COMMISSION DECISION

of 16 December 1985

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/30.839 — Sperry New Holland)

(Only the English, Dutch and Greek texts are authentic)

(85/617/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty (1) as last amended by the Act of Accession of Greece, and in particular Articles 3 (1) and 15 (2) thereof,

Having regard to the application for a finding of an infringement submitted on 17 December 1982 pursuant to Article 3 of Regulation No 17, by W. Burns Tractors Ltd of Peebleshire, Scotland,

Having regard to the notification on 29 June 1973 pursuant to Article 4 of Regulation No 17 of a form of agreement between Sperry New Holland UK and its dealers,

Having regard to the Commission Decision of 5 September 1984 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 (2),

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

I. THE FACTS

The parties

1. Sperry New Holland is a division of the Sperry Corporation which is a company incorporated in Pennsylvania, USA. The Sperry Corporation's consolidated revenue for 1984 was approximately US $ 5 000 million of which Sperry New Holland contributed 15 % (US $ 728,5 million). Sperry New Holland is one of the leading manufacturers of combine harvesters and other agricultural machinery. In 1984, which was recognized to be a difficult year for manufacturers of agricultural machinery, Sperry New Holland realized worldwide operating profits of US $ 71,8 million. Its turnover in such machinery in the common market was ... ECU (3) in 1984 (or ... ECU excluding turnover in the UK).

2. The most important Sperry subsidiary operating in the agricultural machinery sector in the Community is Sperry New Holland-Sperry NV (SNH NV) located at Zedelgem in Belgium. SNH NV manufactures *inter alia* combine harvesters and is responsible for the distribution of Sperry New Holland products in Belgium in accordance with agency agreements concluded with its appointees.

3. SNH NV is also responsible for coordinating the activities of other Sperry New Holland subsidiary companies or Sperry New Holland operating divisions in the Community. These are:

   (i) Sperry New Holland Division of Sperry Ltd, Aylesbury, Bucks, (also responsible for Eire) (SNH UK);

   (ii) Sperry New Holland SA, Paris, France (SNH F);

   (iii) Sperry GmbH, Geschäftsbereich New Holland, Bielefeld, Germany (SNH D);

   (iv) Sperry New Holland, Divisione della Sperry SpA, Milano, Italy (SNH I).

The abovementioned appoint distributors in their respective territories who then sell Sperry New Holland products directly to farmers.

Sperry New Holland, a division of the Sperry Corporation, together with SNH NV and the other subsidiaries mentioned above through which it operates are hereinafter referred to collectively and individually, if not otherwise stated, as SNH.

(1) OJ No 13, 21. 2. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.
(3) Pursuant to Article 21 (2) of Regulation No 17, business secrets are not published in the *Official Journal of the European Communities.*

4. In those countries where SNH has no presence, SNH NV has appointed exclusive national distributors. These are:

(i) A. Blom, Skanderborg, Denmark;

(ii) Éts Wolf, Weyland Noerdange, Luxembourg;

(iii) G. W. Van Driel en Van Dorsten BV, Hoofddorp, Holland (Van Driel);

(iv) P. J. Condellis SA, Athens, Greece (Condellis).

For reasons which appear below, SNH NV, as the principal subsidiary within the common market, Van Driel and Condellis are the addressees of this Decision.

5. The complainant in these proceedings, W. Burns Tractors Ltd (Burns), is a distributor of Fiat tractors based in Peebleshire, Scotland. In addition, W. Burns has a large business in a wide variety of agricultural machinery of all makes which results in a total annual turnover in the region of £ . . .

The product and market

6. The product involved is the type of agricultural machinery sold by SNH. There is a wide variety of agricultural machinery, some manufactured by specialists. Some manufacturers produce a wide range. In addition, some motor-vehicle manufacturers, who otherwise have no interest in the sector, produce agricultural tractors. SNH makes a wide variety of machinery but not including tractors.

7. Agricultural machinery is usually bought by a farmer from a local authorized dealer. Such machinery is usually used intensively for only a short period in the year — combine harvesters, for example, only in the harvest season. For this reason, farmers are concerned to have servicing facilities available, and manufacturers, such as SNH, are concerned to have a network of dealers capable of offering such a service. The structure of SNH's distribution system through wholesaling subsidiaries or independent national distributors selling to local dealers is detailed above.

8. Again because of the seasonal use of such machinery, selling and production plans follow an annual cycle. Dealers place orders or forecasts for orders in September/October, on the basis of which, manufacturers make their initial production plans. SNH, typically, may revise these plans as a result of orders received in November/December, and possibly again in the spring if orders exceed forecasts and production capacity allows.

The proceedings

9. On 29 June 1973, SNH UK notified the standard contract in use by it within the UK. The Commission commented on this contract on 24 April 1980; SNH UK submitted a revised contract on 20 November 1980.

10. On 17 December 1982, Burns lodged a formal complaint with the Commission in respect of the activities of SNH. This complaint, which related, in particular, to events that had taken place some 18 months previously, had already been informally communicated to the Commission. Burns complained that SNH had prevented a Dutch SNH dealer from continuing to supply it with SNH combine harvesters and, in particular, from fulfilling a contract for the supply of such SNH combine harvesters. Burns alleged that SNH's action took the form of representations to Van Driel to cease dealing with the Dutch dealer because of its relationship with importers such as itself. Burns stated that SNH's actions had exposed it to suits for damages in Scottish courts which it had no prospect of defending successfully.

11. Following Burns's complaints, the Commission carried out six inspections on the premises of SNH and its dealers between October 1982 and March 1983. In the course of these inspections, copies of documents relating to cross-border sales were obtained.

12. On 9 February 1983, the Commission sent a letter to SNH UK saying that the revised contract of 1980 (paragraph 9) still contained restrictions.

13. At a meeting with the Commission's services on 3 June 1983, SNH admitted that there had been infringements of the rules on competition at least in Germany and Italy, and on 16 June 1983, SNH voluntarily provided further documents, mainly from SNH D and SNH I, which tended to substantiate information already in the Commission's possession. The Commission was therefore able to cancel the inspection which was to have taken place in Italy.

14. At the same time, that is to say June 1983, SNH NV sent a circular letter to its distributors in the various Member States. This reproduced the content of a Statement of Policy and Guidelines that SNH NV's sales manager had sent to his staff and the sales managers of SNH subsidiaries within the Community on 23 April 1983. In this

statement, SNH provides concrete examples of actions which would constitute infringements of Article 85 and urges its staff and dealers to refrain from such action. SNH has also notified a series of agreements to replace those previously in use. The compatibility of these new agreements with the Community's rules on competition is not the subject of this proceeding.

15. On 11 January 1985, the Commission sent a statement of objections to SNH, Van Driel and Condellis. Lawyers representing SNH and Van Driel inspected the Commission's file later that month.

16. On 4 March 1985, Van Driel, on 27 March, Condellis and on 9 April, SNH replied to the statement of objections and sent further documents.

17. On 25 July 1985, SNH and Burns together with their lawyers and lawyers representing Van Driel participated in a hearing.

18. On 29 July 1985, the Commission by letter drew the attention of SNH and Van Driel to further documents already inspected that had, however, not been previously particularly mentioned that were of relevance to these objections and to SNH's and Van Driel's replies.

19. On 30 August 1985, SNH commented on the documents drawn to its attention in that letter.

20. On 15 October 1985, the Commission by letter drew the attention of SNH to further documents already inspected, that formed a correspondence part of which had been the subject of comment at the hearing.

21. On 28 October 1985 receipt of this letter was acknowledged.

SNH's distribution practices prior to 1983

22. The documents referred to in paragraphs 11, 13 and 16 above show that, in the main, the prices practised by SNH in the United Kingdom and in Greece were considerably higher than those elsewhere in the Community. (The pound sterling fluctuated considerably during the relevant period, and, in consequence, for short periods, UK prices were lower than those elsewhere.) These differences in price gave rise to parallel trading. The national distributors or local dealers affected by this trading asked SNH to quote them the same lower prices as those available to the distributors or dealers in the Member States from which parallel trading stemmed, or, at the least, to prevent the parallel trading.

23. The documents show that from time to time SNH, reluctantly, offered temporary discounts. However, they also show that SNH had contractual export bans in a number of contracts within the Community from as early as 1973 until 1983 and that, quite apart from the terms of its contracts, SNH's relations with its distributors included many actions with the object, and, at least to some extent, the effect of preventing or hindering trade between the Member States, and of requiring national distributors to do the same in their dealings with their local dealers. The immediately following paragraphs give a brief description of a number of these contracts or practices.

24. In the UK, the contract notified in 1973 contained an export ban. This was modified in 1980 allowing dealers to accept orders from farmers outside the UK, but still banning exports to dealers. In addition, outside the terms of its contract but in the context of its contractual relations with its dealers, SNH UK took other steps to hinder parallel trade. There were advertisements and special bonuses for dealers selling against parallel importers; SNH UK had dealers help trace the sources of parallel imports by reporting serial numbers so that SNH elsewhere could cut off those sources; it also sought to use warranty or its ability to refuse to supply spare parts to discredit parallel importers.

25. In Germany there was a contractual ban on dealers exporting from 1976 to 1981. Exporting was regarded as a serious breach of contract justifying immediate cancellation of a dealers contract. Short of cancellation, SNH D refused the usual retail bonus on exports.

26. In Italy, SNH was concerned as early as May 1978 that its dealers were exporting combine harvesters to Greece. In December 1980, just prior to Greece's entry into the Community on 1 January 1981, SNH I sent a circular letter to its dealers in which dealers were requested to confine their activities to their allotted territories. Subsequent action by SNH I showed that this request amounted to a ban on exports. The object of SNH I's action was, in part, to satisfy Condellis' representations in respect of parallel imports into Greece. Condellis' representations (the Commission has documents dating from November 1980 to May 1982) took the form of requests that SNH NV either quote it prices low enough to

allow it to compete with offers from SNH dealers outside Greece or that SNH forbid those dealers to export to Greece.

27. In Belgium, the agreements concluded by SNH NV for the distribution of its products are intended to create a relationship of agency. In the version of the agency agreement which was in force from at the latest 1975 until 1980, the agent was required to insert an unequivocal export ban in each contract of sale entered into on behalf of SNH NV. The obligation not to export contained in this contract of sale was backed by a clause providing for accelerated payment of the total purchase price in the event of direct or indirect breach.

28. In the Netherlands, Van Driel suffered from parallel trading from, among other places, Germany. It attributed this to SNH practising lower prices in Germany. Van Driel asked to be protected either by lower prices or a ban on parallel trading from Germany claiming that it in its turn, for example, forbade its dealers to export to Belgium. For several months in 1981 SNH only gave Van Driel a bonus when Van Driel proved that the machine had not been exported either by Van Driel or by Van Driel's customer.

29. The documents also show that SNH was aware from at least as early as 1979 that such conduct was contrary to the EEC rules on competition.

30. The Commission, on the other hand, has no evidence of specific examples of restrictions on exports in relation to the agreements and the practices with which they were implemented in Denmark or Luxembourg.

The Complaint

31. The most significant evidence concerning the complaint includes the following.

32. Burns had a large trade exporting mostly second-hand and importing mostly new agricultural machinery of various brands. A Dutch dealer in SNH machinery was one of Burns's large export customers. In 1980, Burns arranged to import new SNH machines from this Dutch dealer.

33. The Dutch dealer was Van Driel's largest customer. In 1977, the dealer bought 60 combine harvesters in a single order for sale in Turkey (this is relevant to Van Driel's subsequent dealings with it). The sale was frustrated. The dealer was unable to pay. An arrangement was made finally to pay the debt by a surcharge on all subsequent orders which were, themselves, to be paid cash with order.

34. In 1980, the dealer sold some combines made in 1977 or 1979 in Turkey with serial numbers indicating manufacture in 1980. SNH and Van Driel accused the dealer and the dealer either SNH or Van Driel of changing the numbers.

35. In December 1980 and January 1981, Burns advertised new SNH machines at advantageous prices.

36. On 23 January 1981, SNH UK's marketing director wrote to SNH NV's marketing director: 'We now have to locate a machine which has been imported and retailed, to establish the source.'

37. On 2 February 1981, during a visit by Van Driel to SNH in the USA, there was discussion of sales by the Dutch dealer to Turkey (SNH, having appointed a distributor in Turkey, did not wish Van Driel to supply for export to Turkey). Van Driel sought to persuade SNH that Van Driel's customer was a better outlet for sales in Turkey than the official importer.

38. On 6 February 1981, a SNH Scottish dealer asked SNH UK's sales manager for '... a letter stating categorically that Burns Tractors are unable to obtain spare parts direct from either Aylesbury or Broxburn and that any spare parts would have to be ordered through a Sperry New Holland main dealer franchise.' Such a letter was written on 9 February.

39. On 14 February 1981 SNH UK published in the Scottish Farmer an advertisement saying 'Caution — Protect your investment — Buy your Sperry New Holland combines only from an authorized Sperry New Holland main dealer. This will guarantee that your investment is protected by the full warrants, after-sales and services support available only from your Sperry New Holland Dealer.' Similar advertisements appeared around that time in other periodicals.

40. On 8 April 1981, a SNH employee told the SNH Scottish Dealers Association, in connection with 'grey' imports, that he was extremely doubtful if any units would eventually be imported. He suggested that, if any unit did arrive in a dealer's

territory, full details including serial number and any other identification markings be sent to SNH.

41. In 1981, SNH had particular success with one of its new models — the 8080 combine harvester, and was unable to produce all that were ordered. A late order from Van Driel for three 8080s was acknowledged on 16 April with an offer of delivery in November and was, in consequence, withdrawn.

42. In May 1981, the Dutch SNH dealer supplying Burns told it that it had begun to experience delays with deliveries the previous month. Burns, itself, began to fail to deliver some orders on time.

43. In May 1981, Burns's lorries were followed on the motorway and were examined in the docks by SNH UK dealers endeavouring to obtain serial numbers.

44. On 21 July 1981, SNH UK's sales manager wrote to the Scottish dealer referred to in paragraph 38 above saying: 'I would imagine that the Burns' credibility right now is somewhat jaded in the eyes of farmer customers who accepted quotations from him, as our information suggests that only a very limited number have been imported, and that our joint actions will be seen in the eyes of our customers to have put us in good stead for future trading.'

45. Van Driel supplied the Dutch dealer with two further combine harvesters in July, one in August and one in November. At the hearing (paragraph 17 above), SNH's representative said that these were the only machines supplied by SNH to Van Driel in those months, although further machines had been available and offered.

46. On 8 October 1981, in a telex from SNH NV to SNH D, it was said: 'Van Driel and Van Dorsten say that they have not been selling combines to ... (the name of the Dutch dealer involved) ... during the last four months.'

47. On 17 October 1981, SNH UK's sales manager told the Scottish Dealers Association that, with the information received from UK dealers, SNH had taken 'appropriate action' with the supplying dealers in Europe.

48. In its reply to the statement of objections, Van Driel says that it did, indeed, receive representations from SNH in 1981 not to supply the Dutch dealer because it was exporting to the UK, but ignored them. Further machines were supplied (the deliveries of August and November were quoted). Van Driel said that it ceased to supply the Dutch dealer in 1982, after it had finally paid off the 1977 debt, because of its bad payment record and business ethics.

49. SNH admits tracing Burns's source of supply and then making representations to Van Driel to cease supplying it, but claims that, since Van Driel refused to conform, these were merely unilateral acts.

II. LEGAL ASSESSMENT

Article 85 (1)

50. Article 85 (1) provides that agreements and concerted practices between undertakings 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 shall be prohibited.

51. SNH and its customers are undertakings within the meaning of Article 85 (1). The agreements between these parties, as written or applied, constitute agreements between undertakings within the meaning of Article 85 (1).

52. The facts set out above show that SNH's contracts and contractual relations with its customers included the obligation not to export or allow the export of the products and other provisions for the hindrance of parallel trade in the products. These constitute infringements of Article 85 (1). They took many forms, some of which have been admitted to be infringements by SNH.

53. More particularly, the Belgian agency contract which was in force until 1980 required the agent to insert an export ban in each contract of sale entered into on SNH's behalf with consumers. A restriction on the purchaser's freedom to alienate his property as he sees fit amounts to a restriction of competition within the meaning of Article 85 (1) if such a restriction affects trade between Member States (see Kerpen and Kerpen: Decision of 14 December 1983 of the European Court of Justice in Case 319/82 [1983] ECR 4173).

54. Special mention must also be made of the bonus to Van Driel on proof of non-re-export. SNH claims that it is legitimate for firms to adapt to local circumstances. Moreover, the Commission has accepted that exclusive and selective distribution systems can be beneficial; if it is lawful to prohibit active marketing outside a territory, it would be logical to allow rewards for active marketing within.

55. This reasoning cannot be accepted whenever the rewards in question have as their object or their effect impediments to intra-Community trade. Dealers must have the right to supply farmers from other territories without being penalized by the withdrawal of bonuses. Therefore agreements or practices concerning bonuses which are conditional on the machine not subsequently being exported by the customer are prohibited. The same rationale might apply to the condition that the machine is registered for use within the territory of the dealer or that the warranty service be completed within that territory.

56. The facts (paragraph 32 *et seq.)* directly related to Burns's complaint give a complicated picture. At least some of the combine harvesters ordered by Burns could not have been delivered because SNH did not have them available (paragraph 41). SNH did take steps first to trace Burns's source of supply and then make representations to Van Driel, which Van Driel received, to cut off the Dutch dealer involved. There were other facts (a bad debt and a contested allegation of falsifying serial numbers — paragraphs 33 and 34) that might have given Van Driel, independently of these representations, the desire to cease supplying this dealer. On the other hand, the fact that Van Driel dealt with this dealer cash with order meant that there was no risk of bad debt for the future (paragraph 33) and this dealer was its most important customer (paragraph 33) which Van Driel had clearly wished to continue to supply immediately, prior to the discovery that it was the source of Burns's supply (paragraph 37). The Commission, therefore, concludes that Van Driel's decision to reduce supplies to and ultimately to give up supplying the Dutch dealer with combine harvesters altogether was taken as a consequence of SNH's representations and constitutes an infringement under Article 85 (1). Moreover, SNH UK took other steps with UK dealers to discredit Burns (paragraphs 38, 39 and 44).

57. SNH's actions analyzed above have had the object and effect of preventing competition in trade between Member States and had a direct and actual influence on the pattern of trade between Member States.

Article 85 (3)

58. The contract used by SNH in the UK was notified to the Commission pursuant to Article 4 of Regulation No 17 with a view to obtaining an exemption in accordance with Article 85 (3) of the Treaty. However, those used in Germany, Italy and Belgium were never notified. Even for that notified, no exemption can be granted under Article 85 (3) since such an express prohibition on exports fails to satisfy any of the conditions for the granting of such an exemption.

Article 3 of Regulation No 17

59. Under Article 3 (1) of Regulation No 17, the Commission may, if it finds that there has been an infringement of Article 85 of the Treaty, require by decision that the undertakings concerned bring such infringement to an end.

60. It appears necessary to require SNH, Van Driel and Condellis to remove all intra-Community territorial restrictions from their agreements and practice and to refrain from seeking to reimpose such restrictions by other means.

Article 15 (2) of Regulation No 17

61. Under Article 15 (2) of Regulation No 17, the Commission may impose fines of from 1 000 to one million units of account or a sum in excess thereof, but not exceeding 10 % of the turnover in the preceeding 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 fine, regard shall be had both to the gravity and to the duration of the infringement.

62. Having considered the facts in this case, the Commission considers that, although SNH dealers participated in the infringements as described above, only SNH itself should be fined. In view of the allocation of functions and responsibilities in SNH (paragraphs 1 to 3), the fine should be imposed on SNH NV. Where dealers, for example Van Driel, acted to restrict exports they were acting under duress and against their own economic interests. Moreover, their infringements predated the publication of Commission Decision

85/79/EEC in the John Deere case [1] and the behaviour of Condellis that constituted its infringement began before and was continued for a relatively short period after the accession of Greece to the European Communities.

63. SNH's infringements is very serious since it impeded competition between dealers in SNH products, from which consumers throughout the Member States could have derived substantial benefits. Quite apart from the intrinsic nature of such an infringement, the Commission cannot fail to take into account the size of the SNH operation and its importance in the EEC as a manufacturer of combine harvesters.

64. The infringement began in the UK in 1973. In Germany the infringements began in 1976, in Italy in December 1980, in the Netherlands at least in 1980 and in Belgium at least as early as 1975. In respect of Belgium the infringement lasted until 1980 when a new agency contract came into force which did not restrict the purchaser's freedom to export. In the case of Germany, on the other hand, contractual export bans were in existence until 1981, and for Italy, 1982. All contractual infringements ceased in April 1983 when SNH decided to adopt a policy of compliance with the Community rules on competition.

65. The contractual export ban in the United Kingdom is contained in Clause 17 of the agreement annexed to the notification of 29 June 1973. Because that notification was before the end of the six months period of grace ending 30 June 1973 for the notification of existing agreements following the accession of the UK to the Community, no fine may be imposed for activity falling within the limits of the activity described in it. It is to be noted that no reference to Clause 17 is made in Section III of the notification, which requires restrictions to be listed, and that the existence of the clause is implicitly denied by the claims in Section IV, that trade between Member States is not affected, and in Section V, that the agreement is exempt by virtue of Regulation No 67/67/EEC [2] which declares such a clause inadmissible.

The Commission did not, however, take the formal point that the notification was invalid pursuant to Article 4 of Commission Regulation No 27 [3], or was incorrect or misleading within the meaning of Article 15 (1) (a) of Regulation No 17, and does not now seek to impose fines in respect of this contractual export ban. The Commission has, therefore, and in spite of the fact that there were other activities in the UK (see paragraphs 24, 38, 39, 43 and 44 above) not in any way covered by the notification, excluded sales in the United Kingdom from the relevant common market turnover in assessing the level of the fine.

66. The Commission must also consider whether its failure to object to this export ban before 1980 (or to the modified ban notified in 1980 before 1983) has any wider significance. SNH claimed in its reply to the statement of objections, citing Chiquita (often referred to as United Brands) [4], that in consequence, '... SNH was entitled to consider (at least until May 1980) that a blanket export prohibition imposed upon dealers was compatible with Article 85 (1).' It was drawn to SNH's attention (paragraphs 18 and 20 above) that documents provided by SNH itself while assisting the Commission in establishing the facts of the case (paragraph 13 above) show that SNH staff elsewhere had not been misled by the UK notification (even if they knew of it); they, indeed, well knew that export bans were contrary to Community law. SNH then argued that, even if aware that export bans were illegal, SNH could still implement them outside the UK with impunity by virtue of the UK notification, again citing Chiquita (paragraph 19). In that Decision, the Commission said that '... although only the general conditions for the Netherlands ...', had been notified, those in other Member States '... are substantially the same. UBC can therefore reasonably have considered that the notification covered all its general conditions of sale.' It is to be noted, however, that in Chiquita, the Commission did impose fines in respect of other activity, including activity in the Netherlands, not covered by the general conditions of sale. It is also to be noted that the activity of SNH for the banning of exports took many forms, both contractual and non-contractual, and that the contracts used by SNH in other Member States are not substantially the same as the contract in use in the UK. Indeed, the UK notification appears to be simply that of an existing agreement shortly before the end of the period of grace, without any thought or suggestion that it was to serve as a standard contract for use elsewhere. The Commission does not, therefore, consider that the UK notification affords any wider immunity.

(1) OJ No L 35, 7. 2. 1985, p. 58.
(2) OJ No 57, 25. 3. 1967, p. 849/67.
(3) OJ No 35, 10. 5. 1962, p. 1118/62.
(4) OJ No L 95, 9. 4. 1976, p. 1.

67. Further, SNH claims that the modified agreement of 1980 provided for SNH UK to compensate a dealer appointed by it if another dealer appointed by it sold into the first dealer's territory, and to penalize the offending dealer; the serial number had to be provided to substantiate the claim. SNH argues that this protects the collection of serial numbers from fines. The Commission accepts that the provision of serial numbers in a claim for compensation from a fellow SNH UK dealer is so protected, but not the concerted collection and reporting of serial numbers specifically for the purpose of tracing the source, outside the UK, of parallel imports.

68. On the other hand, SNH actively and voluntarily furnished information to establish the allegations made against it. Also, before proceedings were opened but after investigations had started, SNH ordered its staff and dealers to comply with the Community's competition rules. In addition, the agricultural machinery sector is depressed. The Commission has taken these factors into account in deciding on the amount of the fine.

HAS ADOPTED THIS DECISION:

Article 1

The agreements between Sperry New Holland and its customers in the common market, including its national distributors in the Netherlands and Greece — Van Driel and Condellis — is written or applied, with the object or effect of prohibiting, discouraging or penalizing and requiring the prohibition, discouragement or penalization of trading by a customer outside the Member State in which the customer is established have constituted an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

An exemption under Article 85 (3) of the EEC Treaty for the agreements covered by the notification of 29 June 1973 is hereby refused.

Article 3

To the extent that this has not already been done, the undertakings shall bring the infringements as mentioned in Article 1 to an end forthwith and shall refrain from taking any measure having the same object or effect.

Article 4

In respect of the infringements set out in Article 1 other than those covered by the notification of 29 June 1973, a fine of 750 000 ECU, that is Bfrs 33 604 200, is hereby imposed on Sperry New Holland — Sperry NV. This fine shall be paid within three months of the date of notification of this Decision into the account of the Commission of the European Communities with Kredietbank, Agence Schuman, 2 rond-point Schuman, B-1040 Brussels (account No 426-4403001-52).

Article 5

This decision is addressed to:

1. P. J. Condellis SA
   125 Orfeosstreet
   Rouf
   PO box 91
   GR - Athens

2. Sperry New Holland — Sperry NV
   Leon Claesstraat 3A
   B-8210 Zedelgem

3. G. W. Van Driel en Van Dorsten
   PO box 1
   Stationsweg 17
   NL-2130 XC Hoofddorp

This Decision shall be enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 16 December 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission