that, although Wiggins Teape failed to maintain control over the entire Irish market, since certain customers there were supplied direct by Schleipen & Erkens, on the British market European manufacturers supplied only Wiggins Teape and refrained from supplying users directly.

(58) Even on the assumption that the 18% duty on vegetable parchment imports into Britain could make the task harder for continental manufacturers desiring to sell in the British market, the fact remains that British users were bound to obtain a large part of their requirements from abroad. In any event, the existence of this customs duty is no longer a valid argument after its suspension on 1 January 1972. Moreover, continental manufacturers delivering relatively large quantities of vegetable parchment to Wiggins Teape over several years were easily able to meet British technical standards and the specifications of British users.

(59) These facts confirm therefore that from May 1971 to December 1974 there was a concerted practice between Wiggins Teape and the member manufacturers of the GVPA, who delivered vegetable parchment regularly to the British undertaking. The concerted practice consisted in the continental manufacturers (Alamigeon, Dalle & Lecomte, Feldmühle, Nicolaus and Schleipen & Erkens) refraining from supplying other United Kingdom users while at the same time agreeing to supply Wiggins Teape with the quantities of the product it needed to fill its production gap and thus meet the entire British demand for vegetable parchment.

(60) The object and effect of a concerted practice of this nature was, at any rate from 1 January 1973 (the date of the accession of the United Kingdom to the EEC) to restrict competition within the common market, for it prevented Wiggins Teape's competitors in the Community from supplying vegetable parchment direct to British distributors and users.

(61) In thus restricting the freedom of French, German and Italian producers to export to the British market, the practice is also liable to affect trade between Member States.

(62) The fact that around 20% of its customers needs could not be supplied by Wiggins Teape because of insufficient capacity (6 000 tonnes) shows that continental producers had the opportunity to make substantial deliveries directly to British customers. It is therefore evident that this concerted practice restricted competition and did affect intra-Community trade to an appreciable extent.

2. Exchange of information on exports and prices

(63) (a) The collection and analysis of figures with the object of preparing output and sales statistics within an industry may be a task properly assigned to statistical offices and trade associations working together with undertakings. There is therefore no objection where

national or European trade associations representing the same interests but in different countries organize the exchange of statistical information giving a picture of the output and sales of the relevant industry without identifying individual undertakings.

(64) The same principles apply when statistics of a general nature are itemized in more detail than official statistics in respect of products and time. Undertakings which exchange statistics of this nature must expect that the Commission will examine the situation very closely, having regard to the limited number of competitors, should developments in that market give rise to the suspicion that, in particular, concerted practices may exist for the tacit sharing of markets of the fixing of prices.

Moreover, even at the stage of the collection of data the regular sending to the secretariat of an association of undertakings of invoices or other individual data normally regarded as business confidences would be an indication of such concerted practices. Such data are not necessary even for the preparation of monthly statistics (see paragraph 36 above) since in such cases it is sufficient to send only totals from invoices during the relevant period to the collecting agency.

(65) However, in the present case where the system of reciprocated exchange of statistical data includes the communication to competitors of information relating to individual undertakings, such a system is sufficiently characterized as a concerted practice prohibited by Article 85 (1). This sort of arrangement, which gives the exports for each member undertaking, makes it possible to establish what form of conduct the relevant firms are practising on individual markets and instals a system of solidarity and reciprocated influence between the participants leading to the coordination of their economic activities. They replace the normal risks of competition by practical cooperation leading to conditions which differ from those obtained in a normal market. Conduct such as this is contrary to Article 85 (1) and is not covered by the Commission Notice on cooperation between undertakings [1], and particularly paragraph II.1. thereof.

(66) The fact that such information agreements have the effect of making more complete market information available in no way invalidates this conclusion. The undistorted competition aimed at by the EEC Treaty is incompatible with artificially created market conditions in which, as in the present case, a distorted market transparency eliminates certain competition risks in such a way as to benefit solely the seller and not the buyer.

(67) (b) The only possible explanation for the exchange of information as to selling prices is the desire to coordinate market strategies and to create conditions of competition diverging from normal market conditions by substituting practical cooperation for price competition. In this case the undertakings concerned are naturally led to adapt their own export pricing policy to that of undertakings enjoying a pre-eminent market position in the importing country and having close ties with the resident national distributors.

(68) In the absence of such an exchange of information, producers who wish to export to these countries could, perhaps, by acting through a third party, obtain their competitors' price lists, but this would be more complicated and more time-consuming. It may therefore be assumed that the spontaneous communication of important information on prices artificially alters the conditions of

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[1] OJ No C 75, 29. 7. 1968, p. 3.

competition and tends to establish a system of solidarity and mutual influence between competitors.

(69) The practices described above, whereby GVPA member manufacturers inform each other of export quantities and prices, constitute concerted practices which have the object of distorting and restricting competition in the common market.

(70) They are liable to affect trade between Member States since each of the undertakings participating in the exchange of information about export quantities and prices will tend to work out its pricing and sales policies by reference to those of the other undertakings involved, with the result that the natural trade flows between Member States are artificially altered to an appreciable extent.

3. Export price-fixing

(71) The conduct of the GVPA and its members, described in paragraphs 40 to 52, in convening several meetings each year to set the rate of increase of the selling price of vegetable parchment in the Benelux and Danish markets constitutes a concerted practice which is clearly within Article 85 (1) (a).

(72) This practice seriously restricts competition in the common market for vegetable parchment, since it seeks to affect precisely the free export markets in the Community where, unlike the domestic markets of GVPA members, there are no special standards.

(73) The existence of the infringement is in no way affected by the fact that certain manufacturers have sometimes sold goods in these markets at prices lower than those indicated in the price lists, which were sent to all GVPA members. Every increase in price was introduced by the undertakings concerned on the same dates as those decided upon at their meetings, and the real rates of increase were very close to those which were agreed. Even if certain GVPA member manufacturers did not supply any parchment in the Benelux, Danish and Dutch markets (see paragraph 41 above) the mere fact that these undertakings took part in the discussions by which the price levels for those markets were fixed, and that they regularly received the price lists for those markets, constitutes an infringement of Article 85 (1); in effect such behaviour implies the acceptance of a restriction of competition possibilities on the part of the firms concerned.

III. INAPPLICABILITY OF ARTICLE 85 (3) OF THE TREATY

(74) Under Article 85 (3) of the EEC Treaty, 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 and any concerted practice or category of concerted practices which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives or afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

(75) The concerted practices described in paragraphs 55 to 73 and which consisted in aiding Wiggins Teape to corner the British market by delivering to that firm only and in giving information on export quantities and prices and in jointly agreeing the rates of increase in export prices, should have been notified in order to qualify for exemption under Article 85 (3). In the absence of such notification, a grant of exemption is precluded by Article 4 (1) of Regulation No 17.

(76) However, even if the concerted practices had been notified, the Commission takes the view that an exemption under Article 85 (3) could not have been given. Since the object of these practices was to refrain from competing with a

member undertaking in its domestic market, to exchange individual information on export quantities and prices and to fix uniform prices in certain export markets, they cannot bring about an improvement in production or distribution such as might benefit the consumer.

IV. APPLICABILITY OF ARTICLES 3 AND 15 (2) OF REGULATION No 17

(77) The infringements of Article 85 found by the Commission are as follows:

(78) 1. Alamigeon, Dalle & Lecompte, Feldmühle, Nicolaus and Schleipen & Erkens and Wiggins Teape, have engaged in a concerted practice which consisted of the French and German undertakings not supplying vegetable parchment to other British users while at the same time providing Wiggins Teape with the quantities it needed to meet the shortfall in its production, thereby enabling that firm to supply directly the entire British market on its own;

(79) 2. The French and German manufacturers, together with Burgo, Wiggins Teape and Selachius, have engaged in a concerted practice which consisted of regularly exchanging information on export quantities and prices and informing each other of their respective price levels;

(80) 3. The manufacturers mentioned in the preceding paragraph (Burgo, Wiggins Teape and Serlachius) have engaged in the concerted fixing at periodic intervals of selling prices in the Belgo-Luxembourg, Danish and Dutch markets.

(81) Article 15 (2) (a) of Regulation No 17 empowers the Commission by decision to impose on undertakings fines of 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, where, either intentionally or negligently, they infringe Article 85 (1) of the EEC Treaty. In fixing the amount of the fine, regard is to be had both to the gravity and to the duration of the infringement.

(82) In view of the economic circumstances, the conduct of Wiggins Teape and the French and German manufacturers in the British market does not appear to have serious repercussions on supplies to customers. It is very likely that after the Inveresk factory closed, the continental manufacturers would have had great difficulty in increasing their own outlets in the British market, having regard to the tendency towards market decline and particularly if Wiggins Teape had not actively sought the suspension of the 18% customs duty. It is not necessary therefore to impose a fine on the undertakings participating in this infringement.

(83) The practice by members of the GVPA of mutually informing each other on their own export quantities and on the level of their prices is an infringement which has not necessarily been committed intentionally. At the time in question the rules of competition of the EEC Treaty had not been sufficiently developed by decisions of the Commission in this field. The conditions for imposing a fine under Article 15 (2) of Regulation No 17 are accordingly not fulfilled.

(84) However, in jointly fixing the rate of increase of the selling prices on the Belgo-Luxemburg, Danish and Dutch markets, the GVPA members could not fail to realize that they were seriously infringing the Treaty rules on competition. Manufacturers wanting to sell in these markets were able by this concerted practice to maintain their market position without fear of competition from other participants. A fine should therefore be imposed on these manufacturers — Dalle & Lecomte, Feldmühle, Nicolaus, Rube, Schleipen & Erkens and Serlachius. The position of Alamigeon, Burgo, and Wiggins Teape is not quite the same, since the latter were not directly concerned in the markets in question (see paragraph 41 above), and their role in this matter was insignificant.

(85) The period to be considered when determining the amount of the fine runs from 19 June 1973 (the 25th general meeting of the GVPA at Evian) to 30 October 1974 (meeting of the Promotion Committee in Munich). In order to decide the extent of each undertaking's participation in this concerted practice, it is necessary to consider its

sales volume in the markets concerned and their total output of vegetable parchment, described in paragraphs 9 to 16 above. In this respect it should be noted that during the period in question (1973/74) such sales exceeded 3 000 tonnes in the case of Dalle & Lecomte, 2 000 tonnes for Nicolaus and Schleipen & Erkens and were around 100 tonnes for Feldmühle and Serlachius. Sales by Rube were less than 40 tonnes. Account should also be taken of the conduct of the undertakings concerned in the fixing of prices and in particular of the moderating role assumed in 1973 by Dalle & Lecomte (see paragraph 45 above). In view of these various factors it seems appropriate to impose fines in the amounts indicated in Article 2 of this Decision.

HAS ADOPTED THIS DECISION:

Article 1

1. Alamigeon, Dalle & Lecomte, Feldmühle, Nicolaus, Schleipen & Erkens and Wiggins Teape infringed Article 85 (1) of the EEC Treaty from 1 January 1973 to the end of 1974 by engaging in a concerted practice whereby the French and German undertakings agreed to supply Wiggins Teape with vegetable parchment on the British market to the exclusion of all others.

2. Alamigeon, Burgo, Dalle & Lecomte, Feldmühle, Nicolaus, Rube, Schleipens & Erkens, Serlachius and Wiggins Teape infringed Article 85 (1) of the EEC Treaty from June 1973 to the end of 1974 by engaging in a concerted practice whereby they exchanged information on the quantities exported by each undertaking and informed each other of their price levels.

3. The vegetable parchment manufacturers listed in paragraph 2 infringed Article 85 (1) of the EEC Treaty between June 1973 and the end of 1974 by engaging in the practice of periodically meeting to fix the rates of increase in prices in the Belgo-Luxembourg, Danish and Dutch markets in concert.

Article 2

The following fines are imposed on the undertakings which have participated actively in the infringement found in Article 1 (3) hereof:

1. For Dalle and Lecomte, a fine of 25 000 (twenty-five thousand) units of account or 138 855 (one hundred and thirty-eight thousand eight hundred and fifty-five) French francs;

2. For Feldmühle, a fine of 15 000 (fifteen thousand) units of account or 54 900 (fifty-four thousand nine hundred) German marks;

3. For Nicolaus, a fine of 25 000 (twenty-five thousand) units of account or 91 500 (ninety-one thousand five hundred) German marks;

4. For Rube, a fine of 10 000 (ten thousand) units of account or 36 600 (thirty-six thousand six hundred) German marks;

5. For Schleipen & Erkens a fine of 25 000 (twenty-five thousand) units of account or 91 500 (ninety-one thousand five hundred) German marks;

6. For Serlachius a fine of 15 000 (fifteen thousand) units of account or 63 000 (sixty-three thousand) Finnish marks.

Article 3

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

The fines imposed under Article 2 shall be payable to the following Commission accounts within three months following the date of notification of this Decision:

(a) For Dalle & Lecomte:

Société générale, Direction de l'étranger
29, boulevard Haussmann,
F-75454 Paris Cedex 09
Compte no. 0699.2000-00150734050
C.C.E. Bruxelles;

(b) For Feldmühle, Nicolaus, Rube and Schleipen & Erkens:

Deutsche Bank
Köningsallée 45
D-4000 Düsseldorf
Konto Nr. 2399095;

(c) For Serlachius:

Banque Bruxelles Lambert
310-0231000-32
C.C.E. Bruxelles.

Article 4

This Decision is addressed to:

Papeteries Alamigeon & Lacroix SA, Collas, France;

Papeteries Dalle & Lecomte SA, Bousbecque, France;

Cartiere Burgo SpA, Turin, Italy;

Feldmühle AG, Düsseldorf, Germany;

4 P Nicolaus Kempten GmbH, Kempten, Germany;

4 P Rube Göttingen GmbH, Göttingen, Germany;

Schleipen & Erkens AG, Jülich, Germany;

G. A. Serlachius OY, Mänttà, Finland;

Wiggins Teape Limited, London, United Kingdom.

Done at Brussels, 23 December 1977.

For the Commission

Raymond VOUEL

Member of the Commission

ANNEX A 1

EXPORTS OF VEGETABLE PARCHMENT 1972

NIMEXE 4803.10

(tonnes)

Destination	Origin								
	EUR 9	Germany	France	Italy	Netherlands	BLEU	United Kingdom	Ireland	Denmark
World	10 531 (1)	6 265	3 939	247	53	27	na	na	na
EUR 9	na	3 680	2 017	188	53	28	na	na	na
Germany	163	—	45	61	46	8	3	—	—
France	25	—	—	—	4	19	2	—	—
Italy	—	—	—	—	—	—	—	—	—
Netherlands	1 707	1 470	149	87	—	1	—	—	—
BLEU	1 496	225	1 226	40	3	—	2	—	—
United Kingdom	na	711	597	—	—	—	—	na	na
Ireland	na	24	—	—	—	—	na	—	na
Denmark	na	1 250	—	—	—	—	na	na	—

(1) Only the six countries of the former European Community.
(— = none).
(na = not available).

ANNEX A 2

EXPORTS OF VEGETABLE PARCHMENT 1973

NIMEXE 4803.10

(tonnes)

Destination	Origin								
	EUR 9	Germany	France	Italy	Netherlands	BLEU	United Kingdom	Ireland	Denmark
World	12 072 (1)	6 892	4 589	517	54	20	na	na	na
EUR 9	na	3 204	2 443	450	54	20	na	na	na
Germany	160	—	24	90	43	3	—	—	—
France	144	9	—	124	—	11	—	—	—
Italy	—	—	—	—	—	—	—	—	—
Netherlands	1 484	1 263	181	34	—	6	—	—	—
BLEU	1 689	121	1 355	202	11	—	—	—	—
United Kingdom	na	544	883	—	—	—	—	na	na
Ireland	na	—	—	—	—	—	na	—	na
Denmark	na	1 267	—	—	—	—	na	na	—

(1) Only the six countries of the former European Community.
(— = none).
(na = not available).

ANNEX A 3

EXPRTS OF VEGETABLE PARCHMENT 1974

NIMEXE 4803.10

(tonnes)

Destination	Origin								
	EUR 9	Germany	France	Italy	Netherlands	BLEU	United Kingdom	Ireland	Denmark
World	15 033	7 377	5 505	1 326	140	48	563	20	54
EUR 9	7 734	3 497	2 870	846	60	45	385	20	11
Germany	1 092	—	478	553	60	—	1	—	—
France	277	210	—	49	—	18	—	—	—
Italy	9	6	3	—	—	—	—	—	—
Netherlands	1 763	1 324	231	180	—	27	1	—	—
BLEU	1 611	139	1 409	63	—	—	—	—	—
United Kingdom	1 306	525	750	—	—	—	—	20	11
Ireland	407	24	—	—	—	—	383	—	—
Denmark	1 271	1 271	—	—	—	—	—	—	—

(— = none).