II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 July 1986

relating to a proceeding under Article 85 of the EEC Treaty (IV/31.371 — Roofing felt)

(Only the Dutch and French texts are authentic)

(86/399/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) 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 Spain and Portugal, and in particular Articles 3 (1) and 15 (2) thereof,

Having regard to the submission filed with the Commission on 11 November 1983 and to the request made on 8 March 1985 that it be treated as a complaint for the purposes of Article 3 of Regulation No 17,

Having decided on 14 June 1985 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity of replying to the objections raised by the Commission, in accordance with Article 19 (1) and (2) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Regulation No 17 [2],

After consultation with the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

FACTS

The undertakings and the association of undertakings

(1) This Decision concerns the Société Coopérative des Asphalteurs Belges (Cooperative Association of Belgian Asphalters), Brussels (hereinafter referred to as 'Belasco'), the following business undertakings which are the members of Belasco (hereinafter collectively referred to as 'the members') :

— Compagnie Générale des Asphaltes SA, Brussels ('Asphaltco'),

— Antwerps Teer- en Asphaltbedrijf NV, Antwerp ('ATAB'),

— De Boer & Co SA, Schoten ('De Boer'),

— Kempisch Asphaltbedrijf SA, Herentals ('KAB'),

— Limburgse Asfaltfabrieken Sprl, Hasselt ('LAF'),

— Lummerzheim & Co SA, Ghent ('Lummerzheim'),

— Vlaams Asfaltbedrijf Huyghe & Co Sprl, Staden ('Huyghe'),

and two other business undertakings which are not members of Belasco, and are hereinafter collectively referred to as 'non-members' :

— International Roofing Company SA, Brussels ('IR') and

— AL-Asfalt SA, Alken ('AA').

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

The members and non-members are producers of roofing felt. Most of them also engage in roofing work and some have other activities, for example road works.

The overall business turnover of the members in 1983 was some Bfrs 3 000 million (about 66 million ECU), of which slightly over one-third relates to the supply of roofing felt on the Belgian market. The individual figures for each member and non-member are given in Annex 1.

(2) The Decision relates to the following conduct over the period 1 January 1978 to 9 April 1984 ('the relevant period'):

— an agreement between the members which came into effect on 1 January 1978, and various measures taken by the members to give effect to or supplement that agreement with, in some respects, the assistance of Belasco,

— agreements between the members and non-members on discounts.

The relevant products

(3) The members and non-members are manufacturers of bituminous felt and similar waterproof coverings used in the building industry, principally for roofing work. The products, which are sheets a few millimetres thick sold in rolls, consist of a base of felt, woven or unwoven glass fibre matting, jute or man-made fibre, impregnated and/or coated with bitumen or tar. Roofing felt made with bitumen 'enhanced' by the addition of plastic substances, mainly to improve its mechanical properties, is also now on the market. All such products are relevant to this proceeding and are hereinafter referred to as 'roofing felt'.

(4) Three categories can be distinguished among the relevant products:

(a) Products certified with the 'Benor' mark as manufactured to the very strict design and performance specifications approved by the Belgian Standards Institution (IBN) and subject to periodical testing and inspections of manufacturing facilities by the Building Safety Standards Monitoring Office (SECO).

(b) Products similar in most respects to 'Benor' products but which, for secondary reasons mainly connected with rationalization, do not correspond to IBN specifications; in 1983 this category, which has never been of major importance, accounted for about 3 % of members' roofing felt output.

These two categories are below collectively referred to as 'Belasco products.'

(c) New types of roofing felt made with man-made fibre core and 'enhanced' bitumen which have gradually appeared on the market since the early 1970s; the share of such 'new products' rose from about 5 % of members' output in 1981 to around 11 % in 1982 and about 26 % in 1983. There are no IBN standards for these products, as standards are only available for established products.

(5) The members also sell other products ('ancillary products'), such as mastics and liquid bitumen, which are sold to the same customers and used largely in conjunction with roofing felt.

(6) Producers sell most of their output of roofing felt direct to general building contractors or roofing contractors. Some producers undertake roofing contracting themselves. The rest is sold to wholesalers and retailers.

(7) Between 1979 and 1983 apparent consumption of roofing felt in Belgium declined from 32 million to 23 million square metres. Several members and non-members have pointed out that this contraction of the market coincided with the introduction of new products. As the new products are more economical and therefore fetch much higher prices, the decline in value terms was less drastic than the quantity figures suggest, although it still represented a sharp drop in demand.

(8) In 1983 members supplied almost 60 % by volume (in square metres) of Belgium's apparent consumption of roofing felt. Their average market share over the six years 1978 to 1983 was 58 %. Their share of the production of roofing felt in Belgium in 1983 was around 70 %.

(9) Trade in roofing felt between the Belgo-Luxembourg Economic Union (BLEU) and other Community countries during the relevant period was as follows in million square metres:

	Imports	(of which from EEC)	Exports	(of which to EEC)
1978	4,87	(4,32)	4,31	(3,89)
1979	5,00	(4,23)	8,00	(7,19)
1980	5,19	(4,30)	9,56	(9,00)
1981	5,99	(4,97)	7,90	(7,59)
1982	6,06	(5,12)	7,49	(7,25)
1983	5,04	(4,24)	7,50	(6,83)

Source : Statistical Office of the European Communities

Imports from other Member States fluctuated over the period between 12 and 19 % of apparent consumption in the BLEU and exports to other Member States fluctuated between 12 and 26 % of output in the BLEU.

(10) The proportion of members' output exported during the period was in the region of 20 to 30 %. Most of this was exported to neighbouring countries.

Belasco

(11) Belasco, the association of Belgian roofing felt manufacturers, was set up in 1959 as a cooperative society under Belgian law. Throughout the relevant period membership of the association coincided in practice with participation in the Agreement. Belasco's main function has been to assist in establishing IBN standards.

A. THE CARTEL

The Agreement

(12) On 1 January 1978 an agreement came into effect between the members with an initial term lasting until 31 December 1983 and automatically renewable for a further five years unless terminated ('the Agreement'). The Agreement replaced an agreement in similar terms dating from late 1966.

The Agreement provided (*inter alia)* for :

— adoption of a price list and minimum prices for all roofing felt supplied in Belgium,

— allocation of quotas between members for their deliveries to the Belgian market,

— penalties for breaches of the Agreement and decisions made under it,

— the lodging of security for observance of obligations in a guarantee fund,

— the defence and furtherance of the members' collective interests, notably by joint advertising,

— study and promotion of ways of standardizing and rationalizing the production and distribution of roofing felt,

— a ban on making customers any kind of gifts or selling them products at a loss.

The general meeting

(13) The Agreement provided for the members to hold 'general meetings', at which each would be represented, to administer the Agreement. The general meeting was to appoint an accountant to assist it in this task.

The Agreement laid down detailed rules for general meetings. A general meeting was to be held normally once a month and minutes were to be taken and approved.

(14) In addition to pursuing the objects listed above, the responsibilities of the general meeting included :

— the setting of selling prices for ancillary products,

— taking 'necessary protective or defensive action should the objects (of the Agreement) be theatened by factors external to the parties, such as an increase in competition from abroad, the establishment of new firms, discovery of substitute products . . .',

— establishing breaches of the Agreement's provisions and taking measures to curb or prevent breaches of the spirit of the Agreement.

(15) All validly passed resolutions of the general meeting were to be deemed to form an integral part of the Agreement.

Quotas

(16) The Agreement allocated quotas to the members, which effectively determined the amount they could supply to the Belgian market and hence their relative market shares. The quotas were fixed for the duration of the Agreement and any extensions of it. They related not to sales, but to the amounts of raw materials used in production, which were easier to monitor. After a deduction for exports and adjustment for variations in stocks of finished products, it was possible to work out from these figures each member's deliveries to the Belgian market.

The quotas allocated to members by the Agreement were as follows (rounded to the nearest whole percentage):

	% of raw materials consumption
Lummerzheim	27
Atab	24
Asphaltco	15
De Boer	13
LAF	8
KAB	7
Huyghe	6
	100

(17) The Agreement provided for members who exceeded their quotas to pay penalties in order to compensate those who did not fulfil them. In certain circumstances, the quota of a member who failed to fully take it up would be reduced according to a set formula. The quota of a departing member was to be split between the remaining members in proportion to their original quotas.

Restrictions on the transfer of plant and staff

(18) The members undertook not to sell, assign, lease or loan their production plant or equipment to third parties without the consent of the general meeting. Only sale after demolition was permitted. Should a member go bankrupt or his production plant be seized on behalf of creditors, members undertook to contribute to the cost of buying up the plant on their joint account. Any attempt to poach staff from other members and hiring employees of another member wihout its consent were prohibited.

Restrictions on subcontracting

(19) The members agreed not to manufacture as a subcontractor roofing felt for third parties intending to supply it to the Belgian market, except with the specific consent of the general meeting.

Accountant

(20) The main duties of the accountant were to monitor compliance with quotas and prices. To facilitate monitoring of quotas, members were required to make monthly returns to the accountant stating their purchases and movements of stocks of raw materials and finished products and their exports. They also had to keep numbered invoices on both sales and purchases and to keep full accounts, with supporting documents, for regular or extraordinary inspection. The accountant also administered the arrangements for penalizing those who exceeded their quotas and acted as secretary to the general meetings.

Penalties for other breaches of the Agreement — Guarantee fund

(21) Without prejudice to any other measures decided by the general meeting, a member in breach of its obligations could be ordered to pay a standard penalty into a common fund, failing which the sum could be deducted from the security the member had lodged in the guarantee fund.

B. IMPLEMENTATION OF THE AGREEMENT

Quotas

(22) Every year from 1978 to 1983 (except for 1980 and 1981 when accounts were settled for both years at once), the accountant drew up at the end of the year in accordance with the formula set out in the Agreement a list of the penalties due from members who had exceeded their quota to those who had not fulfilled it and the amounts were claimed from or by the members concerned by means of invoices sent by or to Belasco, as the case may be.

(23) It was then decided that from 1984 onwards penalties for breaches of quotas would be paid by purchases and sales of roofing felt between members at prices fixed by the general meeting. From 1984 onwards the members also agreed to increase the quota allocated to Huyghe, which considered its quota too low, by correspondingly reducing the quotas of the other members.

(24) Compliance with quotas was monitored systematically by the accountant. In June 1983 the accountant wrote: 'Monitoring of purchases, sales (by sampling), output by checking consumption of core and purchases of bitumen is ... carried out reguarly by me, as you all know from the remarks I make and the corrections I ask you to carry out on the basis of my findings.'

(25) The effects of the quotas, and their relationship with the members' pricing and product policies, were illustrated by the comments the chairman of a general meeting early in 1978 made about the consequences of the withdrawal from the 1966 agreement of Usines Pol Madou ('UPM'), which prompted the new 1978 Agreement: 'He is now completely free to try to gain market share and will no doubt do so, seeing how he has always claimed his machines were operating below capacity. Each and every one of us will come up against our former colleague offering low prices, large discounts, and even launching new products not in the Belasco range.'

(26) Members claimed in the course of the proceedings that in practice the accountant's monitoring had been lax, so that some members were able to get away with wrong figures in their monthly returns and to conceal from other members that they were exceeding their quotas.

A comparison of the quotas with the figures members have supplied for their actual deliveries to the Belgian market over the period 1979 to 1983 shows that five members had sales close to their quotas (after allowing for variations in the yield of square metres of finished product from kilograms of raw material). The sales of ATAB and KAB, however, ran throughout at more than double their quotas and KAB's sales in 1983 were as much as three times its quota.

Prices

(27) The selling prices of roofing felt in Belgium over the relevant period were subject to official price control. At times price control took the form of compulsory notification of proposed increases, with the authorities having a certain period to object, and at other times a price freeze was in operation with increases allowed only by advance dispensation. In both cases firms had to notify proposed increases in advance and afterwards had to send the authorities the new price lists implementing the increases. Trade associations were allowed to notify proposed price increases collectively for their members.

The Belasco price list

(28) In accordance with the Agreement, the members adopted throughout the relevant period a common price list known as the Belasco price list. The price list covered virutally all the types of roofing felt sold by the members, except for new products. The members decided collectively the timing and size of proposed increases and collectively notified them to the authorities.

(29) Once increases had been approved, the members also jointly decided the new price list and the date from which it would apply. They sometimes voluntarily delayed increases beyond the earliest permissible implementation date and in some cases apportioned the authorized overall increase in different amounts between products by common agreement.

Communication by members of Belasco price lists to other producers

(30) Besides the members and the two non-members concerned by this Decision, there were two other manufacturers of roofing felt in Belgium throughout the period : Derbit, which only manufactured new products not covered by the Belasco price list, and IG Industries, Antwerp ('IKO'), which mainly manufactured products not concerned by this Decision but also to a lesser extent produced roofing felt of the type on the Belasco price list. The other Belgian producer already mentioned, UPM, Ghent, manufactured roofing felt of the type on the Belasco price list until July 1980, when it was declared bankrupt.

(31) There were eight increases in the Belasco price list over the relevant period. On each occasion the members jointly decided to give other Belgian manufacturers of types of products on the price list prior notice of the increases. It is established that for seven of the eight rises notice was in fact given. Up to May 1982 all the other producers of roofing felt on the Belasco price list were, in general, notified. There was only one other increase in the price list after that, in respect of which it was decided in September 1983 to send a copy of the application for the increase and of the draft new price list to IR.

(32) The individual price lists which the two non-members concerned by this Decision issued over the relevant period bore dates close and often identical to the Belasco price lists (see Annex 2) and with minor exceptions showed identical prices.

Discounts off the Belasco price list

(33) The rates of discount actually given or to be followed on the Belgian market were discussed at no fewer than 25 of the monthly general meetings over the period. At several meetings, especially between 1978 and 1980, the members agreed on discount rates. After 1980 less close attention seems to have been paid to controlling discounts ; although control was not abandoned, the occasions when it was asserted were much less frequent.

(34) Between 1978 and 1980 and again in 1982, representatives of the members had repeated contacts or meetings with other producers to seek agreement on prices. Before such negotiations, the members concerted their positions at general meetings. These talks and negotiations resulted in agreements between the members and non-members to reduce or limit discounts.

(35) A general meeting held in January 1978 decided how to respond to a sales promotion campaign involving large discounts being conducted by IR : 'Be patient. If you are absolutely determined to make a sale, temporarily offer the same terms, but on no account go outside your own clientele.' An inquiry to IR confirmed that its sales campaign was planned to last only a month and was aimed only at its own customers.

(36) In April 1978 the formation of customers of two members and IR into a buying group was said to be causing 'difficulties and bidding up of discounts'. The general meeting agreed the following : members should avoid similar mistakes in future ; any supplier approached by such a group should consult with his colleagues before giving an answer, so as to offer a concerted response.

(37) In April 1978 UPM asked to meet representatives of the members to discuss ways of controlling discounts. The members decided to meet UPM and IR, and a meeting took place in April or May at which proposals were discussed not to increase any discounts and to reduce the top rates. On 15 May 1978 the members informed their customers of a 'reduction and limitation of discounts' in a letter the text of which was approved by the general meeting.

Later, UPM complained that the planned reductions had not been implemented and the members concluded that the attempt to reduce discounts had been a failure. UPM alleged that IR had increased its discounts before applying the reductions. The members' letter prompted negative reactions from customers owing to the large discounts offered by competitors. IR, too, expressed concern about the failure to honour commitments on discounts, especially by Asphaltco, and threatened to 'review its policy'.

(38) After talks with the members' representatives, IR said it was willing to enter into an agreement to set an overall 25 % limit on discounts. The members decided to suggest to UPM, which had also asked for a meeting on discounts, to meet them and IR in October 1978 to reach agreement on this basis. The general meeting decided to induce AA to join in and later to work for a 2 % cut across the board in the discounts granted to the various classes of customer, defined by their annual turnover of roofing felt.

After another approach by UPM with a request for an immediate reduction in rates of discount other than the maximum, the general meeting decided to enter into an agreement to this effect with IR and AA. After the last joint meeting of producers, as it was called at the general meeting on 6 November 1978, members on 30 October 1978 wrote to their customers informing them of a 'reduction and limitation of discounts'.

(39) During the period October 1978 to January 1979 at least four meetings took place between members and the other three manufacturers on a further cut in discounts whereby the maximum rate would be reduced to 23 %.

(40) In January 1979 ATAB announced that it intended to offer a buying group a discount of 23 % and asked the other members not to offer more. LAF and KAB agreed to offer only 15 %.

In March and April 1979 complaints were made about discounts allegedly given by ATAB, which was said to have granted an illicit extra reduction on top of a discount of 23 %. An inquiry found that there was no substance in the complaints and that the discounts granted by ATAB had been within the limits. In March 1979 UPM complained to the members about the alleged failure to honour the agreements on discounts and asked for a 'producers' meeting', failing which it threatened to start a price war.

(41) In November 1979 KAB complained about the terms Asphaltco had offered a certain customer. On the same occasion LAF asked its fellow members not to offer discounts of 5 % or more to one of its customers who was shopping around for better terms.

(42) In May 1980 IR complained about disregard of the 'agreed maximum discounts', and when it asked members to limit their offers of discounts to a particular customer the general meeting decided that the members would not exceed 23 %. ATAB was also reported to have offered 23 % to a former customer of UPM after UPM went bankrupt and to have asked its fellow members not to bid for the customer. Asphaltco and Huyghe made similar requests in relation to other customers.

(43) In April and May 1980, two meetings took place at the members' invitation between the members and UPM, IR and AA to prepare the next application for price increases.

(44) The minutes of the general meeting of September 1980 contain reports of competition on discounts and complaints about this by AA and IR, presumably made since the previous general meeting in June 1980. In response to this situation, the members 'for their part undertook to limit discounts to 23 %'.

(45) In January 1981, the chairman of Belasco stated that 1980 had been 'a year of missed opportunities, for despite contacts and meetings with non-member producers no reduction in discounts was achieved. On the contrary, after the bankruptcy (of UPM in July 1980) everyone joined in the rush to sign up the firm's customers, by offering higher and higher discounts'. The chairman impressed on the meeting 'the importance of stability of clientele'.

(46) In June 1981 ATAB again denied allegations that it had given too high discounts, while three members complained of having lost customers, in one case to another member.

(47) In February 1982, following contacts with IR, the general meeting set a scale of discounts and other price terms to be observed by members.

(48) In August of the same year a member complained of illicit discounts being given by KAB, which was asked for an explanation. It turned out that KAB was selling qualities 'other than those provided for in our agreements'. After the chairman, on the general meeting's instructions, had talked to KAB, KAB confirmed that it did not intend to continue manufacturing these low-price products.

(49) In December 1983 the meeting set maximum discounts which members were permitted to give on new products whose selling prices were fixed by the meeting.

(50) In the course of the proceedings all the members except Lummerzheim produced invoices and credit notes for 1979 and 1980 (and three members for 1978 also) purporting to show that their own conduct at least belied the existence of any joint measures in October 1978 and March 1979 to limit discounts to 25 and 23 % respectively. In fact, the rates of discount the documents show most members to have been giving during the period October 1978 to August 1980 do conform, with some exceptions in the case of certain members, to a pattern of limitation on discounts. ATAB, which during this period was greatly exceeding its sales quotas, kept to the maximum of 25 % from October 1978 and 23 % from March 1979 to July 1980 in the discounts shown on its invoices, although it systematically gave rebates in the form of credit notes as well, which often took the total discount above the maxima.

Sharing of customers

(51) Under the expression 'stability of clientele', the members made it a principle that everyone should stick to his own customers. Members admitted in the course of the proceedings that one of the objects of the Agreement was to avoid a member's customers being approached by other members.

(52) The stability principle, which was reiterated by the chairman at a meeting early in 1981 (see point 45), was put into practice on several occasions during the period from 1978 to February 1982, with consultations about the prices to offer individual customers, complaints to the general meeting about lost customers (points 36, 40, 41, 42 and 46) and the appeal to 'stick to one's own customers' in response to a price-cutting campaign by IR (point 35).

Agreements between members and non-members

(53) Evidence has been presented above showing that there were agreements between members and non-members at various times during the period concerning permitted discounts off the Belasco price list.

May 1978

(54) The facts reported in point 37 above show that the members reached agreement with UPM and IR shortly before 15 May 1978 on a coordinated reduction of discounts. However, the agreement was not observed and the exercise proved a failure because of the larger discounts being offered by other producers.

October 1978

(55) When a new attempt to limit discounts was launched in the autumn of the same year, the members agreed, probably because of the circumstances of the failure of the previous agreement in May, to broaden its support among non-members by getting AA to join in. For the same reason, there can be little doubt that the members did not send a further letter to their customers announcing a reduction in discounts before they had secured the other producers' agreement to apply the reduction. The existence of this agreement is also confirmed by the fact that later on the same parties had several meetings to try to agree a further concerted reduction in the discount rates which had been agreed by them.

(56) The evidence presented in points 39 to 44 strongly suggests that, after the series of meetings in late 1978 and early 1979, an agreement on a further concerted reduction in discounts, or at least in the maximum discount from 25 to 23 %, was reached around the beginning of March. Even if agreement on this further reduction was not in fact achieved the arrangement between the members, non-members and UPM on restraint on discounts which began in October 1978 certainly remained in operation throughout 1979 and the first half of 1980.

The evidence presented in points 44 and 45 indicates that the agreement to limit discounts collapsed around July or August 1980 after UPM's bankruptcy.

New products

(57) Four general meetings between August 1980 and September 1981 decided precise percentage increases in the prices of enhanced bitumen products. A general meeting in December 1983 set prices and maximum discounts to two classes of customer for six new products.

Ancillary products

(58) On 10 occasions between April 1979 and the end of the period considered, the general meeting set the selling prices for various ancillary products.

Action against competitors

(59) The members took or planned concerted action against other manufacturers to discourage them from pursuing a price-cutting policy and/or to take customers away from them. Concerted action against importers and foreign manufacturers was also proposed or decided.

(60) In August 1981, it was suggested that 'the members divide IKO's customers up between them on geographical lines and make them offers with maximum discounts to take as much valuable business away from IKO as possible. To avoid these sales having repercussions on our own customers, rolls should be delivered in neutral packaging bearing only the Benor mark'. The members decided to prepare lists of IKO's customers, noting their size and the terms currently given to them. In September 1981 it was reported that 'the action decided upon at meetings has not yet had much success, except in Lummerzheim's case.' In October it was reported that 'the action mounted against IKO has brought some successes for Asphaltco and KAB.'

(61) In November 1983, under the heading 'fighting competitors', a member suggested launching an attack in the Netherlands on the source of imports that mostly came through a particular Belgian dealer. He referred to the success of a similar operation that had been mounted in Germany in 1973 to 1974 whereby members had sold at a loss to customers of German suppliers who were selling on the Belgian market to get them to stop doing so. The cost of the joint operation had been shared between the then members in proportion to their quotas. There is no mention in the minutes of later meetings whether anything came of the member's suggestion to mount a similar operation in the Netherlands.

(62) In February 1984, after another proposal for joint action against competitors, it was agreed to make a list of customers who would be prime targets. At a meeting called 'to decide who will lead the attack, which must first be mounted on the weakest, namely the importers', a list of targets was drawn up showing the member who would lead the attack on that customer. Later it was decided to attack first AA and Canam Sales (an importer of roofing felt mainly from Italy, Germany and the Netherlands) by offering their customers extra discounts. There is no evidence between the time of these happenings and the Commission's investigation at the Belasco offices on 9 April 1984 to indicate what action was taken on this decision.

The UPM case

(63) In October 1979 the members were told that UPM, a former Belasco member which had resigned at the end of 1977, had closed its felt production unit but was continuing to manufacture finished roofing felt. Members were asked 'whether everyone is agreed in principle to, if necessary, buying up' the roofing felt plant. It was pointed out that, the situation being as it was, UPM might 'disappear all by itself', in which case they would be 'paying for a corpse'. It was agreed to get in touch with a foreign firm that was thought to be negotiating a takeover of UPM.

(64) UPM was declared bankrupt in July 1980. At a meeting with the regional economic authorities the same month, the representatives of Belasco urged that UPM should not be taken over by foreign interests lest this 'upset the already very precarious balance on the market'. They expressed an interest in taking the firm over themselves.

Product strategy

(65) During the period considered the members produced a common range of roofing felts included in the Belasco price list.

General meetings discussed whether members should continue or cease production of some of the products and considered exceptions from the common range (see also points 25 and 48).

(66) As new products gained in importance, the members also set about jointly laying down the main specifications for such products. In 1981, when new products still only accounted for a very small fraction of their output, the members decided that felt made with a plastic core material would be manufactured only in 4 mm thickness. In December 1982, after exchanging information about each other's new products, the members jointly decided the concentrations of plastic substances to be incorporated in enhanced bitumen.

The trade mark and joint advertising

(67) The members' output of roofing felt, other than new products, was sold under the collective trademark 'Belasco', together, where appropriate, with the certification mark 'Benor' and the manufacturer's own trade mark. Belasco ran annual advertising campaigns to promote the collective mark. About Bfrs ... ([1]) was spent on these campaigns in 1978 to 1981, Bfrs ... in 1982 and Bfrs ... in 1983. In addition to this joint advertising, members were free to do their own advertising for 'Belasco'-marked products, associated if they wished with promotion of their own trade mark.

(68) The Belasco mark was not used on new products and these were not advertised jointly, but were marketed by each member individually under his own trade marks.

Period during which the Agreement was in operation

(69) Under the terms of the Agreement, which came into effect on 1 January 1978, the Agreement was to be automatically extended for a further five years unless terminated at the end of 1983. No notice of termination was given. Indeed, there is evidence that up to the Commission's investigation at Belasco's offices on 9 April 1984 the members intended to keep up the Agreement, possibly with amendments which then were under discussion.

([1]) In the published version of the Decision, some figures have hereinafter been omitted, persuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

LEGAL ASSESSMENT

I

Article 85 (1)

(70) Article 85 (1) 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, and in particular those which :

(a) directly or indirectly fix purchase or selling prices or any other trading conditions ;

(b) limit or control production, markets, technical development, or investment ;

(c) share markets or sources of supply ;

...

(71) The members of Belasco and IR and AA are undertakings and Belasco is an association of undertakings within the meaning of Article 85 (1). An agreement in which undertakings and an association of undertakings participate falls within the types of conduct which may be prohibited by Article 85 (1).

A. THE CARTEL

(72) The Agreement between the members of Belasco was intended to control the Belgian roofing-felt market. The Agreement formed, together with the measures taken by the members and by Belasco under it to give effect to and supplement the Agreement, a set of agreements and/or decisions by an association of undertakings ('the cartel') which had the object and/or effect of restricting competition and was likely to affect trade between Member States.

The Agreement

(73) The Agreement contained several provisions which had the object or effect of restricting competition :

(i) The adoption of a common price list and minimum selling prices for roofing felt : such restrictions are expressly condemned by Article 85 (1) (a).

(ii) The ban on members making customers gifts or selling them other products at a loss and the agreeing of prices for ancillary products : this ban was intended to prevent members circumventing the agreed price list and minimum prices.

(iii) The setting of quotas for sales on the Belgian market was intended to restrict competition between the members and to share between them the market which they jointly occupied. Market-sharing is expressly condemned by Article 85 (1) (c).

(iv) The ban on members selling or leasing their production plant or equipment to others and the restrictions on subcontracting : these were intended to restrict the scope for market entry or expansion by actual or potential competitors. The commitment of members to contribute to the cost of jointly buying up the facilities of a member whose plant was seized on behalf of creditors or sold after the member had gone bankrupt served the same purpose.

(v) Joint advertising, which could, and did, involve promotion of a collective trade mark : in the course of the proceedings the members referred to the Commission's 1968 notice (1) on cooperation between undertakings as establishing a presumption that agreements on joint advertising were not restrictive of competition. However, the notice specifies that it covers only agreements having joint advertising 'as their sole object' and that agreements on joint advertising may be restrictive if other restrictions are imposed. In the present case joint advertising was part of an agreement which also provided for restrictions on prices and products and for quotas. The products concerned were also largely standardized ; in such a situation individual advertising could and should have been a means whereby suppliers still competed with one another. There is reason to believe that the joint advertising was intended to back up the other restrictive features of the Agreement by fostering users' impression of a homogeneous product and so limiting the scope members ought to have had to compete by differentiating their products.

(vi) Study and promotion of ways of rationalizing and standardizing products : in view of the restrictive nature of the Agreement of which this clause was part and the way it was applied by establishing and maintaining a common range of Belasco products and by beginning to agree basic specifications for new products also, there is reason to believe that this provision was at least partly intended to restrict members' freedom to differentiate their products.

(1) OJ No C 75, 29. 7. 1968, p. 3.

The members' participation in the establishment of IBN standards is not at issue in this case.

(vii) Taking of joint protective or defensive action should the aims of the Agreement be jeopardized by factors external to the members, such as increased competition from abroad, the establishment of new firms producing roofing felt or the discovery of new competing products : this clause was intended to make the other restrictions of competition more effective by making arrangements for *ad hoc* collective action to deal with emerging new sources of competition, particularly from non-members.

The clauses laying down penalties for breaches of the Agreement or decisions made under it, providing for the lodging of security for observance of obligations in a guarantee fund, and empowering the general meeting to take action to curb or prevent breaches of the spirit of the Agreement were intended to reinforce the obligations assumed by the members, and in particular those restricting competition.

Measures giving effect to or supplementing the Agreement

(74) The members took collective action to achieve the restrictive objects of the Agreement :

(i) Adoption of the common price list for Belasco products : in the course of the procedure the members argued that the alignment of their prices was a consequence of Belgian price control legislation. While it is true that the legislation in force over the period allowed trade associations to lodge applications for price increases collectively on behalf of their members, firms were always free to apply individually. Even when a collective application had been made, approval was given for a maximum increase, which did not necessarily need to be applied in full or immediately the approval became effective. The approvals in fact left each individual firm free to decide the size and timing of increases in its prices, and to reduce its prices at any time. The members defended their record in this regard with the argument that the delays in obtaining approval for price rises necessary to cover cost increases, especially over the period 1980 to 1981, meant that the maximum increase approved was often in economic terms a minimum. However, the fact remains that on each occasion the

members collectively decided how the approved increases were to be incorporated in their price lists and, in particular, the date from which the new price list would apply, and that they sometimes voluntarily delayed the introduction of new price lists beyond the earliest permissible implementation date and in some cases agreed to apportion the overall increase in different amounts between products.

(ii) Policing of quotas : compliance with quotas was monitored by the accountant, mainly from the members' monthly returns, and at the end of the year, on the basis of his findings, members who had exceeded their quotas paid penalties, through Belasco, to those who had not fulfilled their quotas.

(iii) Control of members' discounts to customers, especially by setting overall limits, in order to achieve, in conjunction with the measures referred to in (i) above, the aim of the Agreement of maintaining minimum prices for roofing felt in Belgium : this control was in operation mainly from 1978 to 1980, but was also, much less intensively, applied from 1981 to 1983.

The fact that ATAB in particular was able to give discounts higher than the limits set in the agreements between members does not prove that the agreements did not exist or were not applied. When members, including ATAB, were accused of breaching the discount limits they were at pains to defend themselves against such charges and to go on benefiting from the other members' restraint on discounts. What is more, general meetings decided to investigate complaints of excessive discounting.

(iv) Collective decisions to notify, and actual notification of, intended changes in the members' price list to other producers : there is no doubt that this action was intended to help, if not encourage, the other producers to align their prices on those of the members, and so to extend and increase the impact of the price agreements beyond the immediate circle of the members.

(v) Fixing of prices for ancillary products : from April 1979 onwards the members regularly agreed prices for several products used in conjunction with roofing felt ; however, these prices do not appear to have been observed in practice.

(vi) Adoption and application, at least from 1978 until the middle of 1981, of the principle of stability of clientele and agreement by members of the terms to offer particular customers.

Judging by the lists of customers they had won or lost which members produced in the course of the proceedings, the principle does not appear to have been widely observed in practice.

(vii) The concerted campaign in the autumn of 1981 against another manufacturer, IKO, to induce it to abandon a price-cutting policy, during which at least three members succeeded in taking away business from IKO.

(viii) The joint action in 1980 to stop a takeover of a bankrupt former member by one or more interested foreign firms : the members' object was not to acquire UPM's plant themselves but to make sure it did not fall into the hands of competitors who were not members of the cartel. The action was in line with the clauses in the Agreement requiring members to buy up the assets of a member who went bankrupt and calling for joint action should the objects of the Agreement be threatened by increased competition from outsiders.

(ix) Sale of a common range of Belasco products, collective use of the 'Belasco' trade mark and joint promotion of the trade mark : a major aim of this policy was to limit the scope members had, notwithstanding the extensive standardization of roofing felt in Belgium, for competing with one another through product differentiation.

(x) The agreements with non-members on the level of discounts given on Belasco products also helped to back up the Agreement and extend its scope. These agreements are discussed separately below.

(xi) The decisions of September 1981 and December 1982 laying down certain standard specifications for new products and the decisions in 1981 on price increases and in December 1983 on prices and maximum discounts for new products.

The members submitted during the proceeding that only 'Benor' products were covered by the Agreement and should be taken into account in the proceeding and that new products in particular should be excluded. However, this is contradicted by the express wording of the Agreement which applies not only to tar- or bitumen-coated felts and other core substances but also to 'any materials of the same type that may be manufactured in the future to satisfy the same needs'. What is more, new products were included in the calculation of quotas as soon as they came on to the market.

It is true that new products were developed independently by each producer and that the Agreement was only applied to the limited — though increasing — extent described above. Nevertheless, as new products gained in importance, the members intended to progressively extent the price arrangements provided for in the Agreement to them, as far as this was possible for new products that were not covered by official standards, hence the need to agree basic specifications.

It has not been established that the prices and price increases decided for new products were actually adhered to.

Belasco's involvement in running the cartel

(75) Belasco was involved in a number of ways in the operation of the Agreement and the measures supplementing it. It took part until the end of 1983 in the operation of the scheme for penalizing members for exceeding quotas. It was Belasco that employed and paid the accountant who, under the terms of the Agreement, was required to assist the general meeting in administering the Agreement and to monitor the members' compliance with it, notably by policing of quotas. Belasco also financed the joint advertising of the 'Belasco' trade mark and administered the guarantee fund provided for by the Agreement.

The effects of the cartel

(76) In assessing an agreement or concerted practice in the light of Article 85 (1), it is not necessary to consider the effect the agreement or practice had if it has been established that it had the object of restricting or distorting competition. However, not only the restrictive intent, but also the effects, of a cartel must be taken into consideration when it comes to assessing the gravity of the infringements.

(77) The cartel involved seven firms whose combined sales of roofing felt in Belgium averaged 58 % of the country's apparent consumption.

(78) The sales quotas and the arrangements for policing them and penalizing those who exceeded their quotas applied to all the members' sales of roofing felt on the Belgian market over the relevant period. The quotas practically eliminated any incentive or advantage for the members to try to increase their market share through greater competition, since any increase at the expense of other members was effectively prohibited and penalized. The fact that ATAB and KAB in particular were able to evade the quotas sharing out the market by exploiting alleged deficiencies in the policing arrangements to make false returns of their consumption of materials does not mean that the quotas were ineffective in restricting competition, for in doing so these firms were taking advantage of the restrictions observed by the other members — as indeed was their intention since they have admitted that their purpose was to conceal from the other members that they were exceeding their quotas.

(79) Belasco products accounted for about 90 % of all the roofing felt the members supplied to the Belgian market over the relevant period. In relation to these products, the members restricted competition by issuing an agreed standard price list which prevented them announcing different prices. From 1978 to 1980 in particular, the members also accepted restrictions on their freedom to independently determine their final selling prices for Belasco products by introducing control of discounts, mainly in the form of overall limits.

(80) The effects of the abovementioned quota and price restrictions can only have been reinforced by other measures, although it is not certain that these in themselves actually had major restrictive effects, namely the adoption of the standard Belasco product range, the principle of stability of clientele and the joint use and promotion of the 'Belasco' trade mark.

(81) The giving of notice to non-members of changes in the members' common price list led to an alignment of non-members' price lists on the Belasco price list.

(82) The joint action undertaken against IKO to induce it to stop price cutting did enable some members to take customers away from it.

B. THE AGREEMENTS BETWEEN THE MEMBERS AND NON-MEMBERS ON DISCOUNTS

(83) The agreements between the members and non-members to limit their discounts to customers on sales of roofing felt were intended to restrict price competition between the participants. Such conduct is expressly condemned by Article 85 (1). There is evidence of two such agreements :

— the agreements in May 1978 between the members, IR and UPM on a limitation and coordinated reduction of discounts, and

— the agreement to the same end between the members, IR, UPM and AA which was concluded at the latest by 30 October 1978 and lasted until July or August 1980, after UPM had been declared bankrupt on 4 July 1980.

(84) These agreements were effectively about final selling prices, as discounts have no meaning except in relation to a price list, here the Belasco price list which is applied by all. It follows that these agreements did not apply to new products, which were not on that price list. But from 1978 these new products which were not on that price list. But from 1978 to 1980 these new products only represented a very small part of the Belgian roofing felt market. In 1979 and 1980, while new products accounted for 19 % of IR's roofing felt output, they were under 5 % of the combined output of members and a small proportion of imports, which were then taking overall at most 13 % of the market. New products appeared on AA's price list for the first time in March 1980. The agreements on discounts therefore covered a major part of the participants' roofing felt sales.

(85) During the proceeding, IR questioned whether documents written independently of itself by members, i.e. the minutes of Belasco general meetings, could be used as evidence against it. While it is true that internal memoranda written by a party to an agreement about the involvement of other firms in the same agreement should be treated with caution, nevertheless, where, as in the present case, the documents contain a sufficiently large number of clear and consistent statements they are admissible as factual evidence against the parties to the agreement, including those that had no hand in writing them.

(86) The non-members also argued that if there had been agreements, they had had no intention of observing them. However, neither the state of mind of the non-members when they entered into such agreements as to their intention of abiding by them, nor the fact that the non-members did not in fact observe the agreements (as some evidence suggests) would affect the Commission's finding that the agreements were made and that the non-members were parties to them.

C. EFFECT ON TRADE BETWEEN MEMBER STATES

(87) It is an established principle of the Commission's practice and the Court's case law that for an agreement to be considered likely to affect trade between Member States there must be a sufficiently high degree of probability, on the basis of a set of objective factors of law or fact, that the agreement may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States in a manner that is prejudicial to the establishment of a single Community market.

(88) The parties to the Agreement supplied between 57 and 60 % of the Belgian apparent consumption of the relevant products over the period in question and produced around 70 % of national output of the products. The aim of the Agreement, and of the whole cartel, was to control the Belgian roofing-felt market, by such means as adopting common price lists and minimum prices, allocating quotas to share out the market and coordinating product ranges. The Agreement provided also for measures specifically designed to establish barriers protecting the organization of the market from disruption by external forces, and in particular to impede or control the entry of foreign suppliers into the market. These include the restrictions on the transfer of production plant to actual or potential competitors or the use of such plant for their benefit, as well as the provision for collective action to counter the effects of increased competition from other suppliers, especially from abroad. It has been shown, elsewhere in this Decision, that such action was by no means hypothetical.

(89) Even in the absence of the measures designed specificially to impede the participation of foreign manufacturers or suppliers in the market, the cartel was liable to affect trade between Member States. The Court has held in Case 8/72 *Cementhandelaren* (1) of 17 October 1972 that restrictions of competition extending over the whole territory of a Member State reinforce the compartmentalization of markets on a national basis, thereby holding up the economic interpenetration which the Treaty was designed to bring about. These principles were most recently reiterated in the Court's judgment of 11 July 1985 in case 42/84 *Nutricia* (2). Whilst the Cementhandelaren Judgment concerned a cartel between traders rather than manufacturers, the principle laid down above is applicable also to the present case. Where anti-competitive agreements extending to the whole territory of a Member State are liable to be sufficiently pervasive in their effects to substantially alter competitive conditions for that territory, those anti-competitive agreements are liable to establish or reinforce the subdivision of the common market into distinct national markets with their own artificially differentiated market conditions, contrary to the Treaty objective of free and undistorted competition within a unified Community market. Trade between Member States will be affected in that the propensity of foreign manufacturers or suppliers to enter the national market concerned, and the conditions under which they do so, will be different from what they would have been in the absence of such agreements.

(90) In the present case, actual or potential foreign suppliers to the Belgian market, instead of facing fragmented supply by 10 or so national producers competing amongst each other, had to contend with a unified front of the large majority of producers, acting together to distort competition through a comprehensive cartel. The effect was to transform the basis for decisions by foreign suppliers to enter the market, and the competitive conditions they would have to face, including the prospect of collective retaliation by the cartel against competitive pricing by importers.

(91) In notifying other Belgian producers of intended changes in their price lists, the members sought and were able to increase the cartel's impact beyond their own immediate circle.

Similarly, the agreements with non-members regarding discounts were intended by the members to better ensure the implementation of the objective of the Agreement to establish minimum prices for the sale of roofing felt on the Belgian market, by associating with such implementation other national producers having, together with the members, a still larger market share. The roofing-felt sales of the undertakings party to these agreements in every case exceeded 70 % of apparent consumption in Belgium at the time.

Inasmuch as the agreements entered into by the members with the non-members amounted to measures for the implementation and reinforcement of the Agreement, they were liable to affect trade between Member States in the same way as the other elements of the cartel.

(92) Furthermore, the agreements on the limitation of discounts were in themselves liable to affect the conditions in which imported products could come onto the Belgian market, in view of the application of those agreements to the whole territory of that country, and the participation of almost all national producers, accounting for 88 to 94 % of Belgian production at the time. The price levels resulting from such nationwide price agreements were liable to affect decisions of potential foreign suppliers to enter the market, and to influence the selling prices adopted by foreign suppliers. Imports from other Member States ran at between 12 and 19 % of apparent consumption over the period.

(93) The cartel members' competitive position on export markets in other Member States, andhence the volume of trade with those Member States, were also likely to be affected by the cartel's restrictions on competition — particularly price competition — and by the restricted but secure share of the national market which it guaranteed each member in relation to the others.

(94) It is concluded that both the cartel between the members and the agreements on discounts with non-members designed to increase its impact were likely to affect trade between Member States by impeding the integration of markets that is one of the objectives of the EEC Treaty.

II

Article 85 (3)

(95) Article 85 (3) allows agreements or concerted practices to be exempted from Article 85 (1) if they satisfy certain conditions. A precondition for exemption, however, pursuant to Article 4 of Regulation No 17, is that the agreement or practice must have been duly notified to the Commission.

(1) ECR, 1972, p. 977.
(2) ECR, 1984.

In the present case, neither the main Agreement nor the agreements between members and non-members were notified. Article 4 (2) of Regulation No 17 waives this requirement for, *inter alia*, agreements the only parties to which are undertakings from only one Member State and which do not relate either to imports or exports between Member States.

A. THE CARTEL

(96) The cartel involved firms from only one Member State. However, it is to be regarded as relating to imports, and so excluded from application of Article 4 (2), of Regulation No 17, particularly in view of the Agreement's provision for the general meeting to decide on protective or defensive action should the aims of the Agreement be jeopardized by increased competition from abroad.

(97) Even assuming that the Agreement does fall within Article 4 (2) of Regulation No 17, no exemption could be granted as it does not satisfy all the substantive conditions of Article 85 (3). It is sufficient to point out that even agreements or practices that can be shown to have improved the production or distribution of products or to have promoted technical or economic progress can be exempted only if they give consumers a fair share of the resulting benefit, do not impose on the parties restrictions that are not indispensable to the attainment of the objectives, and do not afford the parties the possibility of eliminating competition for a substantial part of the products in question. None of these three conditions is met by a cartel whose objectives include both price-fixing and market-sharing by competing manufacturers collectively holding a predominant position on one Member State's market and protection of that market against actual or potential competition from firms from other Member States.

B. THE AGREEMENTS ON DISCOUNTS BETWEEN MEMBERS AND NON-MEMBERS

(98) These agreements, involving firms from only one Member State and relating neither to imports nor to exports, were dispensed from notification by Article 4 (2) of Regulation No 17. One of the firms involved, IR, indeed raised the possibility of exemption of the agreements under Article 85 (3).

However, none of the substantive conditions for exemption can be considered to be met by a price-fixing agreement which is patently intended merely to restrict competition.

III

Article 3 (1) of Regulation No 17

(99) Article 3 (1) of Regulation No 17 provides that where the Commission, upon application or on its own initiative, finds that there is infringement of Article 85 (1), it may by Decision order the undertakings or association of undertakings concerned to bring such infringement to an end.

(100) Where the infringements have already been terminated, the Commission may still make a formal finding that the infringements took place, in order to clarify the legal position, cf. Judgment in Case 7/82 GVL (1), to require the undertakings or the association to desist in future from any action having the same object or effect, and to impose findes for the infringements committed.

IV

Article 15 (2) of Regulation No 17

(101) Article 15 (2) of Regulation No 17 empowers the Commission by Decision to impose on undertakings that have deliberately or negligently committed infringements of Article 85 (1) fines of from 1 000 to 1 000 000 ECU or a sum in excess thereof but not exceeding 10 % of each undertaking's turnover in the previous business year. In deciding the size of fines, the Commission must have regard both go the gravity and the duration of the infringements.

A. THE CARTEL

(102) The Commission has decided in this case to impose fines on Belasco and its members.

(103) The members of a cartel, whose aims included agreements on prices, sales quotas and concerted action against competitors, including foreign manufacturers and importers, could not have been unaware that they were engaging in restrictions of competition. There is no doubt that the members moreover intended to restrict competition by their operation of the cartel and that Belasco intended to aid them in doing so by participating in the operation of the Agreement.

(1) ECR , 1983, p. 483.

(104) The fines have been set at a level commensurate with the gravity and duration of the infringements taking into account each firm's aggregate turnover and turnover from roofing felt in Belgium and, in Belasco's case, its annual expenditure.

(105) A cartel, such as that operated by the members of Belasco in which competitors restrict competition in all the main areas in which competition should normally operate constitutes a clear-cut infringement of the competition rules, and individual elements of the Belasco cartel such as the restrictions on prices, market-sharing and concerted attacks on competitors are among the most serious of all such infringements.

(106) As for the duration of the infringement, the cartel was in operation throughout the initial term of the Agreement, i.e. from 1 January 1978 to 31 December 1983, and during a period following its automatic extension lasting at least until the Commission's first on-the-spot investigation on 9 April 1984. The cartel's effects were generally in evidence throughout the period, except for some elements whose duration was, as noted above, shorter.

(107) The in-some-respects less restrictive nature of the members' treatment of new products which were gradually coming on to the market during the period has also been taken into account in assessing the gravity of the infringement. However, this difference in treatment does not justify varying the fines imposed on the various members according to the roportion that new products represented in their turnover from the relevant products.

(108) The members must be considered to be equally responsible for the cartel, including the agreements with non-members.

(109) During the proceeding the members claimed they were unaware that an arrangement concerning the sale of roofing felt within a single Member State could infringe Article 85. While there might have been more valid grounds for accepting this argument at the time of the first agreement in 1966 — which, largely for that reason, is not covered by this Decision — it is more difficult to accept it in relation to the Agreement made in 1978, in view of the case law that had since been established regarding so-called 'national' agreements. The 1978 Agreement, although intended to control the national roofing-felt market, also clearly aimed, in order to maintain that control, to impede competition from firms from other countries and expressly provided for action to that end. Nevertheless, the members, particularly the smaller ones, may well not have fully appreciated that the cartel was prohibited by Article 85 (1).

(110) In determining the level of fines, the Commission has had regard to the economic difficulties encountered by the producers of roofing felt on account in particular of the crisis in the Belgian building industry.

B. THE AGREEMENTS ON PRICES BETWEEN MEMBERS AND NON-MEMBERS

(111) In their replies to the statement of objections, the non-members were at pains to point out that they themselves had never become parties to the Agreement between the members. Even so, in the face of the cartel, their freedom had been heavily circumscribed, It had been impossible for them simply to ignore in their own commercial policies the existence of the cartel, the members' prices and the danger of concerted retaliation by the members should their interest be harmed.

When they had been asked by the members to join in concerted action to limit discounts, the non-members had been eager to give the impression of going along with the plans, although they had no real intention of abiding by such agreements. There was also, they claimed, no evidence of their having observed the agreements in practice.

(112) Against this it must be pointed out that in agreeing with the members to join in a policy of restraint of discounts, the non-members ought to have known that this gave rise to an agreement to restrict competition. Thus, their participation in these infringements was at the very least negligent.

(113) Nevertheless, in view of the factors referred to in point 111 and the limited duration of the infringements established against the non-members, the Commission has decided not to fine them.

The involvement of Belasco

(114) While Belasco was not involved in all aspects of the cartel's operation, it was involved in one of ts most serious aspects, namely the system of quotas. Moreover, the participation of a trade association in a cartel, even if only to a limited extent, is more serious where the association is fully aware of the extent and gravity of the restrictions of competition caused by the cartel, as it unquestionably was in the present case.

(115) Although Belasco's members were also the members of the cartel, Belasco itself must be held responsible, independently of its members, for its involvement in operating the cartel,

HAS ADOPTED THIS DECISION:

Article 1

Compagnie Générale des Asphaltes SA, Antwerps Teer- en Asphaltbedrijf NV, De Boer & Co NV, Kempisch Asphaltbedrijf NV, Limburgse Asfaltfabrieken PvbA, Lummerzheim & Co NV and Vlaams Asfaltbedrijf Huyghe & Co PvbA infringed Article 85 (1) of the EEC Treaty by entering into an Agreement, which came into effect on 1 January 1978 and remained in force at least until 9 April 1984, and by taking joint action to give effect to and supplement the Agreement, including jointly participating in the agreements referred to in Articles 2 and 3. The Société Coopérative des Asphalteurs Belges 'Belasco' infringed Article 85 (1) of the EEC Treaty by helping to operate the Agreement.

Article 2

International Roofing Company SA infringed Article 85 (1) of the EEC Treaty by entering into an agreement with the undertakings mentioned in Article 1 on price rebates for the sale of roofing felt in May 1978.

Article 3

International Roofing Company SA and Al-Asfalt NV infringed Article 85 (1) of the EEC Treaty by participating in an agreement with the undertakings mentioned in Article 1 on price rebates for the sale of roofing felt over the period from October 1978 until July or August 1980.

Article 4

An exemption under Article 85 (3) of the EEC Treaty for the agreements referred to in Articles 2 and 3 is hereby refused.

Article 5

Compagnie Générale des Asphaltes SA, Antwerps Teer- en Asphaltbedfrijf NV, De Boer & Co NV, Kempisch Asphaltbedrijf NV, Limburgse Asfaltfabrieken PvBA, Lummerzheim & Co NV, Vlaams Afaltbedrijf Huyghe & Co PvbA, the Société Coopérative des Asphalteurs Belges, International Roofing Company SA and Al-Asfalt NV, shall cease the infringements forthwith (in so far as they are still in existence) and shall refrain from entering into any agreement or engaging in any concerted practice or measure likely to have a similar effect.

Article 6

For their involvement in the infringements referred to in Article 1, the following fines are imposed on the members and Belasco:

(a) Antwerps Teer- en Asfaltbedrijf NV, Antwerp, a fine of 420 000 ECU, or Bfrs 18 478 950;

(b) Compagnie Générale des Asphaltes SA, Brussels, a fine of 150 000 ECU, or Bfrs 6 599 625;

(c) Lummerzheim & Co NV, Gent, a fine of 200 000 ECU, or Bfrs 8 799 500;

(d) Limburgse Asfaltfabrieken PvbA, Hasselt, a fine of 30 000 ECU, or Bfrs 1 319 925;

(e) Kempisch Asphaltbedrijf NV, Herentals, a fine of 75 000 ECU, or Bfrs 3 299 812;

(f) De Boer & Co NV, Schoten, a fine of 75 000 ECU, or Bfrs 3 299 812;

(g) Vlaams Asfaltbedrijf Huyghe & Co PvbA, Staden, a fine of 50 000 ECU, or Bfrs 2 199 875;

(h) Société Coopérative des Asphalteurs Belges, Brussels, a fine of 15 000 ECU, or Bfrs 659 962.

Article 7

The fines referred to in Article 6 shall be paid in Belgian francs within three months from the notification of this Decision into the Commission's account No 426-4403001-52 with Kredietbank, Agence Schuman, 2 Rond Point Schuman, B-1040 Brussels.

Article 8

This Decision is addressed to:

— Antwerps Teer- en Asphaltbedrijf NV
Tolstraat 24
B-2000 Antwerp

— Compagnie Générale des Asphaltes SA
Rue Maurice de Moor 1
B-1020 Brussels

— Lummerzheim & Co NV
Zeeschipstraat 107
B-9000 Ghent

— Limburgse Asfaltfabrieken PVBA
Diestersteenweg 102
B-3510 Kermt-Hasselt

— Kempisch Asphaltbedrijf NV
Hannekenshoek
B-2410 Herentals

— De Boer & Co NV
Pletterijstraat 100
B-2120 Schoten

— Vlaams Asfaltbedrijf Huyghe & Co PVBA
Sleihagestraat 47
B-8820 Staden (Oostniewkerke)

— La Société Coopérative des Asphalteurs belges
Avenue Grand Champ 148
B-1150 Brussels

— International Roofing Company SA
Avenue de Vilvoorde 306
B-1130 Brussels

— Al-Asfalt NV
Kolmenstraat 38
B-3820 Alken

This Decision shall be enforceable in accordance with Article 192 of the EEC Treaty.

Done at Brussels, 10 July 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

ANNEX 1

1983

(in million ECU)

	Business turnover of the undertaking	Turnover in the supply of roofing felt in Belgium
ATAB	21,6	...(1)
Lummerzheim	12,8	...
Asphaltco	20,2	...
De Boer	2,9	...
KAB	3,1	...
Huyghe	2,5	...
LAF	3,1	...
	66,2	23,8
AA	3,4	...
IR	2,2	...

(The expenditure of Belasco in 1983 was ... ECU.)

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

ANNEX 2

Dates of introduction of price lists for roofing felt in Belgium

(1979 to 1984) (1)

Belasco :	9. 1979	3. 1. 1980	5. 3. 1980	1. 7. 1980	1. 3. 1981	1. 9. 1981	15. 5. 1982	27. 2. 1984
Members :								
				(2)				
Huyghe :	3. 10. 1979	3. 1. 1980	5. 3. 1980	11. 9. 1980	1. 3. 1981	1. 10. 1981	15. 5. 1982	1. 4. 1984
KAB :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 9. 1980	4. 1981	1. 10. 1981	1982	1. 3. 1984
LAF :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 9. 1980	4. 1981	1. 10. 1981	1982	1. 3. 1984
Asphaltco :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 9. 1980	1. 3. 1981	1. 10. 1981	15. 5. 1982	7. 3. 1984
De Boer :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 9. 1980	1. 3. 1981	1. 10. 1981	15. 5. 1982	15. 3. 1984
ATAB :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 8. 1980	1. 3. 1981	1. 10. 1981	15. 5. 1982	1. 3. 1984
Lummerzheim :	3. 10. 1979	3. 1. 1980	5. 3. 1980	1. 9. 1980	4. 1981	10. 1981	15. 5. 1982	5. 3. 1984
Non-members :								
IR :	10. 1979	1. 1980	3. 1980	15. 10. 1980	1. 3. 1981	15. 10. 1981	1. 6. 1982	15. 4. 1984
AA : (3)		3. 1. 1980	5. 3. 1980	1. 9. 1980	1. 3. 1981	1. 9. 1981	15. 5. 1982	15. 3. 1984

(1) There were no price changes in 1978.
(2) Introduction postponed by members until 1 October 1980.
(3) No price list supplied.