II

(Act whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1994

relating to a proceeding under Article 85 of the EC Treaty

(Cases IV/33.126 and 33.322 — Cement)

(94/815/EG)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 Spain and Portugal, and in particular Articles 3 and 15 thereof,

Having regard to the decision taken by the Commission on 12 November 1991 to start own-initiative proceedings,

Having given the undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection, in accordance with the provisions of 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],

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas:

PART I

THE FACTS

SECTION I

THE PROCEEDINGS

CHAPTER 1

The inquiry and the proceedings after the statement of objections

1. Introduction

This Decision follows on from investigations carried out from April 1989 to July 1990, pursuant to Article 14(2) and (3) of Regulation No 17, into European cement producers and trade associations and from requests for information sent to them pursuant to Article 11 of Regulation No 17.

2. The initiation of proceedings, the statement of objections and the appeals to the Court of First Instance

(1) On 12 November 1991 the Commission initiated proceedings in the cement cases and adopted its statement of objections.

By letter dated 25 November 1991, the statement of objections was sent to the undertakings. The statement

[1] OJ No 13, 21.2.1962, p. 204/62.

[2] OJ No 127, 20.8.1963, p. 2268/63.

of objections draws a basic distinction between two types of objectionable practices, namely practices at international level and practices at national level.

(2) The full text of the statement of objections, which is contained in a single document, was not sent to each of the 76 undertakings and associations of undertakings involved in the proceeding. Only the chapters relating to practices engaged in at international level were sent to 61 undertakings and associations of undertakings, while 15 Italian undertakings did not receive that part since they do not participate in any international body. The chapters relating to practices at national level were sent only to the undertakings and associations of undertakings established in the Member State in question. By letter dated 20 May 1992, the statement of objections comprising the international section and the relevant national section was also sent to a further Spanish undertaking.

With the chapters relating to them, the addressees of the statement of objections received the full index of the statement of objections and the list of all the files, specifying the documents which were accessible to them.

Each addressee had access to the file on the basis of the document list received and of the specifications contained in the list.

(3) However, by letter dated 9 July 1992, the Commission sent all the undertakings and associations of undertakings to whom the international section of the statement of objections was addressed a document (the record of the meeting of the European Task Force held on 19 August 1986) which had come to its knowledge through the replies to the statement of objections, and asked the undertakings concerned to make known any comments they might have on the document.

(4) After having received the statement of objections and after having had access to the file, a number of undertakings and associations of undertakings, relying on the judgment of the Court of First Instance of 17 December 1991 in Case 7/89 *Hercules Chemicals* v *Commission* [3], asked the Commission to let them have the chapters that were omitted from the statement of objections sent to each of them and, without specifying any details, requested access to the whole of the file, except for internal or confidential documents.

Since the Commission refused to send the chapters omitted from the statement of objections sent to each of the addressees or to give them access to any documents in the file other than those which they had already been able to consult, S.A. Cimenteries CBR, Blue Circle Industries , the Syndicat National des Fabricants de Ciments et de Chaux, ENCI N.V., the Vereniging Nederlandse Cementindustrie and the Fédération de l'Industrie Cimentière lodged appeals with the Court of First Instance asking for annulment of the Commission decision to refuse to send them the documents and requesting interim measures aimed at bringing about the suspension of the proceedings (Cases T-10 to 12, 14 and 15/92).

(5) By order of 23 March 1992, the President of the Court of First Instance rejected the applications for interim measures and set 27 and 31 March 1992 as the deadlines for the plaintiffs to reply to the statement of objections.

By order of 11 September 1992, Case T-14/92 *ENCI and Vereniging Nederlandse Cementindustrie* [4] was deleted from the register of the Court following the withdrawal of the parties.

Pending the judgment by the Court of First Instance on the substance of the appeals, the Commission suspended the oral hearing to be held after receipt of the replies to the statement of objections.

By judgment of 18 December 1992, in Joined Cases T-10 to 12 and 15/92 [5], the Court of First Instance rejected as inadmissible the appeals lodged by S.A. Cimenteries CBR, Blue Circle Industries Plc, the Syndicat National des Fabricants de Ciments et de Chaux and the Fédération de l'Industrie Cimentière.

3. Hearing

(1) By letter dated 5 February 1993, the Hearing Officer invited the undertakings and associations of undertakings to which the statement of objection had been sent to attend the hearing to be held from 1 March to 1 April 1993.

The hearing was divided into three series of sessions: one series of sessions on the cement market, which all the undertakings and associations of undertakings were able to attend; a second series of sessions on the international part of the statement of objections, which only those undertakings and associations of undertakings which received that part of the statement of objections were able to attend; and a third series of sessions on each of the national chapters, which the

[3] [1991] ECR II-1711.

[4] [1992] ECR II-1571.

[5] [1992] ECR II-2667.

undertakings and associations of undertakings of the relevant Member State were able to attend separately.

In the notice of summons, it was stipulated that if an undertaking wished to put forward its arguments privately, it should indicate precisely the relevant parts of the statement of objections and the relevant business secrets within the meaning of Articles 19, 20 and 21 of Regulation No 17.

(2) By letters dated 17, 18 and 26 February 1993, EC-MEC-CDICT, ECEC and Blue Circle Industries Plc respectively informed the Commission that they did not wish to avail themselves of the opportunity of putting forward their arguments orally on the objections raised against them.

Cedest similarly did not attend the hearing: it had asked for a separate hearing, though without indicating any specific reasons for such request.

4. Termination of the proceeding against certain undertakings

(1) Following examination of the written replies to the statement of objections and the explanations put forward orally at the hearings in March 1993, the Commission decided on 23 September 1993:

(a) to drop the objections relating to the international part, Chapters 2, 10, 11 and 12 of the statement of objections, and, consequently, to terminate the proceeding initiated on 12 November 1991 against the twelve German and six Spanish undertakings specified;

(b) to drop the objections relating to the national agreements, decisions and concerted practices, Chapters 3 to 9 and 13 to 19, and, consequently, to terminate the proceeding initiated on 12 November 1991 in respect of those chapters in the statement of objections.

(2) All the undertakings and associations of undertakings were informed, by letter dated 27 September 1993, of the Commission's decision. In the same letter, the Commission informed the undertakings and associations of undertakings concerned that, as a consequence of its decision, the *'indications contained under letter c) in Part II (Applicability of Article 15(2) of Regulation No 17/62) in point 93(b) of the statement of objections regarding 'the fact that it is impossible to separate the national agreements, decisions and concerted practices from the European ones, since both form an inseparable whole' are now purposeless and will not be taken into consideration during the procedure which will follow its usual course for all remaining chapters of the statement of objections addressed to you'.*

5. The undertakings and associations of undertakings involved in this Decision

(1) (a) *International associations*

Cembureau (The European Cement Association), whose activities will be fully described in Chapter 3.

(2) (b) *Groups having their registered offices in non-member countries*

— Holderbank Financière Glaris S.A. *(Holderbank)*, whose registered office is in Switzerland, is the largest cement producer in the world. It controls several companies throughout the world. Within the Community, it controls the following companies, whose activities will be taken into consideration in this Decision: in Germany: Alsen-Breitenburg Zement- und Kalkwerke GmbH *(Alsen)*; Nordcement AG *(Nordcement)*; in Belgium: S.A. Obourg *(Obourg)*, a holding company which controls the cement activities of the Holderbank group through the companies S.A. Ciments de Haccourt and S.A. Ciments d'Obourg; in Spain: Hornos Ibéricos Alba S.A. *(Hornos Ibéricos)*, a cement company, and UMAR — Union Maritima Internacional S.A. *(UMAR)*, a company engaged in the international clinker and cement trade; in France: Ciments d'Origny S.A. *(Origny)*. It also has a 31% stake in the capital of the Dutch producer ENCI N.V.

— Aker a.s. *(Aker)*, a Norwegian holding company which controls *inter alia* the Norwegian cement producer Norcem a.s. *(Norcem)*.

— EUROC AB *(EUROC)* is a Swedish holding company which controls *inter alia* the Swedish cement producer Cementa AB (Cementa).

In 1986, Aker and EUROC, each of which has holdings in the other, decided to merge their international activities and set up a 50/50 joint subsidiary Scancem Group Limited *(Scancem)*, which is a holding company controlling *inter alia* Scancem International, a company engaged in the international clinker and cement trade, and the British cement producer Castle Cement Limited *(Castle)* and has an indirect 26% holding in the Spanish cement producer Compañia Valenciana de Cementos Portland S.A.

Castle has existed since 5 April 1988. On that date, Scancem purchased the cement business of Rio Tinto Zinc Cement and merged in Castle the companies Tunnel Cement Ltd, Castle Cement (Ribblesdale) Ltd, Castle Cement (Ketton) Ltd., Castle Cement (Clyde) Ltd and Castle Cement (Padeswood) Ltd and Castle Cement (Pitstone) Ltd.

(3) (c) *Germany*

— The Bundesverband der Deutschen Zementindustrie e.V. *(BDZ)* is the association which represents the German cement producers, its object being to protect and promote the common economic interests of the German cement industry in Germany and abroad.

— Heidelberger Zement AG *(Heidelberger)* is one of the major German cement producers. It has a number of holdings in other German cement producers and in the French producer Vicat. In 1993, it took control of the Belgian group S.A. des Cimenteries CBR.

— Dyckerhoff AG *(Dyckerhoff)* is the other major German producer. It also has a number of holdings in German cement producers, controls the Spanish producer S.A. Española de Cementos Portland and has a 33% holding in the Luxembourg company Intermoselle S.a.r.l., a joint subsidiary of Dyckerhoff, Société des Ciments Français and S.A. des Ciments Luxembourgeois.

— *Nordcement* and *Alsen* (of the Holderbank group).

(4) (d) *Belgium*

— The Fédération de l'Industrie Cimentière, a.s.b.l. *(FIC)* is the association representing the Belgian cement producers. It covers all activities relating directly or indirectly to the cement industry, excluding all industrial and commercial operations, and its object is to promote understanding and coordination between the undertakings, to defend and promote the interests of the trade and to represent them in dealings with the public authorities.

— S.A. Cimenteries CBR *(CBR)* is the largest Belgian cement producer. It has a 68% stake in the Dutch cement producer Eerste Nederlandse Cement Industrie N.V. *(ENCI)*, 31% of which is held by the Holderbank group. In 1993, Heidelberger purchased from the Société Générale de Belgique the controlling interest which it held in CBR.

— S.A. *Obourg* (of the Holderbank group)

— S.A. Compagnie des Ciments Belges *(CCB)*, the third largest Belgian producer after CBR and Obourg. CCB is a family firm which was purchased in 1990 by Société des Ciments Français.

(5) (e) *Denmark*

— Aalborg Portland A/S *(Aalborg)*, the sole Danish cement producer, in which Blue Circle took a 50% stake in 1989.

(6) (f) *Spain*

— The Agrupacíon de Fabricantes de Cementos de España — Oficemen *(Oficemen)* is the association of Spanish cement producers, whose task is to represent and defend the legitimate interests of the Spanish cement industry.

— Compañía Valenciana de Cementos Portland S.A. *(Valenciana)*, one of the largest Spanish producers. At the time when the statement of objections was sent, Valenciana held 50% of the capital of Cementos del Mar S.A., 25% of the capital being held by Banco Bilbao Vizcaya and 25% by Banco Central. At that time too, Valenciana held 50% of the capital of Cementos del Altantíco S.A., the rest of the capital being held by Cementos del Mar. Since October 1990, Valenciana has had a majority of the seats on the board of directors of Cementos del Mar. Since April 1992, Valenciana has owned 99.95% of the capital of the two companies.

— Asland S.A. *(Asland)*, which controls Cementos Asland S.A. and Asland Catalunya y del Mediterráneo S.A.. In 1990, Lafarge Coppée took control of Asland.

— Corporación Uniland S.A. *(Uniland)*, which controls Uniland Cementera S.A.

— *Hornos Ibéricos* Alba S.A. (of the Holderbank group)

— *Hispacement* S.A. is a joint venture for exports set up between the Catalan cement producers Asland, Uniland, Cementos Molins S.A., Auxiliar de la Construcción S.A. and Compañía Catalana de Cementos Portland.

(7) (g) *France*

— The Syndicat Français de l'Industrie Cimentière *(SFIC)*, which until 1992 was known as the Syndicat National des Fabricants de Ciments et de Chaux, is the association of French cement producers. Its aims are fairly wide-ranging and include the bringing together of all the members of the trade in order to coordinate their activities, carry out studies, develop the training of skilled labour, pass on any useful documentation to members and represent the trade in dealings with the public authorities and the trade and intertrade groups.

— Lafarge Coppée S.A. *(Lafarge)* is a holding company controlling a number of companies worldwide: in France, it controls Ciments Lafarge and Lafarge Overseas, and it holds 25% of the capital of Cedest; in Germany, it controls Wössinger Zement (in which Cedest has a 17% holding); in Spain, it has since 1990 control led Asland S.A.

— Société des Ciments Français S.A. *(Ciments Français)* is a cement group with widespread interests. In France, it controls Ciments de Loire and Ciment de l'Adour and had a 33% stake in Intermoselle S.A., a 50/50 joint venture between Ciments Français, S.A. des Ciments Luxembourgeois and Dyckerhoff.

In 1990, it took control of the Belgian producer CCB and of the Spanish producers Sociedad Financera y Minera S.A. and Cementos Rezola S.A.

In 1992, control of Ciments Français was acquired by the Italian producer Italcementi-S.p.A.

— Vicat S.A. *(Vicat)*, 65% of which is owned by the Vicat family and 35% by Heidelberger.

— Cedest S.A. *(Cedest)*, which belongs to Groupe CGIP and in which Lafarge has a 25% holding.

(8) (h) *Greece*

— The *Association of the Greek Cement Industry* is the association representing the Greek cement producers. Its object is to develop, protect and promote the Greek cement industry in Greece and abroad.

— Titan Cement Company S.A. *(Titan)*.

— Heracles General Cement Company *(Heracles)*, a State-controlled company which was purchased in 1992 by Calcestruzzi S.p.A. of the Ferruzzi group.

— Halkis Cement Company S.A. *(Halkis)*.

(9) (i) *Ireland*

— Irish Cement Ltd *(Irish Cement)*, which is the only cement producer in Ireland.

(10) (k) *Italy*

— Italcementi — Fabbriche Riunite Cemento S.p.A. *(Italcementi)*, which controls a number of cement and concrete-producing companies in Italy. In 1992, it acquired control of the cement group Ciments Français.

— Unicem S.p.A. *(Unicem)*, belonging to the Agnelli holding company IFI, which controls several cement-producing companies in Italy and the United States.

— Cementir — Cementerie del Tirreno S.p.A. *(Cementir)*, a company belonging to the public holding company IRI and sold to the Caltagirone group in 1992.

— Fratelli Buzzi S.p.A. *(Buzzi)*.

(11) (l) *Luxembourg*

— S.A. des Ciments Luxembourgeois *(Ciments Luxembourgeois)*, which has a 33% stake in Intermoselle S.A., a 50/50 joint venture between Ciments Luxembourgeois, Ciments Français and Dyckerhoff.

(12) (m) *Netherlands*

— The Vereniging Nederlandse Cement-Industrie *(VNC)* is the association of Dutch cement producers (there is now only one remaining producer), whose aim is to protect the joint, non-competing interests of its members and to promote market development and research.

— *ENCI* N.V. (controlled by CBR)

— NCH — Nederlandse Cement Handelmaatschappij B.V. *(NCH)* is a cement marketing and distribution joint venture between the following German producers: Dyckerhoff, Montanzement Marketing GmbH, Heidelberger, Anneliese Zementwerke AG, E. Schwenk Zement- und Steinwerke (Schwenk), Wülfrather Zement GmbH,

Hermann Milke KG GmbH und Co., Pheonix Zementwerke Krogbeumker KG, Teutonia Zementwerk AG (Teutonia), Gebr. Gröne GmbH und Co. KG, Alsen, Hannoversche Portland-Cementfabrik AG and Nordcement.

(13) (n) *Portugal*

— ATIC — Associação Tecnica da Industria do Cimento *(ATIC)* is the association of Portuguese cement producers. Its object is to carry out activities of a scientific and technical nature, and it is active in the fields of research, information and promotion of the utilization of cement.

— Cimpor — Cimentos de Portugal S.A. *(Cimpor)* is an undertaking belonging to the Portuguese State.

— SECIL — Companhia Geral de Cal e Cimento S.A. *(SECIL)* is an undertaking, 59% of whose capital is held by the Portuguese State and 41% by foreign shareholders.

(14) (o) *United Kingdom*

— The British Cement Association *(BCA)* is the association of British cement producers. Its main object is to promote and represent the interests of its members, to develop the use of cement, and to provide a number of mainly technical services.

Before it changed its name on 1 June 1988, BCA was known as the Cement and Concrete Association, having purely technical tasks, the representation of the cement producers' interests being entrusted to another association, the Cement Makers' Federation. On 1 June 1988, the Cement Makers' Federation was dissolved, and representation of the British producers' interests was entrusted to the Cement and Concrete Association, which changed its articles and renamed itself the British Cement Association, grouping together the activities of the two previous associations. The last chairman of the Cement Makers' Federation became the chairman of the British Cement Association; the members of the Cement Makers' Federation, who were also members of the Cement and Concrete Association, became the members of the British Cement Association.

— Blue Circle Industries Plc *(Blue Circle)* is a group which controls a number of companies throughout the world engaged in the production of cement and ready-to-use concrete and the marketing and transport of cement and clinker.

— The Rugby Group Plc *(Rugby)* is a group which is involved in the cement industry in the United Kingdom and Australia, the transport industry, the wood and glass industry and the steel industry.

— Castle (belonging to the Aker/EUROC group).

SECTION II

CHAPTER 2

The cement market

6. **Grey cement**

(1) Cement consists of various binding materials which, when mixed with water, set to a hard mass.

The properties of cement vary considerably depending on the quantities of raw materials used and the production methods chosen. However, all the various types of cement derive from a single intermediate product known as clinker.

(2) Clinker is obtained by burning a mixture of calcareous materials containing chalk and lime, with argillaceous products such as shales, slate and sand.

(3) There are two basic processes for manufacturing clinker: the 'wet' process and the 'dry' process, the first being the traditional one. The basic difference between the two processes is that, whereas in the 'wet' process the raw materials (calcareous and argillaceous products) are ground and mixed with water, thus producing a slurry, before being burned in the kiln, in the 'dry' process the mixture is obtained by making use of the humidity present in the raw materials by means of pre-heating systems, applied during and after grinding and before the burning of the mixture.

The 'wet' process requires a high level of energy consumption, since the water that has been added has to be eliminated during burning in the kiln.

The two main variants of the 'dry' and 'wet' processes are the 'semi-dry' and 'semi-wet' processes, which are largely based on the same principles as the dry process (pre-heating before burning in the kiln), but with some water being added.

Using the dry, semi-dry or semi-wet processes instead of the wet process allows considerable savings to be made in water and energy and has appreciable ecological benefits.

(4) Since it is an intermediate product, clinker cannot be used as such as an hydraulic binding material, since it requires subsequent transformation. However, it can be and is traded between cement producers, who may, for various reasons, buy or sell from or to other producers. When clinker is traded in this way, it constitutes a specific cement product and, consequently, a product with its own market.

(5) In order to obtain cement, the clinker must be ground and mixed with other substances, such as gypsum, natural pozzolanas, fly ash or slag.

(6) Cement may be divided into different types on the basis of the percentage of clinker contained in the final product. There are thus two basic types of cement: Portland cement, which may contain 95% clinker, and cements containing secondary raw materials (such as pozzolanas, slag, etc.), which may contain as little as 20% clinker.

The use of secondary raw materials, which is of course dependent on the availability and price of supplies of such materials, allows considerable energy savings to be made.

(7) Depending on its composition, cement may be divided into the following main categories:

(a) ordinary and special Portland cement, which is the cement normally used in the building and civil engineering industry;

(b) pozzolanic cement — clinker + pozzolana or fly ash;

(c) blast-furnace cement — clinker + slag;

(d) high alumina cement, obtained from special clinker, which hardens rapidly and has a high resistance to aggressive substances (e.g. sea water).

(8) The most widely used cements are divided, by class of resistance, into normal cements and high-resistance cements: normal cement has, as from the 28th day of its use, a minimum compression resistance ranging from 300 to 350 kg/cm^2; high-resistance cement has a compression resistance ranging from 425 to 450 kg/cm^2 and beyond.

(9) Grey cement is a homogeneous product, and inter-brand competition is not of major importance. Although the raw materials used may differ from one plant to another or from one country to another, the final product must possess standards that correspond to physical, chemical and mechanical characteristics which, even before being imposed by the public authorities, were universally recognized by the producers. Whatever the type of cement produced (ordinary or special, normal-hardening or rapid-hardening etc.), therefore, it must always possess the standard characteristics required, and most of the producers are able to supply all types of cement.

7. White cement

(1) The production of white cement requires a very particular quality of chalk for the production of white clinker, and thus one which is rarer than the chalk used to make clinker for grey cement, and special production facilities.

Like grey cement, white cement is obtained from the grinding of white clinker and the addition of gypsum. Its whiteness entails highly specific measures and monitoring so that it can meet the requirements of demand, which are in most cases aesthetic requirements.

White cement is normally a Portland cement and, like grey cement, must meet certain physical, chemical and mechanical specifications, and it is divided by classes of resistance.

(2) Because of the uses to which it is put and the rarity of the raw materials required, white cement is produced by a fairly limited number of manufacturers, its consumption is equivalent to about 1% of the consumption of grey cement, its cost price is higher than that of grey cement and its selling price is twice that of grey cement.

White cement has a different market from the grey cement market.

8. Characteristics of the industry

(1) The cement industry is a heavy, capital-intensive industry requiring large-scale investment. Average plant life is long, amounting to between 20 and 30 years.

(2) The cement industry is geographically widely dispersed: cement is manufactured throughout virtually the whole world. This is due in large part to the fact that the technical process can be used even in the least developed countries, and to the easy availability and relatively low cost of local raw materials. Cement plants are generally close to their raw material sources because the raw materials are heavy and costly to transport. The proximity of cement plants to consumers is another important aspect.

(3) Supply is rigid, since in the short term it is linked to specific production capacities, which require large-scale investment if they are to be increased.

(4) Demand is also relatively rigid even when alternative prices are available. Consequently, the traditional

solution of cutting prices when sales are falling is not a very viable one for producers, since the cement industry in itself can have only a very small influence on the factors determining demand, which are a reflection of the general state of the economy. Such factors are, essentially, interest rates, the policy on lending, the development of real purchasing power, the level of public investment and the profitability of business and of industry in general. Trends in the cement industry thus reflect the trend of economic cycles in the relevant country.

(5) The cement industry offers ideal conditions for achieving economies of scale: the basic process is simple, the final product is homogeneous, and the technology is accessible to everyone. Economies of scale have a major influence on fixed costs and on labour. They may also influence the cost of energy, comparing cases in which the same manufacturing process (wet or dry) is used, since larger-scale energy consumption in a large production unit entails a decrease in the unit price, as will be seen below. An attempt has been made to quantify economies of scale so as to establish the optimum size of a cement production factory (6), and although there are differences of opinion between economists as to the economies achieved in a factory of optimum size as compared with another that is not of optimum size (different economists put such economies at between 10% and 26%), it is accepted that such economies are of major importance to the cement industry.

This has led the cement industry to reduce the number of factories and to increase their average size, as shown by Table 6b presented at the hearing on 2 March 1993 by the Italian industry.

9. Production costs

(1) In their replies to the statement of objections and at the hearing, the undertakings stated that, in substance, the curve of unit production costs was appreciably the same in all countries. Judging from the data published in the documents referred to in the footnotes concerning paragraphs 4 and 5, the statements put forward by the undertakings do not seem to correspond to the facts.

(2) It would seem firstly that, in the cost prices of cement, fixed and variable costs are more or less equal, with each accounting for about 50% of cost price.

(3) As regards fixed costs, mention should be made of financial costs, which differ from one country to another, since they are linked to interest rates, which were markedly different in the various Community countries throughout the 1980s. Depreciation rates also, although less directly than financial costs, reflect the influence of differing interest rates.

(4) The situation regarding the cost of labour, which affects a small proportion of fixed costs (servicing and maintenance) and the bulk of variable costs, was as follows in the Community countries in 1987, taking average costs per hour (Germany: index 100) (7):

Germany	100
Netherlands	95
Belgium	92
Denmark	88
France	78
Italy	74
Ireland	60
United Kingdom	58
Spain	50
Greece	40
Portugal	20

(5) Industrial electricity prices (8) also vary from one country to another and are in all cases degressive in line with the quantities used. Eurostat applies seven consumption categories, ranging from 30 000 KWH to 24 000 000 KWH. A look at the data relating to 2 000 000 KWH (analysis of the other consumption categories leads to similar conclusions) shows that in 1985 and 1990 (referring to other years produces similar conclusions) energy prices differed appreciably from one country to another (ECU/100 KHW):

	1985	1990
Brussels	7.37	6.94
Copenhagen	6.82	5.71
Düsseldorf	7.70	9.83
Athens	8.55	6.52
Madrid	7.03	8.29
Paris	5.67	5.82
Dublin	8.54	6.52
Milan	9.85	9.28
Luxembourg	6.65	7.33
Rotterdam	8.70	6.63
Lisbon	7.65	6.99
London	6.36	6.35

(6) Different production costs mean different prices from one country to another, and even from one region to another within one and the same country, where selling prices are not fixed or controlled by the public authorities.

(6) C. Pratten, A Survey of the economies of scale, Studies on the Economic of Integration, Research on the 'Cost of Non-Europe', Basic findings, Vol. 2, EC Commission, Brussels 1988.

(7) Source: European Commission, Panorama of EC industry, 1990, p. 77; DRI Europe. The same data are referred to in the opinion of Professor Peter Williamson, annexed to Blue Circle's reply to the statement of objections.

(8) Source: Eurostat — Electricity prices 1985-91, p. 177.

Thus, Tables 7, presented at the hearing on 2 March 1993 by the Italian industry and drawn up on the basis of Cembureau figures (see Annex 9), which show the trend of prices in the Community countries from 1981 to 1991, indicate that, as between United Kingdom prices and German, French and Belgian prices, there was in 1981 a difference of some ECU 30 a tonne (the British price being around ECU 70) and of ECU 15 to 20 a tonne in 1991, that the price difference between France, Belgium and Germany, which was almost zero in 1981, gradually widened as from 1982 to reach some ECU 12 a tonne in 1986, falling back to some ECU 7 a tonne in 1991, that the price difference between Italy and the United Kingdom always remained enormous at some ECU 30, and that Italian prices always remained at least 20% lower than French prices and at least 35% below German prices.

These price differences between the various countries were confirmed at the Cembureau Head Delegates meetings (see recital 19).

In the countries in which there was no control of prices or in which such control was lifted, the producers publish prices for each factory that may differ from one another, as is shown by the fact that, for such countries (Germany, France and Spain, for example), the national associations notify price averages to Cembureau.

10. **Cost of transport**

(1) The cost of transport is an important element in determining the final price to the cement consumer, since cement is a heavy product having a low value in relation to its weight.

A first point to be noted is that the unit cost of road transport per tonne decreases as the distance to be covered increases. Taking an index of 100 for distances between 450 and 499 km, the index would be around 80 for distances between 500 and 1 499 km and about 65 for distances in excess of 1 500 km. In absolute terms, one can calculate, for 1989, a minimum of ECU 0.06 per t-km and a maximum of ECU 0.08 per t-km for the first category of distances, a minimum of ECU 0.05 per t-km and a maximum of ECU 0.07 per t-km for the second category and a minimum of ECU 0.04 per t-km and a maximum of ECU 0.06 per t-km for the third ([9]).

A second point to be made is that, in the period 1982 to 1988, the trend of the price index differed from one country to another ([10]). If one takes an index of 100 for 1982 (such index corresponds to different absolute values from one country to another), the index had, by 1988, reached 122 for Germany, 109.8 for France, 115 for Italy, 108.7 for the Netherlands and 117.8 for Belgium-Luxembourg.

The unit costs of sea transport are much lower than for road transport; however, to the lower unit costs as compared with road transport costs must be added the cost of establishing silos at the point of unloading.

(2) The three main methods used for adding transport costs to the cost of production in determining the price which the consumer must pay are as follows ([11]).

(3) (a) *The basing-point system*

'Sale from a basing point implies a delivered price equal to a base price plus the cost of carriage to the place of delivery calculated from a predetermined basing point, which need not necessarily be the place where the seller's factory is located' (Phlips, p. 10) ([12]). When there are several basing points, the system is called a 'multiple basing point system'.

Outlawed in the United States since the forties, the basing point system was officially adopted by Article 60 of the ECSC Treaty (Phlips, p. 15).

'This system requires an agreement between producers on the method of calculating transport costs, the manner of fixing and altering ex-works prices (for example, the average of production costs or through the recognition of price-leaders) and the locations selected as basing points. The zone covered by the agreement is represented by concentric circles around each basing point so that, if the distance between the basing point and the purchaser and the ex-works price are known, everyone is able to know the final price to

([9]) European Communities — Europa Transport, Annual Report 1989, Supplement to the Scad Bulletin, 1991, p. 59.

([10]) European Communities — Europa Transport, Annual Report 1988, Supplement to the Scad Bulletin, 1990, 2.8.2 'Price indices'.

([11]) The following analysis makes use of the studies carried out by Phlips, Spatial pricing and competition, Commission of the EC, Competition Approximation of legislation Series No 29, 1976, and by P. Bianchi, Politiche pubbliche e strategie dell'impresa nell'industria europea del cemento, Ed. Il Mulino, Bologna, 1980.

([12]) Original text in English.

each purchaser . . . This system consequently allows each producer to determine immediately the size of his market by looking at the map graduated in relation to the agreed basing points. It also allows a division of markets between producers since it allows determination of the maximum distance each producer can reach without having to absorb a part of the transport costs and the maximum distance beyond which the absorption of transport costs wipes out the profit margin' (Bianchi, p. 30) ([13]).

(4) (b) *The zone price method*

'A uniform delivered price is applied throughout a given territory. When the unit transport cost is fairly high, and demand is concentrated at different places, a number of separate areas can be demarcated. Within each such area, a single delivered price applies to all points of delivery. . . . Between the areas, a rigid price difference is maintained, which means that buyers (dealers or the ultimate consumer) are prohibited from buying or reselling in any area other than that in which they are located (or which is allotted to them). There is thus a need for strict control of shipments. The simplest way of exercising this control is to ban buyers from handling their own carriage. Yet this is not essential: it may suffice to require payment of the delivered price (. . .) applying in the buyer's area even when he obtains supplies in another area. In such cases, price gaps between areas must not exceed the cost of freight to each of the main centres of consumption, to exclude the possibility of arbitrage. Within each area, a ban on taking delivery at the factory itself ensures that the system will operate smoothly. Once again, however, more flexible arrangements may be possible: it is possible to go so far as to allow reimbursement (sometimes in part only) of freight charges where delivery is taken at the factory, but this presupposes a highly disciplined trade, strict control of destination and tariffs reflecting genuine freight costs' (Phlips, pp. 9-10) ([14]).

'In a system where prices are set by area, the situation is clear and little discussion seems called for: the system is possible only if a geographical market is broken up by tacit or explicit market-sharing agreements. The logic of the system from the price competition angle is obvious: firstly, there can be no competition either at the production or at the wholesale stage; secondly, buyers have no incentive to obtain their supplies from manufacturers nearer by' (Phlips, p. 14) ([15]).

(5) (c) *The factory price method* (F.O.B.)

Under this method, *'the producers publish a factory price at which buyers may buy goods for carriage at their own expense; alternatively, if they prefer the producer to look after carriage, the actual cost can be added to the factory price. In any event, the net producer price (after deduction of freight) is the same*

([13]) Original text in Italian. 'Questo sistema richiede un accordo fra i produttori sul metodo di calcolare i costi di trasporto, sul modo di fissare e cambiare i prezzi base (ad esempio un comitato esterno che sulla base dei costi medi di produzione fissa i nuovi prezzi base, oppure un sistema di *price-leadership* riconosciuto da tutti, ecc.) e naturalmente le località scelte come punti-base. La area coperta dall'accordo è delineata, diciamo, appunto in cerchi concentrici attorno a ciascun punto-base cosicché, data la distanza fra il punto base e l'acquirente e dato il prezzo base, è possibile per chiunque dire immediatamente quale sarà il prezzo finale per ogni acquirente . . . Pertanto questo sistema permette al singolo produttore di individuare immediatamente l'area di espansione delle sue vendite solo guardando la mappa, graduata in relazione ai punti base concordati.
Questo sistema regola pertanto la ripartizione dei mercati fra i produttori perché specifica la massima distanza a cui è possibile per un produttore vendere senza dover assorbire almeno parte dei costi di trasporto e quindi anche la massima distanza oltre la quale l'assorbimento dei costi di trasporto assorbe tutto il margine di profitto.'

([14]) Original text in English.
([15]) Original text in English.

whatever the destination since, at any point of delivery, the delivered price is equal to the factory price plus carriage costs. In a system such as this, the delivered price rises with the distance of the place of delivery from the factory or the centre of production. Each centre thus has a 'natural' market where the delivered price of its goods is lower than that of competing centres of production' (Phlips, p. 12) ([16]).

There are two possible variants of this method.

The first variant is that the factory price is uniform for all producers. *'Uniform F.O.B. prices are found both where there is an organized cartel and where there is tacit collusion, as is the basing point system. Although price information is less perfect as regards delivered prices, since buyers are using their own means of transport, it is perfect as regards factory prices. While the exclusion of alignment confines each centre of production to its own natural market, tacit price-fixing is fostered. The choice between the two formulae will depend, among other things, on the geographical stability of demand. If demand develops along parallel lines on the various regional submarkets, the F.O.B. system is the simplest. Each natural market develops at the same rate, and market shares . . . can be safeguarded simply by maintaining each operator's natural market. If undesirable shifts in natural demarcation lines were to arise, for instance, through the development of new means of transport, corrections can still be made by adjusting differences between factory prices. On the other hand, if regional demand shifts are frequent and on a large scale, alignment becomes necessary and basing points with it. A centre for which demand is falling can then maintain its market share by supplying growth regions without endangering the structure of prices' (Phlips, pp. 17-18)* ([17]).

The other variant of the method is to have a factory price that is not uniform for a given number of producers, but specific to each of them. In this case, each producer has a 'natural market'; however, the extent of such market is not defined by the uniformity of the factory prices of the other producers, but depends solely on factors that are independent of any collusion. If the producer lowers his factory price because he has managed to reduce production costs through better use of plant or through innovations that improve output, his 'natural market' becomes larger and he is able to encroach on the 'natural markets' of other producers. Similarly, if the factory is more favourably located than those of competitors and if technological innovations are applied to means of transport, the natural market may be extended (see Bianchi, p. 29).

11. **The relevant market**

(1) In terms of the relevant product market, grey cement, white cement and clinker constitute separate markets, since each product meets different requirements.

However, it must be borne in mind that clinker may influence the other two markets, since it is the essential intermediate product used in manufacturing grey cement and white cement.

(2) In terms of the relevant geographic market, the cement market may be seen as a set of markets, centred around the various factories, overlapping one another and covering the whole of Europe.

(3) The size of each market, and the extent of market overlap, are determined by the distance, from the factory,

([16]) Original text in English.

([17]) Original text in English.

at which cement may be sold. The producers are not in agreement on what this distance is, since at the hearing some producers cited a maximum of 100 km (the Italian association AITEC, Table 4; Oficemen, Chart 2), while others went as far as 150 or 200 km (SFIC, Transparency 14).

If the producers cannot agree on the distance at which cement can be sold economically, the Commission for its part is not in a position to determine such distance, since it must confine itself to factual findings.

In the light of what has been stated above regarding economies of scale, production costs, freight costs and the methods for adding freight costs to the cost price, it may be said generally that, in a competitive system, the distance at which cement may be sold depends on a number of factors such as the size of the production plant, the degree of utilization of production capacity, production costs, the means of transport used and the cost of each means of transport, and the prices charged on the various markets.

(4) The Commission notes the following factual findings: Schwenk, which has its production plants at Ulm and Karlstadt, supplies cement through NCH, covering more than 500 km to the Dutch frontier, to which must be added the kilometres covered in the Netherlands to supply the cement to the purchasers; Teutonia delivers cement by road through NCH from its Hanover plant to the Netherlands, covering a distance to the Dutch frontier of between 224 and 264 km (depending on whether the cement is supplied to the north or south of the Netherlands), to which must be added the kilometres covered within the Netherlands to deliver the cement to the purchasers; producers in northern France have, through Norcim, supplied cement to the Netherlands and from the Netherlands to Belgium covering more than 250 km by road (see Vicat internal memo of 1 September 1982, Obourg handwritten note of 1985, Vicat telex of 4 April 1986, Norcim minutes of 27 November 1985: documents 33126/6042-6043, 309-310, 6040, 5747-5748); the Belgian producers have referred to the great difficulties involved in supplying cement to France because of the costs of waiting times at customs, the different weights allowed in the two countries, the different standards, etc. (see record of the hearing of 8 March 1983, Annex VII/B, pp. 7-8 and Annex VIII), while the Belgian financial newspaper 'L'Echo de la Bourse' reported on 18 November 1992 that, since Ciments Français had purchased CCB, *'a million additional tonnes will be manufactured this year to meet French demand (as far away as the Paris area), following the recent closure of three production units situated in the north of France, which were also owned by Ciments Français. The cement supplied to France is transported from a station established at the CCB site, where the company has eight storage silos of 5 000 tonnes each':* ([18]) this shows that it is possible to bear the costs involved in crossing the frontier, cover more than 200 km and also bear the additional costs of storage.

(5) Natural obstacles such as mountains do not form any impediment to cement supplies. For example, Buzzi is able to transport cement across the Alps from its factory near Cuneo and deliver it in France, although Italcementi, which has a factory near Cuneo, and the French producers on the other side of the frontier claim that they are unable to supply cement profitably across the frontier. The notes of the Head Delegates meetings (see recital 19) show that cement supplies are possible from Germany and Spain to the United Kingdom and Ireland, and that the Italian producers are able to carry out supplies across the Alps in Switzerland.

The supplies by Greek producers in the United Kingdom and Italy and the threat of supplies to other European markets gave rise to what was known as the 'Greek problem'; Titan was able to set up a terminal for regular cement supplies to the United Kingdom, while Titan and the other Greek producers were able to set up supply points in Italy and France.

(6) With regard to these factual observations and with regard to the low level of intra-Community trade compared with consumption, which Blue Circle claims is also due to the fact that exports do not have any guarantee of long-term profit, it may be observed that the low level of such exports is not sufficient to demonstrate that it is not possible to have a higher level of exports.

Whilst it is true that cement, which is a heavy product of low added value, is by its very nature difficult to transport over long distances, nonetheless no general rule to the effect that transportation of this product is subject to an economic limit can be accepted.

The economically acceptable transport distances depend, in fact, on the production costs of each plant, on the economies of scale achieved as a result of concentrations and on the means of transport used (road, rail, inland waterways or sea).

Moreover, since it is a commonplace product, which is inter-changeable regardless of its provenance, any offer to supply it, even if only a small quantity, at a price even only slightly lower than that indicated by

([18]) Original text in French.
'Un million de tonnes supplémentaires seront fabriquées cette année pour satisfaire à des demandes françaises (jusqu'au bassin parisien), après la fermeture récente de trois unités de fabrication implantées dans le Nord de la France, propriétés elles aussi de Ciments Français. Ce ciment, à destination de l'Hexagone, est acheminé au départ d'une gare d'expédition installée sur le site même de CCB, la Compagnie disposant là de huit silos de stockage de 5 000 tonnes chacun'.

a lcoal producer has an effect by virtue of the signal it gives, which is capable of being regarded as a factor which upsets price levels or commercial transactions to the extent that numerous purchasers either defer their purchases as far as possible or put pressure on the local producers to adjust their price conditions, in such a way as to achieve the effects described in paragraph 7 below.

The comments relating to the low level of exports do not make sense, since, for there to be a sizeable and steady flow of exports, the exporter must establish that the price achievable on the export market is always higher than the price achievable on his own market. Thus, as stated in recital 9, there have since 1981 been differences ranging from 10% to 15 or 20% (between France and Germany, between Germany, the Netherlands and Belgium, between France and Italy, and between Germany and the United Kingdom), 30% (between Germany and Italy, and between Spain, Portugal and Germany), 50% (between Italy and the United Kingdom, and between Spain, Portugal and the United Kingdom) and even 100% (between Greece and the United Kingdom) (see in this connection Tables 7 presented by the Italian industry at the hearing on 2 March 1993). Such price differences recorded over a long period are sufficient to meet the exporters' desire for long-term profitability. The last comment concerns the existence of oligopolies in the various markets, and consequently, the fact that each operator must, before deciding to enter the market of another, take account of the reactions of competitors and of the retaliatory measures which they might take. Without wishing to enter into game theory and the 'prisoner's dilemma', it might be pointed out that it is not certain that each operator gains more by remaining on his own market, since game theory also shows that each operator decides to enter the others' market and risk retaliation when he considers that his long-term advantages are greater if he is present on several markets rather than only one. In addition, games between oligopolists are not simple to resolve, since there are many elements of uncertainty involved, and not just the possible retaliation of one operator or another.

The existence of geographically separate markets does not pose any decisive obstacle to competition between producers on neighbouring markets.

(7) All the overlapping markets are interdependent on one another, and any action taken on one market may have an impact on the most distant markets. This is demonstrated by the following facts. The meetings of the Cembureau Head Delegates (see recital 19), which brought together the whole of the European industry, including that not directly concerned at the time, took place to ensure that the phenomenon of intra-Community trade did not spread in volume and gravity and to advise a reduction in price differences between markets so as to limit export temptations. The agreements between Greek and Spanish producers within the Cement Marketing Association were viewed as being fundamental to equilibrium within Europe. The reaction to Greek exports to the United Kingdom and Italy was a collective reaction by the European industry, because it was considered that cooperation between the entire European industry was essential to safeguard its stability and not just that of the industry in the countries threatened.

It is evident from the above that Europe is the relevant market, consisting of a set of juxtaposed and interdependent markets.

12. **Supply**

(1) The Community is the largest cement producer in the world. Its production capacity amounts to some 220 million tonnes, while its consumption in the peak year was less than 180 million tonnes ([19]). The Community suffers from structural overcapacity and indeed from overproduction: such overcapacity exists in all the countries except the Netherlands, being cyclical in the United Kingdom. Exports have always been greater than imports: the Community is thus a net exporter.

(2) The annual growth rate of the cement industry in Europe was 3.6% from 1965 to 1981. After 1981, the European cement industry began to suffer from the adverse economic situation and, in particular, the crisis in the building and construction industry. Cement producers adopted fairly similar industrial strategies to deal with market difficulties: they adjusted production factors, by reducing both surplus production capacities and labour; they adjusted the production process by, on the one hand, converting kilns to cheaper fuels and, on the other, by making greater use of dry, semi-dry or semi-wet processes; they endeavoured to make greater use of secondary raw materials in the manufacture of cement; and they tried to diversify markets geographically both by increasing exports, notably to non-member countries, and by acquiring cement undertakings in North America.

([19]) See the annexed tables on production capacities and the trend of production, consumption, exports and imports in each Community country.

After 1987, the economy was more buoyant, and cement production grew at an annual rate of more than 3%, only to fall again as from 1991.

(3) Although the cement industry must be considered to be a heavy industry, it is nevertheless fairly concentrated, regionally and indeed at world level. The tendencies towards concentration are strong, in large part because of the high level of capital costs, and they continued up to 1993 (on the control of the various undertakings, see recital 5).

The world's leading cement groups are European. Holderbank, Lafarge, Ciments Français, Italcementi, Blue Circle and Heidelberger alone control some 20% of world cement supplies.

In the Community as a whole, the six abovementioned groups (five groups as from 1992, following the purchase of Ciments Français by Italcementi) control some 45% of cement supplies. If one looks at supply at Member State level, the oligopoly becomes tighter. Denmark, Ireland, Luxembourg and the Netherlands each have only one producer; in Belgium, CBR (since 1993, Heidelberger) and Holderbank control 80% of supply; in France, Lafarge and Ciments Français (Italcementi since 1992) control 77% of supply; in Germany, Heidelberger, Dyckerhoff and Schwenk control around 60% of supply; in Italy, Italcementi, Unicem and Cementir hold more than 60% of the market; in the United Kingdom, the three producers present (Blue Circle, Rugby and Castle) share virtually the whole of the market; in Portugal, the two producers present (Cimpor and SECIL) control virtually the whole of supply; in Spain, four groups, namely Valenciana, Asland (since 1990 Lafarge), Holderbank and Uniland control between 50% and 60% of supply.

(4) Most of the European cement companies have endeavoured to diversify their operating risk by establishing themselves outside Europe, and recently in the countries of Eastern Europe: in the United States, the bulk of supply is controlled by European groups.

(5) Most of the producers are vertically integrated. In addition to controlling raw material sources upstream, they own downstream many ready-mix concrete producers and firms producing precast concrete products, who are all cement users, and they often control, directly or indirectly, cement transport firms: all of this enables them to influence behaviour on the demand side.

(6) Some of the large companies (Holderbank, Blue Circle, Titan, Heracles, Aker/EUROC, Lafarge, Asland-Uniland-LACSA-Molins), alone or in association with one another, are in addition active in international trade in cement, mostly with non-member countries.

13. **Demand**

(1) The trend of cement consumption depends, on the one hand, on the level of activity in the building and construction industry and, on the other, on the proportion of both cement and cement products (ready-mix concrete and precast concrete products) used as raw materials in building and construction.

Despite the greater use of precast concrete products, cement accounts for a very small proportion of the cost of building and construction works.

(2) As has been stated, because of the low impact of cement prices on the cost of building and construction works, demand shows little sensitivity to price changes.

(3) As a result of the development of building and construction techniques, the direct use of cement has declined. The main customers of the cement companies are at present the ready-mix concrete industries, which account for some 45% of cement consumption in the Community. The other main consumers are the manufacturers of precast concrete products and other building components, who account for some 30% of Community cement consumption. The final consumer is normally the building and construction industry, which the cement industry is increasingly trying to persuade to use cement in new applications, such as the building of motorways, and precast concrete products instead of natural products such as marble, stone, steel and wood.

14. **Trade flows**

As already stated, the Community is a net exporter. Most exports go to various third countries, notably countries in North America, the Middle East and Africa. All the Member States' industries participate in differing degrees in such exports, including the industry in the Netherlands, although the Netherlands is a net cement importer, through the export committees set up between the major exporters and between all the countries. The prices charged in overseas exports are normally lower than the prices applicable in the various Community countries, as may be seen from the documents of the export committees (see Chapter 6 below).

Intra-Community trade flows, which were at a very low level before 1985, have tended to increase, and they more than doubled in the early 1990s as compared with the mid-1980s, despite the fact that some countries, in which norms governing the use of cement had existed for some time, began in 1986 to introduce administrative obstacles such as approval procedures.

SECTION III

THE INTERNATIONAL CEMENT ORGANIZATIONS

CHAPTER 3

Cembureau

15. The objects and structure of Cembureau

(1) Cembureau — The European Cement Association — is an association set up in 1947 whose head office is in Malmö, Sweden, and whose administrative offices, previously in Paris, have since 1 October 1988 been in Brussels.

Under paragraph 3 of its Articles, in force until 6 June 1989, *'the main objects of the Association are to arrange for:*

1. the exchange of information between Members

2. the collection of statistical and other data

3. the study of economic questions

4. cooperation in market development (promotion)

5. cooperation in technical and related industrial fields

6. the provision of an information centre about the cement industry [20]'.

The Articles adopted on 6 June 1989 amended points 3 and 5 of paragraph 3 in the following manner and added subparagraph (b) after point 6:

'3. the study of factors concerning the cement industry's development'

'5. the representation of its Members at European and international level'

'(b) The activities of Cembureau can be carried out either directly by the Association itself or by any subsidiary in which Cembureau has full control' [21].

(2) Paragraph 4 of the old Articles, retained with slight amendments in the new Articles, provides as follows: *'Cement manufacturers* (in the new Articles: 'Cement industries') *in different countries, individually or through national organizations, who have declared their interest to partake (in the new articles: 'take part') in the activities of the Association and to pursue the aims as set forth in Article 3 (in the new articles: 'paragraph 3') above, may become Members of the Association. New Members may be adopted by unanimous approval by the General Assembly'* [22].

The members of Cembureau were at the time of the facts and still are:

— for Belgium: FIC;

— for Denmark: Aalborg;

— for France: SFIC (former name: Syndicat National des Fabricants de Ciments et de Chaux);

— for Germany: BDZ;

— for Greece: Association of the Greek Cement Industry;

— for Ireland: Irish Cement;

— for Italy: Italcementi, Unicem and Cementir;

— for Luxembourg: Ciments Luxembourgeois;

— for the Netherlands: VNC;

— for Portugal: ATIC;

— for Spain: Oficemen;

— for the United Kingdom: as from 1988, BCA, which took over the activities of the two former associations, the Cement and Concrete Association and the Cement Makers Federation, the latter having been a member of Cembureau until it was dissolved on 1 June 1988.

[20] Original text in English.

[21] Original text in English.
[22] Original text in English.

The associations or cement industries of seven non-member countries (Austria, Finland, Iceland, Norway, Sweden, Switzerland and Turkey) were and are also members of Cembureau.

(3) Under the old Articles, the Association's structure is as follows: the General Assembly, the Executive Committee, the Coordinating Group for promotion and technical activities, the Committee for Economic Questions, the Liaison Committee of the Cement Industries of the EC, Standing Committees appointed in accordance with Paragraph 11, and the Secretariat.

The new Articles provide for the following bodies: the General Assembly, the Supervisory Council, the Executive Board, the Liaison Committee of the Cement Industries in the EC, Standing Committees appointed in accordance with paragraph 12, and the Secretariat.

(4) According to the first subparagraph of paragraph 6 of the old and new Articles, *'Members' privileges to decide on the activities of the Association are exercised in the General Assembly, which is constituted by representatives appointed by Members. Before each Meeting of the General Assembly, Members shall nominate the representative of the country who shall cast the votes according to paragraph 8'.*

The Members' representatives who cast the votes at the General Assembly are called 'Head Delegates'. The term Head Delegate does not appear in the old Articles, but appears in paragraph 9 of the new Articles: *'There shall be a Supervisory Council of the Association, consisting of the President and the 19 Head Delegates of member countries'.* However, the Cembureau Members Directory dating from July 1988, and thus published when the old Articles were in force, lists from p. 53 to p. 65 the following 'Committees': Executive Committee, Head Delegates, Coordinating Group, Liaison Committee of the Cement Industries in the EEC, Committee for Economic Questions, Market Committee, Technical Committee and Information Delegates.

On page 7 of its reply to the statement of objections, Cembureau states: *'I. 2 . . . The 'Head Delegates' are not referred to or given any powers in the Articles. Cembureau is essentially a trade association which groups together national associations'.*

'I. 3 The 'Head Delegates'.

'As is the case with government representatives on international bodies, and despite the fact that the title 'Head Delegates' is not provided for in the Articles (V.I.2), a person was appointed 'Head Delegate' in order to cast votes in the General Assembly. Cembureau kept an up-to-date list of such 'Head Delegates'.'

'From 1983 to 1985, the Cembureau staff lent their assistance by providing secretarial services when they were asked to organize the meetings of persons who at that time had the title of 'Head Delegate'.

'Cembureau is not in a position to comment on the meetings after 1985, since it no longer had anything whatsoever to do with such meetings' [23].

(5) Paragraph 12 of the old Articles and paragraph 13 of the new Articles, entitled 'Secretariat', provide that if no Director is domiciled in Sweden, a person who is a Swedish citizen domiciled in Sweden shall be appointed to be Deputy Director to act as managing director of Cembureau, in order that the Association may be considered to have a Board of Directors qualified under Swedish law.

(6) Members' contributions are based on their production, according to the old Articles, and on their sales, according to the new Articles, of all kinds of cement, except white cement.

Cembureau's activities are wide-ranging and complex, comprising technical, economic, financial and statistical aspects.

16. The circulation of price information between Cembureau members

(1) To the Commission's knowledge, Cembureau began taking an interest in cement prices at least as from 1978. Initially, at least according to the circular EC 1/1981 (doc. 33126/3241-3242), which makes reference to the circular EC 7/78, Cembureau carried out and distributed studies on price differences between bagged cement and bulk cement in the member countries. Subsequently, Cembureau's field of activity widened so that, on the basis of the documents available, a distinction could be drawn between the circulation of specific information for meetings and the circulation of periodical information.

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[23] Original text in French:
'I. 2 . . . Les 'Head Delegates' n'ont ni existence statutaire, ni pouvoirs statutaires. Cembureau est essentiellement une association professionnelle qui regroupe des associations nationales'.
'I. 3 Les 'Head Delegates'.
'Comme c'est le cas pour les représentants des gouvernements dans des organismes internationaux et en dépit du fait que le titre de 'Head Delegates' n'est pas statutaire (V.I.2), une personne fut nommée 'Chef de délégation ('Head Delegate') pour exercer le droit de vote au sein de l'Assemblée Générale. Cembureau tenait à jour une liste de ces 'Chefs de délégation'.'
'De 1983 à 1985, les services de Cembureau ont prêté leur assistance en fournissant des prestations de secrétariat lorsqu'il leur était demandé d'organiser des réunions de personnes qui avaient, alors, le titre de 'Chef de délégation'.
'Cembureau n'est pas en mesure de commenter les réunions après 1985 puisque Cembureau n'a absolument plus rien eu à voir avec ces réunions.'

(a) *Circulation of information for meetings*

(2) A handwritten preparatory note for the Head Delegates meeting on 14 January 1993 (doc. 33126/11590; see also doc. 33126/11561-11562) states:

'1. Imports from Eastern Europe

(M) 1.1 Send a table to all Members requesting — 1982 estimates corrections — addition

(HD) 1.2 Request information on CIF prices at points of entry

2. Intra-European Trade

2.1 Secretariat compiles existing data 1979-1981

(M) 2.2 Members requested estimates for remaining months 1982

2.3 Secretariat compiles list of official prices, — ex works, (actual or estimated) for Ordinary Portland and/or Principal Cement

3. World Cement markets

(HD) 3.1 Request information on Members export price

3.2 Request information on CIF prices in countries close to Europe' [24].

(3) Another handwritten note (doc. 33126/11592) included amongst the documents referring to the Head Delegates meeting on 14 January 1983 states:

'(A) Ex-works. Actual — Calculated (Cembureau) —

(i) Pure Portland — (problem of France)

(ii) Major Cement

(iii) No information rebates. For rebates special enquiry needed

(Different types — Clauses)

(B) Export Prices. No official information. Poss. by Group Exportations

(C) World Prices. Selection of Prices available — We can update

(D) European Intra-Trade Prices — Some informal prices but could be obtained with authority of Executive Committee' [25].

(4) Another handwritten note (doc. 33126/11614), contained amongst the documents referring to the Head Delegates meeting of 14 January 1983, states:

'UK price

Basing price	*– £ 43.48*
(5 miles)	
ex works	*– £ 1.03*
but hauliers costs	*– £ 1.80 = £ 41.68*
less Merchant Commission	*– £ 1.20 = £ 40.48*
less cash rebate 2 ½	*– £ 1.00 = £ 39.50'* [26]

(5) — At the Head Delegates meeting on 30 May 1983, a table setting out the domestic prices (exclusive of tax) of the Cembureau member countries was distributed. The table contains the following types of data (doc. 33126/11599):

[24] Original text in English.

[25] Original text in English.

[26] Original text in English.

'Ex-works Bulk Principal Type			Price listed Cement Price Reference File			
Country	Type	F.F.	Type	Condi-tions	NC F.F. Bulk	NC F.F. Bagged

Rates: 4.1.83 and 12.1.83 for Greece

(a) New cement, replaces P. 30. Monthly average July-December 1982.
Ex-works price estimated by Cembureau

(b) Average for the whole country. Average South: 300 — Average North: 270 (excl. rebates)

(c) Athens area. x: incl. taxes

(d) max. price: 305 — min.: 250' [27].

(6) A diagram indicating the price situation in Europe at the end of 1983 was sent for discussion at the Head Delegates meeting held on 19 March 1984 (see doc. 33126/11714 and 11718-11720). The diagram is accompanied by an explanatory note in English and French (doc. 33126/11715 and 11717), which states:

'Cement price level in Member countries on 31/12/83

As last year, this information is given in the attached diagram, which calls for the following explanations:

— *In the left hand half of the diagram, those countries where the major part of cement sales consists of pure Portland cement have been included under the abbreviation P, whereas those countries producing essentially Portland composite cements (P.Co), i.e. cements containing 75-85% of clinker and 15-25% of secondary constituents, are shown on the right hand side.*

— *The figure shown on the left hand or right hand side of each square gives in million tonnes the production of the countries included in this square.*

— *Prices are quoted in US$ at the rate of 31/12/83. In order to take into account possible variations and discounts within countries, these prices are shown as a range in the form of an ellipse whose area has been determined approximately in relation to the production of the country concerned and whose centre corresponds as near as possible to the average price.*

— *The range of prices has been subdivided by 10-dollar intervals.*

— *For comparison purposes, two further ellipses are shown on the far left side of the diagram indicating the range of prices being applied on the US and Japanese markets'* [28].

(7) The memorandum to the President (doc. 33126/11728-1729) and the session notes (doc. 33126/11733-11737) also contain comments summarizing the price situation: those comments will be cited in point (b) of recital 19.

(b) *Circulation of periodical information*

(8) From 1980 at least, Cembureau has been receiving from and communicating to its members information on the prices applicable in the various countries. The system for circulating such information is as follows:

(i) each member sends to Cembureau the new price-list or changes to the price-list, with the date on which it takes effect. According to the documents supplied by Cembureau (doc. 33126/15096-15305), most of the members send their price-lists after they have entered into force, though some send them before they enter into force, namely: Belgium (doc. 33126/15100-15109); Denmark on three occasions for the price-lists which entered into force on 1 March 1984, 1 March 1985 and 1 September 1986 (doc. 33126/15188, 15187 and 15185); the Netherlands (doc. 33126/15136-15155); and the United Kingdom in the case of the only example of a price-list change provided by Cembureau (doc. 33126/15115-15121);

[27] Original text in English.

[28] Original text in English.

(ii) after receiving the communications from each member and after the entry into force of the price-lists communicated, Cembureau sends its members three documents:

— a 'form letter' summarizing the price-list changes in the member countries concerned and the dates on which they took effect;

— a 'Cement Price Reference File' per member country containing the new prices for each type of cement and the conditions of sale;

— a 'Price Development for Cement' per member country concerned containing the dates of price changes over a given number of years (normally since 1979/80) and the ex-works prices and the percentages of increase of each price-list change.

(9) In its reply to the statement of objections, Cembureau states on several occasions (see for example page 6): *'The price figures compiled by Cembureau are thus overall figures, country by country, exclusive of VAT and without any indication of rebates. They are always passed on by Cembureau to its members in overall terms, without any individualization whatsoever'* ([29]).

It is necessary to check, on the basis of examination of the figures sent to Cembureau and passed on by it to its members, what is meant by 'overall figures' and 'without any individualization whatsoever'. Such checking will be carried out on the basis of the documents sent by Cembureau in response to a request for information (*'Please find attached, in Annex 3, all the documents which we have been able to find concerning the information on domestic cement prices, received from our associates and passed on to our associates from 1984 to the end of 1989'* ([30]): doc. 33126/15066) and on the basis of the replies by Cembureau and its associates to the statement of objections.

(10) Belgium

According to the Ministerial Decrees of 20 December 1950, 22 December 1971, 6 November 1986 and 24 June 1988, cement prices are subject in Belgium to a price control system under which any price increase must be notified in advance to the Ministry for Economic Affairs and authorized by it.

It is FIC, as the trade organization representing the Belgian cement manufacturers, and not each producer individually which notifies the price increase and which, once the increase has been authorized, publishes the list of prices entitled 'Cement prices in Belgium applicable as from . . .'. The price-lists published by FIC thus represent the price-list of the Belgian producers.

These price-lists contain (doc. 33126/15099, 15101-15102, 15104-15105, 15107 and 15109), for each category and quality of cement, in bulk and bagged, the prices in Belgian francs per tonne delivered at quayside by water (by 251 t boat) and delivered at station by rail (by 20-tonne wagon); in the case of cement delivered by lorry (per full load of a minimum of 20 t), which accounts for the bulk of sales by producers, the lists do not specify any price, but simply state 'Prices varying in accordance with destination'.

In its reply to the statement of objections, FIC states (page 16), like the Belgian producers, that the same figures sent to Cembureau are at the same time sent to the Fédération de l'Industrie du Béton, to the SNCB, to the Fédération des Négociants en Matériaux de Construction, to the Association du Béton prêt à l'Emploi and to the Confédération de la Construction. Neither FIC nor the producers produced any document to show that the figures sent to the various trade associations are the same as those sent to Cembureau.

The covering letters (doc. 33126/15100, 15106) by which the FIC sends the price-list to Cembureau end with a paragraph which states the following: *'In view of this increase (or of the changes referred to above), the prices for delivery by lorry of pozzolana Portland cement 'PPZ 30' (reference prices) become:*

	bulk cement	*bagged cement*
minimum	*BFR . . .*	*BFR . . .*
maximum	*BFR . . .*	*BFR . . .'* ([31])

([29]) In the original French: *'Les données recueillies par Cembureau en matière de prix sont donc des données globales, pays par pays, hors TVA et sans indication de rabais. Elles sont toujours retransmises par Cembureau à ses membres de manière tout à fait globale, sans individualisation quelconque'.*

([30]) In the original French: *'Vous voudrez bien trouver ci-joint, en annexe 3, l'ensemble des documents que nous avons pu retrouver à propos des informations sur les prix intérieurs du ciment, reçues de nos associés et retransmises à nos associés de 1984 à fin 1989'.*

([31]) In the original French: *'Compte tenu de cette majoration (ou des modifications dont question ci-avant), les prix rendus par camion de ciment Portland à la pouzzolane 'PPZ 30' (prix de référence) deviennent:*

	ciment en vrac	*ciment emballé*
minimum	FB . . .	FB . . .
maximum	FB . . .	FB . . .'

An initial page of the 'Cement Price Reference File' (doc. 33126/15111) contains a minimum price and a maximum price for deliveries by lorry and, in the footnote, the increases per tonne for cement delivered by water and by rail and the percentage of increase of the cost of transport of cement supplied by lorry. A second page of the 'Cement Price Reference File' (doc. 33126/15112) contains, for cement delivered by water and by rail, the same figures as the price-list sent by FIC; for cement delivered by lorry, it contains a minimum price ('lowest price') (0 to 10 km) for each type of cement.

It is evident from the above outline that the figures sent by FIC to Cembureau and passed on by Cembureau to its members apply to each Belgian producer, since requests for authorization of price increases by the relevant Ministry are submitted by FIC and not by the producers individually. In addition, while the Ministry authorizes maximum prices, FIC communicates to Cembureau and Cembureau passes on for cement supplied by lorry, which, as has been stated, accounts for the bulk of sales by cement producers, minimum prices which, according to the author of the communication, are to be regarded as minimum prices for the whole of the trade and hence for each producer.

Lastly, according to FIC, *'the passage in the document cited by the Commission which indicates that there was 'confirmation of prices by telephone once a year' (doc. 33126/15096) merely refers to the fact that, since 1986, there had not been any general price increase authorized by the Ministry of Economic Affairs. The FIC was thus confirming that the price-lists communicated in 1986 were still valid'* (reply to the statement of objections, p. 38) ([32]).

(11) Denmark

In Denmark, where there is only one producer, *'the prices of Aalborg have until 1989 been subject to advance approval by the Monopoly Control Authorities, and revised price-lists have been sent to Cembureau after approval and publication in Denmark'* ([33]) (Aalborg's reply to the statement of objections, p. 13, footnote 2).

Aalborg communicates the ex-works prices to Cembureau (doc. 33126/15183-15188 and 15244-15249); Cembureau reproduces these prices in the 'Cement Price Reference File' (see Annex 2/b to Cembureau's reply to the statement of objections) ([34]).

(12) France

The Cembureau note accompanying the document sent to the Commission on the circulation of price information states: *'Photocopies of the prices from 1984 to 1986 — plus copies of two information notes on the average of prices in France for my personal information. System of prices (control up to 1986). The prices communicated are average prices for France. Prices for two types of cement. As from 1987, France no longer wants to see these prices published in the Cembureau documents. They may be communicated by telephone to the Members'* (doc. 33126/15096) ([35]).

After a period of liberalization, cement prices in France were made subject from 1982 to 1986 to the system involving counter-inflationary measures and were subsequently liberalized.

According to the documents provided by Cembureau (doc. 33126/15170-15182 and 15230-15243), the Syndicat National des Fabricants de Ciments et Chaux sent Cembureau, following the price increases in France, the average prices for four categories of products: CPA 55R, CPA 55, CPJ 45R and CPJ 45. The covering letters contain the following sentence: *'Since these are approximate average figures, any comparisons with the previously published prices cannot be*

([32]) In the original French: *'le passage du document cité par la Commission qui indique qu'il y eut 'confirmation des prix donnée par téléphone une fois par an' (doc. 33126/15096) ne fait référence qu'au fait que depuis 1986 il n'y avait pas eu de hausse générale de prix autorisée par le Ministère des affaires économiques. La FIC confirmait donc que les barèmes communiqués en 1986 étaient toujours valables'.*

([33]) Original text in English.

([34]) This document was not sent by Cembureau to the Commission as an annex to the reply of 2 February 1990 to the letter requesting information, but solely as an annex to the reply to the statement of objections. However, it is a document falling within the the category of documents which, to the Commission's knowledge — this being confirmed by Cembureau —, are regularly communicated to the Cembureau members.

([35]) In the original French: *"Photocopies des prix de 1984 à 1986 — plus copies de deux notes d'information sur la moyenne des prix en France pour mon information personnelle. Système des prix (contrôle jusqu'à 1986). Les prix communiqués sont des prix moyens pour la France. Prix pour deux types de ciment. A partir de 1987 la France ne veut plus voir ces prix publiés dans les documents Cembureau. Ceux-ci peuvent être communiqués par téléphone aux Membres'.*

regarded as strict, and the price differences between categories are not significant' ([36]). This sentence is included in the 'Cement Price Reference File'.

For the years 1987 and 1988, the Syndicat sent Cembureau the cement prices in France, without any other indication, for the categories CPJ 45 and CPA 55R: the letter of 2 March 1988 communicating cement prices in France as at 31 December 1987 ends: *'Following our telephone conversation of 1 March 1988, for your personal guidance'* ([37]).

(13) Germany

The abovementioned Cembureau note accompanying the documents on prices sent to the Commission (doc. 33126/15096) states: 'Photocopies of the prices from 1984 to 1989. *System of prices (free setting of prices). The price average supplied to Cembureau by the German Associationis the price average calculated by the German National Statistical Office'* ([38]). This latter particular is confirmed by BDZ (reply to the statement of objections, pp. 812) and by most of the legible examples supplied by Cembureau (doc. 33126/15161-15167). The information contained in the telex sent on 28 May 1985 by BDZ to Cembureau seems to have been passed on by Cembureau to the Cement Makers Federation: the telex contains the following handwritten note: *'Att. Mr. Pinnock. Ref. today's Tx. West Germany (encircled prices) Greetings'* ([39]) (doc. 33126/15166).

(14) Greece

Prices in Greece were subject to government authorization up to May 1989 (see Titan's reply to the statement of objections, p. 14). Titan notified Cembureau, on behalf of the Greek producers as a whole, of all the price changes for three types of cement ('average ex-works prices') (doc. 33126/15291-15305).

(15) Ireland

Prices in Ireland were subject to control until July 1985. Irish Cement, the only Irish producer, *'has supplied price data to Cembureau since the commencement of collation of price data statistics by Cembureau'* ([40]) (reply to the statement of objections, p. 10). Judging from the example supplied by Cembureau, Irish Cement provided price data for: ordinary Portland cement 0/10 miles in bulk, ordinary Portland cement in bulk ex-works and the supplements for rapid-setting cement and sulphate-resistant cement; bagged ordinary Portland cement from . . . (minimum) to . . . (maximum), bagged ordinary Portland cement ex-works and the supplement for rapid-setting cement (doc. 33126/15122).

(16) Italy

Up to 30 November 1985, cement prices were subject to public authority control. The association AITEC, acting on behalf of the Italian members of Cembureau, notified to Cembureau the maximum prices as authorized for the entire country by the public authority and officially published (doc. 33126/15130-15135). As from December 1985, prices were made subject to supervisory arrangements, under which each undertaking, on the basis of the cost trend survey carried out by the CIP amongst a number of producers, submits to the relevant Ministry the price-list which it intends to apply, on which the Ministry must reach a decision within 30 days. Following the introduction of this new procedure, AITEC communicates to Cembureau (doc. 33126/15129) the maximum prices authorized: AITEC's letter seems to imply that these are maximum prices valid for the entire trade, since no reference is made to a price average. This interpretation seems to be borne out by the fact that, after stating that the prices are no longer officially published and that each producer makes his prices public, the letter continues: *'An AITEC announcement is published in the specialized press' ('Un annuncio, come AITEC, appare sulla stampa specializzata').* It is evident from the above that the prices communicated by AITEC to Cembureau are the ex-works maximum prices valid for all the producers.

([36]) In the original French: *'S'agissant de valeurs moyennes approximatives, toutes comparaisons avec les prix publiés précédemment ne peuvent avoir un caractère rigoureux et les écarts de prix entre catégories ne sont pas significatifs'.*

([37]) In the original French: *'Suite à notre entretien téléphonique du 1er mars 1988, pour votre gouverne personnelle'.*

([38]) In the original French: *'Photocopies des prix de 1984 à 1989. Système des prix (libre fixation des prix). La moyenne des prix fournie à Cembureau par l'Association allemande est la moyenne des prix calculée par l'Office National des Statistiques allemand'.*

([39]) In the original French: *'Att. Mr. Pinnock. Ref. au Tx d'aujourd'hui. Allemagne de l'Ouest (Prix entourés) Salutations'.*

([40]) Original text in English.

(17) Luxembourg

In Luxembourg, the prices are subject to State control. The sole Luxembourg producer, Ciments Luxembourgeois, informs Cembureau of its public price-lists without any apparent indication of conditions of sale and rebates (doc. 33126/15126-15127, 15158-15160). The 'Cement Price Reference File' and 'Price Development for Cement' sent by Cembureau to its members contain the following statements: *'The cement prices (or tabled prices) per tonne of the S.A. des Ciments Luxembourgeois are ex-works, naked, rebates included, exclusive of VAT'* (41). The 'Cement Price Reference File' continues: *'For deliveries of bulk cement which are made in the company's own lorries, transport costs according to distance are charged separately'* (42) (see Annex 2/a to Cembureau's reply to the statement of objections) (43).

(18) Netherlands

In the Netherlands, there were from 1982 to 1988 two producers: ENCI and Cemij. Cemij was taken over the ENCI group in 1989. ENCI and Cemij were linked by mutual supply agreements, agreements on the sharing of the Dutch cement market and cooperation agreements on sales and distribution. According to the documents provided by Cembureau (doc. 33126/15136-15157), ENCI informs Cembureau of the official price-lists before they enter into force. The documents also include a communication from VNC to Cembureau on 12 December 1984 (doc. 33126/15152), which states: *'With reference to our telcon of last week we inform you that the prices for different types of cement will be changed as per 2 January 1985. The price for blastfurnace cement (HD-A) delivered by barge will be Dfl 199,05/ton whilst the price for Portland Cement class A will be Dfl 128,50/ton. I have been informed by Mr. Kuijt that since a couple of years he has sent you a copy of the official letter to customers about changes in prices. In your statistics you only mention blastfurnace cement and Portland cement without reference to the trade marks'* (44).

In view of the abovementioned cooperation agreements and the fact that the VNC refers in its letter to price changes without any indication of producers, it must be supposed that the information supplied to Cembureau relates to the prices of the two producers. The price-lists communicated to Cembureau comprise a uniform price for all destinations by water (up to 1984 a uniform price by rail), a minimum price and a maximum price for deliveries by lorry. The 'Cement Price Reference File' (doc. 33126/15149) gives the same figures as those contained in the price-lists.

(19) Portugal

Prices in Portugal were subject to the declared prices system up to 1987; since then, they have been subject to the price agreement system (doc. 33126/15201).

Each change to the price-list of ex-works prices is communicated to Cembureau by the trade association ATIC and included in the 'Cement Price Reference File' and 'Price development for cement' (doc. 33126/15192-15229 and 15253-15290). Since ATIC's covering memos refer to cement prices in Portugal, it must be supposed that such prices represent the prices contained in the price-lists of the two Portuguese producers.

(20) Spain

The Cembureau note accompanying the document sent to the Commission on the circulation of price information (doc. 33126/15096) states: *'Spain — Photocopies of the prices from 1987 to 1988. System of prices (free setting of prices). We stopped publishing cement prices in 1984, a price average is communicated to us once a year, for information, by telephone'* (45).

Cembureau supplied only three documents to the Commission: the 'Cement Price Reference File' (doc.

(41) Original text in English.
(42) Original text in English.
(43) This document was not sent by Cembureau to the Commission as an annex to the reply of 2 February 1990 to the letter requesting information, but only as an annex to the reply to the statement of objections. However, it is a document falling within the category of documents which, to the Commission's knowledge — this being confirmed by Cembureau —, are regularly communicated to the Cembureau members.

(44) Original text in English.
(45) In the original French: *'Spain — Photocopies des prix de 1984 à 1988. Système des prix (libre fixation des prix). Nous ne publions plus les prix du ciment depuis 1984, une moyenne des prix nous est communiquée une fois par an, pour information par téléphone'.*

33126/15191 and 15252) on prices at 1 January 1984, which, in addition to the average prices, contains the following information: *'Since that date (14.10.1980) the prices have followed a different trend from region to region. It is thus difficult to establish an average price for the whole of the country'* [46]; a handwritten table, sent by fax to Cembureau on 7 July 1987, containing the average prices from January 1985 to December 1986 and the following footnote: *'These prices were communicated to Mrs Lacroux on 22 May 1987 for passing on to the Cembureau General Assembly that same month'* [47] (doc. 33126/15190 and 15251); a table communicated to Cembureau on 2 March 1989 containing the average ex-works and delivered prices in December 1988 (doc. 33126/15189 and 15250).

(21) United Kingdom

Up to February 1987, a 'Common Price and Marketing Arrangement' existed between the British producers: prices and terms of sale were decided on jointly and notified to the British authorities (the Restrictive Practices Court ruled on two occasions that the arrangement was not contrary to the public interest). The prices were those communicated by the Cement Makers Federation to Cembureau (doc. 33126/15115-15116) and included by it in the 'Cement Price Reference File' (doc. 33126/15117). Cembureau provided only one notification from the Cement Makers Federation, namely that concerning the price-list change of 1 June 1985. According to Cembureau, which did not mention the changes prior to 1985, *'We have not received any official communication of prices since 85. We obtain prices from different sources (i.e. builders) which we communicate as an approximate estimate by telephone. System of prices (free setting of prices since 1987)'* [48] (doc. 33126/15096).

(22) Cembureau's note accompanying the documents sent to the Commission on the circulation of price information concludes on p. 2 (doc. 33126/15097): *'We generally communicate prices only to our members. External requests always originate from companies or consultants offices wishing to carry out price comparisons. Unfortunately, the price structures and cement types chosen as references by each country are so different that all the comparisons which have been carried out have proved erroneous. A cement producer who is familiar with the standards and with the costs of transport can of course make use of such prices. However, we never carry out this work for our members'* [49].

17. **The discussions on 'fair or healthy or correct' competition**

(1) Three documents or groups of documents make reference to discussions that took place on this subject in the course of meetings held by Cembureau bodies.

(a) *Cimpor note*

(2) According to a handwritten Cimpor note at the top of a page, a five-page document was distributed (doc. 33322/308-312) at the Executive Committee meeting on 25 March 1983.

The document comprises three points, the first two being broken down into subheadings: 1. Eastern bloc imports; 2. Inter-European trade; 3. World market conditions.

The heading *'2. Inter-European trade'* is broken down into the following subheadings *'(a) General', '(b) Price comparisons'* and *'(c) EEC position'*, which states: *'Articles 85 and 86 concerning competition policy are clear, and no actions which contravene these Articles can be envisaged.*

The tendency within the EEC is to take an economic viewpoint of the position of individual industries, and the current aim is to find a pricing system for homogeneous products which is compatible with Article 85.

The basing-points system under investigation is aimed to avoid ruinous competition and would be appropriate for cement.

[46] In the original French: *'Depuis cette date (14.10.1980) les prix ont subi une évolution différente suivant les régions. Il est donc difficile d'établir un prix moyen pour l'ensemble du pays'.*

[47] In the original Spanish: *'Estas precios han sido comunicados a Mme Lacroux el dia 22.5.1987 para que puedan ser ofrecidos a la Asamblea General de Cembureau de este mismo mes'.*

[48] In the original French: *'Nous n'avons plus reçu de communication officielle des prix depuis 85. Nous obtenons des prix de différentes sources (ie constructeurs) que nous communiquons comme estimation approximative par téléphone. Système des prix (libre fixation des prix depuis 1987)'.*

[49] In the original French: *'Nous ne communiquons, en général, les prix qu'à nos Membres. Les demandes qui émanent de l'extérieur proviennent toujours de sociétés ou bureaux de consultants qui souhaitent faire des comparaisons de prix. Malheureusement les structures des prix et les types de ciment choisis par chaque pays comme référence, sont tellement différents que toutes les comparaisons qui ont été faites se sont révélées fausses. Un cimentier qui connaît bien les normes, le coût du transport, peut évidemment utiliser ces prix. Mais nous ne faisons jamais ce travail pour nos membres'.*

Suggestions have also been made that would have the effect of ensuring fair competition' [50].

(3) This document is the same as the document, in English and French versions, found amongst the documents relating to the Head Delegates meeting held on 14 January 1983 (doc. 33126/11617-11629) and is most of a document in English found amongst the document relating to the Head Delegates meeting held on 14 January 1983 (doc. 33126/11630-11633) entitled *'Meeting of Head Delegates, Paris, 14 January 1983 — Notes for the President'*, dated 18.1.83-HC/no, which contains a five-point outline, with points 1, 2, 4 and 5 being subdivided into subheadings: *'1. Eastern bloc imports'; '2. Inter-European trade'; '3. World market conditions'; '4. Questions for consideration by Executive Committee'; '5. General observations'. The heading '2. Inter-European trade'* comprises a subheading *'(a) Price comparisons'* and a subheading *'(b) EEC position'*, which corresponds to point *'2.(c) EEC position'* of the document distributed at the Executive Committee heading held on 25 March 1983 and contains the following addition: *'(cf. Mr. Van Hove's notes)'*. Mr Van Hove's notes are in the form of slides (doc. 33126/11602-11613):

— slides 4, 5, 6 and 7 explain the applicability of Articles 85 and 86, the conditions for obtaining negative clearance and exemption, and the Commission's powers of investigation;

— slide 8 states: *'EEC intends 'letter of comfort' to tolerate:*

— *Basing-point system — Price transparency in order to avoid ruinous competition.*
Arguments: — *Heavy and homogeneous product*
— *Industry dependent on regional raw materials*
— *Low specific value*
— *Inelasticity of demand*
— *Oligopolistic structure*
— *Highly 'mature' industry*
— *High capital intensive industry*
Bases: — *Studies University of Tubigen*
— *Studies University of Louvain'* [51].

— slides 9A, 9B and 9C illustrate the basing points in two frontier regions and the point where the delivered price as between the two relevant markets meets;

— slide 10 contains suggestions for fair competition by reference to the illustrations given in slides 9A, 9B and 9C:

'1. If possible
— list of delivered prices
— and ex-works prices available.

2. These price-lists to be calculated assuming for a price leader company identical basing-point prices ex-works, for all destinations, even for sales beyond the national borders.

3. Within a relevant market, alignment on the price-leader

4. Outside of the relevant market, application of 2 or occasional alignment' [52].

(4) According to what most of the undertakings state in the replies to the statement of objections, 'the suggestions put forward with the aim of ensuring fair competition' were none other than the suggestions put forward to the Commission under the notification procedure carried out by the Belgian and Dutch cement producers on 16 July 1981, suggestions which, according to the undertakings, the Commission planned at that time to exempt.

[50] Original text in English.

[51] Original text in English.
[52] Original text in English.

It must be noted firstly that Mr Van Hove's notes form part of the documents relating to the Head Delegates meeting of 14 January 1983 (see paragraph (3) above) and are the remarks given in reference to item 2.B on the agenda for that meeting 'Possible means of maintaining fair trade . . . Price formation system — Theories applicable — Rules on fair competition' (see recital 19, paragraph (3)). Towards the end of the 'draft introductory statement by the chairman' it is stated that 'it is hardly necessary to tell you that there will be no record of our discussions' (see recital 19, paragraph (5)). If, as the undertakings claim, 'the suggestions put forward with the aim of ensuring fair competition' were no different from the suggestions notified to the Commission on 16 July 1981, it is difficult to see why there had to be no record of the Head Delegates meeting held on 14 January 1983.

Even if it were true that the suggestions discussed at the Cembureau Head Delegates and Executive Committee meetings largely corresponded to the contents of the notification made on 16 July 1981 and even if it is true that the Commission did, on 21 April 1982, send CBR the draft of a notice to be published in the Official Journal pursuant to Article 19(3) of Regulation No 17, it is no less true that, at the time of the Head Delegates meeting on 14 January 1983 and the Executive Committee meeting on 25 March 1983, the Commission had not yet adopted its official position, and, furthermore, the notice pursuant to Article 19(3) of Regulation No 17 was never published in the Official Journal. In addition, as CBR points out in its reply to the statement of objections (p. 44), the Commission informed the notifying parties, on 1 August 1983, that it was holding in abeyance its formal assessment of the notification and that it was considering the possibility that the publication of the delivered prices alongside the ex-works prices could give rise to anti-competitive situations ([53]). It should be borne in mind in this respect that the basing-point system also makes it possible to share markets between producers (see point (a) of recital 10).

It should also be added that the implementation of the system notified had been made subject by the notifying parties to two conditions: removal of price control by the public authorities, and removal of uniform or ceiling regional delivered prices by competitors on the markets concerned by the notified system. The aim of the fair competition suggestions put forward by Mr Van Hove at the abovementioned meetings was to get the system accepted by competitors: this is acknowledged by CBR in its reply to the statement of objections, p. 42-43: *'In view of the Commission's favourable reaction, the Belgian and Dutch cement producers endeavoured to promote the system amongst the cement producers from the other Member States, since it appeared to them to be an acceptable compromise between the requirements of competition law and the need to avoid ruinous competition. Convincing the cement producers in the other Member States to adopt a similar system would also have allowed the second condition for the implementation of the system to be met (removal of competition in uniform or ceiling regional delivered prices) and would have greatly facilitated any action aimed at removing or adjusting state controls on cement prices'.*

(b) *Executive Committee meeting held on 9 November 1983*

(5) The draft record of the Executive Committee meeting held on 9 November 1983 (doc. 33322/286-294), point 2. 'Current activities', letter (b) 'Other questions currently being pursued by the Committee — Cooperation on exports', after having noted Mr Canellopoulos's finding that export prices had deteriorated, states: *'Mr Bertran stated that he was personally optimistic as regards the maintenance of the volume of the overseas markets, but that the problem of price weakness nevertheless remained critical. He felt that it was time to re-examine the scope for improving co-operation, not only between the large exporting countries, but between all the Members of Cembureau. One*

([53]) The study carried out by Louis Phlips, 'Spatial pricing and competition', Competition — Approximation of Legislation Series — 1976, No 29, takes the view (see pp. 14, 15, 17, 18 and 54) that the basing-point system is anti-competitive. In particular, the study states (p. 54): 'The fact is that, from the point of view of active price competition, techniques which involve freight absorption and are therefore discriminatory, such as sales at uniform delivered prices, sales based on a single basing point and sales based on multiple basing points with alignment, turn out to be the indispensable foundations for price agreements designed to preserve a spatial configuration of delivered prices which maximizes joint profits. In oligopolistic industries producing heavy goods of low unit value, these systems indicate the existence of tacit price-fixing agreements. They should be prohibited if the prohibition of price-fixing agreements is to work. Otherwise, explicit price-fixing agreements will be replaced by tacit agreements workable through the perfection of information and through the freight absorption rules which characterize these systems.

of Cembureau's roles had to be to contribute to the establishment of healthy but realistic competition' [54]. The record then noted Mr Heiberg's statement on voluntary restraints on exports by the Japanese and South Korean cement industries, and the statement of Sir J. Milne on the need to establish closer relations between the Export Policy Committee, set up outside Cembureau, and the Executive Committee after Mr Van Hove had expressed the opinion *'that no EEC rules opposed consultations and cooperation in overseas markets'* [55].

(6) Cembureau and its members assert that the statement *'one of Cembureau's roles had to be to contribute to the establishment of healthy but realistic competition'* refers to exports outside the EEC. Cembureau asserts in this respect (p. 15 of the reply to the statement of objections): *'Page No 12 is page 4 of the same document which confirms that the Export Policy Committee is a committee operating outside the sphere of influence of Cembureau. The record indicates under the heading 'Cooperation on exports' (page 11) that what is involved is cooperation in overseas markets 'since no EEC rules oppose such consultation'. The first paragraph of that page indicating that 'one of Cembureau's roles had to be to contribute to the establishment of healthy but realistic competition between all the members of Cembureau' must be read in that light'* [56].

(7) Apart from the fact that the assertion that *'no EEC rules oppose consultations and cooperation in overseas markets'* is merely a statement of opinion, the problem remains the question of how Cembureau can *'contribute to the establishment of healthy but realistic competition'* between its members, whereas it states that the problems of exports outside the EEC do not fall within its realm. It states on page 15 of the reply to the statement of objections that *'the Export Policy Committee is a committee operating outside the sphere of influence of Cembureau'* [57]. Commenting on the Blue Circle internal memo of 9 April 1981 (doc. 33126/11338-11340), according to which Cembureau abandoned the Export Committee that had been set up within it and that since then export committees had been formed outside Cembureau, Cembureau states on page 10 of the reply to the statement of objections: *'Pages Nos 1 to 3: These documents emanate from Blue Circle. They explain that since 1958* [according to the Blue Circle memo, since 1972], *the date of entry into force of the EEC Treaty, Cembureau has no longer included a Committee responsible for any coordination of exports. This also means that Cembureau has nothing to do either with the London Club or with the ECEC (European Cement Export Committee)'* [58].

(8) There are a number of contradictions in the statements quoted above. On the one hand, Cembureau asserts that, since the entry into force of the EEC Treaty, it has no longer included any committee responsible for any coordination whatsoever of exports, and the abovementioned Blue Circle memo of 9 April 1981 states that, because of the common market's distaste for cartels of any sort, Cembureau abandoned its unwanted child, i.e. the European Export Committee [59], while on the other the draft record of the Executive Committee meeting on 9 November 1983 reports the opinion *'that no EEC rules opposed consultations and cooperation in overseas markets'*. In addition, on the one hand, Cembureau asserts that it *'no longer includes a committee responsible for any coordination whatsoever of exports'*, while on the other the abovementioned draft record of the Executive Committee meeting states that: *'He felt that it was time to re-examine the scope for improving cooperation, not only between*

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[54] In the original French: *'M. Bertran indique qu'il est personnellement optimiste en ce qui concerne le maintien du volume des marchés d'outre-mer mais que le problème de la faiblesse des prix n'en demeure pas moins critique. Il estime qu'il est temps de réexaminer les possibilités d'améliorer la coopération, non seulement entre les grands pays exportateurs, mais entre tous les Membres de Cembureau. Un des rôles de Cembureau doit être de contribuer à l'établissement d'une concurrence saine mais réaliste'.*

[55] In the original French: *'qu'aucune réglementation de la CEE ne s'oppose à des consultations et à la coopération dans les marchés d'outre-mer'.*

[56] In the original French: *'La page n° 12 est la page 4 du même document qui confirme que l'Export Policy Committee est un comité fonctionnant en dehors de la sphère d'influence de Cembureau. Le procès-verbal sous la rubrique 'coopération en matière d'exportations (page 11) indique qu'il s'agit de la coopération dans les marchés d'outre-mer 'aucune réglementation de la CEE ne s'opposant à de telle consultation'. Le premier paragraphe de cette page indiquant qu''un des rôles de Cembureau doit être de contribuer à l'établissement d'une concurrence saine mais réaliste entre tous les membres de Cembureau' doit se lire dans cette perspective.'.*

[57] In the original French: *'l'Export Policy Committee (Comité des grands exportateurs, n.d.r.) est un Comité fonctionnant en dehors de la sphère d'influence de Cembureau'.*

[58] In the original French: *'Pages n° 1 à 3: Ces pièces émanent de la société Blue Circle. Elles expliquent que depuis 1958* (d'après la note de Blue Circle, depuis 1972, n.d.r.), *date d'entrée en vigueur du Traité de la C.E.E., Cembureau ne comprend plus de comité chargé d'une coordination quelconque en matière d'exportation. Il en découle également que Cembureau n'a rien à voir ni avec le London Club, ni avec l'E.C.E.C. (European Cement Export Committee)'.*

[59] Original text in English: 'In years gone by, Cembureau ran a European Export Committee under its own wing, but with the advent of the Common Market and its clear distaste for cartels of any sort, Cembureau eventually abandoned its unwanted child, and European Cooperation in cement exports was left to an informal initiative from outside. This Michael Chapman took up, and in 1972 we saw the formation of the so-called 'London Club', which had its origins in a very small informal grouping of exporters who had been meeting for some years under Michael's guidance.'

the large exporting countries, but between all the Members of Cembureau. One of Cembureau's roles had to be to contribute to the establishment of healthy but realistic competition'.

The Commission takes the view that Cembureau encouraged cooperation between its members in respect of activities within the EEC and in non-member countries.

(c) *Italcementi note*

(9) The handwritten Italcementi note on the Executive Committee meeting held in Paris on 14 April 1986 (doc. 33126/3185) states:

'3.1 Van Hove — internal regulation — Collaboration with Cembureau.

(a) Air pollution problem — EEC: agreement to have the cement industry withdraw from large (illegible word) installations. There will be a special name for cement, with a Greek consultant. The CLC will be able to participate in the working group — no news so far.

(b) Dumping in imports. Difficult situation, the damage is limited, it is difficult to get admission of damage, to measure — over time the threat has not increased — low imports. The Commission will not hold any meetings before the end of May, and the only positive result will perhaps be to avoid having the matter shelved.

Bertrand — we must establish rules of the game amongst ourselves to avoid improper competition.

Collis — There is a limit to dumping (illegible word)

V.H. — (1) There has to be dumping and (2) there has to be damage — on this second point we stopped.

3.2 Laplace — (half a page of the handwritten note deals with internal Cembureau problems, such as expenditure and organization)' ([60]).

([60]) In the Italian original: *'3.1 Van Hove. Regolamento interno Collaborazione con Cembureau.*
(a) Problema polluzione atmosferica — CEE: si è ottenuto di far ritirare l'industria cementiera dalle installazioni di grande (parola illegibile). Ci sarà un nome speciale per il cemento, con consulente greco. Il CLC potrà partecipare al gruppo di lavoro — a oggi nessuna notizia.
(b) Importazione in dumping. Situazione difficile, il danno è limitato, difficile fare ammettere il danno da misurare — nel tempo la minaccia non si è accresciuta — importazioni deboli. La Commissione non si riunisce prima della fine maggio e l'unico risultato positivo forse sarà di impedire l'archiviazione.
Bertrand — trovare delle regole del gioco tra di noi per evitare concorrenza non corretta.
Collis — Esiste un limite di dumping — (parola illegibile)
V.H. 1) Ci deve essere dumping e 2) ci deve essere un danno — è su questo secondo punto che ci si è arrestati'.

(10) According to the parties, the Commission misinterpreted the phrase *'we must establish rules of the game amongst ourselves so as to avoid improper competition'*, since the phrase is claimed to refer to dumping problems, with some of the parties going so far as to say that the improper competition referred to is that from foreign producers carrying out dumping.

The phrase in question was included by the author of the handwritten note after letter (b), which refers to dumping problems, and before the statements by Mr Collis and Mr Van Hove, which also refer to dumping problems. However, it is clear that the phrase has nothing to do with dumping problems, since it is stated that rules must be established *'amongst ourselves'* and not amongst the foreign producers suspected of carrying out dumping.

18. **'The Cembureau agreement or Cembureau principle of not transhipping to internal European markets'**

(1) The Commission first learnt of the 'agreement' or 'principle' from two documents found in the course of an inspection visit to Blue Circle.

1. *Internal memo dated 1 December 1983 and entitled 'Strategy against imports and the future of the cement industry'* (doc. 33126/11332-11334)

(2) After examining the imports situation in the United Kingdom and demand in Europe and elsewhere, the memo states: *'At the moment 22 million tonnes of the West European surplus is able to be channelled to overseas markets in need of the product but there is every likelihood that this figure will collapse dramatically to 15 million tonnes or less by early 1985 and under that strain it is probable that the Cembureau principle of not transhipping to internal European markets will break down.*

The counter measures against imports we have taken so far are as follows:

1. Anti-dumping suit which if successful in 1984 may be useless in the long term if Spain joins the EEC.

2. Dealing and negotiating with shippers and importers; reasonably effective at the moment but risks encouraging les autres.

3. Threatening and cajoling Cembureau friends. Probably adequate against most large producers but unlikely to stop every source in the EEC.

4. *Actually setting up silos in 'enemy' territories. A credible and possible effective option to a limited degree, but a) will be time consuming and expensive b) may infuriate the whole target country to even greater measures thereby totally breaking the Cembureau agreement and if so BC will inevitably be the greatest loser. This also assumes that our targets will not obtain 'back-door' government protection which is a very dangerous assumption in dealing with hard-pressed non-oil producing latin economies.*

5. *Quality Assurance may also be a useful tool but can be complied with at relatively little cost.*

6. *Withdrawing cooperation on our Nigeria exports also carries weight but can we rely on the Nigeria economy or Coumantaros goodwill lasting forever?* ([61])'

The memo continues with an examination of two other measures, and suggests possible in-house measures.

2. *Internal memo, undated, entitled 'Import threat' (doc. 33126/11335-11337)*

(3) The memo states that *'Assuming that the Cembureau policy of non-transhipment holds and our assumption that the West German imports are not going to prove profitable, there would appear to be only three major residual threats:*

1. *Bags, of bulk in 5000 tonne pneumatic vessels from East Germany*

2. *Bags, including big bags, from Poland*

3. *A large entrepreneur with a mother ship using 25 000 tonne vessels from South European Comecon ports.*

There is a small residual threat of the small independent North Spaniards importing here but their tonnage, quality and organization is limited' ([62]).

The memo goes on to examine the threat from East Germany and Poland.

(4) In the course of an investigation pursuant to Article 14(2) of Regulation No 17/62 initiated following the discovery of the two memos at Blue Circle, Cembureau was asked to submit a number of documents under Article 14(1) of the Regulation, especially *'all documents relating to the 'Cembureau Agreement and/or Cembureau Principle of not transhipping to internal European markets'. Failing written documents, please describe the content of the 'Agreement or Principle.'* (doc. 33126/11523-11524). Cembureau replied that *'there is no 'Cembureau Agreement or Principle' or a fortiori any other document containing implementing rules. Where such an expression is used in a document, it refers not to an anti-competitive practice but to compliance with established practices and ethics that have gradually evolved through contact with businesses and economic development in various countries'* (doc. 33126/11525) ([63]).

([61]) Original text in English.

([62]) Original text in English.

([63]) In the original French: *'Il n'existe aucun 'Cembureau Agreement or Principle' ni a fortiori aucun document qui contiendrait des règles d'application. Lorsque l'expression est citée dans un document, elle se réfère non pas à une quelconque pratique anti-concurrentielle, mais au respect de règles d'usage et d'éthique progressivement dégagées de la fréquentation des entreprises et de l'évolution économique dans les différents pays'.*

In its reply to the statement of objections relating to a procedure pursuant to Article 15(1) of Regulation No 17/62 (doc. 33126/13568-13573), Cembureau commented on the abovementioned Blue Circle internal memo of 1 December 1983 as follows: *'Annex 10. This document does not call for any particular comments on the part of Cembureau. It is from a cement company and refers simply to good neighbour rules encouraged by Cembureau. The reference to the 'Cembureau principle of not transhipping to internal European markets' relates to a type of conduct which is desired by members but does not in itself contain any constraint or a fortiori any penalty. The reference to a 'Cembureau agreement' concerns the same principle, involving 'established practices and ethics that have gradually evolved through contact with businesses and economic development in various countries' (see answer to question 2 put by the inspectors during their visit on 15 November 1989)'* ([64]).

(5) An investigation carried out at Heracles, a Greek firm, revealed the agenda and minutes of a Board meeting on 15 June 1986. Point 2 of item Delta on the agenda was headed *'Extension of the company's exporting activities. United Kingdom-cartel'* and the minutes of pages 3 and 4 refer to the statement made by the Chairman, Mr Kalogeropoulos, on this subject: *'As regards the negotiations with the United Kingdom cartel, the United Kingdom producers have, in their reaction to Greek exports, the full support of the other European cement producers, since there has existed and continues to exist an agreement by all the European cement producers that no one must intervene within the national frontiers of the others, so that prices are protected and so that there is no fall in prices because of competition from, in particular, neighbouring countries. Because of this way of thinking over the last 30 years and because of this tactic, the Europeans have never had to face active competition and a decrease in prices* (doc. 33126/19875-19877).

(6) Cembureau claims in its reply to the statement of objections (p. 9) that its comments on the Blue Circle memo of 1 December 1983 *'were pure 'speculation' about the meaning of expressions taken from documents unrelated to Cembureau'* ([65]).

The Commission notes that Cembureau used the expressions which it refers to as *'pure speculation'* in the context of a procedure and in a written document signed by its Deputy Director: it thus had the opportunity to weigh the terms used and their meaning. The reason Cembureau wrote those words is that it recognized, in the expressions used in the Blue Circle document, the *'good neighbour'* rules encouraged by it. If Cembureau's aim was simply to deny the existence of a 'Cembureau Agreement or Principle', it would not have made the comments referred to above.

(7) Cembureau and several other firms pointed out in their replies to the statement of objections (Cembureau p. 23, FIC p. 46, CBR p. 65, SFIC p. 64) that the two Blue Circle memos were from a company that is not a member of Cembureau and that it was therefore for that company to comment.

Blue Circle made the following comments on the two memos (reply to statement of objections, point 3.48): *'Secondly, the Commission refers to two internal Blue Circle memoranda written by Jeremy Reiss which refer to the 'Cembureau principle of not transhipping'. It is not clear what Mr. Reiss had in mind when he referred to the 'Cembureau principle' or 'Cembureau agreement'. He may well have been using those expressions as a 'short hand' to refer to the economic facts of life that naturally limit transhipment of cement between producer countries (see Chapter 2 above and volume II). Those economic facts of life would not of course apply in the same way to imports from state-aided producers able to dump cement, which was the same theme of both of Mr. Reiss' memoranda (a fact*

([64]) In the original French: *'Annexe 10. Ce document n'appelle pas de commentaire particulier de la part de Cembureau. Il émane d'une société cimentière et fait allusion, sans plus, aux règles de bon voisinage encouragées par Cembureau. La référence au 'Cembureau principle of not transhipping to internal European markets' se réfère à un mode de comportement qui est souhaité par les membres, mais ne contient en lui-même aucune contrainte ni à fortiori aucune sanction. La référence à un 'Cembureau agreement', ne vise que le même principe, et renvoie à des règles 'd'usage et d'éthique progressivement dégagées de la fréquentation des entreprises et de l'évolution économique dans les différents pays' (voir réponse à la question n. 2 posée par les inspecteurs, lors de leur visite du 15 novembre 1989)'.*

([65]) In the original French: *'n'était que pure 'spéculation' sur la signification d'expressions extraites de documents étrangers à Cembureau'.*

that the Commisson studiously ignores in the statement of objections)' ([66]). Blue Circle correctly notes that the statement of objections make no reference to the passages in the memos that refer to the problem of imports from non-member countries, especially Far East countries: the passages were not included as they were not relevant to the matters objected to. In any event, the two documents were made available to all the firms concerned to allow them to comment. Blue Circle does not explain the link that may exist between the economic facts that naturally limit transhipment between producer countries and the words 'Cembureau Agreement' or 'Cembureau Principle', even if used only as shorthand.

As regards the comment that the two documents in question are from a company that is not a member of Cembureau, it must be pointed out that even if the producers are not direct members of Cembureau, they are members indirectly through their professional association which is itself a member of Cembureau and that, according to Blue Circle's own statement in its reply to the statement of objections, points 3.4 and 3.5: *'Blue Circle was originally itself a member of Cembureau together with the other individual producers in the United Kingdom. However, in 1972 the decision was taken to replace the individual members with membership on the part of their United Kingdom trade association, the Cement Makers' Federation ('the CMF'). The representation of the United Kingdom cement industry on the various committees of Cembureau was decided upon and approved by vote at meetings of the Council of the CMF. Sir John Milne was appointed to represent the United Kingdom producers as Head Delegate to Cembureau at the CMF Council meeting of 19th November 1975. Sir John's tenure lasted until 1 May 1985 when he was elected to be President of Cembureau from June 1985. He was succeeded as the United Kingdom Head Delegate by Dr. Gordon Marshall whose appointment was approved by the CMF Council on 1st May 1985. Various other personnel from the United Kingdom producers represented the United Kingdom on various other committees of Cembureau'* ([67]).

Blue Circle, whose Chairman was for a long time Head Delegate to Cembureau for the UK cement industry, was thus in a position to know of Cembureau's activities and to write in an informed manner about the 'Cembureau principle or agreement'.

(8) Mr Kalogeropoulos' statement is regarded by some (Blue Circle, point 3.46 of reply; CBR, pp. 63, 64 of reply; Ciments Français, p. 53 of reply) as a sort of preventive exculpation to justify the State aid received by his firm; others (SFIC, p. 64 of reply) consider that the statement *'refers only to 'an agreement or principle of not transhipping to internal European markets', but does not refer in any way to Cembureau'* ([68]); Aalborg considers that the statement in question should be regarded as that of a politician called upon to head a nationalized industry (minutes of the hearing on 3 March 1993, Annex VI, p. 7).

In points 5 and 6, pages 16 and 27 of its reply to the statement of objections, Heracles makes the following comments on the statement by Mr Kalogeropoulos: *'The references by Mr Kalogeropoulos to the UK cartel and to the Cembureau principle amount to speculation and descriptions of the export difficulties encountered by his firm. Mr Kalogeropoulos' statement is not based on any proof; he was not in any position to know exactly what was going on; furthermore, a strong commercial reaction by a competitor is not automatic proof that a cartel exists. What is certain is*

([66]) Original text in English.

([67]) Original text in English.

([68]) In the French original: *'mentionne uniquement 'un accord ou un principe de respect des marchés domestiques Européens', mais ne mentionne aucunement Cembureau'.*

that, even if it is eventually proved that there was a cartel, it was not applied to Greek exports as they occurred and expanded in the following years. Exports to the United Kingdom finally took place, as did those to Italy, despite the strong reactions of the Italian producers. Exports to Community markets grew rapidly in terms of volume and outlets'.

The Commission notes that Mr Kalogeropoulos was in the same position as any senior executive taking on new duties, in that he was informed by his staff about the industrial and commercial environment in which his firm operated. His statement was thus made in good faith, to a small audience (the Executive Board of his firm) and not in a public place with a view to justifying possible State aid to third parties.

19. **Meetings of the Cembureau Head Delegates**

(1) As far as the Commission is aware, Cembureau organized five meetings of Head Delegates between 1983 and 1985: on 14 January 1983, 30 May 1983, 19 March 1984, 7 November 1984 and 10 June 1985. Only the agendas for the first, third and fourth meetings will be considered here.

(a) *Meeting of Head Delegates on 14 January 1983*

(2) The letter convening the meeting, dated 16 November 1982, signed by Mr Gil Braz de Oliveira, Delegate to the Executive Committee, and copies of which Cembureau sent to Aalborg and Irish Cement (doc. 33126/11552-11553), reads as follows: *'At the recent Executive Committee meeting on 5 November, a matter was raised which, in the unanimous opinion of members, required careful consideration by Head Delegates at an exceptional meeting. The general recession affecting the industry's domestic sales meant that cement transfers between member countries could have harmful consequences for our industry if appropriate measures were not taken in time as in the case, for example, of the trade between Belgium and the Netherlands which is to be regulated by a protocol shortly to be published in the Official Journal of the EC. At the request of the Cembureau Chairman, Mr Jean Bailly, I hereby inform you of the proposed date for the meeting, i.e. 14 January of next year, at 09.00 in the Cembureau offices in Paris. The meeting of the Head Delegates will be prepared and organized by the Executive Committee before the end of this year and will be confirmed in good time'* ([69]).

(3) A copy of the draft agenda, dated 16 November 1982 (doc. 33126/11580), was sent by telex on 17 November 1982 to Mr Van Hove, Chairman of the Liaison Committee of the Cement Industries in the EC, with the following note (doc. 33126/11559): *'Head Delegates meeting, Paris 14.1.83. We are preparing the draft agenda which the Executive Committee will discuss on 22 December. Herewith an extract as Mr Bailly would welcome your views on the wording of item 2 which should read sufficiently clearly without giving rise to reactions* ([70]):

1. Imports from Eastern Europe

2. Intra European Trade

A. Analysis of situation

1. Data

2. Price situation — National Prices

3. Motivation and organisation of Crossborder Trade — Expected developments

([69]) In the original French: *'Lors de la dernière réunion du Comité Exécutif, le 5 novembre, un sujet a été soulevé, lequel, selon l'avis unanime des Membres, mérite une attention toute particulière, justifiant une réunion exceptionnelle au niveau des Head-Delegates de Cembureau. Etant donnée la conjoncture de récession généralisée dans ses ventes intérieures, les transferts de ciments entre pays-membres pourront avoir des conséquences nuisibles pour notre industrie si certaines mesures appropriées ne sont pas prises à temps, comme c'est, par exemple, le cas des échanges entre la Belgique et les Pays-Bas qui seront réglés par un protocole à être publié prochainement dans le Journal Officiel de la CEE. A la demande du Président de Cembureau, Monsieur Jean Bailly, j'ai l'honneur de vous informer de la date proposée pour cette réunion, c'est-à-dire le 14 janvier de l'année prochaine, à 9.00 heures, dans les bureaux de Cembureau, à Paris. Cette réunion des Head-Delegates sera préparée et organisée par le Comité Exécutif avant la fin de l'année courante et confirmée avec l'anticipation convenable'.*

([70]) In the original French: *'Réunion des Head Delegates, Paris 14.1.83. Nous préparons le projet d'ordre du jour de cette réunion qui sera discuté le 22 décembre par le Comité Exécutif. Voici un extrait de ce projet pour lequel M. Bailly souhaite recevoir vos avis en ce qui concerne la formulation du point 2 que nous voudrions rédiger de manière suffisamment explicite sans risques de susciter des réactions.'*

B. Possible measures to control intratrade

1. *Government support against dumping*
2. *Justification of reasonable price agreements. Intervention of Liaison Committee*
3. *Studies and Seminars — Dumping, profitability*
4. *Other measures*

3. *World market conditions*
4. *Conclusions and decisions* ([71]).

As Mr Bailly wishes to finalize this item of the agenda by tomorrow evening before he leaves the country for a long period, we would like to receive your comments by telex very shortly' ([72]).

By telex dated 17 November 1982, Mr Van Hove sent the following reply (doc. 33126/11558): *'The following words contained in your telex of 17 November must be removed from any official document* ([73]):

A. — 3. . . . Organisation of Crossborder Trade . . .

B. — . . . Control Intratrade

2. *Justification of reasonable price agreements — Intervention of Liaison Committee* ([74]).

I suggest replacing this text with:

— Price formation system — Applied theories

— Fair competition rules ([75]).

I take this opportunity to suggest that I be invited as Chairman of the CLC for EEC problems and that Belgium appoint somebody else as Head Delegate' ([76]).

At the Executive Committee meeting on 22 December 1992, *'The draft agenda for the meeting on 14 January 1983 which had been distributed before the meeting was adopted subject to certain minor amendments'* ([77]) (doc. 33126/11565). Following Mr Van Hove's proposals the draft agenda was adopted as regards point 2 (doc. 33126/11656):

'2. *Intra-European trade*

A. Analysis of situation

(i) Data

(ii) Price situation — national prices

(iii) Motivation and nature of trade — Expected developments

B. Possible ways to maintain fair trading

e.g.— Government support against dumping

— Price formation systems

([71]) Original text in English.
([72]) In the original French: *'M. Bailly désirant mettre au point cet ordre du jour demain soir avant un long départ à l'étranger, nous espérons recevoir vos commentaires par prochain telex'.*
([73]) In the original French: *'Les mots suivants qui étaient repris dans votre telex de ce 17 novembre doivent disparaître de tout document officiel:'.*
([74]) Original text in English.
([75]) Original text in English.
([76]) In the original French: *'Je profite de l'occasion pour suggérer d'être invité comme Président du C.L.C. pour les problèmes CEE et que la Belgique puisse désigner une autre personne comme Head Delegate'.*
([77]) In the original French: *'Le projet d'ordre du jour de la réunion du 14 janvier 1983 qui avait été envoyé avant la réunion est adopté sous réserve de quelques légères modifications'.*

— *Applied theories*

— *Fair competition rules*

— *Studies and seminars*

— *Dumping, profitability'* ([78]).

(4) The following Head Delegates from current Member States were present at the meeting: (doc. 33126/11581): Belgium — Mr A. Pestalozzi; Denmark — Mr O. Stevens Larsen; France — Mr R. Poitrat; Germany — Mr P. Schuhmacher; United Kingdom — Sir J. Milne; Greece — Mr A. G. Tsatsos and Mr A. Canellopoulos; Ireland — Mr D. Quirke; Italy — Mr C. Cesareni and Mr C. Pesenti; Luxembourg — Mr J. C. Tesch; Netherlands — Mr M. Platschorre; Portugal — Mr J. Toscano Junior; Spain — Mr J. Bertrán; the Liaison Committee of the Cement Industries in the EC was represented by Mr Van Hove and Cembureau by its Chairman Mr Bailly and by Mr Collis and Mr Dutron, Director and Deputy Director respectively.

(5) The 'Draft introductory statement by the Chairman', after first welcoming participants, states that (doc. 33126/11583-11585):

'A brief summary of the reasons for our meeting might be useful:

— *On the one hand, Mr Heiberg raised the question, within the Coordinating Group which he chairs, of non-Cembureau export prices and the real or potential dangers which might result. The Coordinating Group unanimously acknowledged the importance of the problem and recommended that it be considered urgently by the Executive Committee.*

— *On the other hand, our Irish colleagues have described the threats to their domestic market and have asked for my help.*

This is the reason for the first two items on the agenda:

— *Imports from the East*

— *Trade between members*

— *At its meeting on 5 November the Executive Committee took note of the Irish action and the recommendation of the Coordinating Group. It acknowledged the vital importance of these issues and decided to set up a meeting of Head Delegates and even devoted a special meeting on 22 December to organizing it in the best possible circumstances.*

This explains why I considered it desirable to invite Executive Committee members who are not Head Delegates to this meeting.

I shall now give a very precise description of the aim and scope of our discussions:

— *The first task, with your help, is to set out all the data we have in the three fields in question.*

— *We shall thus be able to assess the risks entailed by an increase in certain imports coupled with a sharp reduction in certain prices, before this phenomenon has had time to spread in extent and gravity.*

— *Our objective is not of course to take collective decisions here, to pass judgment on what we find or to act as arbiter, but rather, with your assistance, to identify possible solutions capable of modifying market developments and to propose, at least in regard to principles, certain rules of the game which it is in the interests of all of us to follow.*

— *What we then expect of you is that this exchange of views encourages you to spread words of wisdom around you and that, each time it is necessary, multi- or bi-lateral discussions are held, as and when the need arises.*

— *Cembureau's role is limited for the time being to providing any assistance required, particularly in the form of documentation.*

We shall now turn to the three chapters of the agenda which the Directors of Cembureau and I shall introduce and discuss.

Needless to say there will be no minutes of this meeting. We plan on ending the meeting at 13.00 or 13.30 and lunch is available for those who want it (ask number of participants);

([78]) Original text in English.

If any of you wish to hold further discussions in small groups, Cembureau's premises are naturally at your entire disposal' ([79]).

(6) The memorandum on the structure of the meeting contains the following reference to item 2 (doc. 33126/11578-11579): *'II Inter-Cembureau trade.*

11.00 — Presentation by Mr Dutron of the documents distributed concerning imports and price levels.

— *Statement by Mr Dempsey concerning the particular situation in his country which is one of the reasons for the meeting.*

11.15 — A. Analysis of the situation
Round-table discussion

11.45 — B. Inventory of available means
Statement by Mr Van Hove on price formation systems
Statement by Mr Schrafl on studies concerning dumping and profitability'.

At the end of page 2, it is specified: '13.15/13.30 — *Close of meeting — No minutes'* ([80]).

No minutes or record of the meeting were included among the documents submitted by Cembureau; these documents included preparatory documents for the meeting, tables, transparencies, handwritten notes (doc. 33126/11560-11577, 11587-11633).

(b) *Meeting of Head Delegates on 19 March 1984*

(7) The meeting was called by letter from Cembureau of 22 February 1984 (doc. 33126/11714 and 11730).

Tables showing imports from eastern European countries, data on output, domestic deliveries, imports, exports and consumption by Cembureau member country and a diagram with a note explaining the prices situation were attached to the letter calling the meeting (doc. 33126/11715 and 11717-11727).

The diagram and explanatory note are referred to above in point (a) of recital 16.

(8) The following Head Delegates from countries that are now Member States were present at the meeting: (doc. 33126/11699-11700): Belgium — Mr J. Van Hove;

([79]) In the original French: 'Il est utile de rappeler succinctement les circonstances qui sont à la base de notre réunion:
— D'une part, M. Heiberg a soulevé au sein du Groupe de Coordination qu'il préside la question du niveau des prix à l'exportation hors Cembureau et des dangers réels ou potentiels qui pourraient en résulter. Le Groupe de Coordination a reconnu unanimement l'importance de ce problème et a recommandé sa prise en considération urgente par le Comité Exécutif.
— D'autre part, nos collègues irlandais se sont adressés à moi pour exposer les dangers qui menacent leur marché intérieur et ont sollicité mon assistance.
C'est l'origine des 2 premiers points de notre ordre du jour:
— Importations de l'Est
— Echanges entre membres
— A sa réunion du 5 novembre le Comité Exécutif a pris connaissance de cette démarché irlandaise et de la recommandation du Groupe de Coordination. Il a pris conscience de l'extrême importance de ces questions et a aussitôt décidé de mettre sur pied une rencontre des Chefs de Délégation et a même consacré une réunion spéciale le 22 décembre pour l'organiser dans les meilleures conditions.
Ceci vous explique pourquoi j'ai cru utile d'inviter en outre aujourd'hui les membres du Comité Exécutif qui ne sont pas Chefs de Délégation.
Je voudrais maintenant préciser très clairement le but et la portée de nos discussions:
— Il s'agit d'abord de présenter, avec votre aide et en toute clarté, les données dont nous disposons dans les trois domaines considérés.
— Nous serons ainsi en mesure d'apprécier les risques pouvant résulter d'un accroissement de certaines importations conjointement avec une réduction marquée du niveau de certains prix, cela avant que ce phénomène n'ait eu le temps de s'étendre en volume et en gravité.
— Notre objectif n'est évidemment pas de prendre ici des décisions de caractère collectif, ni de porter un jugement sur l'état de choses constaté, ni de jouer un rôle d'arbitrage, mais toujours avec votre aide d'évoquer des solutions possibles susceptibles de tempérer l'évolution des marchés et de proposer, au moins sur le plan des principes, certaines règles du jeu que nous avons tous intérêt à respecter.
— Ce que nous attendons ensuite de vous tous, c'est que ces échanges de vue vous encouragent à répandre autour de vous des paroles de sagesse et que s'organisent, chaque fois que nécessaire, des dialogues bi- ou multi-latéraux dans chaque cas d'espèce.
— Le rôle de Cembureau se limitera à ce moment à vous prêter toute assistance particulièrement au niveau de la documentation nécessaire.
Nous allons maintenant passer à l'examen des 3 chapitres de l'ordre du jour que les Directeurs de Cembureau et moi-même vont introduire et animer.
Il est presque inutile de vous dire qu'il n'y aura pas de compte-rendu de nos débats.
Nous envisageons d'achever la réunion vers 13h00 ou même 13h30 et un lunch a été prévu pour ceux qui le désirent (demander le nombre de participants).
Si quelques uns d'entre vous souhaitaient prolonger des discussions en petits groupes, les locaux de Cembureau sont évidemment à leur entière disposition'.

([80]) In the original French: *'II Echanges inter- Cembureau.*
11h00 — Présentation par M. Dutron de la documentation distribuée relative aux importations et au niveau des prix.
— Contribution de M. Dempsey sur la situation particulière de son pays qui est en partie à l'origine de la réunion.
11h15 — A. Analyse de la situation
Tour de table
11h45 — B. Inventaire des moyens disponibles
Intervention de M. Van Hove sur les systèmes de formation des prix
Intervention de M. Schrafl sur les études en matière de dumping et de rentabilité.
At the end of page 2: *'13h15./.13h30 — Clôture de la réunion qui ne donnera pas lieu à procès-verbal'.*

Denmark — Mr O. Stevens Larsen; France — Mr B. Collomb; Germany — Mr A. Von Engelhardt; United Kingdom — Sir J. Milne; Greece — Mr A. Canellopoulos; Ireland — Mr D. Quirke; Italy — Mr A. D'Agostino; Luxembourg — Mr J-C. Tesch; Netherlands — Mr Platschorre; Portugal — Mr V. Teixeira Lopo; Spain — Mr J. Bertrán; Cembureau was represented by its Chairman, Mr J. Bailly and by Mr H. Collis and Mr P. Dutron, Director and Deputy Director.

(9) The memorandum to the Chairman dated 15 March 1984 (doc. 33126/11728-11729), lists the items on the agenda: *'1. Imports from Eastern Europe. 2. Situation on the European market. 3. Situation on the world market'*. Item 2, *'Situation on the European market'*, contains the following suggestions: *'This part of the meeting is to be taken by Mr Bailly.*

- *Comments on the table summarizing the prices situation:*
  - *The price levels indicated are approximate but none the less significant.*
  - *As a general rule, prices are ex-works, except for Austria and the United Kingdom and, to a lesser extent, Belgium and the Netherlands.*
  - *The gap between extremes which is between 1 and 2 inevitably constitutes a temptation.*
  - *It is therefore desirable gradually to reduce the gap, essentially by increasing the lowest prices (two thirds of output are sold at under $50, i.e. well below Japanese and US domestic prices), and also by moderating high price trends.*
- *Comments on the table showing imports and exports of member countries.*
  - *It will be noted that the discussions will not concern traditional or even structural interstate trade, e.g. exports from Germany and Belgium to the Netherlands.*
  - *The hot spots are still:*
    - *Exports from Germany to the United Kingdom and Ireland.*
    - *Exports from France to Germany.*
    - *Exports from Spain to Ireland and the United Kingdom.*
  - *A new hot spot is exports from Italy to Switzerland.*
- *Participants will then be asked to comment round the table'* ([81]).

(10) The notes on that meeting, dated 2 April 1984 (doc. 33126/11733-11737), refer to the discussions and statements concerning the three items on the agenda.

Thus the notes report discussion of item 2 on the agenda, *'Situation on the European market' as follows: 'The table showing cement prices (in principle ex-works) in the member countries and in Japan and the USA was commented as follows:*

- *United Kingdom:*
  If the customer was able to take delivery of the cement ex works, the bulk price would be about $54 after deducting the distribution costs which account for 17 to 18% of the sales price charged by the cement industry.
- *Sweden:*
  The ex-works price should be about 20% lower than the amount shown.
- *Finland:*
  As the clinker content of Finnish cement was at least 85%, it would perhaps be better to put Finland in the 'p' column of pure Portland.

Conclusions:

Although the data collected were not fully comparable in view of the differences in price quotations, it was agreed that a visual presentation of price ranges was

([81]) In the original French: *'Cette partie de la réunion est conduite par M. Bailly.*
- *Présentation d'un commentaire sur le tableau résumant la situation en matière de prix:*
  - *Les niveaux de prix indiqués sont approximatifs mais néanmoins significatifs.*
  - *En règle générale, les prix sont ex-works, sauf pour l'Autriche et la Grande-Bretagne et dans une moindre mesure la Belgique et les Pays-Bas.*
  - *L'écart entre extrêmes qui reste de 1 à 2 constitue inévitablement une tentation.*
  - *Il est donc souhaitable de réduire progressivement cet écart, essentiellement en augmentant les prix les plus bas (2/3 de la production sont vendus à moins de 50$, c'est-à-dire bien en-dessous des prix intérieurs japonais et américains) et en même temps par une modération de l'évolution des prix élevés.*
- *Présentation d'un commentaire sur le tableau indiquant les importations et exportations des pays-membres.*
  - *Pour rappel, les discussions ne portent pas sur le commerce inter-états de caractère traditionnel, voire structurel tel que c'est le cas par exemple pour les exportations d'Allemagne et de Belgique vers les Pays-Bas.*
  - *Les points chauds sont toujours:*
    - *Les exportations de l'Allemagne vers la Grande-Bretagne et l'Irlande.*
    - *Les exportations de la France vers l'Allemagne.*
    - *Les exportations de l'Espagne vers l'Irlande et la Grande-Bretagne.*
- *On peut y ajouter un point chaud nouvellement mentionné, à savoir les exportations de l'Italie vers la Suisse.*
- *Solliciter ensuite les interventions des participants au cours d'un tour de table'.*

an effective means of highlighting potential causes of conflict.

It would not, however, be advisable to distribute the document more widely as it might be interpreted incorrectly. In addition, the effects of major changes in exchange rates were not apparent.

More detailed data which included the prices charged by cement firms rather than the official prices communicated by Members might be considered contrary to the rules of the common market.

The discussion then turned to the table containing all the statistics for 1983, in particular trade flows between Members. The following comments were made:

— *Belgium:*
Although some of Germany's exports of cement to the Netherlands are structural and traditional, there have been 'random' additional exports to the Netherlands and Belgium. As previous discussions between Head Delegates had not altered this state of affairs, it was pointless to continue the discussion within Cembureau.

The Chairman reminded participants that the decision to hold the present meeting had not been opposed at the recent Executive Committee meeting and asked the other members for their views.

— *Spain:*
Further discussion of this matter was essential, otherwise Spain would be prepared to leave Cembureau.

— *United Kingdom:*
If the problem could not be dealt with at this level, Cembureau's future would be at stake.

— *Switzerland:*
It must be possible to discuss these problems here and it was pointed out in this connection that the dispute between Switzerland and Italy was about to be resolved.

— *Ireland:*
As the country which had started these discussions, Ireland had a duty to request that they be continued as they had been extremely useful in calming the situation in Ireland.

— *Italy:*
Cembureau must be the forum where industrialists can take proper stock of vital problems.

Conclusions:
Pressure from inter-member trade had slackened considerably through improved bilateral contacts. Exports had tended to shrink but there was still a threat from outsiders' ([82]).

([82]) In the original French: *'Le tableau indiquant l'ordre de grandeur des prix du ciment (en principe départ usine) dans les pays-membres ainsi qu'au Japon et aux USA soulève un certain nombre d'observations:*
— *Royaume-Uni:*
Si le client avait la possibilité de prendre livraison du ciment à l'usine, le prix en vrac serait environ de 54$ par déduction des frais de distribution qui représentent 17 à 18% du prix de vente à la charge de l'industrie cimentière.
— *Suède:*
Le prix départ usine devrait être inférieur d'environ 20% à la valeur indiquée.
— *Finlande:*
La teneur en clinker du ciment finlandais étant d'au moins 85%, il serait peut-être préférable de placer la Finlande dans la colonne 'p' du Portland pur.
Conclusions:
Bien que les données rassemblées ne soient pas parfaitement comparables eu égard aux différences en matière de quotation des prix, il a été convenu que la présentation visuelle de la gamme des prix était un moyen efficace de mettre en relief les causes potentielles de conflit qui existent.
Une plus large circulation d'un tel document serait toutefois inopportune vu le risque d'interprétations erronées auxquelles elle pourrait conduire. De plus, les effets de modifications importantes dans les taux de change n'apparaissent pas.
Si l'on voulait affiner ces données en indiquant les prix pratiqués par les sociétés cimentières plutôt que les prix officiels communiqués par les Membres, cela pourrait être considéré comme contraire aux réglementations du Marché commun.
La discussion porte ensuite sur le tableau contenant toutes les informations statistiques pour 1983 et notamment les mouvements commerciaux entre les pays-membres. Il donne lieu aux commentaires suivants:
— *Belgique:*
L'attention est attirée sur le fait que, si effectivement une partie des exportations de ciment de l'Allemagne vers les Pays-Bas ont un caractère structurel et traditionnel, il s'y ajoute depuis plusieurs années des exportations 'sauvages' complémentaires vers les Pays-Bas et la Belgique. Les discussions précédentes entre Chefs de Délégation n'ayant pas modifié cet état de choses, il est estimé inutile de tenir un pareil débat au sein de Cembureau.
Le Président rappelle que la tenue de la présente réunion a été décidée sans aucune opposition lors de la dernière réunion du Comité Exécutif et sollicite l'avis des autres membres.
— *Espagne:*
La poursuite d'échanges de vues sur ce sujet est impérative, faute de quoi l'Espagne serait prête à quitter Cembureau.
— *Royaume-Uni:*
Si l'on ne parvenait plus à traiter à ce niveau un tel problème, l'avenir de Cembureau est en cause.
— *Suisse:*
On doit pouvoir discuter ici de ces problèmes et il est signalé dans ce contexte que le différend entre la Suisse et l'Italie est en voie de trouver une solution.
— *Irlande:*
Etant le pays qui a provoqué de pareilles discussions, l'Irlande a le devoir de demander la poursuite de ces discussions car elles ont été d'une grande utilité pour apaiser la situation en Irlande.
— *Italie:*
Cembureau doit être un forum où les industriels doivent pouvoir prendre pleinement conscience des problèmes vitaux.
Conclusions:
La pression due au commerce inter-membres s'est affaiblie nettement grâce à l'amélioration des contacts bilatéraux. Les quantités exportées sont plutôt en diminution mais il reste la menace en provenance des outsiders'.

(11) In addition to the documents referred to above, the following papers were found in the file on the Head Delegates meeting of 19 March 1984; a letter dated 20 January 1984 in which Mr Bailly, Chairman of Cembureau, informed Mr Bertran, Chairman of Asland, that he was seeking a friendly settlement of the problem of Spanish exports to the United Kingdom and Ireland (doc. 33126/11697); a note dated 13 March 1984 headed 'Italian cement exports to Switzerland — Record of a telephone conversation with Mr d'Agostino' (doc. 33126/11698); letters dated 16 February 1984 from Mr Bailly, Chairman of Cembureau, to Mr Bertran, Chairman of Asland, and Mr Canellopoulos, Managing Director of Titan, in which the problem of relations between Cembureau and the Export Committee is discussed (doc. 33126/11701-11702); a handwritten memo on the Export Policy Committee (doc. 33126/11703); minutes of the meeting of the European Cement Export Committee held on 7 December 1983 (doc. 33126/11704-11713); a handwritten note 'Export Cooperation — Jan. 84' (doc. 33126/11732).

(c) *Head Delegates meeting on 7 November 1984*

(12) The agenda of this meeting, called by letter dated 17 October 1984 (doc. 33126/11748), was as follows:

'1. East European imports

— *Situation and forecast*

— *Activities of traders*

— *Anti-dumping complaints and measures.*

2. World market developments

— *Progress in cooperation between European producers.*

— *Possible effect of East European cement on world markets.*

— *Far Eastern developments'* ([83]).

A draft introductory statement was prepared for the meeting (doc. 33126/11751).

(13) The following Head Delegates from countries that are now Member States attended the meeting (doc. 33126/11752): Belgium — Mr J. Van Hove; Denmark — Mr O. Stevens Larsen; France — Mr B. Collomb; Germany — Mr P. Schuhmacher; United Kingdom — Sir J. Milne; Greece — Mr A. Canellopoulos; Ireland — Mr D. Quirke; Italy — Mr C. Cesareni; Luxembourg — Mr J-C. Tesch; Portugal — Mr V. Teixeira Lopo; the Head Delegates from Spain and the Netherlands sent apologies for absence; Cembureau was represented by Mr J. Bailly, Chairman, and by Mr H. Collis and Mr P. Dutron, Director and Deputy Director.

(14) The 'summary notes' of 12 November 1984 (33126/11754-11755) are a brief record of the discussions of the items on the agenda:

'East European imports

.....

World market developments

Situation

.....

Greek/Spanish Agreement ([84])

This is unanimously considered as the basic criterion if better export prices are to be achieved, and the risk of a destabilisation in Europe avoided. Negotiations have been proceeding for several months between four Spanish and three Greek companies, though the mechanism of the discussions were not described. Some results have been achieved, but there has been no effect so far on prices. Discussions have already been held also with Japan and Korea. The general sentiment, however, is that the main problem is to achieve a firm understanding between the major European exporters.

East European cement on world markets

.....

Traders

.....

([83]) Original text in English.

([84]) The agreement in question was signed on 16 October 1984 (doc. 33126/19261-19284) by four Spanish and three Greek enterprises, and concerned the setting-up of a Cement Marketing Association and the allocation of quotas for exports outside Europe. The agreement should have remained in force until the end of 1986, but was applied only partially as certain parties were unable to provide the agreed bank guarantee. The same parties signed another agreement in London on 6 February 1986 valid from 1 January 1986 to 31 December 1987 and subject to the same rules as the Cement Marketing Association; it was to be implemented subject to the provision of bank guarantees (doc. 19295-19310). Whether or not this occurred is not known.

General conclusions

The situation was serious and export prices damagingly low. There was surplus capacity both in West Europe and the Far East, which had to be used in a responsible manner.

The Greek and Spanish cement industries were to be congratulated on their efforts to reach understanding, and other Member countries were prepared, if requested, to support fully their endeavours. Small quantities expected by other countries would not disturb the market if mutual confidence prevailed' ([85]).

(15) Apart from the documents referred to above, the following papers were found in the file on the Head Delegates meeting on 7 November 1984: ten telex messages (doc. 33126/11739-11747 and 11750); a handwritten two-page memo headed 'Projected Meeting 7.11.84 — Information to be collected about traders' (doc. 33126/11756-11757); a handwritten note 'Preparation Meeting Head Delegates 7.11.84' (doc. 33126/11758); a handwritten note possibly summarizing telephone conversations with Milne (17/9) on the discussions between Greek and Spanish producers, with Milne (13/9) on prices in the Belfast area, with Heiberg and Bertran (17/9) on East European exports (doc. 33126/11759); a handwritten 13-page note (page 4 is missing) which appears to be a summary record of the Head Delegates meeting (doc. 33126/11762-11773); notes, tables and lists on third-country imports (doc. 33126/11760-11761, 11774-11789).

([85]) Original text in English.

CHAPTER 4

Bilateral and multilateral relations between Community producers

20. **France — Italy**

(1) The situation as regards cement factories on either side of the Franco-Italian border is as follows: near Cunea, Buzzi has a plant at Robilante and Italcementi a plant at Borgo S. Dalmazzo; until 1987, Unicem had a plant at Morano Po (near Alessandria); in the neighbourhood of Nice, Lafarge has a plant at Contes-les-Pins and Vicat one at Grave-de-Peille; in Bouches-du-Rhône, Lafarge has a plant at La Malle and Ciments Français one at Ranville; Ciments Français has a plant at Beaucaire in the Gard.

(2) In the period in question, the prices charged by Italian producers were roughly 20% lower than prices charged by French producers.

(3) *Lafarge-Buzzi.* On 26 November 1988, Emanuele Buzzi and Pierre Saint-Hillier of Lafarge had a meeting. The record, drawn up by Lafarge, reads as follows: (doc. 33126/6857/bis): *'Several subjects were discussed:*

1. South of France

Emanuel understood (following meeting with G. Liduena) that he had three possibilities:

— *Build a clinker plant near the sea*

— *Build a grinding plant*

— *Close the plant. Negotiate markets. Set up supply company, for supplies either from La Malle, or from Robilante, or through imports (e.g. Greece).*

I said there was no urgency as we had 15 or 20 years of reserves. The problem was chiefly the operating licence.

Buzzi's position:

— *The market belonged to Ciments Lafarge.*

— *No desire to enter Côte d'Azur to upset the market.*

— *They have had only two or three customers in 20 years.*

— *A war is pointless.*

— *Agreements must be concluded to avoid conflict.*

— *Prepared to consider joint venture'* ([86]).

This record contains a statement of intent to share the Côte d'Azur market and to share cement supply sources in the medium and long term.

(4) *Ciments Français — Buzzi*

On 17 March 1988, Ciments Français sent a list of its prices applicable from 2 March 1987. The covering note states that: *'In reply to your telex of today, herewith our ex-works prices for sacked and bulk cement. Price increase timetable has not been decided as yet. An average increase of 1% to 1.5% in the current year is envisaged'* ([87]) (doc. 33126/11982-11987).

(5) *Vicat — Buzzi*

At Buzzi's request (doc. 33126/11974), Vicat sent it on 11 May 1983 the price-list applicable from 1 June 1983 (doc. 33126/11973) and, on the same date and also on 16 May 1983, Buzzi telexed to Vicat its prices *ex* Robilante from 28 February 1983 (doc. 33126/11975-11977). On 23 April 1986, Buzzi sent the following telex to Vicat (doc. 33126/6144): *'We have received requests to supply cement not only from Nice but also Toulon. We replied in the negative to all such requests and intend to continue so doing. We have learnt that your prices rose recently. Please inform us: ex-works prices for bulk and sacked goods, the percentage increase, and if other price increases are planned for this year. Our prices from March 1986 are:* (illegible) *Lire/tonne ex-works, 81.EPP Lire/tonne ex-works* [illegible]. *The percentage increase was around 4.5%. We anticipate/hope for another increase in September of 3%'* ([88]). Vicat sent Buzzi its price-list applicable from 1 July 1986 (doc. 33126/11971), at the top of which Buzzi noted: *'+ 6.3% for bulk compared with March 1986; + 18.79 for sacked'.*

(6) The Commission considers that the reason why Ciments Français communicated its price-list and forecast price increases and why Vicat sent its price-list was so that Buzzi could align its cement prices in France on Ciments Français and Vicat prices. The Commission also considers that the fact that Buzzi informed Vicat both of its refusal to fill cement orders from the south of France and that it intended to continue doing so constitutes sharing the south of France market.

(7) The French firms in question consider that the Italian frontier market is not attractive for economic reasons, notably transport costs.

Buzzi states that, despite a number of obstacles which it had to overcome (transport costs, customs, difference in the quality of Italian and French cement), and although it could have sold its products on closer and more profitable markets, it has been exporting worthwhile quantities ('interessanti quantità') of cement to the south of France since the end of the 1960s. It points out that if there had been any agreements with French producers, it would not have tackled such obstacles in order to develop a market for itself in France. The fact that it had embarked on the difficult task of exporting shows that it acted completely independently, in accordance with the actions of an entrepreneur seeking new markets. Buzzi also states that the prices it charged were lower than the prices communicated to it by the French producers.

The data provided by Buzzi in its reply (p. 15) to the statement of objections show that its cement sales in France, having increased steadily until 1986, started

([86]) In the original French: *'Plusieurs sujets ont été abordés:*
1. Le Sud de la France
Emanuel a compris (suite à l'entrevue avec G. Liduena) qu'il avait trois possibilités:
— Faire une usine à clinker près de l'eau
— Faire une station de broyage
— Fermer l'usine. Négocier le marché. Réalisation d'une Société pour fournir, soit à partir de La Malle, soit à partir de Robilante, soit à partir d'import (La Grèce par exemple).
Je lui ai affirmé qu'il n'y avait pas d'urgence car nous avions devant nous 15 à 20 ans de réserves. Le problème se situe principalement au niveau du permis d'exploitation.
La position de Buzzi:
— Le marché appartient à Ciments Lafarge.
— Aucun souhait de venir sur la Côte d'Azur pour perturber le marché.
Ils ont seulement 2 ou 3 clients depuis vingt ans.
— La guerre est inutile.
— Il faut faire des accords pour éviter des conflits.
— Prêts à regarder une affaire en commun.'

([87]) In the original French: *'En réponse au telex de ce jour, ci-joints nos barêmes de prix ciment sac et vrac au départ des usines. Le calendrier de révisions des prix n'est pas décidé à ce jour. Une hausse moyenne de 1% à 1,5% sur l'année en cours est envisagée'.*

([88]) In the original Italian: *'Ci giungono richieste di forniture cemento, oltre che da Nizza, anche da Tolone. Abbiamo già dato risposta negativa a tutte e intendiamo continuare a farlo. Sappiamo che recentemente i Vs/prezzi sono aumentati. Gradiremmo conoscere: i prezzi, franco fabbrica, per merce sfusa e in sacchi, qual è stata la percentuale di aumento. Se ci sono previsioni di altri aumenti nell'anno. I nostri prezzi, dal marzo 1986, sono: (illegibile) Lire/tonn. (illegibile) franco fabbrica. (illegibile) Lire/tonn. 81.EPP Franco fabbrica (illegibile). La percentuale di aumento è stata del 4,5 per cento circa. Prevediamo/speriamo altro aumento settembre 3 per cento'.*

to fall sharply from 1987 onwards. According to Buzzi, its sales in France fell because two important customers were taken over by French cement producers. The Commission is not contesting the possibility that Buzzi may have lost two important customers, but notes that Buzzi refused to supply cement to new customers, that it informed Vicat by telex on 23 April 1986 of its refusal to fill cement orders and its intention of continuing to do so, and that it informed Lafarge at a meeting on 26 November 1988 that it would not upset the south of France market and wished only to retain its present customers. The fall in Buzzi's cement sales in France from 1987 can thus be attributed to concerted action between Buzzi and the French producers Vicat and Lafarge.

As regards Buzzi's claim that its prices in France were lower than those in the French producers' price-lists, it need only be said that the lower prices are justified by the fact that the Portland cements sold by Buzzi in France (grades 325 and 425) have lower resistance grades than the corresponding cements manufactured and sold by the French producers (grades 350 and 450).

21. **Spain — Portugal**

(1) The Portuguese producers Cimpor and SECIL and the Spanish producers' association Oficemen held several meetings between 1985 and 1989 to discuss cement exports, mainly from Portugal to Spain, resulting from the difference in prices between the two countries. Oficemen was represented at the meetings by its Chairman and Board members.

(2) On 22 July 1985, according to a record drawn up by Cimpor (doc. 33322/155-157), the parties agreed as follows: *'1. The parties present, who may be regarded as the representatives of Spanish and Portuguese cement producers, expressed their clear support for the principle that there should be no cement movements from Spain to Portugal or from Portugal to Spain that are not instigated or controlled by the cement industry of either country. 2. However, they acknowledge that this unambiguous position of agreement does not prevent third parties (distributors, retailers, consumers, carriers, etc.) from undermining the intentions of the two parties, without the latter being able to exercise effective control. In the event of such situations arising, the two parties should hold open exchanges of information in order to find a solution to the problem'* [89]. After taking note of price differences which encouraged cement movements between Spain and Portugal, the anticipated 10% increase in Portuguese prices in October, and the difficulties that Community and national rules on competition might entail for their decisions, the parties agreed to review the situation in October 1985. The Commission has no evidence of a meeting in October; however, according to a Hispacement document (doc. 33322/2901), a meeting took place in December: *'Mr Bordado informs me that the Chairmen of the Portuguese cement companies met at the premises of Oficemen with their Spanish counterparts in December last year, at which time it was decided to agree on a reciprocal ban on exports between the two countries. He confirmed that SECIL is firmly committed to carrying out this arrangement. He said that Cimpor had recently received several requests to export to Extremadura in Spain. This is a temptation that Cimpor has resisted until now, in view of the harm which the cement companies in the two countries could suffer as a result of such a decision'* [90].

(3) According to the minutes of the Oficemen board meeting (doc. 33322/1311 and 1314), another meeting between Oficemen, Cimpor and SECIL was held on 20 January 1986 in order to exchange information on the development of cement exports between the two countries. During the meeting, the Portuguese producers informed Oficemen that the Portuguese prices had increased by ESC 650 a tonne, and both parties agreed to inform each other about any exports known to them.

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[89] In the original Portuguese:
'1. Os presentes, que se podem considerar os representantes da indústria de produção de cimento de Espanha e de Portugal, manifestaram a sua adesão inequívoca ao princípio de que não deverão haver movimentos de cimento de Espanha para Portugal e de Portugal para Espanha, a não ser que sejam solicitados e controlados pelas indústrias cimenteiras de cada um dos países.
2. Todavía, reconheceram que esta posição de acordo inequívoca não evita que haja intervenção de 'terceiros', (Distribuidores, Retalhistas, Consumidores, Camionistas, etc.), que possam pôr em causa as intenções das duas partes, sem que as mesmas possam exercer um controle efectivo.
No caso de ocorrência destas situações, as duas partes deverão proceder a uma troca de informações completamente aberta a fim de se tentar encontrar uma solução para o problema'.

[90] In the original Spanish: *'El Sr. Bordado me dice que los Presidentes de las compañias cementeras portuguesas se reunieron en Oficemen con sus homólogos españoles en el pasado mes de Diciembre, llegando a la decisión de que ninguno de los países exportaría al otro.Me confirma que SECIL está firmemente dispuesto a cumplir con ese compromiso. Me indica que CIMPOR últimamente ha tenido muchas solicitudes para exportar a España por la zona de Extremadura que han supuesto una tentación para CIMPOR pero hasta el momento ha desistido, al valorar finalmente el perjudicio que podría suponer para las compañias cementeras de ambos países la adopción de esa decisión'.*

(4) Another meeting took place on 23 January 1987. Two records of this meeting were made: one handwritten record in Portuguese (doc. 33322/163-166) and another in Spanish (doc. 33322/1406-1408). These show that the Spanish producers had expressed anxiety about the increase in exports of sacked Portuguese cement to Extremadura and the start of bulk exports of Portuguese cement to Galicia; that the Portuguese producers attributed the trade to the price differences which did not take account of the difference in quality between Portuguese and Spanish cement; that they suggested a medium-term solution consisting of an increase in the price of Portuguese cement, and a short-term solution, consisting in a policy of discouraging Portuguese operators engaged in cross-frontier exports.

(5) At the meeting on 6 March 1987, of which there is a record in Spanish (doc. 33322/1410-1412), two main subjects were discussed: Portuguese cement prices in conjunction with exports to Spain, and the Portuguese cement P-300 which did not conform to Spanish standards and should be prohibited by the Spanish authorities. At the meeting, the Portuguese producers provided their Spanish colleagues with a list of the Spanish operators who had asked them for cement quotations (doc. 33322/172) and the position of Portuguese cement exports to Spain for each point of entry (Valencia de Alcantara, Badajoz, Tuy), for each month of 1986 and for January and February 1987 (doc. 33322/170).

(6) No records of the subsequent meetings were found during the investigations. The evidence for such meetings lies in the following documents:

— the meeting on 25 June 1987: a Cimpor document 'Programa de Acção Conjunta' (doc. 33322/79);

— the meetings on 10 November 1987, 5 February 1988, 21 April 1988, 10 May 1988 and 27 July 1988: documents 'Programa de Acção Conjunta (doc. 33322/84, 85, 88, 89, 90) and in the telex messages and memos communicating the names of persons present (doc. 33322/160, 161, 270-276, 158-159, 1397-1399);

— the meetings on 28 October 1988, 12 January 1989, 23 February 1989, 24 April 1989: Cimpor document 'Programa de Acção Conjunta' (doc. 33322/92, 93, 95 and 96).

(7) At the meetings, monthly data showing Portuguese cement exports to Spain for each point of entry were examined (doc. 33322/162, 177, 181, 252).

(8) A series of telex messages in 1988 and 1989 (doc. 33322/485-486, 493-495, 512-513, 530-532, 537-538, 549-550) show that Cimpor refused all requests for cement from Spain with the standard reponse *'we have no availabilities for export'*.

A Spanish trader, Tracoisa, in response to a refusal to supply cement intended not only for Spain (doc. 33322/512-513, 566-567) but also for the Benelux countries (doc. 33322/527-529), sent the following telex to Cimpor on 13 March 1989 (doc. 33322/575): *'If exports to Spain cannot (be) even considered due to the bilateral agreement between Spanish and Portuguese producers, okay but please let us know your possibilities for other markets'* ([91]).

Although Cimpor refused to sell in Spain, it agreed in the same years 1988/89 to fill specific orders not connected to long- or short-term contracts for cement going to: Africa (doc. 33322/516-517, 525-526, 533-536); Guinea (doc. 33322/496-511, 554-556); Senegal (doc. 33322/ 551-553); Libya (doc. 33322/ 490-492, 546-548); Madagascar (doc. 33322/539-541, 571-574); Puerto Rico (doc. 33322/543-545); United States of America (doc. 33322/523-524); Antilles (doc. 33322/514-515).

(9) It is clear from the foregoing that the aim of the Portuguese and Spanish producers, represented by their associations, was to control cement exports between their two countries and hence to share the markets.

(10) According to the parties concerned, it was not the purpose of the meetings between the Portuguese producers and Oficemen to prevent movements of cement between the two countries but rather to ensure compliance with Spanish standards on the utilization of cement and to remedy unnatural price differences.

According to Portuguese legislation (Decree No 208/85), only grade 30 and grade 40 cements may be used in that country; the law was amended in 1991 and the new provisions allow grades 32.5 and 42.5 to be used.

Spanish law, on the other hand, provides for grades 35, 45 and 55 (Decree No 1964/75). Decree No 1312/88 of 28 October 1988 published in the Spanish Official Journal of 4 November 1988 approved new technical

([91]) Original text in English.

standards and cement grades ranging from 25 to 55 and made it compulsory (Decree No 13/88 of 28 October 1988, published in the Spanish Official Journal of 4.11.1988) to obtain type approval for cement used in Spain for concrete and mortar used in the manufacture of prefabricated products.

According to Oficemen, the aim of the Spanish cement producers was, as is evident in the record of the meeting on 6 March 1987, to prevent the use in Spain of cement not conforming to Spanish legislation and to ensure that Spanish producers were not liable should Portuguese cement be mixed with Spanish cement.

(11) The statements of the parties call for the following comments.

Although Spanish Decree No 1312/88 of 28 October 1988 clearly provides that the technical specifications for cement are applicable to all works, whether ordered by public or private bodies, Decree No 1964/75 is not as clear since it states that *'tenders may not be invited or contracts awarded in respect of work or services involving the use of cement which does not meet the specifications set out in the Annex, as from the date of entry into force of this decree.'*

In any event, however the application of the Decrees is interpreted, it is for the public authorities to apply them and not enterprises or private associations that have not been empowered to do so.

Thus, setting aside any question as to its scope, Spanish Decree No 1964/75 stipulates that a cement of at least grade 35 must be used; thus there was nothing prohibiting the use of grade 40 Portuguese cement.

The record of the meeting on 22 July 1985 (doc. 33322/155-157) refers to the resolution that *'there should be no cement movements from Spain to Portugal or from Portugal to Spain that are not instigated or controlled by the cement industry of either country'*. If what the parties claim is true, namely that their main concern was to avoid selling cement not corresponding to national standards, it is not clear how the fact that movements are controlled or instigated by the cement industries of either country could ensure that cement exports conformed to the standards of the country of destination. Furthermore, this is not enough to justify the control of any exports from Spain to Portugal since Spanish cement is at least grade 35 and thus higher than the Portuguese grade 30.

The Hispacement document (doc. 33322/2901) shows that SECIL had the firm intention of abiding by the arrangement not to export from one country to another and that Cimpor had resisted the temptation to export, despite requests for cement from Spain. The reason why Portuguese enterprises firmly state their intention of resisting the temptation to export is because export is possible, otherwise the problem of temptation would not even arise.

Oficemen claims that the increase in Portuguese exports from 2 439 tonnes in 1986 to 28 999 tonnes in 1987 and to 75 427 tonnes in 1988 and the subsequent fall to 2 715 tonnes in 1989 and 83 tonnes in 1990 following the entry into force of Decrees Nos 1312 and 1333/88 show that there were never any agreements between Portuguese producers and Oficemen aimed at preventing cement exports. The increase in exports is not sufficient to refute the documentary evidence. The fall in exports in 1989 and 1990 is due solely to the need for Portuguese producers to comply with Decree No 1313/88 and start the very long procedure of type approval for cement: the procedure ended only on 17 December 1990 (Spanish Official Journal No 50 of 27 February 1991). Furthermore, the type approval was only for cement used in the manufacture of certain products (concrete and mortar for prefabricated products) which explains why, despite Decrees Nos 1312 and 1313/88, exports nevertheless took place in 1989 and in 1990 for other uses.

22. France — Germany

(1) An internal memo from Vicat (doc. 33126/6055-6057) dated 22 July 1982 and referring to 'Deliveries of German cement to Eastern France', after noting that deliveries of German cement complying with French standards had appeared in Alsace at 10.5% below the price for corresponding French cement, summarizes the results of the investigation as follows:

'1. Backgound

Historically, the starting point to this business was when Saarland became a economic part of Germany in 1959.

After the Second World War, administratively autonomous Saarland (1947) was returned to France before being attached once again to Germany on 1 January 1957. Economic reintegration finally took place in 1959. In the period 1947-1959, cement was supplied by French (Thionville and Hagondange) and German

steelmakers under a specific quota system. Thus, until recently, deliveries were broken down as follows:

— *SCF = 120 000 tonnes/year through Saarländische Zement-Gesellschaft (affiliated to SCF);*

— *Cedest = 90 000 tonnes/year;*

— *German producers (Dyckerhoff from the Gommel plant and Heidelberger) = 250 000 tonnes/year.*

Saarland, with a consumption rate of 0.430 tonnes per inhabitant, has a population of some 1 200 000 persons.

This generally accepted situation was considerably altered some five years ago by Cedest which, not content with supplying the Saarland market, acquired an entire section of German consumers representing an annual share of some 100 000 to 120 000 tonnes/year. The German producers protested vehemently, then, tired of fruitless discussions, took the initiative by entering Eastern France with the aim of making good their losses on the French market, in particular by targeting Cedest customers. In addition, the German producer Wössingen (in which Lafarge holds a stake of 34%) [in fact Lafarge has controlled Wössingen since 1981] *at the same time started to supply Readymix at Schoeneck which had hitherto been supplied by SCF. Very tense relations thus arose between Cedest and SCF, further heightened by the battle taking place between these two competitors in the Lower Rhine and Moselle regions.*

2. *Consequences*

Despite the devaluation of the French franc and the price freeze (11.6.82), German producers decided to intensify their action in the East.

In addition to the four Lower Rhine traders, a very large trader (Angernmuller, a Sarreguemines cement-maker tied to Cedest) is now being supplied by Heidelberger.

Should this situation, which is limited to the Lower Rhine and Moselle, spread to the Meurthe et Moselle or Vosges regions, it would have particularly serious consequences in a market experiencing full recession.

Furthermore, Cedest is spoiling the climate which can only result in conflict, a conflict that is liable to spread at a time when we are endeavouring to increase our tonnage. The problem remains unsolved, however, as regards the tonnes taken on the French market by German producers, owing to the attitude of Cedest' ([92]).

(2) The agreement to share the Saarland market was supported by another agreement on the setting-up of a joint cement transport company 'Saarländische Silo-Transport GmbH', the only company which the associates (Arbed, Ciments Français, Cedest, Wülfrather, Heidelberger and Dyckerhoff) would use to transport their cement to Saarland. In view of the fact that the German associates were no longer able to use the joint venture and because of its operating losses, the trans-

([92]) In the original French: *'1° Historique'*
Le point de départ de cette affaire est historiquement le rattachement économique à la R.F.A. de la Sarre en 1959.
Après le second conflit mondial, la Sarre administrativement autonome (1947) fut rattachée économiquement à la France avant de faire retour à la R.F.A. le 1.1.1957. La réintégration économique n'eut lieu en fait qu'en 1959. Pendant la période 1947-1959, les fournitures de ciment furent effectuées — par répartition délibérée — par le canal des sidérurgistes français (Thionville et Hagondange) et allemands.
Les livraisons se faisaient donc jusqu'à ces dernières années dans la relation suivante:
— *S.C.F. = 120 000 Tonnes/an par le canal de Saarlaendische Zement-Gesellschaft (affiliée à S.C.F.).*
— *Cedest = 90 000 Tonnes/an.*
— *Producteurs allemands (Dyckerhoff au départ de l'usine de Gommel et Heidelberger) = 250 000 Tonnes/an.*
La Sarre — qui a un taux de consommation de 0,430 T. par habitant dispose d'une population de 1 200 000 personnes environ.
Cette situation reconnue de tous a été profondément amendée il y a environ 5 ans par Cedest qui, non content d'approvisionner le marché sarrois, s'est adjugé pour une part annuelle d'environ 100 à 120 OOO Tonnes/an toute une couche d'utilisateurs allemands. Cette novation a engendré des protestations véhémentes des producteurs allemands qui las des discussions stériles ont pris l'initiative en envahissant l'Est de la France de transporter ce manque à gagner sur le marché français en visant particulièrement la clientèle Cedest.
A cela il y a lieu d'ajouter le fait que le producteur allemand Wössingen (Participation Lafarge de 34%) (en fait Lafarge a le contrôle de Wössingen depuis 1981, n.d.r.) a pendant le même temps entrepris de fournir Readymix à Schoeneck jusqu'alors approvisionné par S.C.F.
Un climat de tension très grave s'est donc installé entre Cedest et S.C.F. qui se trouve être accru par la bataille que se livrent ces deux concurrents dans le Bas-Rhin et en Moselle.
2° Conséquences
En dépit de la dévaluation du Franc français et des mesures de blocage de prix (11.06.1982), les producteurs allemands ont pris l'initiative d'intensifier leur action dans l'Est.
En plus des quatre négociants bas-rhinois, les approvisionnements d'un très important négociant — bétonnier de Sarreguemines inféodé à Cedest — Angernmuller — sont désormais assurés par Heidelberger.
Cette situation circonscrite au Bas-Rhin et à la Moselle — si elle venait à s'étendre à la Meurthe et Moselle ou aux Vosges — aurait des conséquences particulièrement graves dans un marché en pleine récession.
De surcroit Cedest fait en sorte de pourrir le climat ce qui ne peut que déboucher sur une situation conflictuelle — qui risque de faire tache d'huile à un moment où nous tentons de valoriser nos tonnes.
Le problème demeure toutefois entier pour ce qui concerne les tonnes prises sur le marché français par les producteurs allemands — du fait de l'attitude de Cedest.'

port company was sold on 16 April 1986 (doc. 33126/13477-13478 and 13444-13445).

(3) In order to remedy Cedest's non-quota sales and the German reaction, meetings were held and memos exchanged.

(4) A handwritten internal memo dated 23 June 1982 by Lafarge-Ciments Bétons Europe (doc. 33126/6592-6596) refers to discussions between Lafarge and a German producer.

The note starts with 'Gr [uner — Dyckerhoff] 1) Background' and describes Cedest's relations with South Germany, *'the rules of the game'* in Saarland which resulted in the price increase of DM 15, the breach of this rule around 1970 by Thionvillaise [Cedest], the reaction of the German association and the talks with the Syndicat Français.

The memo continues on p. 2 *'2) W*[össingen] — *We clearly expressed the opinion that each party should remain within its borders. Expansionism or le us assume 500 000 t/year from point of departure risen to 600 000. Reference to enlargement of the Rohmühle kiln –2 500 t/day → Unfavourable impression of L*[afarge] *because of W*[össingen]. *Aim should be to join two businesses. Not deal with things separately - 268 000 t 12-14 years ago.*

B.C. [Bertrand Collomb — Lafarge] — *two very different problems.*

(1) Relations between the industries of neighbouring countries

(2) Holdings of a company in another country

(1) Home market principle OK. But is it easily complied with — In Belgium?
Should perhaps be reviewed at frontier level but not without agreement.
Where do we stand with regard to Cedest? Shareholders with 25% of Cedest → no blocking minority (1/3) even for major decisions. CGIP not just a cement group, similar size to Lafarge (10 billion).

Relatively difficult period. Cedest tried to demolish the French system. Relations today with Cedest. Our power stops where Cedest's or the parent company's interests start.

HB [Holderbank] *in Champagnolle was unable to gain control with 40%. Responsibility of cement industry in exports/Cedest. The industry (Syndicat) and Lafarge in particular applied their full weight when: unregulated competition (Kerpen).*

Ground slag dangerous for mixtures.

What are Cedest's rights since this has been going on for ten years? Renard [Cedest] *says that he is dependent on W*[össingen] and *L*[afarge].

To whom should we speak above him. Cedest must understand that the tonnage must be brought back to the basic figure or to balanced reciprocal exports but not one-way.

H[ummel, Dyckerhoff]. *Since 1980 we have constantly told our French colleagues not to accept Cedest* (81).

We counted on our French colleagues for solutions. The other alternative was RMC impossible so in the end, against our fundamental principles, we are going into France.

BC [Bertrand Collomb — Lafarge] *put the ball in Ciments Français' court.*

[Hummel apparently talking] *CF* [Ciments Français] *we know that it has less influence on Cedest than L*[afarge]. *Also delivery prices to RMC are below French prices.*

How to determine the valid reference, the right to supply?

BC [Bertrand Collomb — Lafarge] — *W*[össingen]. *Concentration not completed.*
German. important in Europe. Same principle as in North America. Unpleasant feeling [illegible] *presence. Harmony. No aggressivity.*

[Possibly the Germans speak again since the memo continues]:

The greatest overcapacity is in Westphalia. But overcapacity virtually everywhere and this creates moves towards the regions and neighbouring countries. Thus we believe we have sufficiently good relations with L[afarge] *to say: do not come into W*[estphalia];

Westphalia: Wülfr[ather], *RMC Hoesch, Dyckerhoff or combination of two, Sebel Söhne is to close.*

G[runer — Dyckerhoff]. *We are fully prepared to see you take part once we are certain that you will accept the rules of the game but we are not yet there. The figures published by the Verband for domestic market are correct at under 1%.*

G[runer — Dyckerhoff] *considers that W*[össingen] *is aggressive.*

— *W*[össingen] *offers DM 3-5 less than the majors in Karlsruhe*

— *W*[össingen] *does not supply figures, is not prepared to fix market share.*

We have 700 000 t clinker capacity: we did it

A row-mill is being built to renew plant and not to increase capacity.
W[össingen] = *337 000 in 72 and we believe this is a reasonable figure.*
76 → 81 RFA 10%
BW 9.2%
hence W[össingen] *also Rep. more or less*

To arrive in Westphalia without telling us is an unfriendly act by anyone.

As long as: — we have no figures
— we see no price reductions
— we see investment
— there is no agreement on sharing
we can only react with a certain amount of distrust.

You say to us . . . you have only to believe us. The answer is simple: here are our figures.

H[ummel — Dyckerhoff]. *Average utilization is 60%. This is a very favourable position.*

BC [Bertrand Collomb — Lafarge] *considers that the level of trust required initially by L*[afarge] *is not less than the trust you should have in → one Verband member. But for our part we consider it normal to require some openness'* ([93]).

(5) On 28 July 1982 Dyckerhoff wrote to Lafarge (doc. 33126/6597-6599), in reply to a letter of 8 July 1992; after referring to the good relations between the two companies, it goes on to say: *'And as we are frankly exchanging ideas, I should like to add today that, in our opinion, true cooperation could have positive effects not only as regards your majority holding in Wössingen but especially on Cedest. It should be possible to resolve existing problems through a fundamentally positive attitude on the part of all the partici-*

([93]) In the original French: *'Gr (uner — Dyckerhoff, n.d.r.) 1) Rappel histoire' et évoque les relations Cedest-Allemagne du Sud, 'la règle du jeu' en Sarre qui avait eu comme résultat le relèvement de prix de 15 DM, la violation de cette règle vers 1970 par la Thionvillaise (Cedest, n.d.r.), la réaction de l'Association allemande, les pourparlers avec le Syndicat Français.*
La note continue en p. 2 *'2) W(össingen, n.d.r.) — Nous avons clairement exprimé l'avis que chacun doit rester dans ses frontières. Expansionisme ou supposons 500 000 T./an point départ passé à 600 000. On parle de l'agrandissement du four Rohmühle — 2 500 T./jour → Impression défavorable de L. (afarge, n.d.r.) à cause de W. (össingen, n.d.r.). Jeu devrait être joindre les 2 affaires. Ne pas traiter les choses séparément – 268 000 T. il y a 12/14 ans.*
B.C. (Bertrand Collomb — Lafarge, n.d.r.) — deux problèmes très différents.
1) Relations entre les industries des pays voisins
2) Participations d'une société dans un autre pays
1) Principe home market OK. Mais est-ce facile à respecter — En Belgique?
Peut-être à remettre en cause au niveau des frontières mais pas sans accord.
Face à Cedest, nous sommes où? Actionnaires à 25% de Cedest → pas minorité de blocage (1/3) même pour les grandes décisions. Groupe pas seulement ciment CGIP même ordre d'importance que Lafarge (10 Mia).
Période relativement difficile. Cedest a voulu faire éclater le système français. Relations aujourd'hui avec Cedest. Notre pouvoir s'arrête à la frontière des intérêts de Cedest ou maison mère.
HB (Holderbank, n.d.r.) en Champagnolle n'a pas pu maîtriser avec 40%.
Responsabilité de l'industrie Cimentière dans exportations/ Cedest.
Industrie (Syndicat) et particulièrement Lafarge a exercé tout son poids lorsque: concurrence sauvage (Kerpen)
laitier moulu dangereux pour mélanges.
Où en sont les droits de Cedest puisque cela dure depuis 10 ans?
Renard (Cedest, n.d.r.) dit qu'il dépend de W(össingen, n.d.r.) et de L(afarge, n.d.r.).
A qui devons-nous nous adresser au-dessus de lui. Cedest doit comprendre que le tonnage doit être ramené à sa base ou un équilibre des exportations mutuelles mais pas à sens unique.
H(ummel, Dyckerhoff, n.d.r.). Nous avons dit ne pas accepter, constamment depuis 1980 dans des conversations avec collègues français
Cedest (81).
Nous avons compté sur nos collègues français pour solutions.
L'autre branche de l'alternative était RMC impossible donc finalement, contre nos principes fondamentaux nous allons en France.
BC (Bertrand Collomb — Lafarge, n.d.r.) réjette la balle aux Ciments Français.
(Hummel reprend apparemment) *CF (Ciments Français, n.d.r.) nous savons que son influence sur Cedest est inférieure à celle de L(afarge, n.d.r.). En plus prix de fourniture à RMC sont inférieurs prix français.*
Comment reconnaît-on la référence valable le droit à la fourniture?
BC (Bertrand Collomb — Lafarge, n.d.r.) — W(össingen, n.d.r.). Concentration pas arrivée à son terme.
Allem. important en Europe. Même principe qu'en Amérique du Nord. Sentiment désagréable (illisible) présence. Harmonie. Pas d'agressivité.
(Peut-être les interlocuteurs allemands reprennent la parole car la note poursuit en indiquant):
La plus grande surcapacité est en Westphalie. Mais surcapacité un peu partout et cela crée des percées vers les régions et les pays voisins. Donc nous croyons être en assez bonnes relations avec L.(afarge, n.d.r.) pour dire: ne venez pas en W.(estphalie, n.d.r.);
Westphalie: Wülfr(ather), RMC Hoesch, Dyckerhoff ou combinaison des 2, Sebel Söhne doit fermer.
Gr(uner — Dyckerhoff, n.d.r.). Nous sommes tout disposés à vous voir participer lorsque nous serons sûrs que vous accepterez les règles du jeu mais nous n'en sommes pas encore là. Les chiffres publiés par le Verband pour marché domestique sont exacts à moins de 1%.
G(runer — Dyckerhoff, n.d.r.) considère que W(össingen, n.d.r.) est agressif.
— W(össingen) offre 3 à 5 DM. de moins que les gros à Karlsruhe
— W(össingen) ne fournit pas ses chiffres, n'est pas d'accord pour fixer une part de marché.
Nous avons capacité 700 000 T. clinker: on l'a fait.
On construit un row-mill pour renouveler et pas pour une sensible augmentation de capacité.
W(össingen, n.d.r.) = 337 000 en 72 et nous croyons que c'est un chiffre raisonnable.
76 → 81 RFA 10%
BW 9,2
donc W(össingen, n.d.r.) aussi Rep. à peu près.
Acte inamical de n'importe quelle source l'arrivée en Westphalie sans nous en parler.
Aussi longtemps que: — on n'a pas les chiffres
— on ne voit que l'abaissement des prix
— on voit des investissements
— on ne donne pas un accord sur partage
nous ne pouvons que réagir avec une certaine méfiance.
Vous nous dites . . . vous n'avez qu'à nous croire. La réponse est simple: voici nos chiffres.
H(ummel — Dyckerhoff, n.d.r.). Moyenne utilisation est 60%. C'est une situation très favorable.
BC (Bertrand Collomb — Lafarge, n.d.r.) estime que le niveau de confiance demandé au départ par L(afarge, n.d.r.) n'est pas inférieur à celui que vous devriez avoir → 1 membre Verband. Mais de notre côté nous estimons qu'il n'est pas anormal de demander une ouverture'.

pants, in view of the composition of the Cedest and Lafarge administrative boards' (94).

This letter confirms the agreement between Dyckerhoff and Lafarge (see memo of 23 June 1982 in preceding paragraph) to seek a solution to the problem of non-quota sales by Cedest in Germany.

(6) An internal handwritten note by Lafarge-Ciments Béton Europe dated 2 September 1982 (doc. 33126/6584) refers to a telephone conversation with Dyckerhoff. Dyckerhoff returned to an idea expressed on 29 July 1992 during a telephone conversation concerning a general meeting between Dyckerhoff, Heidelberger, Cedest and Lafarge to resolve the problem of Cedest's aggression in Germany. Lafarge answered that first of all the possibilities of direct negotiation with Cedest should be explored; Lafarge could take part if invited by Cedest. Lafarge also said it seemed too soon to organize a meeting with the German producers, including Wössingen, affected by Cedest's aggression, before the talks with Cedest had taken place. Lafarge ended by suggesting to Dyckerhoff: *'1. No general meeting, but an essential talk between Dyckerhoff (with or without Heidelberger) and the Chairman of Cedest before any other meeting. 2. A meeting with the German producers affected, after the talks, so as to some extent to share the sacrifices if an agreement has been concluded'* (95).

Thus Lafarge, through its Wössingen subsidiary, is prepared to sacrifice some of its market share with the other German producers concerned if agreement is reached with Cedest.

(7) According to an internal handwritten note by Lafarge-Ciments Bétons Europe (doc. 33126/6582-6583), the meeting suggested by Lafarge between Cedest, Dyckerhoff and Heidelberger took place on 17 November 1982, with Mr Seillière and Mr Renard representing Cedest, Mr Lose and Mr Gruner representing Dyckerhoff, and Mr Brenke for Heidelberger. The note sets out the content of the discussions on the basis of information communicated by Wössingen, which probably obtained it from Cedest:

'1. Mr Seillière for the first time produced the following figures (exports to FRG, excluding Saarland): 1981: 108 000 t. Mainly HDZ cement; ten months 1982: 95 000 t. Mainly HDZ cement. He apparently went back several years with data on cement and clinker (ten years but details? → see document written by Renard).

2. He also said he had sold 9 000 t of clinker this year to Wössingen (which does not please K. [director of Wössingen]*).* [Comment by the author of the note on an event that took place after the meeting].

3. Cedest confirmed that it would sell only to RMC ... and to PZW [Wössingen] in Germany. It also agreed in future to adjust its supplies to Germany (excluding Saarland) to delivery trends in that country whether the trend is upward or downward.

4. Seillière said it was prepared to withdraw from the PZW [Wössingen] areas provided of course that it could sell its tonnages more in the North. To which Gruner apparently replied that PZW [Wössingen] should cede to D[yckerhoff] an equivalent tonnage to the one given up by Cedest in the Karlsruhe and Mannheim-Ludwigshafen area (96). *Cedest replied: this is no longer our affair. (K[director of Wössingen] naturally considered that the behaviour of Cedest is not the correct attitude of an associate since, whilst appearing to give way in one area, it is 'telling tales' about us to D[yckerhoff]).*

Apart from what K has reported [director of Wössingen] I intend to ask Renard for news fol-

(94) In the original French: *'Et puisque nous échangeons franchement nos idées, je voudrais également ajouter aujourd'hui que, selon nous, une véritable coopération pourrait avoir des effets positifs non seulement en ce qui concerne votre participation majoritaire à Wössingen mais surtout sur Cedest. Les problèmes existant devraient pouvoir être résolus par une attitude fondamentalement positive de tous les participants, ceci étant donné la composition au niveau des personnes des conseils d'administration de Cedest et Lafarge.'*

(95) In the original French: *'1. Pas de réunion générale, mais un indispensable entretien de Dyckerhoff (avec ou sans Heidelberger) avec le Président de Cedest avant toute autre réunion. 2. Une réunion des producteurs allemands touchés, après cet entretien, en quelque sorte pour partager les sacrifices si un accord a été conclu.'*

(96) Lafarge controls Wössingen, in which Cedest has a minority holding; Lafarge also has a 25% stake in Cedest. Under such conditions, Dyckerhoff considers that Lafarge could influence the behaviour of Cedest and Wössingen and that, therefore, Wössingen and Cedest form a single economic entity or form part of the same group.

lowing our meeting on 28 October, about which I sent you a detailed report' ([97]).

It appears from this note that Cedest was prepared to limit its sales in Germany and adapt them to market trends.

(8) An internal Ciments Français memo dated 25 January 1983 (doc. 33126/4254-4256) records a visit on 21 January 1983 to Dyckerhoff and refers to the agenda for the meeting on 15 February 1983 between Ciments Français and Dyckerhoff. The note comments on several items on the agenda: *'Item 7. In fact concerns sales by Cedest in Germany and by DYZ (Dyckerhoff) in France (request by Mr Gruner). Item 8. DYZ agrees to the resumption of Franco-German meetings which, according to DYZ, apparently depends on questions of precedence'* ([98]).

This note shows the active part played by Ciments Français in the discussions on restricting Cedest's sales in Germany and the retaliatory measures taken by Dyckerhoff in France against Cedest.

(9) According to a summary record (doc. 33126/4251-4253) drawn up on 17 May 1983 by Ciments Français, a meeting took place on 9 and 10 May 1983 between Ciments Français and Dyckerhoff. They discussed the position of Dyckerhoff, its sales, the running of its plants (items 1 to 4), its talks with Ciments Luxembourgeois concerning the grinding of 100 000 t of clinker (item 6), the aggressive attitude of Cedest (item 7), engineering activity and shareholders of Dyckerhoff (items 8 and 9), and the organization of the meeting in Paris on 17 and 18 November 1983 between Dyckerhoff and Ciments Français (item 10). As regards items 6 and 7, the record states:

'6. DYZ confirmed that talks were nearing completion with CL to provide DYZ with a grinding quota of 100 000 t on CL's grinding plant and for cement deliveries in the Trier region and in the Eifel. These tonnes will not a priori go to Saarland unless there is a definite economic advantage compared with the Goellheim plant which currently delivers to Saarland. The tonnes will never go to France.

7. DYZ described its difficulties on the German market following the commercial aggression shown by Cedest on this market, and the measures it had taken and planned to take to deal with the competition' ([99]).

The note goes on to describe the discussions between Ciments Français and Dyckerhoff on restricting Cedest sales in Germany and the retaliatory measures taken by Dyckerhoff as well as the latter's desire to respect the French market, as reflected in its intention not to sell the cement obtained from the clinker ground by Ciments Luxembourgeois.

(10) All these contacts and meetings resulted in an agreement on expansion outside Saarland and on regulating sales, as is clear from a letter which the Chairman of Ciments Français, Mr Laplace, who was at the same time Chairman of the Syndicat Français, wrote on 22 September 1986 to the Chairman of Heidelberger, Mr Schumacher, who was also Chairman of the German association BDZ (doc. 33126/3574-3576). The letter refers first to the regular meetings between Lose (Dyckerhoff) and Brenke (Heidelberger), the progress made during the meetings compared with the situation in 1984 ([100]), and the fact that, if the arbitrators appointed on the French side and the German side failed

([97]) In the original French: *'1. M. Seillière a, pour la première fois, sorti les chiffres suivants (export en RFA, Sarre exclue): 1981: 108.000 T. Ciment essentiellement HDZ; 10 mois 1982: 95.000 T. Ciment essentiellement HDZ. Il serait remonté loin dans les années passées avec des indications pour ciment et clinker (10 ans mais précision? → voir document écrit par Renard).*
2. Le même a signalé avoir vendu cette année 9 000 T. de clinker à Wössingen (ce qui ne fait pas plaisir à K. (directeur de Wössingen, n.d.r.)). (Remarque faite par l'auteur de la note qui relate d'une circonstance successive).
3. Cedest a réaffirmé sa volonté de ne vendre en RFA qu'à RMC ... et à PZW (Wössingen, n.d.r.). Elle serait aussi d'accord pour adapter, dans l'avenir, ses fournitures en RFA (toujours Sarre exclue) à l'évolution des expéditions dans ce pays, à la baisse comme à la hausse.
4. Seillière a déclaré être prêt à se retirer des zones de PZW (Wössingen, n.d.r.) à la condition évidente de reporter ses tonnages plus au Nord. A quoi Gruner aurait rétorqué que PZW (Wössingen) devrait céder à D(yckerhoff) un tonnage équivalent à celui qu'abandonnerait Cedest dans zones Karlsruhe et Mannheim/Ludwigshafen . Réponse de Cedest: cela ce n'est plus notre affaire. [K(directeur de Wössingen) réagit évidemment en considérant que le jeu de Cedest n'est pas celui d'un associé correct, puisqu'en ayant l'air de céder d'un côté, il nous 'dénonce' auprès de D(yckerhoff)].
Indépendamment de ce qu'a rapporté K.(directeur de Wössingen) je compte demander à Renard des nouvelles en suite à notre réunion du 28.10 dont je vous ai transmis un rapport détaillé'.

([98]) In the original French: *'Point 7. Il s'agit en fait des ventes de Cedest en Allemagne et de DYZ (Dyckerhoff) en France (demande de M. Gruner). Point 8. Il y a accord de DYZ sur la reprise des réunions franco-allemandes qui, d'après DYZ, est apparemment subordonnée à des questions de préséance'.*

([99]) In the original French: *'6. DYZ a confirmé que des conversations étaient prêtes à aboutir avec CL pour assurer à DYZ un quota de broyage de 100 000 T. sur les installations de broyage de CL et pour des livraisons de ciment dans la région de Trèves et dans l'Eifel. A priori ces tonnes n'iront pas en Sarre, sauf s'il y avait un avantage économique certain par rapport à l'usine de Goellheim qui livre actuellement la Sarre. Ces tonnes n'iront jamais en France.*
7. DYZ indique ses difficultés sur le marché allemand à la suite de l'agressivité commerciale de Cedest sur ce marché et fait part de son action et de ses projets pour faire face à cette concurrence.'

([100]) As stated above in point (b) of recital 19, one of the 'hot spots' referred to at the Head Delegates meeting on 19 March 1984 included 'exports from France to Germany'.

to reach a solution acceptable to all parties, the latter would have to take the matter in hand, continues as follows: *'The second problem concerns the future. Ted Brenke expressed during our last meeting the opinion that, if we were to renew our agreement, there would be a demand from the German side that the gap existing since 1984 between French and German deliveries be reduced. I told him that, if this demand were to be maintained, I saw very little hope in our reaching a further agreement. As you remember, there was no logical and, even less, ethical justification for this gap, which was not, in fact, the result of bilateral discussions between French and German interests, but resulted from a far more complicated pattern of discussion which included conflicts between the French parties, and would probably have included conflicts on the German side had we not agreed then to leave Wössingen aside for the time being. I do not believe that we can have so many people agree on something new unless they are under pressure, and the very purpose of a renewal is not to let such a pressure develop.*

I should like to have your reaction on these two questions. We shall, I hope, see each other in Paris at the end of October, but I also have an appointment with Ted Brenke and Jürgen Lose on 15 October, and if you could call me before then, I would appreciate it' ([101]).

The recipient of this letter added a handwritten comment: *'Conversation of 11.10:*

(a) Agreed in principle on function of arbitrators

(b) No to the quantity ratios, official discussion only after Paris' ([102]).

The following essential points emerge from the letter: that there was an agreement between certain French and German enterprises (SFIC, Lafarge, Ciments Français and Cedest on the one hand, and BDZ, Heidelberger and Dyckerhoff on the other hand); that the performance or interpretation of the agreement gave rise to disputes submitted for arbitration; that there were discussions on renewal of the agreement; that the gap between French deliveries and German deliveries was not the result of bilateral discussions (referred to above in paragraphs 4 to 9) between the French and German enterprises but of differences of opinion between the French enterprises; that the chairmen of the French and German associations met on 11 October 1986 to discuss the two problems referred to in the letter and agreed, as regards quantities, to deal officially with the problem after the Franco-German meeting which took place in Paris on 27-28 October 1986 (according to documents 33126/14764-14768). The Commission does not have any proof concerning the renewal of the agreement, but the statistics on French deliveries to Germany and German deliveries to France (see paragraph 12 below) show that the agreement between SFIC, Lafarge, Ciments Français and Cedest on the one hand and BDZ, Heidelberger and Dyckerhoff on the other hand continued after 1986.

According to an internal Heidelberger memo of 12 August 1987 (doc. 33126/3573), the Franco-German talks continued in 1987: *'I agreed with Mr Laplace to discuss, before his term of office in the French cement industry came to an end, a number of well-known unresolved matters. You will meet him with the Cembureau delegation that is leaving for Russia. I should like to discuss with you, before you meet him, the content of your talks with him. Annex'* ([103]).

The Annex is the letter of 22 September 1986 referred to above.

(11) In order to obtain a full picture of Franco-German relations, it is also useful to examine the relations between the major actors ([104]).

Heidelberger has held 35% of the capital of Vicat for several years.

([101]) Original text in English.

([102]) In the original German: *'am 11.10. — Gespräch*
a) der Schiedsrichterfunktion im Prinzip zugestimmt.
b) der Mengenrelation nicht, offiziell nach Paris erst ansprechen'.

([103]) In the original German: 'Aktennotiz an Herrn Brenke.
Ich hatte ein Gespräch mit Herrn Laplace verabredet, um gemeinsam mit ihm, bevor er sein Mandat für die französische Zementindustrie niederlegt, die bekannten offenen Fragen zu besprechen. Sie werden ihm zusammen mit der Cembureau-Delegation, die nach Russland reist, begegnen. Ich würde mich gerne vorher mit Ihnen über den Inhalt des zu führenden Gespräches abstimmen. Anlage'.

([104]) The facts described in this paragraph are not part of the objections of the Commission. They are referred to solely in order to present a fuller picture of the relationships between the various actors.

In 1973, Ciments Luxembourgeois, an Arbed subsidiary in which the Belgian producer CBR has a 10% stake (doc. 33126/818-819), Ciments Français and Dyckerhoff set up a joint venture, Intermoselle, to manufacture clinker and hydraulic binding agents. As stated in the contract between the partners (doc. 33126/4446-4451), each partner has an equal share of production; however, in view of the fact that Intermoselle is the sole source of supply of clinker for Ciments Luxembourgeois and its subsidiary Stahlwerke Röchling-Burbach, if the Intermoselle production share held by Ciments Luxembourgeois does not cover its requirements and those of its subsidiary, Ciments Français and Dyckerhoff undertake to supply Ciments Luxembourgeois with the additional clinker tonnages in accordance with the terms of the contract ([105]).

Since 1981, the Lafarge group has controlled the German producer Wössingen Zement GmbH (formerly Portland Zementwerk Wössingen or PZW) in which Cedest has a 17% stake. After acquiring control, Lafarge contacted the German producers on several occasions, in particular Heidelberger, with a view to bringing PZW into the quota allocation system for southern Germany, a system which PZW left in 1977. The contacts were intensified in 1984 with a view to obtaining results, and involved meetings and exchanges of letters (doc. 33126/6671-6672, 6687, 6710-6711, 6715-6719). The final decision to take part in the quota system for southern Germany was taken at the PZW supervisory board meeting on 27 September 1985 (doc. 33126/6976-6979 and 16556): the Lafarge and Cedest representatives on the board voted for membership, the minority partners voted against. As the Bundeskartellamt inquiry and decision of 12 September 1988 (doc. 33126/6720-6745) made clear, during the summer of 1985 the Lafarge group, the majority partner in PZW and Mr Schumacher, Chairman of Heidelberger and of BDZ, agreed that PZW would take part in the German agreement for the south of the country. Under the agreement, PZW obtained a delivery quota of 12.087% and PZW undertook to notify its deliveries to the 'Meldstelle' Dr Bache and Heidelberger.

(12) SFIC and BDZ have for several years exchanged monthly data on French exports to Germany and German exports to France. The stated aim of the exchange is to be able to compare the data in the possession of the two associations with those published by the national statistical institutes. Although the data exchanged are aggregate and do not contain any indication of destination by region and although the data published by the various statistical institutes and those published by the Statistisches Bundesamt do not indicate destination by region, BDZ is able, each quarter, to establish that imports from various countries are intended for specific Länder and to publish those results. In particular, BDZ is able to state that French cement imports have always been intended for Rheinland-Pfalz, Saarland and Baden-Württemberg, with tonnages for each Land, as can be seen from the figures available at the time of verification for the last five years:

	1985	1986	1987	1988	1989 (9 months)
Rheinland-Pfalz	[. . .]	[. . .]	[. . .]	[. . .]	[. . .] (*)
Saarland	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
Baden-Württemberg	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
TOTAL	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
German exports to France in the same years totalled:	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]

(*) [. . .]: In the published version of the Decision, some information has hereinafter been omitted, pursant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

This system of data exchange is a means of monitoring the implementation of the agreement on regulating sales between French and German enterprises (see paragraph 10 above).

A comparison of these data shows that *'the gap existing since 1984 between French and German deliveries'* (letter of 22 September 1986 referred to above in paragraph 10) was reduced.

(13) Lafarge claims that its participation in a Franco-German agreement would mean that it posed a threat to the Germans or that it was threatened on its market by its German competitors. The location, however, of the Lafarge plants in France allegedly shows that there is no serious threat which could have persuaded Lafarge to conclude agreements with German competitors; as regards Wössingen, it would not, it is claimed, be in its economic interests to export to France.

Even if it were true that the location of the Lafarge plants in France might to some extent constitute an obstacle, compared with other better-situated French producers, to serious competition in Germany or to the risk of experiencing German competition, Lafarge would not be protected from all the consequences of

([105]) The abovementioned contract and the agreements relating to Intermoselle were notified to the Commission which, by letter dated 29 November 1974, announced that it had no objections under the competition rules.

competition between producers in the two countries since, as Vicat states in its note of 22 July 1982 referred to above in paragraph 1, such competition could spread and affect other regions.

It is fully in Lafarge's interests to take part in the market-sharing system, if only to protect its subsidiary Wössinger.

Wössinger is affected on its market by certain French exports. Lafarge has worked since 1984 at least to incorporate Wössinger in a quota-balancing scheme in Germany (see documents referred to above in paragraph 11); Lafarge thus has an interest in seeing that agreements between French and German producers do not upset Wössinger's market and the German system in which Wössinger took part.

(14) Cedest points out that the documents referred to by the Commission show that it adopted a policy of expansion on the German market and not one aimed at agreements.

It should first be noted that Cedest shares the Saarland market with Ciments Français, Heidelberger and Dyckerhoff (see notes dated 22 July 1982 and 23 June 1982, paragraphs 1 and 4 above). In addition, the handwritten note by Lafarge on the Cedest-Dyckerhoff-Heidelberger meeting on 17 November 1982 (see paragraph 7 above), states that Cedest would *'in future adjust its supplies to Germany (excluding Saarland) to delivery trends in the country whether the trend is upward or downward'*. The notes undoubtedly point to some aggressiveness on the part of Cedest in Germany, but it is also true that the letter of 22 Septemer 1986 talks of an improved situation since 1984 and of a Franco-German agreement which might be renewed.

With a view to demonstrating the independence of its export policy, Cedest attached two tables to its reply to the statement of objections, one (Annex II) showing sales in Germany ('of which Saarland — approximate') from 1970 to 1981, the other (Annex III) showing the trend in exports to Germany from 1987 to 1991. The gap between the two tables is the most interesting period; furthermore, it can be said that exports gradually fell off in the period 1987-89 compared with the preceding decade, and rose in 1990 and 1991. Lastly, the fact that an agreement has been infringed is not proof of the non-existence of an agreement.

(15) Ciments Français states that the notes written by Vicat and Lafarge are not evidence of its participation in Franco-German agreements. Nor was it concerned with Cedest's exports to Germany or the role of Wössinger.

Firstly, Ciments Français is involved, together with Cedest, Dyckerhoff and Heidelberger, as regards deliveries to Saarland (Vicat note of 22 July 1982 and Lafarge note of 23 June 1982 referred to above in paragraphs 1 and 4); secondly, it is affected by Cedest deliveries to Germany because of the reactions of German producers in eastern France (Vicat note of 22 July 1982) which resulted in 'very tense relations ... between Cedest and Ciments Français', with the latter being forced to compete against the German producers reacting in France to Cedest penetration of the German market; lastly, Cedest sales in Germany and Dyckerhoff sales in France were on the agenda of the meetings held on 15 February 1983 and 10 May 1983 between Ciments Français and Dyckerhoff (Ciments Français notes of 25 January 1983 and 17 May 1983 referred to above in paragraphs 8 and 9).

As regards the grinding of Dyckerhoff's clinker quota on Ciments Luxembourgeois plant, the Commission is not objecting to the distribution of the joint subsidiary's clinker production. The record of the meeting on 17 May 1983 drawn up by Ciments Français states that Dyckerhoff intended to grind its clinker quota 'for cement deliveries to the Trier and Eifel regions'. The tonnes not going to Saarland or to France are tonnes of cement and not clinker as claimed by Ciments Français (see Ciments Français minutes of 17 May 1983, referred to in paragraph 9 above).

At the hearing attended by all the enterprises concerned, Ciments Français, after first describing the various export obstacles, and the fact that, despite those obstacles, cross-frontier trade between France and Germany was extensive in relation to consumption in the regions concerned and that, in order to quantify that trade, it must be borne in mind that consumption density in the French areas concerned was lower than in the corresponding German areas and that German factories were further from French markets than French factories from German markets (by about 20 kilometres), went on to explain the change in the delivery gap between France and Germany after 1986: *'Whilst there may be a tendency for the gap to diminish from 1986, it is because German deliveries to France increased over that period, and here too there are logical explanations, namely:*

— *The regional market in France expanded more strongly than the German market in the period 1986-88: approximately 11% against 4%.*

— *The French market was thus more attractive to German firms.*

— *In addition, French prices were more attractive than German prices from 1986. Thus there is a perfectly logical explanation for the changing gap in cement deliveries between France and Germany'* ([106]).

Ciments Français has not provided any evidence in support of its allegations.

Leaving aside the fact that the stronger market expansion in France could not cancel out the initial handicaps referred to by Ciments Français, i.e. lower consumption figures in the French regions concerned and greater distance (20 km) of German factories from French markets, it must be noted that, on the basis of documents received by Cembureau from the Syndicat Français (doc. 33126/15168-15170) and from the German BDZ (doc. 33126/15161-15163), French prices were not at all more attractive than German prices in the period 1986-88. On the contrary, the price difference is all the greater considering that the German PZ35 cement has a lower resistance grade than the French CPJ45 and CPA55R grades.

	German average gross ex-works price communicated by BDZ only for PZ 35	Average DM/FF exchange rate over the year	Price for German cement in FF	French gross ex-works price communicated by SFIC for CPJ45/ CPA55R
1986	[. . .]	[. . .]	[. . .]	[. . .]
1987	[. . .]	[. . .]	[. . .]	[. . .]
1988	[. . .]	[. . .]	[. . .]	[. . .]

It is clear that the explanations given by Ciments Français are not supported by the facts.

(16) As regards the comments made by SFIC, the Lafarge memo of 23 June 1982 (see paragraph 4 above) refers to the Syndicat not only in connection with talks between the Syndicat Français and BDZ, but also as regards pressure, (p. 3 *'Industrie (Syndicat) and especially Lafarge use their full weight against random competition (Kerpen), ground slag dangerous for mixtures')*. Furthermore, the letter from Mr Laplace of 22 September 1986 (see paragraph 10 above) is a letter from the Chairman of SFIC to the Chairman of BDZ, as is clear from its content; moreover Ciments Français takes the same view.

(17) Dyckerhoff and Heidelberger consider that the agreement concerning Saarland is pure speculation since, they claim, in the first place they are not the authors of these notes and second, their market shares in Saarland are minimal, respectively 16.92% in 1989 and 3%, no dates provided. In addition, the Lafarge and Ciments Français notes do not prove involvement of the two German companies in any agreement since each one acted completely independently in its exports to France. Finally, the letter of 22 September 1986 (see paragraph 10 above) has no particular meaning as it simply refers to hypotheses.

The arguments put forward by Dyckerhoff and Heidelberger are contradicted by the facts already referred to, namely: the agreement on Saarland is referred to in the notes of two different producers; the agreement is mentioned not only as a historical fact but also as an existing fact; if the agreement were not current there would be no reason for Dyckerhoff saying to Ciments Français (note of 17 May 1983 referred to above at paragraph 9 above), in connection with the grinding of clinker at Ciments Luxembourgeois, that these tonnes would never go to France and would not *a priori* go to Saarland; the existence of agreements is not proved or disproved by quantities delivered or sizes of market shares. Other Lafarge and Ciments Français notes prove that the two German producers put pressure on Cedest to apply, outside Saarland, a non-aggressive sales policy in Germany, and that this pressure, like the talks with the French producers, produced results, since the letter from Mr Laplace of 22 September 1986 (see paragraph 10 above) refers to an improvement of the situation in 1986 as against 1984 and to the possible renewal of the agreement. Lastly, according to the Heidelberger memo of 12 August 1987 (see paragraph 10 above), the subjects dealt with in the Laplace letter were discussed in 1987.

(18) BDZ maintains that it was never informed of the Franco-German contacts, talks and correspondence and that even the Laplace letter of 22 September 1986 was not known to the Director of BDZ until the statement of objections was communicated. Yet, in its memo of 23 June 1982, Lafarge states that the *'Verband was very upset'* at the disturbance on the German market; as the Laplace letter is intended for the Chairman of Heidelberger in his capacity as Chairman of BDZ, it is not essential to establish whether the Director of the German association was aware of it.

([106]) In the original French: *'Si toutefois, en tendance, on apprécie que cet écart diminue à partir de 1986, on constatera que c'est parce que les livraisons allemandes en France augmentent sur cette période, et là encore il y a des explications logiques: en effet*
— *Le marché régional français a été en plus forte expansion que le marché allemand sur la période 1986-1988: + 11% contre + 4%.*
Le marché français a donc été plus attractif pour les usines allemandes.
— *En plus, les prix français ont été plus attractifs que les prix allemands à partir de 1986. L'évolution de l'écart de livraison de ciment entre la France et l'Allemagne s'explique donc parfaitement'.*

As regards the statistics, BDZ states that overall export data have been exchanged with the Syndicat Français for decades with a view to checking official statistics, that the data received by SFIC are not communicated to members of BDZ, that the allocation of French imports to the Länder was based on official statistics and estimates based on the location of French plants and transport costs, that the allocations were rounded off per thousand tonnes as regards Baden-Württemberg and Saarland and not for Rhineland-Palatinate which has the alleged difference. BDZ also states that these allocations are compared later with data on imports drawn up by each Land. According to information provided at the hearing, the comparison is not followed by corrections to the estimated allocations.

After announcing it at the hearing, BDZ sent the Commission on 4 May 1993, through its lawyers, a model of the new statistics drawn up for domestic deliveries since 1992, and an example from North Rhine-Westphalia of cement import statistics drawn up by the Länder. If the statistics drawn up by the Länder are the same as those contained in the example presented to the Commission, the data contained in the statistics are not comparable since they relate only to commercial cement imports ('Einfuhr-Generalhandel').

Despite the arguments produced in writing and orally by BDZ, the Commission has been unable to find any valid explanation for the allocation of imports to the various Länder.

BDZ states that the allocation is based on official statistics. Yet the tables for 1985 to 1989 all have asterisks next to GDR imports only and total imports and, in the footnotes, the words 'according to official statistics'; no reference is made to imports from other countries, apart from 7 639 tonnes from Poland in 1985 referred to as *'region not clear'*. The tables for 1988 and 1989 contain another footnote, in the form of a small cross next to Belgium (although it may be assumed that they are imports from Belgium and Luxembourg in view of the economic union between the two countries), which says *'not including the quantities already included under Saarland'* ([107]). No imports from Belgium/Luxembourg are intended for Saarland, according to the 1988 and 1989 tables, and the 1985-87 tables: it must therefore be concluded that imports from Belgium/Luxembourg were allocated by BDZ either among imports from another country, probably France, or among domestic deliveries. In order to carry out such an operation, BDZ must know the real provenance of these imports and their real destination.

The estimated transport cost does not appear to be a reliable basis for allocating imported tonnes to different Länder. Although such an estimate can give an overall measure of the extent of French penetration of the German market, it is not possible to quantify the tonnage intended for the various regions covered by the estimated market penetration. In addition, the table produced by BDZ on 4 May 1993, which contains statistics on imports into North Rhine-Westphalia from 1983 to 1991, shows that France exported and sold there, through trade channels, amounts ranging from 4 621 tonnes in 1983 to 8 916 tonnes in 1991. This shows on the one hand that the estimated transport cost is not a reliable basis for allocating imported tonnes to the various Länder and, on the other, that the statement by Ciments Français at the hearing to the effect that French exports to Germany can go, for economic reasons, only to Saarland, southern Rhineland-Palatinate and western Baden-Württemberg, does not correspond to the facts. The table of imports through traders in North Rhine-Westphalia clearly shows that the allocations effected by BDZ are indeed estimates and hence do not correspond to the facts. Apart from the fact that it is difficult to understand without further explanation why French exports to North Rhine-Westphalia, known of for several years, have never been taken into account in BDZ statistics, this observation could be valid if the allocations were made globally for the three Länder concerned by French exports: in the case in question, the quantities are very specific and are allocated each quarter to each Land.

23. **Belgium — Netherlands — Germany**

(1) The Netherlands traditionally consumes more cement than it produces. At the beginning of the 1980s, three producers were responsible for producing 55-60% (depending on the year) of consumption: ENCI, the largest producer, 68% of which is owned by the Belgian group CBR and 31% by the Belgian group Obourg, which is part of the Swiss group Holderbank; the other two producers, Cemij and Robur, were joint subsidiaries (50%-50%) of ENCI and Hoogovens Ijmuiden. In 1982, Cemij became wholly owned by Hoogovens and Robur wholly owned by ENCI. Until 1982, ENCI, Cemij and Robur had entrusted their cement sales in the Netherlands to the Verkoop Associatie Nederlandse Cement ENCI Cemij — Robur BV.

([107]) In the original German: 'Ohne die Mengen, die bereits unter Saarland erfaßt sind'.

In 1982, the Verkoop Associatie was dissolved and VNC was set up as the trade association. Again in 1982, following the acquisition of Cemij and Robur by Hoogovens and ENCI respectively, and the winding-up of the Verkoop Associatie, Hoogovens and ENCI concluded agreements on mutual supplies, the sharing of the Dutch cement market and cooperation in sales and distribution.

At the beginning of 1989, ENCI purchased Cemij and there is now only one producer in the Netherlands.

(2) The supply of the Dutch market, heavily dependent on imports, has for decades been the subject of agreements between manufacturers in various European countries.

In 1956, the first agreement, the 'Noordwijks — Cement — Accord' (NCA), was signed by Belgian and Dutch producers and the sales branch of a group of German producers, NCH ([108]); it provided for market-sharing and uniform sales conditions.

The agreement was replaced by a new agreement 'Cementregeling voor Nederland' (CRN) which entered into force for three years on 1 January 1971. Under the agreement, total forecast Dutch demand, after deduction of 550 000 tonnes which was subject to free competition, was to be shared among the parties in the following proportions: 69% to the Dutch industry, 17% to the Belgian industry and 14% to the German industry (NCH). The CRN agreement was declared incompatible with Article 85 ([109]).

On 14 January 1975, Cimbel, which preceded FIC as the Belgian producers' representative, the Verkoop Associatie, which preceded VNC as the Dutch producer's representative and NCH notified the Commission of the 'Cement en Beton Stichting'(CBS) agreement whereby the parties communicated to the accountant appointed by CBS the quantity of cement delivered on the Dutch market, by type and category of cement, by mode of transport and packaging, by category of customer and by province of delivery; CBS was to inform its members, both quarterly and annually, of the cumulative data relating to deliveries by Dutch, Belgian and NCH producers.

In addition, the German members of NCH notified the Commission in 1972 of the new NCH statutes as well as the framework contracts signed by members.

(3) There is some evidence that the Dutch market-sharing agreements are essentially still being applied. The minutes of the CBR management board meeting held on 30 August 1982 (doc. 33126/8124) read as follows: *'2. STR. — Grey cement — Market strategy for Bel., Hol., FRG (North Rhineland).*

21. Document examined: handwritten document drawn up by the STR Department and dated 27 August 1982 [this document was not found].

22. Discussions and conclusions

— *Findings based on comparison 1st half 1982/ 1st half 1981*

— *Dutch market: fall in NCH market share; slight increase in non-NCH market share.*

— *N. Rhineland market: Belgo-Dutch industry down slightly.*

— *The reduction in German deliveries to Bel., Hol. and N. Rhineland is chiefly due to fall in cement consumption.*

— *With a view to the introduction of the BPS, German cement firms should increase current prices by DM 8 to 10 to arrive at a balance of market shares that CBR-ENCI could regard as acceptable. The allocation of market shares*

([108]) See Commission Decision 72/68/EEC, OJ No L 22, 26.1.1972, p. 16.

([109]) See Commission Decision 72/468/EEC, OJ No L 303, 31.12.1972, p. 7. According to that Decision, the NCA agreement provided for the following delivery quotas: approximately 62.5% to the Dutch industry if consumption reached 2 million tonnes, 20% to Belgian firms, 14.5% to German firms.

would be half-way between the former NCA and the present situation' ([110]).

The statistics on deliveries to the Netherlands drawn up by CBS, all of which are in the possession of the parties concerned (see e.g. documents from Obourg 33126/296-298, FIC 33126/2388-2405, CBR 9434-9450), show the following market shares for deliveries taken into account by CBS:

	Netherlands (deliveries 000 tonnes)	% (Market share)	Belgium (deliveries 000 tonnes)	% (Market share)	NCH (deliveries 000 tonnes)	% (Market share)	Total (deliveries 000 tonnes)	% (deliveries)
1983	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1984	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1985	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1986	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1987	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1988	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1989	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]

(4) The above data show that: NCH held a market share of roughly [. . .] of deliveries recorded by CBS, except in 1988, a percentage that may be compared with the [. . .] provided for in the CRN agreement; each significant variation in the percentage of deliveries of Dutch producers from one year (1984, 1987 and 1988) against the following year is symmetrically offset by a variation, even if it is not exactly of the same intensity, in the percentage of deliveries by Belgian producers. This symmetry may be set against the links referred to in the beginning of paragraph (1) above between the two major producers and ENCI and between Dutch producers until 1988. The percentages held by Dutch and Belgian producers do not correspond exactly to the percentages provided for in the former NCA and CRN agreements. However, the sum of the percentages held by the Dutch and the Belgian producers, an addition that is justified by the relations between them, is very close to the percentage provided for in the CRN agreement for the two groups of producers. The agreement specifies [. . .] for the Dutch industry and [. . .] for the Belgian industry, giving a total of [. . .] for the two producer groups. The total delivery percentage for the two groups of producers gives the following results for each year from 1983 to 1989: [. . .]. The only significant variation on the CRN percentage occurs in 1988: [. . .], i.e. about [. . .] less, compared with the increase in NCH deliveries for the same year (about [. . .]).

The constancy of delivery quotas was maintained despite variations in consumption in the Netherlands and in deliveries by third parties, which rose in 1986 as may be seen in the following table:

	Consumption Netherlands (Cembureau data) (000 tonnes)	Total deliveries Dutch, Belgian and NCH producers (000 tonnes)	Third-party deliveries (000 tonnes)	Market share held by third parties of consumption in Netherlands
1983	[. . .]	[. . .]	[. . .]	[. . .]
1984	[. . .]	[. . .]	[. . .]	[. . .]
1985	[. . .]	[. . .]	[. . .]	[. . .]
1986	[. . .]	[. . .]	[. . .]	[. . .]
1987	[. . .]	[. . .]	[. . .]	[. . .]
1988	[. . .] ([111])	[. . .]	[. . .]	[. . .]
1989	[. . .]	[. . .]	[. . .]	[. . .]

(5) As stated above in point (b) of recital 19, the Head Delegates meeting on 19 March 1984, according to the Memorandum to the Chairman, did not concern 'traditional or even structural inter-state trade, e.g. exports from Germany and Belgium to the Netherlands'. According to the notes on this meeting, the Belgian Head Delegate complained about the non-structural exports from Germany: *'Belgium — attention was drawn to the fact that, although some cement exports from Germany to the Netherlands are effectively structural and traditional, a number of 'unregulated' exports have taken place for a number of years into the Netherlands and Belgium. As earlier discussions between Head Delegates had not modified this state of affairs, it was considered pointless to continue discussion within Cembureau.*

The Chairman reminded participants that the decision to hold the present meeting had not been opposed at

([110]) In the original French: *'2. STR. — Ciment gris — Stratégie Marchés BEL NDL — RFA (Nord-Rheinland).*

21. Document examiné: dossier manuscrit établi par le Département STR et daté du 27 août 1982 (ce document n'a pas été trouvé, n.d.r.).

22. Discussions et conclusions

— Constatations basées sur comparaison 1er sem. 1982/1er sem. 1981.

— Marché NDL: recul de la part de marché du NCH; légère augmentation de la part de marché du non NCH.

— Marché N. Rheinland: léger recul de l'industrie belgo-néerlandaise.

— La diminution des livraisons de l'industrie allemande en BEL — NDL et N. Rheinland provient en ordre principal de la baisse de la consommation de ciment.

— Dans la perspective de l'introduction du BPS, il faudrait que les cimentiers allemands augmentent les prix pratiqués actuellement de 8 à 10 DM pour arriver à un équilibre de parts de marché que CBR-ENCI pourrait considérer comme acceptable. La répartition des parts de marché se situerait à mi-chemin entre l'ancien NCA et la situation actuelle.'

([111]) [. . .]

the recent meeting of the Executive Committee and sought the opinion of other members' ([112]).

When the Belgian Head Delegate complained about German imports to the Netherlands, they had reached 1 460 000 tonnes in 1983, according to the table on 'Imports by Cembureau countries' dated 15 March 1984 and distributed at the Head Delegates meeting (doc. 33126/11725). The figure appears to be provisional and might be exaggerated since the BDZ statistics give the figure of 1 108 989 as the definitive figure for German exports to the Netherlands. The difference between the two figures is considerable, but the firms did not provide any explanation in the course of the proceeding. In any event, it must be concluded, using the same sources to provide a consistent comparison, that the exchanges of views and the bilateral or multilateral dialogue advocated by the Chairman of Cembureau at the Head Delegates meeting on 14 January 1983 had some effect since German exports to the Netherlands, especially by non-NCH members, first gradually fell and then started to level off in 1986, in relation to consumption, as the following figures show:

	Consumption in the Netherlands (Source: Cembureau) (000 tonnes)	Total German deliveries (Source: BDZ report) (000 tonnes)	and % in relation to consumption	NCH deliveries (Source CBS) (000 tonnes)	and % in relation to consumption and NCH deliveries (000 tonnes)	Non-NCH deliveries (difference between total German deliveries)	and % in relation to consumption
1983	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1984	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1985	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1986	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1987	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1988	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]
1989	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]	[. . .]

(6) As regards exports to Germany from Belgium and the Netherlands, BDZ is able, although no official publication shows destination by Land, to determine and publish quarterly data which show the destination of imports from the two countries as being North Rhine-Westphalia and Rhineland-Palatinate, as well as the quantities to each Land.

([112]) In the original French: 'Belgique — L'attention est attirée sur le fait que, si effectivement une partie des exportations de ciment d'Allemagne vers les Pays-Bas ont un caractère structurel et traditionnel, il s'y ajoute depuis plusieurs années des exportations 'sauvages' complémentaires vers les Pays-Bas et la Belgique. Les discussions précédentes entre Chefs de Délégation n'ayant pas modifié cet état de choses, il est estimé inutile de tenir un pareil débat au sein de Cembureau.
Le Président rappelle que la tenue de la présente réunion a été décidée sans aucune opposition lors de la dernière réunion du Comité Exécutif et sollicite l'avis des autres membres . . .'

CHAPTER 5

'Cembureau Task Force' or 'European Task Force'

24. Origin of the 'Greek problem'

(1) Between the second half of the 1970s and the start of the 1980s, Greek cement producers increased their production capacities by some 7 million tonnes to meet the strong demand from the construction and technical equipment markets in the Middle East which at the time were in full expansion due to the higher prices being paid for oil products. By mid-1985, however, the fall in oil prices which led to the collapse of the Middle-East markets, combined with the expansion of local cement firms, created huge overcapacity in the Greek cement industry and prompted a search for new markets for domestic output which considerably outstripped domestic consumption.

At the end of 1985/early 1986, Greek producers looked towards western Europe, especially to those markets it regarded as more easily accessible: firstly the United Kingdom because it had the highest cement prices in Europe and secondly Italy, where small associations formed by consumers and small import/export companies had taken the step of importing Greek cement.

(2) As soon as the cement imported by Libexim and purchased from Titan and Herakles started appearing, the UK producers were swift to act: in particular, they complained to the Commission that the Greek cement industry was being subsidized by the State ([113]).

([113]) When Greece joined the Community, its cement industry was receiving a considerable amount of State aid. By Decision No C/85/1344 of 13 August 1985, the Commission found that Greek aid in the form of export refunds was incompatible with the common market. However, in view of the balance of payments situation in Greece, the Commission decided in Decision 85/594/EEC of 22 November 1985 (OJ No L 373, 31.12.1985, p. 9) that the refunds could continue until 31 December 1986. Again in view of the Greek economic situation, the Commission decided in Decision 86/614/EEC of 16 December 1986 (OJ No L 357, 16.12.1986, p. 28) to amend its Decision of 22 November 1985 by authorizing Greece to abolish the aid gradually in four stages, the final stage being scheduled for 1990. The Commission also decided that aid granted by Greece in the form of interest subsidies was incompatible with the common market (Decision 86/187/EEC of 13 November 1985, OJ No L 136, 23.5.1986, p. 61).
This occurred during the period in which the European Task Force was operational. In the following period, the Commission terminated in August 1991 (OJ No C 1, 4.1.1992, p. 4) a procedure initiated in 1988 against Greece in respect of aid to Herakles; on the other hand, by Decision 91/144/EEC of 2 May 1990 (OJ No L 73, 20.3.1991, p. 27), it found that aid granted to Halkis was incompatible with the common market.

The UK producers must have alerted their colleagues, as a coalition of cement producers was formed relatively quickly in order to cope with what was referred to as the 'Greek threat'.

(3) The coalition was formed within Cembureau. As will be seen below, Cembureau was represented by its directors at two meetings at least (according to the Holderbank documents, at the Rome meetings on 28 May 1986 and at Zurich on 3 June 1986; according to the written statement by Cembureau taken on 15 November 1989, at the meetings on 28 May 1986 and 'probably' in September 1986), the 'Head Delegates' adopted the most important decisions, and Ciments Français claimed at the hearing on 12 March 1993 that the presence of Mr Laplace 'at these meetings of Head Delegates was related to his role in the Syndicat and on the Liaison Committee'.

In addition, page 2 of the record of the European Export Policy Committee meeting on 13 May 1987 drafted by Mr Gordon Marshall of Blue Circle and found at Blue Circle (doc. 33126/11344-11345) states: *'Cembureau Task Force. I was approached on two occasions to try to make sure that the Cembureau Task Force continues in operation as a means of keeping up our pressure on the Greeks. Scancem were particularly anxious and felt that as 80% of the Cement to the USA is handled by four European Organisations — Blue Circle, Lafarge, Holderbank and Scancem — some pressure could be brought to bear on the Greeks'* ([114]).

It will be remembered that, in 1987, Mr Marshall was Chairman of the European Export Policy Committee and, from 1985, Deputy Director General of the Blue Circle group. In addition, as Blue Circle noted in its reply to the statement of objections (point 3.5), a decision of the Cement Makers Federation Council of 1 May 1985 appointed Mr Marshall, from June 1985, as Head Delegate for the United Kingdom to Cembureau, and Sir J. Milne, Chairman of Blue Circle, as Chairman of Cembureau. Mr Marshall thus held a position giving him good knowledge of the structures of Cembureau and its activities.

In Annex 2, p. 2 of its reply to the statement of objections, the European Cement Manufacturers Export Committee (ECMEC) refers to a statement by Mr Marshall to the effect that the note he drew up for Blue Circle does not refer to subjects discussed at Export Policy Committee meetings except as regards the paragaphs headed 'Summary', 'Turkey' and 'Freight' and that he had not written the note in his capacity as Chairman of the Export Policy Committee. Apart from the question whether the note constitutes a record of the EPC meeting on 13 May 1987, irrespective of Mr Marshall's capacity at the moment he wrote the note and of its addressees, it is a fact that Mr Marshall does not dispute the factual content of the note. The statement by ECMEC also shows that it contests only its possible liability in regard to the facts set out in the note. On the other hand, ECMEC does not state that the note does not concern Cembureau. Its explanation does not therefore invalidate the Commission's conclusion that the note effectively establishes a link between Cembureau and the Task Force, a link resulting from the actual terms chosen by Mr Marshall.

25. **Setting-up and activities of the 'Cembureau Task Force' or 'European Task Force' (ETF)** ([115])

(a) *Rome meeting*

(1) On 28 May 1986 the representatives of Blue Circle, Ciments Français and Lafarge, Holderbank, Heidelberger and Dyckerhoff, Italcementi and Asland met in Rome to take rapid stock of the defensive and support measures to counter the decision of the Greek cement industry to export to western Europe.

The typewritten record of this meeting was drafted by Mr Phillipe Dutron, Director of Cembureau, who was present at the meeting (doc. 33126/18771); there is also a handwritten record possibly drafted by the same Cembureau Director (doc. 33126/10982-10983).

The representatives of these companies decided to meet again in Stockholm, at the Grand Hotel, on Monday, 9 June 1986 at 09.30, together with representa-

([114]) Original text in English.

([115]) The ETF was set up with a twofold purpose: to heighten the awareness of national and Community authorities regarding the effects of cheap Greek cement exports on the various markets; to establish measures aimed at preventing or impeding Greek exports in western Europe. This analysis relates only to the measures which go beyond the awareness and/or pressure activities conducted at national and Community level.

tives of Cementa/Norcem and perhaps CBR. With a view to the Stockholm meeting, a working party made up of four members (United Kingdom, Spain, France and Italy) was instructed to prepare, with the assistance of Mr Henry Collis, a Director of Cembureau, at the Zurich meeting the following week, documents on possible defensive measures and on the following subjects: the legal aspects of any action in relation to Community law and, in particular, the legality of State aid to the Greek cement industry and the legality of a joint reaction in the form of exports of cement to Greece; existing import barriers in Greece; the availability of vessels and floating terminals; the structure of the ready-to-use concrete industry in Greece; a list of European banks in Greece; the possible setting-up of a joint venture between the major European cement producers in order to put the necessary measures into practice.

The representatives of the companies also planned that, if a strategy was defined at Stockholm, three representatives of the European cement industry would meet with representatives of the Greek industry on 10 June, after the Cembureau General Assembly.

(b) *Working party meetings at Zurich and Celigny*

(2) As planned, the working party set up in Rome met from 3 to 5 June in Zurich and, on the last day, at Céligny.

In addition to the countries referred to in the note of 28 May 1986, Holderbank, in whose offices the meetings took place, also attended. Attendance was as follows (doc. 33126/18756):

— on 3 June, the representatives of Blue Circle (Mr Horner and Mr Cheney), Hispacement (Mr Fernandez), Lafarge (Mr Marichal) and Holderbank (Mr Ackermann).

According to Holderbank, Mr Collis, a Director of Cembureau, was present only at the start of the meeting and withdrew rapidly;

— on 4 June, the representatives of Blue Circle, Hispacement, Holderbank and Italcementi (Mr D'Agostino);

— on 5 June, the representatives of Blue Circle, Hispacement, Lafarge and Holderbank.

(3) The paper entitled 'Collective response to problems posed by destabilizing cement industry' was finalized at the above meetings (doc. 33126/18772-18779). The introduction to the document, prepared for the Stockholm meeting on 9 June 1986 (see doc. 33126/18755), dated 5 June 1986, reads as follows: *'Cooperation between the Common Market/Western European Producers is essential for the stability of the European Cement Industry in view of the threat posed by certain countries who disrupt by exporting surplus tonnage. Furthermore the presence of idle floating silos constitutes an additional destabilizing effect. The strategies developed below reflect a response based on solidarity and the obstacles to be overcome. A 'stick' and 'carrot' approach has been adopted separating short term punitive and supportive measures for immediate implementation from those solutions involving political and structural changes in the relevant destabilizing cement industry. It is believed that if the destabilizing cement industry is to be 'persuaded' to cooperate, then it will be essential for other (leading) European Producers to demonstrate a strong and united approach. Clearly the current situation constitutes a threat to the whole of Europe and not only to the countries under immediate attack'* ([116]). The document goes on to examine possible short-term measures:

(4) Dissuasive measures ('Stick Actions')

— Defence of European domestic markets by various means, e.g. administrative obstacles, imposition of quality standards, action by Associations, penalizing of customers purchasing imported cement.

— Attacking the export markets of producers destabilizing the market by taking the place of Greek suppliers in various countries (Algeria, United States, West Africa, Egypt and Saudi Arabia) or by making Greek exports unprofitable.

([116]) Original text in English.

— Boycott of shipping companies controlled by the producers destabilizing the market;

— Studying the possibility of exporting cement to Greece and, if the cost is too high, studying the possibility of 'guerilla' measures and of exporting other products manufactured by the subsidiaries of European cement producers.

— Studying the situation of floating silos and intermediaries.

— Seeking the assistance of international banks to 'convince' the producers destabilizing the market, intermediaries and shipowners to cooperate.

(5) Persuasive measures ('Carrot Actions')

Purchase of available tonnage from producers destabilizing the market and its channelling towards the United States (Blue Circle, Holderbank, Lafarge, Cementa/Norcem and others could do this), West Africa (France could be responsible for this), other countries (complex solutions are envisaged if necessary).

(6) Market regulation

— Setting up a commercial joint venture (short-term action) initially involving producers in France, Germany, Italy, Norway, Switzerland, Sweden, Spain and the United Kingdom, and eventually open to all.

The joint venture would essentially aim at obtaining orders on the main export markets supplied by the countries threatening the stability of the markets in member countries; purchasing cement and clinker from the countries threatening the stability of member country markets; exporting cement and clinker to the countries threatening the stability of member country markets.

— Creation of an *export cartel* (long-term action) to fix quotas, minimum prices and contractual export terms.

(7) Other considerations

— In the context of long-term persuasive measures, it was suggested that the procedure set out in Appendix I be followed, i.e.: endeavouring to convince the Greek Government to adopt the measures set out in the Appendix to solve the problems of the Greek cement industry; making the Commission aware of the Greek problem; informing Commission officials of the actions envisaged.

— It was also suggested that the legal opinion of an expert in Community law be sought in connection with the proposed measures.

None of the firms indicated whether and which Commission officials were informed of the collective actions proposed.

(c) *Head Delegates meeting in Stockholm*

(8) On 9 June 1986 the Head Delegates present in Stockholm for the Cembureau General Assembly held a meeting. The Commission does not have a record of this meeting and it must therefore endeavour to reconstruct the list of persons present and the topics discussed from other documents.

(9) Head Delegates present:

Switzerland — Holderbank: the presence of a Holderbank representative emerges from its reply 7(b) of 7 May 1990 to a request for information (doc. 33126/18755), from Annex 2 to the agenda of the meeting on 19 August 1986 (doc. 33126/18821-18822) and the minutes of the Head Delegates meeting on 9 September 1986 which record the distribution of shares in Intercement decided on at Stockholm (doc. 33126/18861);

Italy — Italcementi admits its involvement in a letter of 21 March 1990 replying to a request for information (doc. 33126/15983). *'As regards the Stockholm meeting, Mr Pesenti remembers have participated, on the*

margins of a Cembureau meeting, with representatives of other European producers' ([117]);

Belgium — In its reply to the statement of objections, p. 188, CBR says that: *'The decision to set up the Joint Trading Company was taken by the Head Delegates of eight countries, including Belgium, at the meeting in Stockholm on 9 June 1986'* ([118]). Thus CBR was present at the meeting as indeed it acknowledged at the hearing on 11 March 1993.

Aker/EUROC (Norcem/Cementa) states in its reply to the statement of objections, page 49, that Mr Borelius (EUROC/Cementa) and Mr Heiberg (Norcem) were invited by Sir J. Milne (Blue Circle) to take part in the meeting, but they declined the invitation which was, however, accepted by Mr Linderoth (EUROC/Cementa).

United Kingdom — The involvement of Blue Circle emerges not only from the fact that it was Sir J. Milne who invited the participants, as stated by Aker/EUROC, but also from the distribution of shares in Interciment referred to in Annex 2 to the agenda of the meeting on 19 August 1986 (doc. 33126/18821-18822) and the minutes of the Head Delegates meeting on 9 September 1986 (doc. 33126/18861), and the content of the reply to the statement of objections (points 4.74-4.77).

France — The presence of Lafarge may be deduced from the fact that it admits generally having taken part in the meetings as part of the Task Force (p. 58 of reply to statement of objections and oral statement at hearing on 12 March 1993). Ciments Français stated at the hearing on 12 March 1993 that Mr Laplace (Chairman of Ciments Français) attended the meetings in Rome (28 May 1986), Stockholm (9 June 1986) and Brussels (6 November 1986), and that the presence of Mr Laplace *'at these meetings of the Head Delegates related to his role in the Syndicat and on the Liaison Committee'* ([119]) [of the cement industry of the EEC, a Cembureau body].

Germany — Dyckerhoff acknowledges that it took part in the Stockholm meeting, but states that its representative was not a Head Delegate (reply to statement of objections, pp. 59-60). Heidelberger states that it did not take part in the meeting (p. 44 of reply to statement of objections) and BDZ simply disputes that the persons present at the meeting were Head Delegates (reply to statement of objections, p. 22).

Spain — Asland's participation in the Stockholm meeting was planned at the Rome meeting (doc. 33126/18771), but Asland denies having taken part in any meeting including Rome (reply to statement of objections, pp. 41-42, and oral statement at the hearing on 11 March 1993). The presence of a Spanish Head Delegate may, however, be deduced from the distribution of shares in Interciment referred to in Annex 2 to the agenda of the meeting on 19 August 1986 (doc. 33126/18821-18822) and in the minutes of the Head Delegates meeting on 9 September 1986 (doc. 33126/18861): shareholder stock could be allocated only to those present or represented at the meeting and who indicated their agreement.

(10) Subjects discussed and decisions adopted

According to reply 7(b) of 7 May 1990 from Holderbank (doc. 33126/18755) to a request for information from the Commission, the participants at the Stockholm meeting decided formally to set up the ETF.

Annex 2 to the agenda of the ETF meeting in Geneva on 19 August 1986 (doc. 32126/18821-18822) and the minutes of the Head Delegates meeting in Baden-Baden on 9 September 1986 (doc. 33126/18857-18862) state that the Head Delegates meeting in Stockholm also decided to set up a Joint Trading Company and to allocate shareholdings in this company to the various ' countries and/or companies' taking part in the meeting.

([117]) In the original Italian: 'Per quanto riguarda la riunione di Stoccolma, l'Ing. G. Pesenti ricorda di avervi partecipato, a margine di una riunione di Cembureau, con i rappresentanti di vari altri produttori europei'.

([118]) In the original French: *'La décision de constituer la Joint Trading Company a été adoptée par les Head Delegates de huit pays, dont la Belgique, lors de la réunion à Stockholm le 9 juin 1986'.*

([119]) In the original French: *'à ces réunions de Head Delegates tenait à son rôle au Syndicat et au Comité de Liaison'.*

(d) *First ETF meeting in London*

(11) On 17 June 1986 the ETF held a meeting in London with representatives from Blue Circle, Lafarge, Italcementi and Holderbank (doc. 33126/18756). Blue Circle sent Holderbank, before the meeting and at the latter's request (doc. 33126/18781), its views on the Joint Trading Company (doc. 33126/18782-18785).

Holderbank had also asked Lafarge before the meeting to indicate at the meeting on 17 June the Greek tonnage which Lafarge could sell on non-European markets (doc. 33126/18786).

A memo from Mr Cheney of Blue Circle dated 19 June 1986 lists the items dealt with at the meeting (doc. 33126/18787):

— Preparation of standard contract for the purchase of Greek cement and clinker by the Joint Trading Company (doc. 33126/18788-18790). (A draft document attached to the memo provided for the notification of the contract to the Commission, but it was apparently not put into practical effect and no notification took place);

— gathering of information on Bouri;

— study of possibility of switching Greek exports to other countries;

— investigation of status of Greek shipping companies;

— study of feasibility of exporting to Greece;

— coordination of setting-up of the Joint Trading Company;

— consideration of possibility of lobbying;

— investigation of exports from eastern European countries and Turkey;

— coordination of Ferruzzi situation.

(e) *Second ETF meeting in Milan*

(12) On 2 July 1986 the ETF met in Milan with representatives of Blue Circle, Lafarge, Italcementi, Holderbank (doc. 33126/18756-18757 and 18791-18793).

The draft agenda lists the following items (doc. 33126/18794): agreement with Greek industry — state and follow-up; Bouri Group — state of the negotiations — information; traditional Greek export markets; Greek exports: state of the investigation and follow-up; Ferruzzi situation; creation of Interciment — state — shareholders — further action; lobbying — state — follow-up; Head Delegate information; any other business.

(f) *Third ETF meeting in Geneva*

(13) On 8 July 1986 the ETF met in Geneva with representatives from Blue Circle, Lafarge, Italcementi, Hornos Ibéricos and Holderbank (doc. 33126/18757 and 18795). No agenda or record of the meeting is available.

(g) *Fourth ETF meeting in Geneva*

(14) On 19 August 1986, the ETF held a meeting in Geneva with representatives from Blue Circle, Lafarge, Hornos Ibéricos, Cementa/Norcem (Aker/EUROC) and Holderbank (doc. 33126/18757-18758 and 18795-18811). An agenda was prepared for the meeting (doc. 33126/18811). No minutes of the meeting were found during the investigation. Aker/EUROC submitted, in Annex 15 to the reply to the statement of objections, a record of the meeting drafted on 26 August 1986 by Mr Ulestig, Norcem/Cementa's representative at the meeting, and intended for the management of his firm. By letter dated 9 July 1992 the Commission sent all the firms concerned by the international part of the statement of objections a copy of the records submitted by Aker/EUROC, stating that it intended to use this document in the proceeding and inviting them to present their comments.

The record by Mr Ulestig contains exactly the same items as those on the agenda and describes the discussions and decisions that took place.

(15) Item 1 'Briefing' was included in the agenda to explain the aims of the ETF to those (in practice Norcem/Cementa) taking part for the first time in the meetings. The record defines the purpose of the ETF as follows: *'ETF's purpose is to evaluate measures to eliminate imports to Western Europe, presently imports from Greece. ETF shall recommend measures to the Head Delegates for decisions'* ([120]).

(16) Items 2 and 3 refer to the imports into the United Kingdom, Italy and Spain and the attempt by Holderbank

([120]) Original text in English.

to place pressure on Crédit Suisse to withdraw its financing from Bouri ([121]).

(17) Items 4 and 5 take stock of the carrot and stick actions.

Although no agreement had been obtained on the Greek producers, Blue Circle had begun to purchase Greek cement for delivery to the United States and deliveries would continue in September and October; Lafarge had purchased a cargo of cement from Titan for delivery to Montreal and another cargo for delivery in September; Holderbank had agreed to purchase 90 000 tonnes of cement from Titan (of which 7 000 tonnes were apparently delivered), 100 000 tonnes of cement from Heracles (of which 40 000 tonnes were delivered), 50 000 tonnes of clinker from Titan (of which 25 000 tonnes were delivered), all of which was intended for the United States.

Blue Circle reported on its talks with Titan and the attempts to find a solution which might be used as a means of putting pressure on Heracles.

Italcementi submitted a report on the possibility of exporting to Greece (doc. 33126/18812-18820).

Lastly, consideration was given to the traditional Greek export markets, traders and the threat of imports from other countries.

(18) Item 6 concerns the setting-up of the Joint Trading Company 'Interciment', the distribution of its capital, its articles of association (doc. 33126/18821-18841). On the basis of an internal Blue Circle memo (doc. 33126/18842-18843), it was suggested that the setting-up of Interciment be notified to the Commission.

(19) Item 7 concerns information given by Blue Circle on the lobbying of the United Kingdom Government (doc. 33126/18844-18845).

(20) Item 8 concerns the Blue Circle study on the possibility of investing in Halkis (doc. 33126/18846).

(h) *Fifth ETF meeting in Baden-Baden*

(21) This meeting, called by Holderbank, took place on 9 September 1986 at 12.00 and was essentially aimed at preparing the briefing for each subject for the Head Delegates meeting the same day after 18.00. Each participant was invited to prepare an oral or written report on the subject entrusted to him (doc. 33126/18848).

(i) *Head Delegates meeting in Baden-Baden*

(22) After the EFT meeting in the afternoon, the Head Delegates met on 9 September 1986 at 18.00.

Draft minutes of the meeting were first drawn up, followed by a final version (doc. 33126/18849-18862). The minutes were headed 'Summary of statements and conclusions of the meetings of the Head Delegates and representatives of the Task Force at Baden-Baden on 9 September 1986'.

(23) The following Head Delegates attended: Sir J. Milne, Blue Circle (UK); Mr D. Amstutz, Holderbank (CH); Mr G. Pesenti, Italcementi (I); Mr B. Kasriel, Lafarge Coppée (F); Mr P. Rumeu, Cementos Uniland (ES); Mr J. Lose, Dyckerhoff and Mr B. Steinbach, BDZ (D); Mr P. Rabl, Norcem (N); Mr O. Stevens Larsen, Aalborg (DK); Mr D. Quirke, Irish Cement (IRL); Mr P. Sytor, Cimenteries CBR (B).

The following representatives of the ETF were also present: Mr M. Akermann, Holderbank (CH); Mr J. Marichal, Lafarge Coppée (F); Mr A. D'Agostino, Italcementi (I); Mr J. Félix, Hornos Ibéricos and Mr J. Bruguera, Cementos del Norte (ES); Mr M. Horner and Mr R. J. Cheney, Blue Circle (UK).

(24) Item 1 on the agenda concerns organizational aspects. The objectives of the Task Force were reiterated: to examine possible 'dissuasive' and 'persuasive' measures to counter the arrival of cheap cement on European markets (primarily against Greek imports into the United Kingdom) and to submit recommendations to the Head Delegates.

The following firms and/or countries were represented on the Task Force: Holderbank: Mr Akermann; United Kingdom: Mr Horner and Mr Cheney; France: Mr J Marichal; Italy: Mr D'Agostino; Spain: Mr Félix and Mr Bruguera. The Task Force identified the following subjects requiring study and investigation: agreement with the Greek industry; retaliatory action on the traditional markets for Greek exports; exports to Greece; threats from other countries; cement dealers, especially Bouri. As the Task Force had a considerable amount of work and did not propose any sig-

([121]) In its communication of 25 November 1991 (paragraphs 19(a) and (c) and 61(h)(ii) and (iii)), the Commission had objected to the pressure put on Bouri and its creditors and on RMC. These objections are not maintained in this Decision.

nificant solutions, it was decided to set up the following sub-groups, coordinated by the Task Force; their results would be examined periodically by the Head Delegates:

— sub-group of intermediaries composed of Mr Horner, coordinator (UK), Mr Fraisse (F), Mr Manglano (ES), Mr X (I);

— sub-group Greek export markets, composed of Mr Akermann, coordinator (CH), Mr Palomar (ES), Mr Clemente (I), Mr Fraisse (F), Mr X (Scandinavia);

— sub-group exports to Greece, composed of Mr Clemente, coordinator (I), Mr Marichal (F), Mr Ynzenga (UK), Mr Kober (D);

— sub-group exchange of defensive experiences, composed of Mr Marichal, coordinator (I), Mr Albert (I), Mr Andia (ES), Mr Brenke (D), Mr Shepherd (UK);

— sub-group threats from other countries, composed of Mr X, (Coordinator, Scandinavia), Mr Y (S), Mr Albert (I), Mr Fraisse (F) Mr Z (D), Mr K (Scandinavia).

(25) Item 2 concerns the agreement with the Greek industry. An overall agreement with the Greek industry on removal of the cement was not possible because of problems of price and duration and perhaps because of the fact, according to the author of the minutes, that each Greek producer prefers separate agreements. It was decided to continue negotiations.

(26) As regards item 3, exports to Greece, the Task Force was instructed to submit a recommendation to the Head Delegates by the end of September but serious doubts as to economic feasibility were expressed.

(27) As regards exports to Greece's traditional markets, item 4 on the agenda, it was concluded that this measure was not feasible.

(28) As regards item 5, the question of Greek cement imports by Ferruzzi was discussed and it was noted that the talks between the Italian cement producers and Ferruzzi might produce results. Imports of Tunisian cement into Spain and the progress of the talks between Spanish and Tunisian producers were also discussed. (It should be noted that, as regards imports coming from third countries, in 1992 Spanish producers lodged an anti-dumping complaint. This was not raised by the undertakings).

(29) Item 6 concerns the possibility of alternative deliveries of low alkali cement.

(30) Item 7 concerns Bouri. Blue Circle related its fruitless approaches to Banque Worms and to Crédit Suisse France to cut the flow of the financing to Bouri and it was decided to obtain further information.

(31) Item 8 concerns the progress with the Halkis investment study undertaken by Blue Circle.

(32) Under item 9, it was noted that, in accordance with the decision of the Head Delegates in Stockholm, the Joint Trading Company Interciment had been set up and could become immediately operational as part of the carrot and stick measures. It was agreed that the company would for the time being stay dormant; it was important, however, to ensure that it was ready to become operational.

(33) By letters dated 22 September 1986 (doc. 33126/19019-19025), Holderbank sent the minutes of the Head Delegates meeting to Mr D'Agostino, requesting him to give a copy to Mr Pesenti and Unicem; to Mr Lose, with a request to give a copy to Mr Schumacher (Heidelberger) and to Mr Steinbach (BDZ); to Mr Rable (Norcem) with a request to give copy to Cementa; to Mr Marichal with a request to give a copy to Mr Kasriel (Lafarge) and Ciments Français; to Mr Félix with a request to give a copy to Mr Rumeu (Uniland) and to Mr Bruguera (Cementos del Norte); to Mr Cheney with a request to give a copy to Mr Larsen (Aalborg) and to Mr Quirke (Irish Cement); and to Mr Sytor (CBR).

(l) *Sixth ETF meeting in Geneva*

(34) This meeting was held on 21 October 1986 with representatives from Holderbank, Lafarge, Italcementi, Hornos Ibéricos, Scancem (Aker/EUROC) and Blue Circle. According to the minutes (doc. 33126/18895-18900), six items were discussed.

(35) As regards the organizational aspects, it was decided that the Task Force would meet from time to time to examine subjects of general interest and that the rationalization of the Community industry in a period of overcapacity would take place in accordance with Community law. The problem of Spain's representation could be discussed by Mr Félix and Mr Rumeu.

(36) The position regarding imports into the United Kingdom was examined. The problem of State aid to the Greek cement industry had been brought to the attention of Commission officials.

A meeting with the member of the Commission responsible for competition had been arranged for 6 November.

The position regarding imports into Italy and Spain was examined.

(37) As regards Interciment, it was confirmed that it would remain dormant for the time being.

(38) The progress of the study on potential investments in Halkis was discussed.

(m) *Head Delegates meeting in Brussels*

(39) On 6 November 1986, the following Head Delegates met in Brussels: Sir J. Milne (UK), Mr B. Laplace (F), Mr J. Lose (D), Mr G. Pesenti (I), Mr J. Van Hove (B), Mr P. Rumeu (ES), Mr D. Quirke (IRL).

The meeting was also attended by Mr D'Agostino (Italcementi) and Mr K. D. Irons (Blue Circle) who drew up the 'notes of the meeting of EEC cement industry representatives in the Hilton Hotel, Brussels, at 9.00 a.m., 6 November 1986' (doc. 33126/19007-19008).

(40) Sir J. Milne opened the meeting by reminding participants that any restructuring of a European cement industry suffering from chronic overcapacity must be carried out in compliance with the competition rules. He then reviewed the position regarding Greek imports into the United Kingdom.

Mr Laplace, Mr Rumeu and Mr Pesenti also reported on the threat of imports in their own countries.

(41) After a brief discussion, it was decided that Interciment would for the time being remain dormant and that no Community company would subscribe its share of the capital for the time being.

Mr Van Hove proposed an amendment to Article 2 of Interciment's articles of association, which was approved.

(42) It was also agreed that the Task Force would continue to meet from time to time and that the Chairman of Holderbank should be asked to visit Greece to discuss with the authorities and industry possible solutions to the problems of the Greek cement industry.

(43) The content of the document to be submitted to the Member of the Commission responsible for competition at the meeting which had been arranged was discussed (doc. 33126/19009-19010).

(n) *Seventh ETF meeting in Milan*

(44) The meeting was held on 9 January 1987 and was attended by representatives of Blue Circle, Lafarge, Italcementi, Hornos Ibéricos and Holderbank (doc. 33126/18759). The Commission has no record of the meeting, only the agenda (doc. 33126/18921-18922): review of the Brussels meeting, examination of Italian and Spanish positions, Interciment, visit to Greece by Mr Schmidheiny (Chairman of Holderbank), information on Bouri and future role of Task Force.

Among the documents found at Italcementi referring to the Milan meeting is a handwritten note comprising a legal opinion on Interciment: the opinion is described in greater detail in recital 26.

(o) *Eighth ETF meeting in Geneva*

(45) The meeting took place in Geneva on 11 February 1987 and was attended by representatives of Blue Circle, Lafarge, Italcementi, Cementa/Norcem and Holderbank (doc. 33126/18760 and 18929-18936). The agenda was as follows (doc. 33126/18937-18938): subjects relating to Greece (visit to Greece by Mr Marshall and Mr Poole of Blue Circle, postponement of Mr Schmidheiny's visit, draft letter from Mr Marshall of Blue Circle to the Bank of Greece and to the Industry Minister (doc. 33126/18939-18944), reduction in Greek aid, Greek export quantities and contracts with members of Task Force); matters concerning Bouri; matters concerning Ferruzzi; Spanish situation; Interciment (uncertified balance sheet at 31 December 1986 (doc. 33126/18946-18949), future work — participation of other Task Force member firms); Task Force sub-groups (opportunities for exports to Greece, exchanges of experience on defensive measures); other matters (proposed follow-up to Head Delegates meeting, 'Stockholm Group', Intercem, GOIC).

(46) A handwritten record of the meeting containing only some of the items on the agenda was found at Lafarge (doc. 33126/4911-4913). It refers to Greek imports into the United Kingdom and the price reductions made by UK producers, imports into Spain of cement from third countries, an agreement between Ferruzzi and Italian cement producers, Greek export subsidies and the position as regards sales by Heracles and Halkis.

(p) *Meeting of sub-group on 'stick actions'*

(47) The sub-group held a meeting on 17 March 1987 attended by Mr Marichal for France, Mr De Vogue for Lafarge, Mr Albert for Italy, Mr Andia of Oficemen for Spain, Mr Shepherd of Blue Circle for the United Kingdom and Mr Steinbach of the BDZ for Germany.

The record of the meeting found at Lafarge describes the following discussions (doc. 33126/4858-4861): *United Kingdom:* Greek cement imports, effect on UK prices, the UK Government allegedly granted the Greek Government 'authorization' to import the equivalent in Greek cement of 3% of UK consumption; consultations between the UK producers and their Industry Minister; the Commission was apparently not pleased with dilatory Greek action on aid, relations between UK producers. *Spain:* situation as regards imports from third countries; *Italy:* agreement with Ferruzzi apparently not finalized, Italian cement manufacturers considering using import monitoring measures provided for by Regulation (EEC) No 288/82; *FRG:* pressure from East European countries continues.

(q) *Subsequent fate of the ETF*

(48) As far as the Commission is aware, no other meetings of the ETF took place.

Attempts were made to reconvene the ETF (doc. 33126/18950, 18952 and 18960), apparently without success, and it was for this reason that it was decided to postpone any decision on its future until the Head Delegates meeting taking place at the same time as the Cembureau General Assembly in Luxembourg on 25-28 May 1987. According to Holderbank, the ETF was officially wound up at the end of May 1987 at the Head Delegates meeting (doc. 33126/18760): no minutes or record of the meeting at which the decision to wind up the ETF was taken have been produced. At the meetings in Luxembourg on 25-28 May 1987, Mr Marichal of Lafarge obtained some information recorded in the confidential note of 1 June 1987 (doc. 33126/4487-4490). Page 4 of the note states in connection with the ETF: *'the mission of the team formed just a year ago will in future be strictly limited to exchanges of information on very specific subjects. The British were in favour of winding it up, but the Swiss finally convinced their colleagues that this would be a mistake: as the tool had been forged it might as well be kept ready for use. Even the British acknowledged that the ETF had been a precious source of information'.*

26. **Market regulation measures: the Joint Trading Company**

(1) As stated in point (b) of recital 25, the working party had proposed the setting-up of a Joint Trading Company as a short-term market regulation measure and an export cartel as a long-term measure. There is no means of establishing if the long-term measure was actually adopted. However, the short-term measure was adopted. At their meeting in Stockholm on 9 June 1986, the Head Delegates decided (see point (c) of recital 25) to set up a Joint Trading Company whose functions were defined as follows by the working group on 3 to 5 June 1986 (doc. 33126/18776-18777): to capture the orders of the principal export markets supplied by the countries threatening the stability of the member countries' markets; to purchase cement and clinker from the countries threatening the stability of the member countries' markets; to market the quantities purchased through market intervention; to export cement and clinker to the countries threatening the stability of the member countries; a committee was to designate the markets for purchases, marketing and exports and to set the purchase and selling prices. According to the record of the Head Delegates meeting held in Baden-Baden on 9 September 1986, *'the company can be put immediately into operation either for 'stick' or 'carrot' measures'* ([122]).

(2) At the Stockholm meeting, the Head Delegates decided that the capital of the Joint Trading Company was to be divided between the following 'countries and/or companies', with each having a 12.5% stake: Italy, Germany, Norcem/Cementa, France, Spain, Blue Circle, Belgium (CBR/Obourg) and Holderbank (doc. 33126/18821-18822, 18857-18861).

(3) On 24 June 1986, three Swiss lawyers acting as trustees set up the company Interciment S.A. with a capital of 50 000 Swiss francs (doc. 33126/18734-18739).

(4) According to paragraph 2 of the Articles, *'the object of the company is to engage in the international trade in building and construction materials and to take holdings in foreign undertakings engaged in the trade in building and construction materials. In general, the company may carry out all transactions and perform*

([122]) Original text in English.

all functions, both for its own account and for the account of third parties, that are directly or indirectly related to its goal' (doc. 33126/18833-18841) ([123]). As stated in point (m) of recital 25, the Head Delegates, meeting in Brussels on 6 November 1986, approved a proposal by Mr Van Hove that paragraph 2 of the Articles be amended (doc. 33126/19007-19008) in such a way that the object of the company was to engage in the trade in building and construction materials for exports outside the territory of the European Economic Community. No undertaking has produced the Articles incorporating the amendment approved on 6 November 1986 by the Head Delegates.

(5) Interciment was registered in Fribourg, with its office being the office of the lawyer who as a trustee subscribed almost all of the shares and who is its sole administrator (doc. 33126/18823-18832). The record of the Head Delegates meeting held in Baden-Baden on 9 September 1986 refers to the appointment of an Interciment Executive Committee in the persons of Mr D'Agostino — Italy, Mr Marichal — France, Mr Félix — Spain, Mr Horner — Blue Circle and Mr Akermann — Holderbank (coordination) (doc. 33126/18861).

(6) The sum required for capital subscription was advanced by Holderbank, which, by letters dated 22 September 1986 (doc. 33126/19019-19025), requested the following to pay their quota of shares in Interciment: Italcementi for the Italian shareholding; Dyckerhoff for the German shareholding; Norcem for the Scandinavian shareholding; Lafarge-Coppée for the French shareholding; Hornos Ibéricos for the Spanish shareholding; Blue Circle for its shareholding; and CBR for the Belgian shareholding.

(7) Blue Circle paid the amount involved in its quota through the intermediary of its Swiss subsidiary BCO AG between the months of September and October, as may be seen from a statement of accounts of 7 November 1986 (doc. 33126/10960-10962), but it subsequently got BCO AG to amend the object of the payment relating to the shareholding in Interciment; it asked that the payment should be identified as being *'a contribution towards market research expenses'* (doc. 33126/10958) ([124]).

(8) Italcementi subscribed to the capital on 11 February 1987 (doc. 33126/16220) and resold its shares to Holderbank on 7 November 1988 (doc. 33126/16218).

(9) With regard to the payment of the other quotas, Holderbank stated (doc. 33126/18329): *'Apart from Holderbank, one other member* [Italcementi] *of the 'European Task Force' subscribed and paid up its shares. (Another member* [Blue Circle] *paid the relevant amount, but never became an actual shareholder. The member in question preferred to request the postponement sine die of the transmission of the shares to the holders and subsequently never requested any such transmission, apparently through lack of interest. It is for this reason, and in view of the relatively small amounts involved, that no refund has so far taken place). No document was drawn up on this subject; proof of this may be deduced from the wording of the document communicated in reply to question 7/e* [abovementioned letters dated 22 September 1986, through which Holderbank requested payment of share quotas]. *Furthermore, Holderbank repurchased all the shares some time ago and is thus the only shareholder in Interciment S.A., a company which has not so far had any activity'* ([125]). In point 4.159 of its reply to the statement of objections, Blue Circle stated that, through the payment carried out, it had reimbursed Holderbank its 1/8th share of the expenses incurred by

([123]) In the original French: *'la société a pour objet de faire le commerce international de matériaux de construction ainsi que de prendre des participations dans des entreprises étrangères faisant le commerce de matériaux de construction. D'une manière générale, la société peut faire toutes opérations et assurer toutes fonctions, tant pour son compte que pour le compte de tiers, qui ont un rapport direct ou indirect avec son but'.*

([124]) Telex from Blue Circle to Cementia dated 7 October 1987: 'Further to our conversation I confirm the funds which were advanced towards the end of last year and which are noted in the BCO AG accounts as being in anticipation of a capital subscription in Interciment should be reclassified as a contribution towards market research expenses and should have been written off last year. I would be grateful if the accounts of BCO AG could be corrected for this as soon as possible'.
According to Blue circle (see footnote 55, point 4.158, in the reply to the statement of objections): *'Cementia* [now owned by Lafarge but then independent] *performed a company secretarial and administrative function for Blue Circle's Swiss subsidiary BCO AG whose purpose was to hold Blue Circle's 50% shareholding in Marinecement, a 50/50 Blue Circle/Cementia joint venture'.*

([125]) Original text in French: *'Outre Holderbank, un seul autre membre (Italcementi, n.d.r.) de la 'European Task Force' a souscrit et libéré ses actions. (Un autre membre (Blue Circle, n.d.r.) a payé le montant correspondant mais n'est jamais devenu actionnaire effectif. Le membre en question préféra demander la postposition sine die de la transmission des actions aux porteurs et par après ne réclama jamais, apparemment par manque d'intérêt, une telle transmission. C'est pourquoi, et au vu des montants en jeu relativement peu importants, aucune restitution n'a eu lieu jusqu'à ce jour). Aucun document ne fut établi à ce sujet; la preuve peut en être déduite du libellé du document communiqué en réponse à la question 7/e (lettres du 22.9.1986, par lesquelles Holderbank a réclamé le paiement de quote-parts des actions, ci-dessus mentionées, n.d.r.). De plus, Holderbank a, depuis un certain temps déjà, racheté toutes les actions et est donc seul actionnaire d'Interciment S.A., société n'ayant jusqu'à ce jour aucune activité'.*

Holderbank in setting up Interciment S.A ([126]). Holderbank has never specified from whom it repurchased the Interciment shares nor has it produced any document whatsoever to show that it became the sole shareholder in Interciment.

(10) Despite the decision adopted at the Head Delegates meeting in Brussels on 6 November 1986 that no Community company would subscribe to the capital of Interciment (doc. 33126/19007-19008), Holderbank sent all the members, by letter dated 10 February 1987, Interciment's balance sheet as at 31 December 1986 and entered it on the agenda of the ETF meeting on 11 February 1987 (doc. 33126/18936-18938 and 18946-18949). According to Blue Circle (point 4.162 of the reply to the statement of objections), the members were entitled to examine Interciment's balance sheet, since the company was established pursuant to their instruction; in addition, Holderbank was entitled to be reimbursed regardless of the subscription of the shares ([127]).

(11) It should also be noted that, before and after the above-mentioned decision taken by the Head Delegates at their Brussels meeting on 6 November 1986, the problem of whether the subscription to Interciment's capital was compatible with Article 85 was raised. Prior to the decision, a handwritten Lafarge note of 3 October 1986 (doc. 33126/6647), after having raised the question of Interciment's compatibility with Article 85, states: *'No doubt it is late in the day to call into question the form of the shareholding and hence the capital contributions, but it is not too late. What are we doing?'* ([128]).

(12) Following the decision taken by the Head Delegates, solutions were sought to enable the ETF members to discharge their financial obligations to Holderbank, which had acted on their behalf and had advanced the capital.

Point 4 of an undated handwritten note found at Italcementi amongst the documents referring to the ETF meeting held in Milan on 9 January 1987 (doc. 33126/2915), after having referred to the problems posed by Article 85, recommends that, if Interciment is to be used, the plans concerning the shareholders should be changed, with their number being limited, and another way found of collecting the other producers' contributions ([129]). The problem of the participation of the other ETF members in the shares of Interciment was entered as item 5.2 on the agenda of the ETF meeting held in Geneva on 11 February 1987 (doc. 33126/18937-18938) ([130]).

(13) Following the decision taken at Stockholm to set up the Joint Trading Company, the problem of possible notification to the Commission was raised immediately. A memo from Blue Circle's lawyer dated 10 July 1986 (doc. 33126/18842-18843) states that the setting up of the Joint Trading Company constituted an infringement of Article 85 and recommends notifying the Commission with a view to the application of Article 85(3): the recommendation was accepted by the ETF at the meeting held on 19 August 1986 (doc. 33126/18821-18822). Italcementi also seems to have informed the ETF of the opinion of a professor (doc. 33126/18848). The opinion obtained by Lafarge and referred to in the note of 3 October 1986 (doc. 33126/6647) has already been mentioned, as has the undated opinion of French origin (doc. 33126/2915) which advises, simply to gain a maximum of 12 months, that the Commission be notified at the same time as the start of operations.

No notification was carried out.

(14) As a result of these various legal opinions, it was decided, at the Head Delegates meeting on 9 September 1986 (doc. 33126/18857-18861), that the company should remain dormant. This decision was confirmed at the Head Delegates meeting on 6 November 1986 (doc. 33126/19007-19008). The matter was also discussed at the ETF meetings held on 21 October 1986 (doc. 33126/18895-18896) and 9 January 1987 (doc. 33126/18921-18922).

(15) At the Head Delegates meeting held on 9 September 1986, it was also decided that it was important to ensure that Interciment was ready for operation ([131]). In

([126]) In the original English: *'Thus, there was — and is — no mystery. Blue Circle reimbursed Holderbank its 1/8 share of the expenses incurred by Holderbank in setting up Interciment S.A.. As a separate matter Blue Circle decided not to take up shares in Interciment and told Holderbank of that decision. The other six Task Force members also chose not to take up shares in Interciment. The circumstances of this general decision to 'freeze' Interciment are explained at para. 151 essentially, it was a decision taken ex abundantia cautela in light of competition law advice that had been received'.*

([127]) In the original English: *'There is surely nothing to be surprised at in this. Apart from the fact that Interciment was established pursuant to a Task Force instruction (so that Task Force Members ought naturally to be kept abreast), Holderbank had paid out 50 000 Swiss Francs plus legal and other costs to set up Interciment under delegation from the Task Force. Holderbank was entitled to be reimbursed for that outlay regardless of whether Task Force members subscribed for shares in Interciment or not. The circulated accounts state clearly the monies owing and were therefore a convenient 'invoice'.'*

([128]) In the original French: *'Sans doute est-il tard pour remettre en cause la forme de l'actionnariat et donc les contributions au capital, mais il n'est pas trop tard. Que faisons-nous?'.*

([129]) In the original English: *'To use S.A. Interciment, it is recommended to change our plans about shareholders, to limit the number of these, and to find another way to collect other producers' contributions'.*

([130]) In the original English: *'5.2 Next moves are participation of other Task Force Member Companies'.*

([131]) In the original English: *'It was agreed that Interciment would be maintained as 'dormant' company for the time being. However, it was important to ensure that it be 'ready for operation'.*

point 4.147 of its reply to the statement of objections, Blue Circle acknowledges that Interciment was still ready to operate, but that it could serve any objective ([132]).

(16) By letter dated 3 May 1993, Holderbank's lawyer sent the Commission the record of the Assembly of Interciment S.A. held on 26 March 1993, at which it was decided to dissolve the company.

27. The measures to defend national markets: Italy

(1) Amongst the dissuasive measures ('stick actions') proposed by the working group meeting in Zurich and Céligny on 3 to 5 June 1986 (doc. 33126/18772-18779) was the defence of the markets affected by imports by using various methods. The defensive measures relating to the Italian market will be examined below, the Commission having no evidence available for the other markets.

(2) On 3 April 1986, the Greek producer Titan and Calcestruzzi S.p.A, the largest Italian ready-mix concrete producer, signed a five-year contract under which Titan undertook to sell and Calcestruzzi to buy up to a maximum of 440 000 tonnes of cement a year, with the quantities actually deliverable each year being specified in subsequent agreements (doc. 33126/16361-16368 and 19210-19217).

(3) The problem of imports of Greek cement into Italy by Calcestruzzi was brought before the ETF and discussed at its meetings on 17 June 1986, 2 July 1986, 19 August 1986, 9 September 1986, 21 October 1986, 9 January 1987, 11 February 1987 and 15 March 1987 and at the Head Delegates meetings held on 9 September 1986 and 6 November 1986 (see point 25 above).

An internal Blue Circle memo of 4 September 1986 (doc. 33126/11026-11027) reports that Blue Circle raised the problem of exports into Italy with Titan: *'In regard to Italy, Titan remain adamant that they will not cancel their contract with Ferruzzi* [Calcestruzzi, a Ferruzzi subsidiary] *before December 1987 at the earliest when it appears they have an escape clause'* ([133]).

(4) At the same time as the problem was brought to the ETF's attention, pressure was exerted on Calcestruzzi not to honour the contract with Titan. As may be seen from a letter sent by Titan to its lawyers in London on 2 September 1988 and written at a time when the non-performance of the Titan-Calcestruzzi contract was being referred to arbitration, Calcestruzzi was unwilling to perform the contract because of talks with certain Italian cement producers: *'On February 6, 1987, Calcestruzzi for the first time seems reluctant to confirm shipments schedule claiming that 'the situation is in evolution with the local cement industries' (!). On February 17, 1987, and due to Buyer's silence, we sent them a telex outlining the situation and describing the consequences of an eventual breach of contract on their behalf'.* (doc. 33126/19195-19196) ([134]).

(5) The Italian representative reported to the ETF meetings on the talks with Calcestruzzi and/or its parent company Ferruzzi. The handwritten record of the ETF meeting held on 11 February 1987 summarizes the report given by the Italian representative as follows (doc. 33126/4911-4913):

'2.2 Italy

The agreement between the cement producers and Ferruzzi has been signed. It allows the threat to be removed of imports of 1.5 MT by the latter group in a dozen ports, which would have been catastrophic for prices. Duration: 5 years. Apart from the cross holdings which will block Calcestruzzi, the Ferruzzi subsidiary BPE, but also the parent company, Ciments de Ravenna, a series of measures designed to consolidate the alliance have been taken.

Ferruzzi will in return for its compliance receive the tidy sum of US$ 15 million a year for five years. The sum will be paid partly in securities (Montedison) and partly in cash: Ferruzzi will have to use part of the money to purchase BPE companies or holdings in BPE companies so as to put the coast under lock and key.

Two problems remain to be solved:

1. A use would have to be found for two Ferruzzi vessels. These are 6 000 DWT floating silos.

([132]) In the original English: *'Had any such measures been decided upon (which they were not, in the event) Interciment could, it is true, have been used to carry them into effect: so could any other vehicle such as another joint company, a subsidiary of one of the producers, an informal liaison committee, an agent etc. etc. etc. Equally, Interciment could have been used to sell cabbages to Japan'.*

([133]) Original text in English.

([134]) Original text in English.

2. *The contracts for 75 000 T/year with Titan, for x T/year with Spalato in Yugoslavian cement will have to be honoured or the relevant penalties paid.*

In order to solve these problems, Italcementi requests the aid of its European colleagues.

The Italian cement producers will request EEC agreement for application of the Italian Law providing for the introduction of 'prior notification' of all cement imports.

They ask their European colleagues to apprise their EEC representatives so that they will not oppose the request' ([135]).

The record of the meeting of the Sub-group 'defensive measures' held on 15 March 1987 reports as follows the information given by the Italian representative (doc. 33126/4858-4861):

'Italy

— *The representative reiterated what had already been said at the meetings of the Task Force (cf. J.M. note of 12 February 1987), adding however that the agreement with Ferruzzi had not yet been finalized'* ([136]).

(6) The agreement with Calcestruzzi was concluded the following April. On 3 and 15 April 1987, the Italian cement producers Italcementi, Unicem, Cementir and Calcestruzzi signed agreements and contracts on the supply of cement and on cooperation with one another (doc. 33126/12145-12342). Through the agreements and contracts, Italcementi, Unicem and Cementir jointly undertook to meet all the cement requirements of the Calcestruzzi group and to apply the price reductions specified; for its part, Calcestruzzi undertook to channel half of the price reductions to a joint subsidiary of the four contractors, which was to invest the sums in ready-mix concrete companies or related activities, and to obtain at least 80% of its cement requirements from Italcementi, Unicem and Cementir or from companies designated by them; the three cement producers reserved the right to terminate the agreements and contracts if Calcestruzzi's cement purchases from them were less than 95% of its requirements.

(7) Following the signature of the agreements and contracts with Italcementi, Unicem and Cementir, Calcestruzzi responded to requests to implement the contract and to Titan's threats that it would start proceedings for damages (telex of 14 April 1987 — doc. 33126/19207), first by pointing to the difficulties of planning deliveries (telex of 6 May 1987 — doc. 33126/19206); then, on 13 May 1987, it sent the following text to Titan (doc. 33126/19205): *'As you are already informed, we could not import cement in Italy as per purchase contract already signed as consequence of an agreement we reached with Italian cement producers. Therefore, as they are interested and directly involved in trying to reach a settlement with your company, they have expressly requested to be present at the negotiation to find with us a mutually satisfying solution. They have therefore proposed to promote the meeting on the occasion of the next conference of the Cembureau the next 26th of May. You will receive their confirmation by telex in this regard. As there has been always a good relationship between us, we hope that during this meeting will be examined the elements necessary to reach a mutually interest agreement'* ([137]).

(8) On the same day, 13 May 1987, Italcementi sent the following telex message to Titan (doc. 33126/19204): *'With reference to the contract between Titan and Calcestruzzi related to cement supplies in Italy and also*

([135]) In the original French: *2.2 Italie*

L'accord entre les producteurs cimentiers et Ferruzzi a été signé. Il permet d'éviter une menace d'importation par ce dernier groupe de 1,5 MT dans une dizaine de ports, ce qui aurait été catastrophique pour les prix. Durée: 5 ans. Outre les participations croisées qui bloqueront Calcestruzzi, la filiale BPE de Ferruzzi mais aussi la maison mère, Ciments de Ravenna, une série de mesures destinées à consolider l'alliance ont été prises.

Ferruzzi recevra pour sa bonne volonté la coquette somme de 15 M. US $/an pendant les cinq années. Cette somme sera versée partiellement en titres (Montedison) partiellement en espèces: Ferruzzi devra consacrer une partie du magot à acheter des sociétés de BPE ou des participations dans des sociétés BPE pour cadenasser les côtes.

Il reste deux problèmes à résoudre:

1. *2 bateaux de Ferruzzi devraient trouver une utilisation. Ce sont des bateux silos 6000 DWT.*
2. *Les contrats de 75 000 T/an avec Titan, de x T/an avec Spalato en ciment yougoslave devront être honorés ou les pénalités prévues payées.*

Pour résoudre ces problèmes, Italcementi demande l'aide des collègues européens.

Les cimentiers italiens vont demander l'accord de la CEE pour appliquer la loi italienne prévoyant l'instauration d'une 'Notification préalable' à toute importation de ciment.

Il demandent à leurs collègues européens de prévenir leur représentant auprès de la CEE pour qu'ils ne s'opposent pas à la demande'.

([136]) In the original French: *'Italie*

— *Le représentant a repris ce qui fut déjà dit au cours des réunions de la Task Force (cf. note J.M. du 12.02.1987) en précisant cependant que l'accord avec Ferruzzi n'avait pas encore été finalisé.*

([137]) Original text in English.

to the proposed meeting requested by M/S. Calcestruzzi itself to take place in Luxembourg on May 24, 1987, I wish to inform you that we, the cement Manufacturers, will clearly take part to said meeting since we are the parties involved at top level. Therefore, Messrs. Pesenti, Testore and Carella (in charge of Italcementi, Unicem and Cementir respectively) will gladly be available for the meeting after the General Assembly of Cembureau, with the aim to find a solution to the problem, object of our discussions, with the same spirit that for many years has binded the cement industries of various European countries' ([138]).

(9) By telex message dated 20 May 1987 (doc. 33126/19203), Titan, after having taken note of the involvement of the Italian producers, informed Calcestruzzi that the bilateral problems due to the non-performance of the contract had to be resolved between the two parties concerned and it proposed a meeting the following week in Athens or Rome. Calcestruzzi replied by telex message dated 25 May 1987 (doc. 33126/19202) that the meeting proposed by Titan could be agreed after the meeting in Luxembourg on 26 May.

(10) The meeting in Luxembourg between the three Italian producers and Titan took place, since Calcestruzzi sent the following telex to Titan on 28 May 1987 (doc. 33126/19201): *'We know of the meeting held in Luxembourg between you and Italian cement industries. On this occasion some proposals have been made which will be valued and on which it will be necessary to go back on the occasion of the next meeting. Of course, as you are informed of the Italian cement industries' involvement in this suspension of the withdrawals, as per contract agreed upon at that time, it is necessary that they are present from now in every circumstance which concerns this pursuit of a mutually interesting solution. Please inform us when you think that Mr Canellopoulos will be available to meet Mr Giampiero Pesenti, meeting which could be held whether in Athens or eventually in Rome'* ([139]). By telex message dated 2 June 1987, Calcestruzzi reiterated to Titan its request for a meeting with the Italian producers in order to resolve the problem of the non-performance of the contract for the purchase of Greek cement (doc. 33126/19208): *'As you know, the suspension of the withdrawals of cement has been determined by an agreement reached with the major Italian cement producers (Italcementi — Unicem Cementir). And as on the ground of this agreement, Italian cement producers will saddle themselves with charges, and consequently also with those eventual and relative to the suspension of our agreement, it is necessary their presence at each negotiation, as the decision need their full assent. This and not other is the exact reason for which Mr Ing. Giampiero Pesenti, Dr. D'Agostino, Dr. Ing. Testore, Dr. Ing. Olivero and Dr. Carella have contacted you on the occasion of the recent meeting of the cement producers held in Luxembourg. We don't hide that we are surprised of your requests, expressed after the abovementioned meeting, as the news transmitted to us directly from the persons which have met you, are quite reassuring towards an agreement of mutual interest which should expand to a larger range of interests. Considering the previous, we communicate you: our complete availability to reach a good settlement of the arisen controversy. A qualified delegation of the Italian cement should be present to the negotiations. To make the conclusion of the negotiations easier, in our opinion, it would be very useful that Mr. Dr. Canellopoulos and Mr. Dr. Ing. Giampiero Pesenti could attend the meeting, as they are the two big and*

([138]) Original text in English.

([139]) Original text in English.

so they are able to take decisions on the future strategy plan too' ([140]).

(11) The meetings with the Italian cement producers proposed by Calcestruzzi to Titan took place, but they did not produce any results as regards the damages claimed by Titan for the non-performance of the contract with Calcestruzzi. This is evident from the letter which Italcementi sent the Commission on 21 March 1990 (doc. 33126/15981): *'On 16 July 1987, Ing. Pesenti and Dr. D'Agostino of Italcementi, Ing. Testore and Dr. Olivero of Unicem met Mr Canellopoulos of Titan in Athens, at the latter's invitation. Following other requests on the Greek side, Dr. Clemente of Italcementi and Ing. Albert of Unicem met in December 1987 and the early months of 1988 Mr Kalogeropoulos and Mr Sevdalis of Heracles and Mr Prezanis and Mr Trifonas of Titan.*

The subject of the meetings was always the same: to examine the proposals of the Greek producers, whose unfair threats to the Italian market were a source of concern. In the event, no specific result was achieved at the meetings' ([141]).

The dispute on the non-performance of the Calcestruzzi-Titan contract was referred to arbitration.

28. **The persuasive measures ('carrot actions'): purchase of quantities that might destabilize the market**

(1) The document prepared by the working group at the meetings in Zurich and Celigny on 3 to 5 June 1986 (doc. 33126/18772-18779) proposes, as a persuasive measure, the purchase of cement and clinker from the Greek producers. Page 4 of the document states the following:

'Absorption of 'destabilizer's tonnage'

The opportunity exists in a number of markets for European Producers to arrange to place tonnage with the 'destabilizing' Cement Industry. For example:

USA — 1st priority

(1) Blue Circle Atlantic could offer 500 000 tons cement

(2) Holderbank/Dundee could offer 50/60 000 tons clinker

(3) Lafarge/General could offer?

(4) Cementa/Norcem could offer?

(5) Other Companies/Importers could offer? [i.e. offer to purchase for disposal in the United States]

West Africa

France perhaps could arrange to place . . . tonnes in the following territories: (a) (b) (c) (d)' ([142]).

([140]) Original text in English.

([141]) In the original Italian: *'In data 16 luglio 1987, l'ing. Pesenti e il dr. D'Agostino della Italcementi, l'ing. Testore e il dott. Olivero dell'Unicem hanno incontrato il sig. Cannellopoulos della Titan ad Atene, su invito di quest'ultimo. A seguito di ulteriori sollecitazioni da parte greca, il Dr. Clemente della Italcementi e l'ing. Albert della Unicem hanno incontrato nel dicembre del 1987 e nei primi mesi del 1988 i sigg. Kalogeropoulos e Sevdalis della Heracles ed i sigg. Prezanis e Trifonas della Titan.*
L'oggetto degli incontri era sempre il medesimo: esaminare le proposte avanzate dai produttori greci, le cui minacce sleali al mercato italiano preoccupavano. In tali riunioni peraltro non si è raggiunto alcun risultato concreto'.

([142]) Original text in English.

(2) Point 5 of a handwritten Blue Circle memo on points to be dealt with (doc. 33126/10988-10990) states: *'Our willingness to work to a mutually acceptable solution is preconditioned by:*

(a) no further shipments of Greek cement into Western Europe either direct to end users or through traders/shipowners etc.

(b) a collective agreement is reached with the Greek cement industry and not individual members' ([143]).

(3) The problem of purchases of Greek cement was discussed at the ETF meetings held on 17 June 1986 (see point (d) of recital 25), 2 July 1986 (see point (g) of recital 25) and 19 August 1986 (see point (g) of recital 25). Point 4.1 of the record of the latter meeting, drawn up by the representative of Scancem, states:

'No agreement has been reached with the Greek companies. They have not even been in contact with each other the last month! Reasons for failure are primarily price (US$ 1-2/ton difference) and the question whom is taking care of Bouri UK.

However, BCI has started taking deliveries from Greece to US already (first vessel completed discharging Boston 20 000 ton, second loading shortly for Baltimore 25 000 ton). Price; 1st shipment US$ 29, — FOB and 2nd US$ 27,—. They will continue take shipments September-October.

Lafarge has bought one cargo from Titan for Montreal and second cargo will be taken in September.

Holderbank has also agreed to buy (not signed yet) 90 000 tons from Titan. One shipment 7 000 tons has been taken. Furthermore they have bought 100 000 tons from Heracles, whereof 40 000 tons has been delivered. Bloom is involved in the last deal as he unloads the vessels in Mississipi and distributes it to Dundees market.

Holderbank has also bought 50 000 tons clinker from Titan at a price of US$ 19.80 FOB. 25 000 tons already delivered, all above for US markets.

In summary, although we have not agreed with the Greeks on a take-off agreement, some members, in my opinion, have put us in a rather weak position in negotiations.

It was agreed, after a long discussion, that a sub group shall investigate what companies can deliver ASTM type II cement now and in the near future.

Furthermore, BCI shall resume talks with Titan and try to find a solution with them in order put some pressure on Heracles' ([144]).

(4) The purchases from the Greek producers are confirmed: by the internal Blue Circle memo, undated, but almost certainly drafted in September 1986, entitled 'Greek imports' (doc. 33126/11083-11084) which states: *'In recent weeks Blue Circle, Holderbank and Lafarge have all started absorbing some Greek cement or clinker, primarily from Titan, in their US and Canadian operations in good faith to keep the door open with the Greeks.'* ([145]); and by the letter sent on 22 September 1986 from Blue Circle to Holderbank, in which Blue Circle states that it has decided to continue to take quantities of Greek cement for the United States (doc. 33126/11094-11095).

([143]) Original text in English.

([144]) Original text in English.

([145]) Original text in English.

(5) Point 1.2 of the record of the Head Delegates meeting held on 9 September 1986 (doc. 33126/18857-18862) reports that Heracles, Titan and Halkis had declared themselves in favour of a joint take-off agreement; however, it was not possible to reach such an agreement because of differences on prices and duration and because of the commitments given by Heracles and Titan to Bouri and Ferruzzi. The record goes on to report that Titan had declared itself ready to cooperate during the talks with Blue Circle and Holderbank, that, in view of the support offered by the United Kingdom Government and by other institutions, it was for the time being preferable not to conclude agreements, and that the negotiations with the Greek producers should be suspended until such time as their market position and that of Bouri weakened. It goes on to state: *'Simultaneously however, the possibility of accepting a take-off-agreement for a higher tonnage, say 2/3 million tonnes or lower tonnage at a premium price should be considered further. It was eventually agreed that negotiations should continue'* ([146]).

(6) Item 1.5 on the agenda for the ETF meeting held on 11 February 1987 (doc. 33126/18937-18938) states: *'Greek exports — tonnages and contracts with Task Force Members 1987':* ([147]) as noted in recital 25, the record of the meeting found at Lafarge confines itself to the discussions on certain items on the agenda.

(7) The documents referred to in paragraphs (2) to (6) above suggest that, perhaps, the ETF members did not manage to reach a collective agreement with the Greek producers, since the Greek producers were very hesitant on this subject; however, the documents also indicate that European producers concluded cement and clinker purchasing agreements with the Greek producers with the aim of at least slowing down Greek exports to Europe. The documents indicate, lastly, that, despite the fact that the ETF members did not manage to conclude a collective agreement with the Greek producers, they informed one another mutually of the quantities which each had purchased and of the contracts concluded with the Greek producers.

(a) *Agreements between British and Greek producers*

(8) The internal Blue Circle memo entitled 'Concept arrived at MJH/Presanis — 16.6.1986' (doc. 33126/10991) states:

'1. Blue Circle sells 300 000 tons GDR cement to Bouri for Egypt at $ 10 FOB.

2. Titan/Heracles sell 500 000 tons cement to BC Atlantic at $ 25 FOB Type II — $ 27 FOB Type II AASHTO.

3. We use Titan 25 000 ton vessel 'Ionian Carrier' at $ 7.50 freight.

4. Blue Circle purchases 100 000 tons BS12 clinker from Titan/Heracles for Magheramorne at $ 21.50 FOB — estimated freight 4 000 ton vessel $ 12.

5. Blue Circle charters Bouri terminal — say $ 2 million; either hold idle on berth at Tilbury or operate as BCC terminal and close Wouldham.

Notes

a. Deal is for 1 year while we look for longer term solution with Greek industry and BCC slims itself down.

b. Prices are tentative — subject to negotiation. If achieved BCI should not have additional cash outlay beyond GDR commitment and Rugby and RTZ still pay their proportion of nett loss, i.e. $ 5 per ton.

c. Magheramorne is outside the CPA [common price agreement, see recital 16, paragraph 21] *Greek clinker is within the EEC, GDR is still subject of antidumping action.*

d. Achieving an effective agreement with the Europeans has a 50:50 chance. It could restrict BCI's freedom of action in the future — there could be a price to pay later for co-operation now.

e. A deal structured this way should not breach EEC, FTC or antitrust regulations.

([146]) Original text in English.
([147]) Original text in English.

f. Bouri will be more expensive to remove once he starts selling' ([148]).

(9) The internal Blue Circle memo drafted as a discussion paper on low-price imports for the meeting on 7 July 1986 (doc. 33126/10992-10994), after having set out the options available to the British cement industry, namely a policy of non-cooperation with the Greek producers or a policy of cooperation, states with regard to the latter that the discussions with Titan and Heracles have prompted the examination of two alternative solutions:

Scheme A: a European intermediary would purchase 1 million tonnes over one year for destinations outside Europe. However, the Greek producers do not accept the one-year restriction.

Scheme B: three-year agreement under which Titan and Heracles would sell Blue Circle the following quantities: first year (1986/87): 700 000 tonnes (100 000 tonnes for Northern Ireland, 500 000 tonnes for the United States and 100 000 tonnes for other destinations); second year (1987/88): 900 000 tonnes (100 000 tonnes for Northern Ireland, 200 000 tonnes for other regions in the United Kingdom, 500 000 tonnes for the United States and 100 000 tonnes for other unspecified destinations); third year (1988/89): 900 000 tonnes with the same tonnages and destinations as for the second year.

The memo continues: *'This scheme has been agreed in principle with the Greeks, but is contingent upon, as is scheme A, reaching agreement with Bouri'* ([149]).

The same quantitites and destinations as those specified in scheme A are referred to in a handwritten, undated Heracles note, drafted on paper headed 'Sheraton Park Tower London' (doc. 33126/19864-19865), and in an undated 'Memorandum of Understanding', which states the date on which the agreement was to begin (1 August 1986) and indicates that the products for the United Kingdom and other unspecified countries may be either cement or clinker, whereas the product to be supplied to the United States would in principle be cement (doc. 33126/11096).

(10) The record of the meeting held on 17 September 1986 between Blue Circle and Titan (doc. 33126/11080-11082) refers to the decision adopted by Blue Circle and communicated to Titan that the programme under which Blue Circle purchased products from Titan and Heracles for the United States was independent of the situation in the United Kingdom. The author of the record notes that the purchase of large quantities from Titan by Blue Circle Atlantic would be likely to encourage Titan to withdraw unilaterally from the United Kingdom and hence to weaken Bouri's position.

(11) The internal Blue Circle memo, undated but drafted in September (doc. 33126/11083-11084), reports that, at a meeting held the previous week in Athens, Titan proposed restricting the combined sales of Titan and Heracles in the United Kingdom to 300 000 tonnes the first year and 500 000 tonnes the second and third years; Titan appeared confident that it could persuade Heracles. These quantities would be sold to British producers for subsequent sale through their distribution networks. The author of the memo recommends pursuing with the Greek producers, at the meeting on 8 and 9 September 1986, the solution based on the restriction of sales in the United Kingdom.

(12) These discussions involved directly only Blue Circle on the United Kingdom side and Titan and Heracles on the Greek side. However, it is apparent from a number of references in the documents obtained by the Commission that Blue Circle was not acting solely for its own account, but also for that of the two other British producers, Rugby and RTZ (now Castle). Blue Circle took defensive measures against imports on various occasions and got the other two companies to

([148]) Original text in English.
([149]) Original text in English.

bear some of the costs. This may be seen from the following:

(a) the memo on the meeting held on 16 June 1986 between Mr Horner and Mr Presanis (doc. 33126/10991) contains an explicit reference to Rugby and RTZ: Blue Circle was counting on their financial support so as to reduce the cost which it would otherwise have to bear alone for the measures envisaged with Titan;

(b) the internal Blue Circle memo relating to a meeting with Titan held on 17 September 1986 (doc. 33126/111080) refers to a position which, in its talks with Titan, Blue Circle attributes to 'the United Kingdom industry' as a whole;

(c) the internal Blue Circle memos of 7 September 1987, 22 October 1987, 18 December 1987 and 8 January 1988 (doc. 33126/11195-11198) show that Blue Circle had managed to get the other two companies to bear part of what it called the 'Import Battle Costs'. In particular, the memo of 18 December 1987 (doc. 33126/11197) reveals that there was a general requirement to share the costs relating to several years, which made it unnecessary to have any specific prior agreement for each operation.

The three British companies dispute this interpretation.

According to Castle and Rugby:

— the memo relating to the meeting held on 17 September 1986 (doc. 33126/11080) does not concern them: the reference to the United Kingdom industry was merely a reference to legitimate lobbying of government; Rugby also takes the view that it is improbable that such a detailed memo would not have mentioned the fact that the scheme also concerned the other two companies if in fact they were associated with it (replies to the statement of objections: Rugby, point 4.3.19 and Castle, point 5.2.18);

— the memos of 7 September 1987, 22 October 1987, 18 December 1987 and 8 January 1988 (doc. 33126/11195-11198) do not relate to Greek imports, since these did not really begin until mid-1986, while the memo of 18 December 1987 (doc. 33126/11197-11198) relates to the period 1983-86; these memos do not contain any reference to Greece, but at the very most a general reference to Western Europe. Castle adds that the memo of 18 December 1987 shows that RTZ had not agreed to pay any contribution whatsoever; on the contrary, it had refused to do so and had withdrawn the offer of £ 595 000 which it had made previously (*loc. cit.*, points 4.3.40 and 5.2.30 to 32 respectively).

According to Blue Circle:

— there was no prior agreement between it and the other two companies on its contacts with Titan or with the creditors of Bouri;

— however, it had previously, as the largest United Kingdom producer, adopted somewhat 'paternalistic' positions, taking the initiative to fight activities (it cites the example of dumping imports from Eastern Europe) which it perceived as a threat not only to itself but also to the United Kingdom cement industry as a whole. It had occasionally sought to recoup some of the costs incurred from the other producers with a limited degree of success, as the documents to which the Commission refers attest ([150]).

The Commission cannot accept these explanations. The memo relating to the meeting held on 17 September 1986 (doc.33126/11080) does not simply confine itself to setting out the attitude of the United Kingdom industry in its lobbying of government; the author of the memo indicates that the joint approach of the industry also applied to a possible agreement with their new competitor on the United Kingdom market, Bouri. As regards the memos of 7 September 1987, 22 October 1987, 18 December 1987 and 8 January 1988 (doc. 33126/11195-11198), it should be noted that:

(a) even though Greek imports did not begin in significant quantities until 1986, the period mentioned in the memo of 18 December 1987 includes that year (doc. 33126/11197);

(b) the fact that the memo of 22 October 1987 (doc. 33126/11196) refers only to Western Europe (as opposed to East Germany, which is the only other heading) is not important since it is precisely Greece which, according to the undertakings themselves, was one of the main sources of imports to the United Kingdom in the relevant period (Blue Circle's reply to the statement of objections, Volume II, chart 5);

([150]) *'Blue Circle, as the largest of the United Kingdom producers, was inclined in former years to adopt a somewhat paternalistic stance. On occasion it took certain actions (fighting the dumping cases against the Eastern European producers, for example) which it perceived to be not only in its own interest but also in the wider interest of the United Kingdom cement industry. On an ex post facto basis Blue Circle occasionally sought to recoup a proportion of its costs in relation to these exercises from the other United Kingdom producers — with a limited degree of success as the documents which the Commission relies upon attest.'* Reply to the statement of objections, point 4.224.

(c) the memo of 8 January 1988 (doc. 33126/11198) certainly does not show that there was no instance in which the three undertakings shared the cost of a defensive measure against imports; it shows, as Castle acknowledges, that RTZ had put forward to Blue Circle a proposal which had not been maintained; obviously the only issue was the amount, with Blue Circle wanting RTZ to agree to pay more;

(d) despite the insistence of Castle and Rugby that the memos do not show that the arrangements also applied to Greek imports, it is clear (memo of 16 June 1986, doc. 33126/10991) that Blue Circle thought the measures envisaged with Titan were to be shared, and Blue Circle expressly acknowledges having obtained such contributions in respect of its measures against imports;

(e) the fourth paragraph of the memo of 18 December 1987 (doc. 33126/11197) states clearly: *'I pointed out to Hewitt that much of what he said was irrelevant since we were discussing costs incurred by BC in the period 1983-1986 and nothing had removed RTZ's obligation to stand its corner. Furthermore, Rugby had contributed and it was even more unreasonable, therefore, for RTZ to take no responsibility for what had been done'* ([151]). Rugby had thus already contributed its quota for the period in question. As far as RTZ is concerned, the memo refers to an *obligation* to pay its contribution. Only the amount was at issue. The memo refers to an 'offer' of £ 595 000 already made by RTZ, obviously in connection with the 'obligation' referred to in the memo.

These pointers are indirectly confirmed by Blue Circle's reply to the statement of objections: it recognizes that there was a practice of requesting contributions from the other undertakings; by acknowledging that this tactic was not always crowned with success, it confirms that, on other occasions, contributions were paid. Blue Circle confines itself to affirming that there was no *prior* agreement with the other producers on the occasion in question (point 4.223 of the reply).

(13) With regard to the restriction of Greek imports into the United Kingdom, it should be added that the documents referred to below show that apparently such restriction was not officially agreed between the Greek and United Kingdom producers, despite the fact that the Greek producers had offered the United Kingdom producers to restrict their exports to the United Kingdom, but between the United Kingdom and Greek governments. The Financial Times of 18 December 1986 (doc. 33126/2907) speaks of an intergovernmental agreement between Greece and the United Kingdom under which Greek exports to the United Kingdom were to be limited initially to 2.75% of consumption, reaching 3% in 1989; the record of the Cement Makers Federation meeting held on 9 January 1987 (annex VI to Blue Circle's reply to the statement of objections) refers to an intergovernmental agreement for 300 000 tonnes/year; the record of the meeting of the ETF defensive measures subgroup, held on 15 March 1987 (doc. 33126/4858), states that it was reasons of 'high policy' which had led the United Kingdom Government to give the Greek Government 'authorization' of a sort to import up to 3% of national consumption.

(14) By contrast the purchases of Greek cement and clinker, as measures to curb Greek imports into the other Member States, are the result of agreements between producers. The Commission does not dispute that Greek producers may have made sales to users, but nevertheless, contracts were concluded between Greek producers and European producers with a view to curbing exports to European countries.

— Agreements between Blue Circle and Titan

(15) By telex messages dated 4 and 7 July 1986 (doc. 33126/19545-19546), Blue Circle, referring to previous telephone conversations, confirmed to Titan the purchase of 20 000 tonnes of cement destined for Boston at the price of US$ 29 per tonne FOB for delivery on 18-21 July.

These quantities and this price should be compared with the record of the ETF meeting on 19 August 1986 (see paragraph 3 above): *'BCI has started taking deliveries from Greece to US already (first vessel completed discharging Boston 20 000 ton . . .) Price; 1st shipment US$ 29 — FOB . . .'*

The telex messages dated 11 August 1986, 14 August 1986, 1 September 1986 and 5 September 1986 (doc. 33126/19547-19551 and 19553-19555) report the purchase by Blue Circle of some 25 000 tonnes of cement from Titan for Blue Circle Atlantic, price up to a maximum of US$ 27 FOB depending on the strength

([151]) Original text in English.

of the cement. These quantities and this price should be compared with the record of the ETF meeting on 19 August 1986: *'. . . second loading shortly for Baltimore 25 000 ton). Price. . . . 2nd US$ 27'.*

The record goes on: *'They will continue take shipments in September-October'*. In fact, by telex message dated 30 September 1986 (doc. 33126/19552), Blue Circle Atlantic confirmed to Titan that it was available to take 22 000 tonnes on 16-19 October 1986 and 20 000 tonnes on 1-6 November 1986.

The following contracts for cement supplies to the United States were signed between Blue Circle Atlantic and Titan: contract of 14 October 1986, amended on 30 November 1986 (doc. 33126/10926-10941); contract of 1 August 1987, amended on 2 August 1987, 31 August 1987, 15 January 1988 and 24 October 1988 (doc. 33126/10896-10905, 10946-10951 and 19562-19579); contract of 24 October 1988 (doc. 33126/10907-10914). These contracts relate to supplies, respectively, of 300 000 tonnes from 1 January to 31 December 1987, 200 000 tonnes from 1 January to 31 December 1988 plus an option for 200 000 tonnes, and 216 000 tonnes from 1 November 1988 to 31 December 1989. These quantities should be compared with the quantities which Blue Circle stated that it wished to buy from Titan and from Heracles for the United States for each of the years 1986/87, 1987/88, 1988/89 (see documents mentioned above). It should also be remembered that item 1.5 of the ETF agenda of 11 February 1987 reads *'Greek exports: quantities and contracts with members of the Task Force 1987'*.

By telex messages dated 17 December 1986, 7 January 1987, 15 January 1987, 12 February 1987, 26 February 1987, 1 April 1987 and 3 April 1987 (doc. 33126/19461-19469), Blue Circle ordered cement from Titan for Nigeria. These purchases should be compared with the quantities of 100 000 tonnes for unspecified destinations which Blue Circle stated that it wished to purchase for each year from 1986 to 1989 (see documents mentioned above).

Blue Circle and Titan maintain that the business relations between Titan and Blue Circle Atlantic and between Titan and Nigeria existed well before 1986 and that in 1986 Blue Circle Atlantic was in the course of performing a contract signed with Titan in 1985.

The Commission does not dispute that business relations may have existed between the parties well before the so-called Greek problem arose.

Nevertheless the documents mentioned show that business relations, in the form taken from the second half of 1986, were an effort to resolve the so-called 'Greek problem'. In addition, the normality of these relations is contradicted by the fact that ETF members discussed them together. Lastly, in answer to the argument that the contracts with Greek firms preceded the so-called 'Greek problem', the Commission notes that, even if that were the case for some of them, the quantities concerned were nevertheless taken into account as a contribution to the ETF's activities and were the subject of joint discussions. This consideration applies precisely to the case of contracts between Blue Circle and Titan.

It should also be recalled that Mr Marshall's note of 14 May 1987 concerning the EPC meeting of 13 May 1987 (doc. 33126/11344-11345) states: *'Titan. They were pleased with their contact with Blue Circle and in particular with Philip Hawkesworth. Ivan Tryfonas commented that with hindsight he believes that common sense is beginning to prevail, certainly in Titan.*

They respect the way we have dealt with them in the USA and feel that their supplying Northern Ireland is not as emotive as to the mainland' ([152]).

This note confirms, if there were any need to do so, that these contracts represent something other than a normal business relationship.

(b) *Agreements between Greek producers and Holderbank Group*

(16) Titan-Holderbank Group

There is a draft contract between Titan and Umar (a Holderbank subsidiary) dated 19 June 1986; this draft was signed by Titan but not by Umar and relates to the supply of clinker and cement for the United States (doc. 33126/19501-19511). According to Titan (p. 50 of the reply to the statement of objections), this contract was not accepted by Umar: nevertheless during June and July 1986 Titan supplied Umar with two cargoes of clinker and one of cement totalling 61 437 tonnes. This tonnage is to be compared with the record of the ETF meeting of 19 September 1986 (see paragraph 3 above). *'Holderbank has also agreed to buy (not signed yet) 90 000 tons from Titan. One shipment of 7 000 tons has been taken . . .'*.

([152]) Original text in English.

On 16 January 1987 and 18 December 1987 two other contracts were signed between Umar and Titan (doc. 33126/19482-19489) relating to the supply of large quantities of clinker — at least 200 000 tonnes for 1987 and 90 000 tonnes for 1988 — to Ideal Basic Industries — United States (a Holderbank subsidiary).

On 20 August 1988, Pays Bas Cement Co of the Holderbank Group and Titan signed a contract (doc. 33126/19814-19843) relating to the delivery, from 1 August 1988 to 31 December 1990, of a total of 300 000 tonnes of clinker, at least half of which was destined for Benelux and the rest for Africa. The agreed ECU price might also be subject to variations in keeping with variations in prices of 'Portland 40' cement as recorded by the Belgian Ministry for Economic Affairs.

These quantities should be compared with the undertaking of ETF members to buy a million tonnes and more, and even 2 to 3 million tonnes from Greek producers (see documents mentioned in paragraphs 1 to 6 above).

Even if, as Titan maintains, business relations with Ideal Basic Industries preceded the period covered by the contracts in dispute, these contracts still form part of the measures aimed at absorbing destabilizing quantities, since the parent company, Holderbank, decided, with other producers, that it was necessary to reduce the pressure of Greek producers in Europe by purchasing products from them and channelling them to the United States in particular.

(17) Heracles-Holderbank Group

On 9 May 1986 a contract for the supply of 100 000 tonnes of cement was signed between Heracles and UMAR (doc. 33126/20057-20064). These quantities are to be compared with the record of the ETF meeting on 19 August 1986. '... *Furthermore they* [Holderbank] *have bought 100 000 tons from Heracles, whereof 40 000 has been delivered*...'.

On 19 May 1988 a contract for the supply of 490 000 tonnes (230 000 tonnes of clinker and 260 000 tonnes of clinker or cement) broken down into 110 000 tonnes in 1988, 190 000 tonnes in 1989 and 190 000 tonnes in 1990, was signed between Heracles and UMAR (doc. 33126/20063-20071). Under Article 6 of this contract, the destination for at least 230 000 tonnes of clinker must, at the purchaser's choice, be the Netherlands and/or Luxembourg and/or Belgium; the remaining quantities of clinker or cement may go to non-Benelux countries and the purchaser must ask for the vendor's prior consent in writing.

These quantities should be compared with the statement by Holderbank and other producers that they wished to purchase one million tonnes and more, and even 2 to 3 million tonnes from Greek producers (see documents mentioned in paragraphs 1 to 6 above).

(c) *Agreements between Greek producers and Lafarge*

(18) Titan-Lafarge

The record of the ETF meeting of 19 August 1986 states: '... *Lafarge has bought one cargo from Titan for Montreal and second cargo will be taken in September*...'.

Lafarge's internal documents of 8 July 1986, 28 January 1987 and the table of 1986 purchases from Greece (doc. 33126/14412, 14417, 14407) show that on 22 July 1986 Lafarge bought 33 051 tonnes of clinker in Greece via CFCI for delivery to Montreal on 5/10 August 1986 and on 19 August 1986 bought 29 806 tonnes of clinker for Canada Cement Lafarge.

On 12 June 1987, Titan agreed to sell Lafarge a cargo of 26 000 tonnes of clinker for Montreal (doc. 33126/14433-14437).

In the contract of 3 June 1988 (doc. 33126/14422-14424), incorporated into the contract of 20 October 1988 (doc. 33126/19708-19721), Titan and Lafarge agreed on 150 000 tonnes a year of clinker to be supplied from 1 November 1988 to 31 December 1991, half of which was to go to France, including the islands belonging to France.

These quantities should be compared with the statement by Lafarge and other producers that they wished to buy one million tonnes and more, and even 2 to 3 million tonnes from Greek producers.

(19) Heracles-Lafarge

On 17 June 1988, a contract, running from 1 June 1988 to 15 June 1991, was signed between Lafarge Overseas America and Heracles (doc. 33126/14454-14469). This contract is for the supply, for each year of the contract, of 500 000 tonnes of clinker and cement. The clinker could be for destinations outside France, and part of the cement could be exported to the countries indicated in addendum No 2 and, as far as Europe is concerned, to France, Portugal, Scandinavia, Turkey, but most of it had to go to France. The price of the clinker and cement for delivery to France varied in keeping with changes in the price of cement in France (doc. 33126/14446-14453).

These quantities should be compared with the statement by Lafarge and other producers that they wished to buy a million tonnes and more, and even 2 to 3 million tonnes from Greek producers.

The contracts of October 1988 between Lafarge, Titan and Heracles were brought to the EPC's knowledge at the meeting of 20 October 1988 (see Ciments Français record, doc. 33126/18179-18180).

The fact that business relations existed between Lafarge and Heracles and Titan, directly or through intermediaries, prior to these contracts, in no way detracts from the fact that these purchases form part of the persuasive measures adopted by the ETF. These contracts were brought to the knowledge of the other ETF members and even of the EPC members (see recital 36, paragraph 8). This demonstrates that, even if these business relations preceded the 'Greek problem', Lafarge wished to present these contracts as its contribution to the purchasing system jointly discussed within the ETF.

(d) *Purchases of Greek products by the CBR group*

(20) CBR took part in the persuasive measures not through direct relationships with the Greek producers but indirectly through UMAR, a Holderbank subsidiary.

As we have seen in (b) above, on 19 May 1988 and 20 August 1988 UMAR and Pays Bas Cement Co. signed contracts with Heracles and Titan respectively for the supply of clinker, at least half of which was intended for Benelux.

On 15 July 1988, UMAR and CBR concluded a contract on the general conditions for transferring Greek clinker (doc. 33126/18117-18121). By telex messages dated 13 September 1988, 27 January 1989 and 24 March 1989, CBR placed orders, each for 25 000 tonnes of clinker, with UMAR (doc. 331276/18122-18124). Sea freight contracts for the execution of three orders indicate CBR as the consignee and Titan as the supplier-consignor (doc. 33126/18125-18127).

The handwritten record of the CBR Board of Directors meeting on 4 May 1988 gives the following interpretation of this transfer contract. *'Greek cement — Preferring in Benelux clinker imports to cement imports because they confer no possibility of influence over the market, Mr Celis, with the agreement of the EEC, concluded an ageement to import clinker from Greece. This clinker will be used in the grinding halls of the Netherlands and in Belgium. Through the intermediary of the Madrid company Humar (international trading company) Mr Celis will draw up a contract relating to the import of Greek clinker, provided that Greece limits cement exports to Benelux. This contract will run for 2 years and will cover 280 000 tonnes or 1.65% of our consumption. The purchase price FOB Greece is US$ 29.5, plus transport and unloading costs. The Chairman thanks Mr Celis for negotiating this contract brilliantly and reaching a very positive result' (doc. 33126/7632-7633)* ([153]).

(21) CBR criticizes the Commission for attributing undue importance to the handwritten note which is said to have been drawn up by a secretary and which *'contains numerous erasures, internal contradictions (reference is made, in turn, to a contract which has been concluded and one which is about to be concluded) and undoubted errors. Thus the note states that Greek clinker is purchased with 'the agreement of the EEC'. All this reflects the confusion which reigned in the mind of the note's author concerning the exact object of the discussions' (p. 112 of the reply to the statement of objections)* ([154]). CBR also criticizes the Commission for ignoring the official minutes of this same meeting.

Even if it is accepted that this note was drawn up by a person who was unfamiliar with the subjects being discussed, the extract quoted contains no interpretations of the discussions which it reports; had it done so, an imperfect knowledge of the subjects dealt with might have had some importance. Instead it is a factual record of a discussion. The Commission considers that it is not possible, in these circumstances, to take account solely of the official minutes. Moreover CBR's own explanations on p. 116 of the reply to the statement of objections indirectly confirm what emerges from the first sentence of the extract from the handwritten record quoted above.

([153]) In the original French: *'Ciments grecs — Préférant au Benelux les importations de clinker à celles de ciment parce qu'elles ne confèrent aucune possibilité d'influence sur le marché, Mr. Celis, avec l'accord de la CEE, a conclu un accord d'importation de clinker en provenance de la Grèce. Ce clinker sera utilisé dans les salles de mouture des Pays-Bas et en Belgique. Par l'intermédiaire de la société madrilène Humar (société de trading international) Mr. Celis va établir un contrat portant sur l'importation de clinker grec, moyennant que la Grèce limite les exportations de ciment vers le Benelux. La durée de ce contrat est fixée à 2 ans et portera sur 280 000 tonnes soit 1,65% de notre consommation. Le prix d'achat FOB Grèce est de 29,5 $ auquel s'ajoutent les frais de transport et de déchargement. Le Président remercie Mr. Celis pour avoir négocié brillamment ce contrat et avoir abouti à un résultat très positif'*

([154]) In the original French: *'se caractérise par de nombreuses ratures, des contradictions internes (il est tour à tour question d'un contrat conclu et à conclure) et d'erreurs indubitables. Ainsi il y est indiqué que l'achat de clinker grec se fait avec 'l'accord de la CEE'. Tout cela reflète la confusion qui régnait dans l'esprit de l'auteur de la note quant à l'objet exact des discussions'*

The official minutes, which, even if they were not quoted in the statement of objections, were made available to all the enterprises, present the facts differently. So that it may be compared with the handwritten record of the meeting of the CBR Board of Directors on 4 May 1988, the official minutes of this same meeting are quoted below (doc. 33126/7629-7631). *'Europe: clinker purchase. Given the unexpected growth of cement consumption in our natural market (end April 1988: 32% up on 1987 compared with the forecast status quo) and contracts for the export of clinker and cement concluded at the beginning of the year with a view to avoiding the shutdown of kilns because of surplus stock, there is at present a risk of a slight shortage. Mr Celis has negotiated with Umar (international trading company) the possibility for CBR and ENCI of obtaining supplies of foreign clinker under a unit contract for 25 000 tonnes. This possibility can extend over a period of two and a half years for up to 240 Kt, or 3.2% of the clinker requirements of CBR and ENCI and 2.5% of total cement supplies. The cost price will be around US$ 48 per tonne supplied to Rotterdam or Antwerp. This clinker will be used directly in the Rozenburg, Ghent or Ijmuiden grinding halls. The total cost price of 'wet' clinker in the CBR-EUR group is US$ 42 per tonne factory stock of clinker. The price will be denominated and paid in ecu. The Chairman thanks Mr Celis for this rapid reaction and the positive outcome of the negotiation'* ([155]).

Some comments must be made on these official minutes, on which CBR dwells in its reply to the statement of objections. First, even if it were true that there had been unexpected growth in cement consumption, this does not mean that Greek clinker was not bought with a view to curbing Greek exports to Benelux, as CBR acknowledges indirectly: *'Lastly, in buying clinker from Greek producers, CBR was hoping to reduce the interest which the importation of cement into Belgium might have had for them'* ([156]) (p. 116 of the reply to the statement of objections).

In addition, with regard to the unexpected percentage increase in consumption, CBR's Annual Report for 1988 states that in 1988 consumption was 16% up on 1987 in Belgium, 15% in the Netherlands and 6% in Nordrhein and that CBR supplies of cement and clinker increased by 16%, not 30% as CBR indicates in its reply to the statement of objections for a four-month period only, with no actual reference datum, or higher percentages which in addition are compared with 1985 with no explanation.

(e) *Agreements between Greek producers and Scancem (Aker/EUROC)*

(22) The document prepared by the working party in Zurich and Celigny (see paragraph 1 above) mentions Cementa/Norcem among the companies which could take part in the absorption of Greek cement. The Blue Circle internal memo of 4 September 1986 (doc. 33126/11026-11027) states that Norcem/Cementa (part of the same Aker/EUROC group as Scancem) are among the companies which should participate in the absorption of Greek products. The Aker/EUROC group was represented at two Head Delegates meetings and at ETF meetings (see points (c), (g), (i), (l) and (o) of recital 25).

— Titan/Scancem

Titan and Scancem signed the following contracts:

— on 28 January 1987 (doc. 33126/19621-19629) on the supply, from 1 February to 31 December 1987, of 125 000 tonnes of clinker to Ghana, Liberia and Togo;

— on 7 October 1987, amended several times by additional clauses, the most recent dating from 17 November 1989 (doc. 33126/19585-19620), on the supply, from 1 January 1988 to 31 December 1990, of 650 000 tonnes of cement to the United States and the Bahamas;

— on 15 October 1987, amended several times by additional clauses, the most recent dating from 15 March 1990 (doc. 33126/19631-19656), on the supply, from 1 Janury 1988 to 31 December 1990, of 300 000 tonnes of clinker to Ghana, Liberia and Togo.

([155]) In the original French: *'Europe: achat clinker. Etant donné la croissance inattendue de la consommation de ciment dans notre marché naturel (fin avril 1988: + 32% par rapport à 1987 contre prévision de statu quo) et les contrats d'exportation de clinker et de ciment conclus au début de l'année dans le but d'éviter l'arrêt des fours pour excès de stock, il y a actuellement risque d'une légère pénurie. Monsieur Celis a négocié avec la société Umar (société de trading international) la possibilité pour CBR et ENCI de s'approvisionner en clinker étranger par contrat unitaire de 25 000 tonnes. Cette possibilité pourra s'étendre sur une période de 2 ans et demi jusqu'à concurrence de 240 Kt, soit 3,2% des besoins en clinker de CBR et ENCI et 2,5% des livraisons totales de ciment. Le prix d'achat sera d'environ 48 dollars/tonne livrée à Rotterdam ou Anvers. Ce clinker sera utilisé directement dans les salles de mouture de Rozenburg, Gand ou Ijmuiden. Le prix de revient total du clinker voie humide dans le groupe CBR-EUR est de 42 dollars/tonne stock usine de clinker. Le prix sera libellé et payé en ECU. Le Président remercie Monsieur Celis pour cette réaction rapide et le résultat positif de la négociation'.*

([156]) In the original French: *'Enfin, en achetant du clinker auprès des producteurs grecs, CBR espérait réduire l'intérêt que pouvait avoir pour ceux-ci l'importation de ciment en Belgique'.*

These quantities should be compared with the European producers' intention of absorbing 2 to 3 million tonnes of products with a view to curbing Greek exports to Europe (see documents mentioned in paragraphs 1 to 6 above).

The fact that Scancem is a company which normally engages in the international trading of cement and clinker does not mean that these contracts are not part of the persuasive measures. Holderbank, Lafarge and Blue Circle also engage in the international trading of cement and clinker: the activity in which they are involved makes it easier to place quantities destabilizing the market. Moreover, the documents mentioned show that the business relations, in the form they took from the second half of 1986, were an effort to solve the so-called 'Greek problem'. The normality of these relations is also belied by the fact that the ETF members discussed them together. Lastly, the record of the ETF meeting of 19 August 1986 (see paragraph 3 above) shows that Scancem was participating in the absorption of Greek products since its author complains solely of the fact that the initiatives of certain ETF members had put Scancem in a weak position in the negotiations with Greek producers.

29. **The position of certain undertakings**

(1) In view of the observations of the various undertakings it is appropriate to define the position of some of them as compared with the facts set out in this chapter.

(2) On Cembureau we can only refer to what was said at recital 24.

(3) Oficemen considers that the facts relating to the ETF have nothing to do with it, since its Chairman Mr Andia was prevented from taking part in the only meeting he was due to attend — that of the 'Defensive measures' sub-group on 15 March 1987 — because his plane was delayed. This is belied by the fact that Mr Andia was appointed member of this sub-group at the Head Delegates meeting of 9 September 1986 (see paragraph 24 of recital 25) and above all by the fact that the record of the meeting states that Mr Andia was present (see paragraph 47 of recital 25).

Also, even more importantly, the Spanish Head Delegate, who also represented the Spanish industry and therefore represented Oficemen, was present at the Head Delegates meetings of 9 June 1986, 9 September 1986 and 6 November 1986 (see paragraphs 9, 23 and 39 of recital 25).

(4) SFIC states that it took no part in any meeting concerning the ETF and that it knew nothing of its activities. It should be remembered first that the French Head Delegate, representing SFIC and, therefore, the entire French industry, was present at the Head Delegates meetings of 9 June 1986, 9 September 1986 and 6 November 1986 (see paragraphs 9, 23 and 39 of recital 25); moreover, Ciments Français stated that the presence of Mr Laplace at certain meetings was due, among other things, to his role at SFIC (see paragraph 3 of recital 24 and paragraph 9 of recital 25). In addition, item 3 of the agenda of the meetings of the SFIC Bureau on 8 July 1986, 9 September 1986 and 7 October 1986 deals with the problem of exports of cement from Greece and this item is not at all developed in the minutes of these meetings (doc. 33126/14828-14860). According to SFIC, it did not wish to show any written evidence of the criticisms which the Bureau made of the French public authorities. This explanation conflicts with the agenda of the SFIC Bureau meetings on 8 July 1986 and 9 September 1986 which do not refer to the public authorities at all, but only to Greek cement exports: the only reference to the public authorities is in the agenda of the 7 October 1986 meeting which contains, in brackets, the words 'talk at the DREE on 25 September'. In addition, item 3 is entirely ignored in the minutes and it is not even mentioned. In any event, the members of the Bureau present at the meetings of 8 July, 9 September and 7 October 1986 always included Mr Laplace, Chairman and, at one meeting, Mr Kasriel, who both took part in various meetings, and in particular in the Head Delegates meetings concerning the ETF: SFIC's claim that it was unaware of the ETF's activities is therefore absolutely unfounded.

(5) For the very specific cases of Cementos Cosmos and Cementos del Norte, the Commission has decided to terminate the proceedings against them (see recital 4 above).

CHAPTER 6

European Cement Manufacturers Export Committee (ECMEC)

30. **Background to the establishment of the ECMEC**

(1) The Blue Circle internal memo of 4 April 1981 (doc. 33126/11338-11340) describes the establishment of the export committees as follows: *'In years gone by, Cembureau ran a European Export Committee under*

its own wing, but with the advent of the Common Market and its clear distaste for cartels of any sort, Cembureau eventually abandoned its unwanted child, and European Cooperation in cement exports was left to an informal initiative from outside. This Michael Chapman took up, and in 1972 we saw the formation of the so-called 'London Club', which had its origins in a very small informal grouping of exporters who had been meeting for some years under Michael's guidance' ([157]). The memo goes on to mention the division of the 'London Club' into two committees, the scepticism of some as to the usefulness of the Committee of large exporters and the distrust which prevailed within it between the Greek and Spanish producers who, according to the memo, had succeeded in disposing of large quantities on the market with disastrous consequences.

The 'London Club' developed and gave itself a structure; its headquarters were in the Blue Circle offices and it consisted of an 'Export General Committee' and an 'Export Working Committee'.

(2) In 1978, the larger exporters felt that they should have separate meetings from the London Club and established another committee known as the 'European Export Policy Committee' (EPC).

Following the establishment of the EPC, the members of the London Club decided at the meeting held in Paris on 23 January 1979 in the offices of Cembureau (doc. 33126/12751-12752).

'1. That the Export General Committee and the Export Working Committee are merged into one Committee, which should meet about four times a year. The Committee to be open to Cembureau members actively interested in the Export trade to non-Cembureau countries. This Committee to be called the European Cement Export Committee, its object to be the promotion of export and the exchange of commercial information . . .' (Recitals 2, 3 and 4 concern the nomination of a chairman and three Vice-Chairmen, an administrative subcommittee and the seat of the secretariat.) *'The larger exporters will continue to meet together from time to time and their views on commercial matters will be shared with the other members of the European Cement Export Committee through their representatives on this Committee'* ([158]).

(3) Since at least 1980, it had been decided that the two Committees would have a single secretariat, and the structure providing this secretarial service was called the ECMEC: 'It should be understood that the name ECMEC has no legal significance. It is merely a convenient term for an organization which provides independent secretarial services . . . Neither agreement between ECMEC and the two Committees for the provision of these services was embodied in written contracts' ([159]) (ECMEC letter of 30 March 1990 (doc. 33126/16766-16774).

(4) From the very outset, Blue Circle seconded one of its employees, Mr Gac, to the ECMEC to act as secretary; Mr Gac took responsibility for the structure of the ECMEC as from 1989. The ECMEC had its headquarters in the offices of Blue Circle up to 1987, when Blue Circle rented offices for it; on 7 June 1989 Blue Circle passed the lease on to Mr Gac (doc. 33126/13673-13682 and 11260-11274).

It seems that the severing of all connections between Blue Circle and ECMEC and between Blue Circle and Mr Gac were the result of the inquiry conducted in the United States by the Federal Trade Commission on possible collusion between European producers exporting to the United States: this seems to emerge from a memo of 17 October 1988 by the Blue Circle internal lawyer (doc. 33126/11275) ([160]).

([157]) Original text in English.

([158]) Original text in English.

([159]) Original text in English.

([160]) 'Subject: EPC — Andrew Gac.
As you are aware, our American lawyers have insisted that we divorce ourselves from all association with the Cembureau (sic!) Export Policy Committee and the European Cement Exporters Committee and, indeed, Jim McColgan has resigned from the above committees. They also require us to cease supporting these committees on any way and to cease having any association in employment terms with Andrew Gac.
Can you please advise me of the precise nature, if any, of our current relationship with Andrew. If there is such a relationship it should be terminated forthwith including any agreement to re-employ him in the future'.

(5) Since it does not have any statutes and since it is not subject to any statutory requirement in the United Kingdom, the ECMEC acted as a *de facto* association. Expenses were shared between the two committees, with 80% being borne by the EPC and 20% by the European Cement Export Committee, on the basis of an agreement reached between the two respective chairmen and set out in a letter dated 15 December 1980 (doc. 33126/16785).

The Commission willingly acknowledges that the ECMEC was in fact a secretariat for the committees and consisted of Mr Gac and his secretary.

(6) By letter of 31 December 1992 (doc. 33126/22289a), Mr Gac informed the Commission that ECMEC was being dissolved as from 1 January 1993 and that correspondence concerning the two committees should in future be sent to the respective chairmen.

(A) EUROPEAN CEMENT EXPORT COMMITTEE (ECEC)

31. **Object, structure and membership of the ECEC**

(1) As stated in the preceding recital, the ECEC was set up in 1979 through the merger of the Export General Committee and the Export Working Committee.

(2) The aim attributed to the ECEC by the statutes of 6 December 1979 (doc. 33126/16786-16789) is to promote, on an informal basis, cooperation between the European producers concerned with exports of grey cement to all countries with the exception of the west European countries and the United States. Despite this restriction, the ECEC is able to receive and publish statistics on the cement industry for all countries. Its members can be the west European country associations or producers concerned with exports. Each country is entitled to one vote; countries which export between 1 million and 3 million tonnes a year are entitled to two votes; countries which export over 3 million tonnes are entitled to three votes. The organs of the ECEC are a Plenary Assembly, a Chairman, a Vice-Chairman and a Steering Committee. The latter consists of a Chairman, a Vice-Chairman and four members, two of which are elected from the countries entitled to one vote and two from those entitled to two or three votes.

Under the statutes of 26 September 1986 (doc. 33126/12516-12518) the aim and the organs are the same as under the previous statutes. The only difference lies in the allocation of voting rights, with each country having one vote, irrespective of the quantities exported, and, consequently, in the election of the five members of the Steering Committee, with no post being reserved for the large exporters.

The Assembly meets twice a year and the Steering Committee four times a year.

(3) As regards Community countries, the ECEC members are: for Belgium, since 1986 FIC, which succeeded Cimbel as a member of the ECEC; for Denmark, Aalborg; for France, SFIC (formerly the Syndicat National des Fabricants de Ciments et de Chaux); for Germany, Dyckerhoff, Alsen Breitenburg and Nordcement; for Greece, the Association of the Greek Cement Industry; for Ireland, Irish Cement; for Italy, Italcementi, Unicem and Cementir; for the Netherlands, ENCI; for Spain, Oficemen; for the United Kingdom, Castle since 1986 (reply to the statement of objections, page 54). In the statement of objections ATIC was indicated as ECEC member for Portugal. In its reply to the statement of objections and at the hearing ATIC maintained that it was not a member of the ECEC, basing its assertion on the fact that it was only a technical association. In answer to this assertion, it may be pointed out that despite its status as a technical association it is a member of Cembureau. On the basis of the documents available, the Commission considers that ATIC was a member of the ECEC: the handwritten record of the Steering Committee meeting on 13/14 April 1989 drawn up by Ciments Français (doc. 33126/18201-18204) states at (i) *'The Chairman read a letter sent by Mr Meric concerning the non-participation of Ciments Français in the meetings of the ECEC. Mr Clemente noted this but recalled that it was countries which were ECEC members and which decided as they pleased who was to represent them from among the associations or the companies'* ([161]); it is true that ATIC is not one of the names appearing on the mailing list for records of the meetings and general correspondence; but ATIC is asked to complete the quarterly questionnaire and does receive statistics, in contrast to what happens in the other cases (Germany, Italy and the Netherlands) where, since the national association is not a member, the member producers themselves are asked to complete the quarterly questionnaire and receive statistics (doc. 33126/12524-12534).

Furthermore, when the associations are members of the ECEC, they retain this membership status even if in fact the representatives on the ECEC are usually commercial directors of the cement companies, appointed at national level by the associations and/or by the companies themselves (see doc. 33126/18201-18204).

([161]) In the original French: *'Le Président donne lecture d'une lettre adressée par M. Meric concernant la non-participation des Ciments Français aux réunions du ECEC. M. Clemente prend note mais rappelle que ce sont les pays qui sont membres du ECEC et qui constituent à leur gré leur représentation au niveau des syndicats ou des sociétés'.*

32. **ECEC-EPC relations**

(1) According to the 1979 statutes, two members of the Steering Committee had to be elected from among the members entitled to two or three votes, i.e. from among the larger exporters. One of the consequences of this rule was that the Steering Committee provided the link between the ECEC and the EPC. The letter sent following the Paris meeting of 23 January 1979, quoted in paragraph 2 of recital 30, confirms the link between the two Committees, particularly when it states that *'The largest exporters will continue to meet from time to time and their points of view on commercial problems will be shared with the other members of the European Cement Export Committee through their representatives on this Committee'* ([162]).

(2) On the basis of the records which have been found, EPC points of view ('Report from the Policy Committee') were in fact communicated to the ECEC at the following ECEC meetings: on 14 March 1984 (doc. 33126/14257-14262) Mr Balbo reported on the market situation on behalf of the EPC; on 11 September 1984 (doc. 33126/14303-14309) Mr Gac stated that there was not a great deal to report; on 21 February 1985 (doc. 33126/14266-14267) a special ECEC meeting took place to discuss the nature of the agreement between Greek and Spanish producers concerning quotas for exports outside Europe: this gave rise to the establishment of the Cement Marketing Association and relationships between the ECEC and the EPC; on 22 March 1985 (doc. 33126/14289-14294), Mr Balbo and Mr Rumeu, on behalf of the EPC, presented a report on the market situation, on the EPC's future after the establishment of the Cement Marketing Association, on the EPC's activity, and expressed their point of view on the separate personalities of the EPC and the ECEC; on 22 January 1986 (doc. 33126/12614-12616 and 12667-12674) the relationships between the ECEC and the EPC were discussed and there was apparently some tension between the two Committees; on 10 June 1986 (doc. 33126/12607-12610) the Chairman reported the conversation with the Chairman of the EPC to try to overcome the EPC's reluctance to continue passing information to the ECEC. The Commission also has the agenda of two other meetings, those of 7 December 1983 (doc. 33126/14184) and 14 December 1984 (doc. 33126/14310-14315); in the first case, the Commission does not have the record, and in the other, the record indicates that the point was not discussed on that occasion.

(3) The 1986 statutes (see paragraph 2 of recital 31) did not envisage a special role for the large exporters in the Steering Committee. Nevertheless it appears that from time to time EPC information continued to be communicated to the ECEC even after September 1986. The official record of the ECEC meeting of 23 September 1988 (doc. 33126/12627-12634) indicates that, under a general agreement beween the ECEC and EPC Chairmen, information on the meetings with Far East producers were available to ECEC members (see also the Ciments Français memo, doc. 33126/18218-18219). Handwritten Italcemementi notes on the same meeting (doc. 33126/3418-3421) show that EPC information continued to be passed to the ECEC. Although the ECEC statistics are aggregated by country, Italcementi notes on page 3419: *'EPC 25% in the first three months — 1988 trend — Total EPC 10 mil. Hispacement, Heracles, Valenciana, Titan ± 7 mil. — Ciments Français, Lafarge, Norcem, Cementos del Mar, Hornos Ibéricos, Rezola, Cementa, Blue Circle, Halkis ± 3 mil.'; and on page 3421: 'Hispacement 1.1 mil.; Heracles 2.8 mil. ton; Titan 1.8; Valenciana 1 mil. — All destinations 10 mil.'*. Clearly this refers to data exchanged within the EPC: this emerges not only from the explicit reference to the EPC but from the fact that Italcementi, although a member of the ECEC, was not a member of the EPC.

33. **Activities of the ECEC**

(a) *Statistics*

(1) According to the statement by Mr Gac on page 10 of his letter of 30 March 1990, (doc. 33126/16776), the statistical data are published, on a cumulative basis by country, at the end of each quarter of each year: the data for the second, third and fourth quarters therefore cover not only the quarter in question but also the aggregated data for all the previous quarters ('year to date').

Every quarter, each member sends, for his own country, the quantities intended for export to each recipient country outside Cembureau (see example doc. 33126/12706).

On the basis of the data received by the members and information on the markets, Mr Gac publishes the following data: a table indicating actual quantities by countries and total quantities for the preceding period, and the estimated quantities, for the period which has not elapsed, of cement and clinker for export; a table containing quantities of cement or clinker which the various importing countries have requested, for the preceding period, and which they may request, for the current period not over (example doc. 33126/3410-3412, 12707-12709). At the end of each year a more detailed table is published, giving each exporting country's exports to each importing country (example doc. 33126/16814-16817). Data showing export fore-

([162]) In the original French: *'Les plus grands exportateurs continueront à se réunir de temps à autre et leurs points de vue sur les problèmes commerciaux seront partagés avec les autres membres de European Cement Export Committee à travers leurs représentants dans ce Comité'.*

casts and outturns for each year and each country are also published at regular intervals (doc. 33126/3422-3433, 12721-12728) ([163]).

(b) *Comparison of supply and demand and examination of markets*

(2) At the Steering Committee and plenary meetings the situations on the various export markets is reviewed. If necessary, members correct the data sent in, and, communicate their sales forecasts for the current years and their sales estimates for the following year. On the basis of the data collected, members' aggregate supply is compared with demand and the excess of supply over demand or vice versa is established for cement supplied in sacks and in bulk, and for clinker. Examination of the situation on the largest export markets reveals which members export to those markets, how much they are planning to export, which members have built or are planning to build unloading facilities for cement or clinker, and the prices charged on those markets ([164]).

(c) *Export prices*

(3) As stated at (b) above, consideration is given to the prices chargeable on the different export markets in the light of competition from third parties.

At the plenary meeting of 14 March 1984 (doc. 33126/14257-14262), reference prices to be charged by members for export destinations were recommended for bulk supplies of cement supplied in sacks, cement supplied in bulk and clinker. At the plenary meeting of 11 September 1984 (doc. 33126/14303-14309), the members reviewed progress towards the objective of a common reference price by exchanging information on the level actually reached on export markets, for each member country, and established that prices averaged US$ 34 (US$ 28-32) for cement supplied in sacks, US$ 25 (US$ 23-24) for bulk supplies of cement and US$ 20-21 (US$ 17-19) for clinker. At the plenary meeting of 22 March 1985 (doc. 33126/14289-14294) it was found that the market situation prevented *'realistic price recommendations'* from being made; the members, nevertheless, agreed to review current prices and, after discussion, it was established that they were the following: sack US$ 29/32, bulk US$ 21/22, clinker US$ 18. At the plenary meeting of 11/12 September 1985 (doc. 33126/6139-6142) it was found that the prices charged in 1985 by ECEC members were lower than the prices recommended for the same year. The author of the record draws the following conclusions: *'The ECEC meetings are useful in that they permit informal communications between the representatives of cement-exporting companies. Nevertheless, it is necessary to note the failure of the policy of consultation between Cembureau exporters with a view to halting the deterioration in prices caused by supply exceeding demand. It is to be feared that the companies owning waterside factories and capable of loading clinker and cement in bulk onto large vessels at minimum forwarding costs, will price small exporters, less favoured by their geographical situation, out of the market'* ([165]). At the plenary meeting of 23 September 1988 (doc. 33126/12627-12634) market prices were discussed and it was agreed that prices had increased by US$ 2-4 for bulk supplies and US$ 1-2 for clinker. Although the supply position was tight, everyone expected prices to fall because of Saudi exports. At the Steering Committee meeting of 16 December 1988 (doc. 33126/12570-12575), it was found that fob prices had improved slightly during 1988 and it was expected that prices for 1989 would be aligned on the December 1988 prices.

(d) *Import situation in the member countries*

(4) During the ECEC meetings, mostly in connection with competition from third countries, the members also examined the import situation in the member countries.

Thus at the plenary meeting of 22 March 1985 (doc. 33126/14289-14294) it is stated that Blue Circle was purchasing 400 000 tonnes of bulk cement from East Germany. At the following plenary meetings (doc, 33126/12617-12674), each member reports on cement imports into his country, usually from the East European countries.

([163]) The Commission has in its possession statistics for 1985 to 1989 (doc. 33126/16790-16824, 12544-12557, 12706-12708, 3410-3412), for 1982-83 (doc. 33126/14027-14029), for 1983-1984-1985 (doc. 33126/14245-14249, 14295-14298), the overview, consisting of 6 tables, for 1975 to 1986 (doc. 33126/12721-12728) and for 1975 to 1988 (doc. 33126/3422-3433).

([164]) The Commission has in its possession all the minutes of the meetings from1986 to 1989 (doc 33126/12558-12674) and also the minutes of the meetings of 14 March 1984 (doc 33126/14257-14262), 11 September 1984 (doc. 33126/14303-14309), 14 December 1984 (doc. 3126/14311-14316), 21 February 1985 (doc. 33126/14300-14301), 22 March 1985 (doc. 33126/14289-14294), 11 September 1985 (doc. 33126/6139-6142).

([165]) In the original French: *'Les réunions du ECEC sont utiles en ce qu'elles permettent des communications informelles entre les représentants des sociétés cimentières exportatrices. Toutefois, on doit constater l'échec de la politique de concertation entre les exportateurs de Cembureau en vue d'enrayer la dégradation des prix provoquée par une offre supérieure à la demande. On peut craindre que les sociétés possédant des usines au bord de l'eau et capables d'effectuer des chargements en vrac (clinker et ciment), sur de gros navires avec un coût minimum d'approche, n'éliminent par le prix les petites exportateurs moins favorisés par la situation géographique'.*

(e) *Home markets*

(5) In examining the situation on the cement market, members find themselves taking note of communications concerning the situation of member countries.

On 26 March 1987 (doc. 33126/12594-12598), the Steering Committee noted that Spain was enjoying vigorous domestic demand, partly offset by a fall in exports and that the Spanish industry had reduced its capacity.

On 10 March 1988 (doc. 33126/12579-12581), the Steering Committee took note that Spain was determined to reduce exports to the minimum to cope with domestic demand.

The Italcementi notes on the Steering Committee meeting of 22/23 September 1988 (doc. 33126/3415-3416 and 3419) report the following communications: 'The floating silo which was in the port of Brest has put out to sea again, apparently for Algiers following probable agreements with Lafarge [the silo to which Italcementi refers probably belongs to Libexim which was planning to unload Greek cement]; the Gizan floating silo is still in the port of Sète and is welcomed by the dockers who would like to take revenge for the fact that Lafarge has closed a cement factory in the region from which cement was exported'; 'Blue Circle is purchasing clinker from Lebanon (Holderbank) for the United Kingdom; it is also buying in Belgium'.

The Italcementi notes on the Steering Committee meeting of 16 December 1988 (doc. 33126/3401-3402) state that the United Kingdom would have to import 2 million tonnes of cement and clinker in 1989. The author of the notes comments that if Italcementi were 'authorized' to act as a marketing company it could interpose itself in the supplies for the United Kingdom, for example with Yugoslav cement ([166]).

The minutes of the Steering Committee meeting of 13 April 1989 (doc, 33126/12566-2569) report that French clinker exports had diminished since capacity was limited and there was heavy demand in neighbouring markets which were more profitable. Although French exports to countries outside western Europe had fallen, the first quarter of 1989 showed an increase of 8% in aggregate local and export sales.

([166]) 'Nel 1989 il Regno Unito avrà bisogno di 2 milioni di tonn. di cemento e clinker d'importazione; se fossimo autorizzati ad agire come Intertrading potremmo cercare di inserirci nelle forniture, per esempio con prodotto iugoslavo'.

34. **Dissolution of the ECEC**

By letters of 8 and 18 october 1993, the ECEC lawyers forwarded to the Commission the minutes of the ECEC meeting of 19 March 1993 during which the members, after taking note of the resignations of Partek Cement, Italcementi, Cementir, Unicem, Halkis and the Turkish Association, decided to dissolve the ECEC and to forward the archives to the solicitors Simmons & Simmons. In their covering letter when forwarding the minutes, Simmons & Simmons stated that they had not yet received the ECEC archives.

(B) EUROPEAN EXPORT POLICY COMMITTEE (EPC)

35. **Structure and functions of the EPC**

(1) In 1978, the large exporters belonging to the London Club decided (see recital 30) to create their own Club, the EPC, grouping together the producers having at least 500 000 tonnes a year for export.

(2) According to statements by Mr Gac (doc. 33126/16766-16777, page 5), the EPC was formed when the companies, which had installed substantial production capacity in the 1960s, were compelled, as a result of the recession in their countries from 1973 on, to turn to exports in order to dispose of their production, and in particular to the OPEC countries which were becoming profitable and easy to reach after the reopening of the Suez canal. Since small exporters did not have the same export-associated problems as large exporters, the latter decided to form their committee with a view to developing exports outside Europe. Unlike the ECEC, on which the countries were represented by trade associations or by enterprises, the EPC is a Club for chief executives.

(3) According to statements by Mr Gac, the founding members of the EPC were: the French producers Lafarge and Ciments Français; the United Kingdom producer Blue Circle; the Scandinavian producer Norcem; the Spanish producers Hispacement, Valenciana (but the latter considers it was a member from 1981, page 39 of the reply to the statement of objections), Cementos del Mar, Exponor (which was succeeded, in 1984, by Rezola as principal shareholder — doc. 33126/14041); the Greek producers Titan, Heracles and Halkis. On 1 July 1982 they were joined by Hornos Ibéricos and on 1 January 1983 by Cementa. On 1 January 1987 Norcem and Cementa merged their international activities and Scancem took their place as member. Rezola resigned on 31 December 1985, Blue Circle resigned on 12 October 1987 and Ciments Français resigned on 17 February 1989.

On p. 41 of its reply to the statement of objections Valenciana states that from 1986 it took no further part

in the EPC meetings since its name does not appear after that date. The Commission cannot accept this statement since Valenciana was represented, in the person of Mr Manglano, at the EPC plenary meetings on 13 May 1987, 15 October 1987 and 16 February 1989 and sent apologies for its absence from the meeting of 18 February 1988. In addition Valenciana's name, with its market share in EPC exports, is found in all the EPC statistics from 1986 to 1989 (doc. 33126/12967-12970, 12987-12998, 13004-13011, 12915-12966, 12808-12814).

(4) The Commission does not have a copy of the EPC statutes. Moreover, according to the statement by Mr Gac, EPC appears never to have had any up to the time it was dissolved on 19 May 1989, on which date the EPC members set up a new statute-based association, the Committee for Development of International Cement Trade (CDICT).

However, the Commission has obtained numerous documents which report some of the EPC's activities and which therefore throw light on one of the aims which were attributed to it by its members.

(5) According to an undated handwritten memo from Ciments Français (doc. 33126/4454) found in the office of the sales manager (doc. 33126/4365), in setting up the EPC in 1978, *'the Chairmen wished to control the exporters'*. This interpretation seems to be confirmed by the Blue Circle internal memo of 9 April 1981 (doc. 33126/11338-11340): *'The idea behind this Policy Committee was that member companies would be represented at Chief Executive level, thereby, it was hoped, making it possible to establish policies which would lead to a stronger market and hence better prices for all. Foremost in people's minds, of course, was the thought that at Chief Executive level it might be possible to take such weighty decisions as holding back sizeable tonnages from the market in order to keep supply in line with demand'*. ([167]) The memo goes on to comment that, although the EPC had not been ineffective, it had not achieved its main aim because of the lack of confidence between Greek and Spanish producers and because of the supply, by the Greeks and the Spanish, of large quantities of cement which had depressed prices.

([167]) Original text in English.

(6) In the internal memo of 7 March 1989 (doc. 33126/4466-4467), Ciments Français defines the White Cement Committee by reference to the EPC. *'It is an informal Club which is to white cement what the Policy* [Export Policy Committee] *is to grey cement'* ([168]). The undated handwritten Ciments Français memo (doc. 33126/4454) states with regard to the White Cement Committee: *'It is a club: object: protection of home markets — rule: everyone respects his home markets and exports excess production under general consensus'* ([169]).

Four recipients of the statement of objectives mention the memo of 7 March 1989 (Titan p. 30, Hornos Ibéricos p. 30, Ciments Français p. 27, ECMEC, Annex 2 p. 2) but only two of them, Ciments Français itself and ECMEC, deal with its content ([170]).

(7) The EPC Chairman, complaining that some members were losing interest in taking part in meetings, defined the EPC as follows at the Steering Comittee meeting of 19 January 1987 (doc. 33126/13045-13049): *'Probably the greatest advantage that individual members obtain from their membership is to establish and develop close personal contacts. The role of the meetings is to provide the formal structure around which such relationships may blossom'* ([171]).

([168]) In the original French: *'C'est un Club informel qui est au ciment blanc ce que le Policy (Export Policy Committee, n.d.r.) est au gris'*.

([169]) In the original French: *'C'est un club: objet: protection des marchés intérieurs — règle: chacun respecte ses marchés intérieurs et exporte ses surproductions dans un consensus général'*.

([170]) In its reply to the statement of objections, page 127, Ciments Français maintains that at the time that Mr Dupuis wrote the memo (7 March 1989), he had no detailed knowledge of the various Committees since he had not taken on the post of sales manager until January 1988. ECMEC makes a similar claim, based on a statement by Mr Dupuis on 12 February 1992, made in connection with the reply to the statement of objections. However, these statements should be compared with what happened at the time, namely that Mr Meric, Mr Dupuis' superior and the person to whom the memo was sent, did not apparently see things in the same way since he actually sent (see doc. 33126/18217) the ECEC Chairman the letter which Mr Dupuis had drafted in the annex to the memo and which was based on Mr Dupuis' presentation in the memo. It should also be noted that the Ciments Français representatives on the EPC and on the White Cement Committee were the same persons (see memo of 7 March 1989), and they were therefore able to inform the sales manager with full knowledge of the facts.

([171]) Original text in English.

(8) The EPC has always had a certain structure, with the same groups meeting at regular intervals. These were a *'Clinker sub-Committee'* and a *'bulk sub-Committee'*; there was also a *'Steering Committee'*, which met under the chairmanship of a member acting as Chairman of the EPC, assisted by three vice-Chairmen and a secretary.

(9) On the basis of documents which have been assembled ([172]) and given the fact that the official documents do not always, as will be seen during this analysis, reflect the discussions which actually took place at meetings, it can be observed that the EPC's aims included encouraging the respect of each member's home market by means of cooperation between members with regard to exports.

36. Intra-European problems

(1) Some documents quoted in recital 35 and the following documents issuing from the EPC structure show that the EPC did not just deal with exports outside Europe but also with intra-European trade.

(2) The letter sending Blue Circle the minutes of the EPC meeting of 18 November 1983 (doc. 33126/11364) contains the following postscript: *'PS. I also enclose a copy of the draft Minutes for BCC's information only, which includes the discussion on matters normally not within the EPC remit, which might be of interest to you'* ([173]). The minutes sent to Blue Circle (doc. 33126/11365-11373) contain, on page 4, the following annotations which are not in the official minutes (doc. 33126/14062-14068): *'? The following concerns intra-European business and I am not sure it should be included in our Minutes?*

A Norwegian shipping company, PF Bassoe, have started buying bagged cement in West Germany and Holland to supply the Stavanger market. It is understood that it is their ultimate intention to establish a bulk importing terminal in Norway.

The UK market is under pressure from Spanish suppliers. Mr Manglano assured delegates that neither Valenciana nor Cementos del Mar are involved in any UK trade' ([174]).

(3) On 29 August 1985, Mr Gac prepared for the Chairman of the EPC the note entitled *'Memorandum for the EPC Steering Committee, Athens, 12 September 1985'* on the subjects to be discussed at the meeting (doc. 33126/12804). The note contains the following: at point 1, the need to check whether the Spanish still want to participate in the EPC after the Cement Marketing Association has been set up; at point 2, the need to check whether the Cement Marketing Association has effectively been set up and its chances of survival beyond 1985; at point 3, the need to verify the seriousness of the dispute between Hispacement and Heracles over supplies to Egypt and *'to establish the seriousness of the threat that Spanish bulk will be supplied to the Bouri terminal in England'* ([175]); at point 4, the need to establish clear agreements, should the Steering Committee decide that the EPC should continue to function. The Commission has no minutes or notes indicating what discussions actually took place at the Athens meeting on 12 September 1985.

(4) The document prepared by Mr Gac on 1 September 1986 and entitled *'EPC Beyond 1986'* sets out three options (doc. 33126/12771-12773): *'1st option Maintenance of the status quo'; '2nd option Dissolution of EPC'; '3rd option New EPC'*. Under the first option, the document states, in the first sentence, that: *'The continuing decline in volume of business as well as intra-European friction produced by the Greek intention to export into West European markets, suggest that*

([172]) According to the letter of 30 March 1990 (doc. 33126/16766-16777), Mr Gac kept the EPC documents only from 1 January 1987 until its dissolution on 19 May 1989. The handwritten notes on the last EPC meeting, which took place on 19 May 1989 (doc. 33126/12820-12823), report, *inter alia*, the following discussions: *'Minutes and Statistics. Gordon. EPC records? Files? legal advice on records. No reference to the past'*. The official minutes make no mention of these discussions (doc. 33126/12824-12826). According to Mr Gac, there is no question of the documents which were searched for and not found during the investigation being in Dr Gordon Marshall's possession. In its reply to the statement of objections, Annex 2, page 4, ECMEC-EPC adds that there was no legal obligation to keep documents concerning the period prior to 1987 and that on 19 May 1989 ECMEC had no knowledge of an imminent investigation at its offices. The Commission does not dispute these statements. However, it should be remembered that 19 May 1989 is later than the date (25 April 1989) of the Commission's first investigations.

([173]) Original text in English.

([174]) Original text in English.

([175]) Original text in English.

there is no further benefit in continuing EPC under the present agreement' ([176]).

(5) In another document dated 4 November 1986, *'Future of EPC'* (doc. 33126/12775-12778), Mr Gac sets out his impressions of the EPC meeting in October 1986 and on a proposed international cement industry organization. Mr Gac notes that at the EPC meeting a certain apathy and a lack of initiative was observed among the participants; he wonders whether the EPC will continue and emphasizes what the overriding problem is in his view: *'The particular problem, to which we are somewhat reluctant to address ourselves is overcapacity in Western Europe, and increasingly, in other parts of the world. Our difficulties lie in formulation of the question, for while the problem looms over the horizon of our home markets, it is not tangible enough to become a subject of lively discussion'* ([177]).

(6) On 14 May 1987, Mr Marshall, chairman of the EPC, summarized, in a note sent to Blue Circle, the subjects discussed at the EPC meeting on 13 May 1987 (doc. 33126/11344-11345). If one compares the subjects discussed in this note with the official minutes of the meeting (doc. 33126/13004-13011), one finds that the first two points *('Summary — Turkey')* and the fourth *('Freight')* of Mr Marshall's note correspond to items III *('Review of statistics')* and IV *('Review of Market Development')* in the official minutes. Mr Marshall's note makes no mention of items V *('Dr Marshall's meeting with Asean producers')*, VI *('East-West Meeting in Tokyo')* and VII *('Administration')* in the official minutes; by contrast, the official minutes contain no mention of the other subjects listed in Mr Marshall's note, namely: *'USA', 'Bourie', 'Titan', 'Cembureau Task Force', 'Lafarge', 'Norcem'*. In that note, the points *'Bourie'* and *'Titan'* summarize discussions within the EPC on intra-Community trade, linking certain aspects of that trade with the activities of certain EPC members on the export markets (the point devoted to Cembureau Task Force was examined in paragraph (3) of recital 24). The points *'Bourie'* and *'Titan'* are worded as follows: *'Bourie. Their financial troubles seem to get worse with suppliers withdrawing from Algeria because they have not paid them since October 1986. Titan have withdrawn from Bourie in the UK but have taken over from the Germans in supplies to Lagan (Northern Ireland).*

A second ship is on its way from Heracles to Bourie in the UK. Rumours regarding Bourie looking at both France and Spain abound and other traders are interested as well but not necessarily with Greek cement. The French particularly asked for details of people and companies involved in trading in the UK as they feel they are going through a similar experience to the one we had nearly two years ago.

Titan. They were satisfied with their contacts with Blue Circle and particularly with Philip Hawkesworth. Ivan Tryfonas commented that with hindsight he believes that common sense is beginning to prevail, certainly in Titan. They respect the way we have dealt with them in the USA and feel that their supplying Northern Ireland is not as emotive as to the mainland. Meanwhile the Heracles management are under pressure not only from their Government but also from the 'conservative' press who criticise everything they do as being inefficient socialist management' ([178]).

(7) Having discussed this matter at the EPC meeting on 20 October 1988 (doc. 33126/12791-12799 and 12971-12977), the members returned at the meeting of the Steering Committee on 15 February 1989 to the problem of the increase in intra-European trade (doc. 33126/13019-13021): *'General Market Conditions. There was a brief discussion of the world market situation and its trends. In most West European countries domestic demand was high, leading in some cases to considerable imports to meet the shortfall in local production. For example, the United Kingdom imported over 1 million tonnes of cement and clinker and*

([176]) Original text in English.
([177]) Original text in English.
([178]) Original text in English.

will require something in the order of 2 million tonnes in 1989. Consequently, one of the leading manufacturers is restarting old kilns in the expectation of producing 300 000 tonnes with them.

Greek domestic demand rose by 8% in 1988 and should stay at that level in 1989. The domestic price remains modest.

Halkis has reduced its capacity by 1 million tonnes but even that is not sufficient to ensure the viability of the company.

Spain is under increasing pressure from importers. In particular, Catalonia is a growing market but some 50% of the increase in demand is taken up by importers' ([179]).

(8) The record of the EPC meeting of 20 October 1988 drawn up by Ciments Français (doc. 33126/18179-18180) mentions, *inter alia,* the status of the negotiations between Lafarge and Heracles and Titan over the supply of cement or clinker. These contracts were mentioned in the context of the ETF (see paragraphs (18) and (19) of recital 28), which context highlights the relevance to intra-Community trade.

(9) In its reply to the statement of objections, Annex 2, page 2, ECMEC maintains that the note of 14 May 1987 was prepared by Mr Marshall in his capacity as a director of Blue Circle for his colleagues in the company and not in his capacity as chairman of the EPC and it reproduces the extract from a written statement made by Mr Marshall on 13 February 1992: *'I confirm that the contents of this document* [referred to in point 16, page 40 of the SO] . . . *do not relate to matters discussed at any EPC meeting save for the paragraphs headed Summary and Turkey and Freight.*

The document was prepared by me solely as a briefing paper for fellow directors at Blue Circle. It was not an EPC document. It was not circulated to any other EPC members nor to the EPC secretary. It was circulated only to addressees within Blue Circle' ([180]).

The Commission would draw attention to the following facts: Mr Marshall held at the same time the functions of chairman of the EPC and a senior director in Blue Circle (he was on the Board of Directors); the note in question bears the title *'European Export Policy Committee — Meeting on 13th May 1987';* nowhere does the note distinguish between subjects discussed at the EPC meeting, on the periphery of the meeting or elsewhere; all the subjects raised in the note are listed one after the other under the same title *'European Export Policy Committee — Meeting on 13th May 1987'.*

(10) Certain undertakings (see in particular the replies to the statement of objections from Blue Circle, recitals 6.13 to 6.15; Ciments Français, pp. 128 to 134; Lafarge, pp.68-70; Titan, pp. 29-31) argue that the fact that certain intra-Community situations were mentioned at EPC meetings does not make it possible to establish that there was a principle of non-transhipment to home markets, or to conclude that intra-Community trade was the purpose of the committees, or to cast doubt on the legitimacy of these discussions especially when they concerned intra-Community trade 'carried on as dumping' (an allusion apparently to the State aid granted to the Greek undertakings).

Nobody is able to say what the purpose of the EPC is, since it has always been maintained that it was an informal club without any founding instrument or statutes. The Commission can only observe that the undertakings recognize, as the documents show, that within the EPC not only were exports outside Europe discussed but so was intra-Community trade. The Commission obviously recognizes the right of undertakings not only to notify the competent authorities — including the Commission where appropriate — of any breaches of national or Community provisions but also their right to act collectively for this purpose, which necessarily presupposes the possibility of holding preparatory discussions among themselves. However, the fact that the undertakings were concerned about the State aid granted to other European competitors cannot in any circumstances justify the adoption of private measures in addition to the possibility of bringing the matter to the knowledge of the competent authorities. This concern does not explain either the fact that, according to the documents just quoted, the undertakings perceived the intention of undertakings

([179]) Original text in English.
([180]) Original text in English.

belonging to a country which is a member of Cembureau to export to another member country as jeopardizing the survival of the EPC, whereas the latter is reputed to be devoted exclusively to the functions relating to exports to third countries.

37. **Cooperation between members on export markets**

(1) The Commission recognizes that, as many undertakings have maintained, the EPC's activities related essentially to export markets. It also recognizes that the fact that some undertakings cooperated on these markets can be deemed an infringement of Article 85(1) of the EC Treaty only if such cooperation affects, at least potentially, trade between Member States. The existence of such a potential effect is clear from the preceding recitals; its consequences are examined in Chapter 10 below. However, while cooperation on third-country markets cannot as such be regarded as an infringement, it is nevertheless appropriate to explain briefly, through a few examples, what that cooperation amounted to. As the Commission pointed out in recital 36, this cooperation was not without effect on the possibility of restricting intra-Community trade.

(2) The cooperation in question related to market sharing, price fixing, the exchange of data, and the effort to conclude agreements with other exporting organizations with headquarters in Asia.

(a) *Market sharing*

(3) At the EPC meeting on 1 and 2 July 1981 (doc. 33126/11442-11451), the members approved the general rules of the agreement *('Principles of Understanding')* (doc. 33126/11452-11455) which, in an effort to achieve stability on world markets, commits each party to observe the following principles as regards the export of bulk cement:

— members who declare they have interests on certain markets ('captive markets') have priority regarding deliveries to those markets;

— members who declare they have long-term contracts in certain markets ('controlled markets') have priority regarding deliveries, but if they are unable to supply all the quantities required by those markets, they must share the supplies equitably with the others;

— in the case of 'free markets', members interested in supplying them must appoint a leading member to conduct negotiations and allocate supplies;

— where a member plans to alter the quantities intended for export, he must inform the EPC;

— where it is necessary to obtain more favourable prices, members may alter the volume of supply but may not allow third parties to enter the market;

— arrangements must be sought with other suppliers (ECEC and others) to create a climate of stability on the market.

(4) These rules were confirmed in practice at the EPC meeting on 14 September 1983 (doc. 33126/11400-11407) and by letter from the EPC chairman dated 14 September 1983 (doc. 33126/11414-11415), to which Blue Circle replied on 6 October 1983 (doc. 33126/11416), indicating that it had also bought certain quantities in East Germany with a view, *inter alia,* to subtracting these quantities from intermediaries so as to protect EPC members, who would therefore be asked to cooperate in selling them.

(b) *Price fixing*

(5) As stated in paragraph 3(c) and (d) of the general rules of the agreement, prices are fixed collectively for each unloading point and any change must be the subject of consultations ([181]). Examples of pricing decisions can be read in the minutes of the meeting of the *'Bulk Sub-Committee'* of 1 July 1981 (doc. 33126/11442-11446), in the minutes of the EPC meetings of 12 November 1981 (doc. 33126/11432-11440), 10 November 1982 (doc. 33126/11417-11420) and 14 September 1983 (doc 33126/11401-11407). Starting from the EPC meeting of 18 November 1983 (doc. 33126/11383-11390), it was agreed not to mention in the official minutes the prices decided (compare the official minutes of the meeting of 18 November 1983, mentioned above, with the unofficial minutes of the same meeting, doc. 33126/11391-11399). The practice of not mentioning in the official minutes the prices decided was confirmed at the EPC meeting of 16 February 1984 (doc. 33126/11356-11363) ([182]). The other

([181]) '(c) Price levels will be established and maintained for all terminals.
(d) Any intended price changes will be co-ordinated through the Sub-Committee.'

([182]) 'It was agreed that the practice instituted with the November Minutes not to quote prices should be continued. In case of doubt, members could consult the Secretariat about prices discussed at the meeting.'

available minutes no longer mention the prices decided ([183]).

(c) *Exchange of data*

(6) Each member declared its quantities available for export and the quantities which it had effectively exported to each importing country. Market shares were calculated at regular intervals by the EPC for each member and were distributed by the EPC to the members. The statistics for all years are available ([184]).

(d) *Agreements with other organizations*

(7) To avoid destabilizing the markets, the EPC members consulted the ECEC members (see recital 32) and, as stated in the general rules of the agreement (see paragraph 3), sought agreements with them and with the producers and/or producer organizations in Asia. Meetings were held between the EPC, and sometimes Cembureau, and these Asian producers *('East/West Meeting')* with a view to controlling the supply of cement on the world market (doc. 33126/11291-11306, 11328-11331 and minutes of the EPC meetings: the EPC Steering Committee on 18 May 1989 and the CDICT meeting — see paragraph 4 of recital 35 — on 19 October 1989 report the last meetings).

The establishment of a market-regulating organization with quotas for the major exporting countries was also studied. In this connection, on 3 October 1986 a proposal was presented to set up the International Cement Organization (bringing together 25 exporting countries) (doc. 33126/11307-11319, 11346-11348). The proposal appears to have been examined at the *'East/West Meeting'* in Tokyo on 13 April 1987 and a draft agreement was prepared (doc. 33126/11297). It is not possible to say whether this proposal has been implemented.

CHAPTER 7

White Cement Committee (WCC)

38. Nature and functions of the WCC

(1) According to the definition given by Ciments Français in a handwritten undated note (doc. 33126/4454) and in the internal note of 7 March 1989 (doc. 33126/4466-4467), the WCC is a club of European exporting white-cement manufacturers (see also the record of the WCC meeting of 3 October 1985, compiled by CBR, doc. 33126/9962-9966).

(2) The WCC has no by-laws, according to the undertakings concerned. There is no founding instrument, and the date on which it was set up is not known; since there is no structure, the secretariat is provided in turn by the members. The only certainties about the WCC, according to the records of the meetings between 6/7 May 1982 and 26 May 1988 entered in the file ([185]), are that its members meet twice a year and that the activity of the club is supported by a White Cement Promotion Committee (WCPC), which consists only of the WCC's members (see records of the WCC meetings on 2 October 1986 and 19 June 1986, doc. 33126/9962-9966 and 2760-2763) and which is responsible for the promotion of white cement and the exchange of information on its various uses.

(3) During the investigation carried out on 13 February 1990, the sales director of Ciments Français stated in writing: *'ECME Committees, to the best of my knowledge, means all the groupings, i.e. the Export Policy Committee, the European Cement Export Committee and the White Cement Committee'* ([186]) (doc. 33126/18138). By letter dated 30 March 1990, ECMEC challenged the claims by Ciments Français (doc. 33126/16766-16777). As was pointed out in the third footnote of paragraph (6) of recital 35, Ciments Français emphasized, in its reply to the statement of objections, that the sales director had been mistaken when he made that statement, as he had been the previous year when he wrote the note of 7 March 1989.

([183]) The minutes of the following EPC meetings are available: 1/2 July 1981 (doc. 33126/11442-11455), 12 November 1981 (doc. 33126/11431-11440), 13 May 1982 (doc. 33126/11421-11430), 10 November 1982 (doc. 33126/11417-11420), 17 February 1983 (doc. 33126/14148-14154), 5 July 1983 (doc. 33126/14094-14097), 14 September 1983 (doc. 33126/14401-14418), 18 November 1983 (doc. 33126/11365-11399, 14062-14085), 16 February 1984 (doc. 33126/11356-11363, 14035-14042), 22 November 1984 (doc. 33126/13845-13850); all the minutes and records from 1987 to 1989 (doc. 33126/12762-12770, 12788-12799, 12805-12807, 12815, 12817-12832, 12967-13050, 18169-18172, 18179-18180, 18189-18191).

([184]) Statistics: 1981-82 (doc. 33126/14155-14166); 1982-83 (doc. 33126/14027-14029, 14046-14061, 14086-14092, 14098-14147, 14167-14169, 14175-14180, 14186-14229, 14237-14243); 1983-84 (doc. 33126/13854-14021, 14043-14045); 1984-85 (doc. 33126/12865); 1985-86 (doc. 33126/14270-14284); 1984-85-86 (doc. 33126/12866-12870); 1986-87 (doc. 33126/12871-12874); 1987-88 (doc. 33126/12876-12882, 12892-12896); 1988-89 (doc. 33126/12732-12734, 12808-12814, 12889-12891). Series: 1979-83 (doc. 33126/12864); 1979-86 (doc. 33126/12761, 12897-12904); 1979-1988 (doc. 33126/12915-12966); 1980-88 (doc. 33126/12883-12888).

([185]) The records of the meetings between 6/7 May 1982 and 26 May 1988, notes and statistics relating to WCC are to be found in file 33126 at pages 2720-2884, 3370-3385, 4454, 4466-4467, 9859-9988, 12816-12817, 15545-15549, 18135, 18138, 18198 and 19354

([186]) In the original French: *'L'ECME Committees est, à ma connaissance, l'ensemble des regroupements, à savoir l'Export Policy Committee, l'European Cement Export Committee et le White Cement Committee'.*

In this connection, Ciments Français produced, at Annex 1 to its reply, the letter which the sales director sent on 12 February 1992 to ECMEC's lawyers acknowledging the error committed in the statement of 13 February 1990. Reference is made here to the remarks in the third footnote of paragraph (6) of recital 35; it should be added that Ciments Français was represented, during the period in question, by the same persons in the EPC and the WCC, namely by Mr de Kervenoael (assisted sometimes by Mr Leboeuf or Miss Deneuville) for the EPC, and by Mr Leboeuf (assisted sometimes by Mr de Kervenoael or by Miss Deneuville) for the WCC.

(4) During the investigation carried out on 17 July 1990, Titan's export director stated in writing that *'In 1984/85, Titan and Heracles contacted Mr Gac, the secretary of the WCC, to find out how they could become members. Mr Gac replied that they should apply in writing to the chairman of the WCC'*. In its reply to the statement of objections, Annex 2, pages 3 and 4, ECMEC reproduced the statement made, at the request of ECMEC's lawyers, in March 1992 by Titan's export director, according to which it was by simple deduction that he thought that Mr Gac, the secretary of the ECMEC and the EPC, might also be the secretary of the WCC.

(5) According to a note from Italcementi of 30 August 1985 (doc. 33126/2802), which points out that the WCC is not an offshoot of Cembureau although it was set up several years ago by Cembureau members, the founder members of the WCC were: Aalborg (Denmark), Alsen and Dyckerhoff (Germany), CBR (Belgium), Lafarge (France), Blue Circle (United Kingdom), Italcementi (Italy); they were joined later by, first, Ciments Français (France) and then Valenciana (Spain). After January 1984, Aalborg, Alsen and Blue Circle stopped being members, for the reasons explained below.

Ciments Français stated in writing during the investigation on 13 February 1990 (doc. 33126/18135) that it *'resigned from all the committees (in October 1988 and March 1989) constituting ECEC and in particular from those mentioned at 3 and 4 above'* ([187]) (3. WCC, 4. EPC — author's note). The letters of resignation submitted by Ciments Français are as follows: a letter of resignation from the EPC, sent to its chairman on 17 February 1989 (doc. 33126/18216); a letter of resignation from all the ECMEC committees, sent to the chairman of ECEC on 10 March 1989 (doc. 33126/18217); a letter sent on 25 April 1989 to Mr Gac, the ECMEC, in which Ciments Français confirms the resignation from all the ECMEC committees and encloses a cheque as payment for its 1989 subscription (doc. 33126/18198). In its reply to the statement of objections, Annex 2, pages 2 and 3, the ECMEC maintains that the Commission made a mistatke when it claimed that Ciments Français resigned from the WCC by letter dated 25 April 1989, since nothing in the letter points to a resignation from the Committee. Since the letter of 17 February 1989 contains the resignation from the EPC and the letter of 10 March 1989 the resignation from all the ECMEC committees, and since Mr Gac maintains that the ECMEC does not include the WCC, the conclusion must be that Ciments Français did not submit any letter of resignation from the WCC. In its reply to the statement of objections, point 14.3.3, *'Resignation of Ciments Français'*, the company maintains: *'In 1988, Ciments Français considered that, in view of its weak exports, there was no further justification in belonging to the WCC and therefore decided to take no further part in it'* ([188]).

(6) The Commission considers that there is sufficient correlation between the statements cited above for it to conclude that the ECMEC consisted of the three export committees: ECEC, EPC and WCC.

(7) Based on the records of the meetings, the functions and activities of the WCC can be described as follows.

39. Non-transhipment to members' home markets

(1) According to the handwritten undated note from Ciments Français (doc. 33126/4454), the WCC *'is a club: purpose: protection of home markets — rule: each member keeps to its home market and exports its excess production on generally agreed terms'* ([189]).

(2) The object and the rule are confirmed by certain records of WCC meetings. The record of the meeting of 9 May 1985, compiled by Ciments Français, (doc. 33126/2793-2798) states at item 2 *'Relations with Aalborg/BC and ABZ/Japan'* that the decision was taken not to invite Aalborg to the meetings any more and *'They point out that respecting 'home markets' is*

([187]) In the original French: *'a démissionné de tous les comités (octobre 1988 et mars 1989) constituant ECEC et en particulier de ceux mentionnés aux 3 et 4 ci-dessus'*

([188]) In the original French: *'La démission de Ciments Français' 'En 1988, Ciments Français a donc estimé qu'eu égard à la faiblesse de ses exportations, une appartenance au WCC ne se trouvait plus être justifiée, et a donc décidé de ne plus y participer'*.

([189]) In the original French: *'est un Club: objet: protection des marchés intérieurs — regle: chacun respecte ses marchés intérieurs et exporte ses surproductions dans un consensus général'*.

the sine qua non for membership of the WCC or WCPC' ([190]).

(3) Following the meeting on 3 October 1985, the representative of CBR indulged in a few reflections and concluded (doc. 33126/9958-9961):

'5. General conclusions

5.1 The WCC, in its current form, does not contribute (or no longer contributes) to maintaining the yield from sales.

5.2 To achieve this, two exporters such as Asland and Aalborg should sit on the committee. All the current members are opposed to Aalborg rejoining, since they no longer have any confidence in the current directors at Dansk [Aalborg].

5.3 The current members abide amongst themselves by a certain set of rules, but for how much longer? (example of Tunisia)

5.4 Most white-cement manufacturers have an easy life within their national borders (Italcementi, Ciments Français, Dyckerhoff. The latter are being attacked a little by Aalborg through Alsen).

5.5 Respecting the home market does not suit us, because de facto it limits our natural market in the Benelux.

5.6 We must therefore rely only on ourselves and be able to produce a white cement which is competitive on quality at least cost. We believe we are more competitive than most of our colleagues. We must catch Aalborg up' ([191]).

(4) The record of the meeting of 2 October 1986, compiled by CBR, (doc. 33126/9874-9875) — point 1. Aalborg — reports the conversation between Ciments Français and Aalborg: (Aalborg) *'You still don't want us in the WCC';* (Ciments Français) *'You know very well why you are no longer in the WCC. We are all affected in proportion to the exports we made. There was a gentlemen's agreement (to) respect home market'* ([192]). Italcementi's record of the same meeting (doc. 33126/2737-2739), having pointed out that Aalborg was also excluded from the WCPC because this is what the other members (but not Italcementi) wanted, maintains that, during the talks with Aalborg, Mr Leboeuf seized the opportunity to draw attention to respect for home markets ([193]).

(5) Specific cases illustrate how this rule of not transhipping to home markets was applied.

(a) *Aalborg*

(6) At the meeting on 13 September 1983 (doc. 33126/2855-2858), the nine members present observed that Aalborg had increased its production capacity to 250 000 tonnes, and possibly to 300 000 tonnes, compared with domestic demand of 20 000 tonnes, and that, contrary to the commitments made at the Cembureau meeting on 31 May 1983, it had slashed its prices, forcing Valenciana in turn to reduce its prices. In the circumstances, Valenciana announced that it no longer intended to participate in WCC meetings.

(7) In January 1984 (doc. 33126/2850-2852), Italcementi, Dyckerhoff, Lafarge, Ciments Français and CBR met in restricted committee and, having observed that cooperation with Aalborg was no longer possible, decided to suspend the old WCC and set up a new one. Valenciana, which was absent, received a telex on 10 January 1984 (doc. 33126/2853) saying that the five participants at the meeting hoped that Valenciana's absence did not mean that it was withdrawing from the WCC. By telex message dated 17 January 1984 (doc. 33126/2854), Valenciana confirmed it was willing to continue to participate with the five companies mentioned above.

(8) On 13 March 1984, the new WCC, comprising Italcementi, Dyckerhoff, Lafarge, Ciments Français, CBR and Valenciana, confirmed the decision temporarily to exclude Aalborg from the WCC (doc. 33126/2842-2844); a letter was sent to the company on

([190]) In the original French: *'Ils rappellent que le respect des 'home markets' est la condition sine qua non aux participations au WCC ou au WCPC'.*

([191]) In the original French:
'5. Conclusions générales
5.1 Le WCC, dans sa forme actuelle, ne contribue pas (ou plus) à préserver les rendements des ventes.
5.2 Pour y arriver, deux exportateurs comme Asland et Aalborg devraient y siéger. Tous les membres actuels sont opposés à la réintégration d'Aalborg, car la Direction actuelle de la Dansk (Aalborg, n.d.r.) n'a plus leur confiance.
5.3 Les membres actuels respectent entre eux une certaine règle du jeu, mais jusques à quand? (exemple de la Tunisie)
5.5 La plupart des cimentiers blancs vivent confortablement à l'intérieur de leurs frontières (Italcementi, Ciments Français, Dyckerhoff. Ces derniers sont un peu attaqués par Aalborg, via Alsen).
5.5 Ce respect du home market ne nous convient pas bien, car il limite de fait notre marché naturel au Benelux.
5.6 Nous devons donc nous compter que sur nous-mêmes et être capables de produire un ciment blanc compétitif au point de vue qualité au meilleur coût. Nous avons le sentiment d'être plus compétitifs que la plupart de nos collègues. Nous devons rattraper Aalborg.'

([192]) In the original French: *(Aalborg) 'Vous ne voulez toujours pas de nous au WCC'; (Ciments Français) 'Vous connaissez bien pour quelles raisons vous n'êtes plus dans le WCC. Nous sommes tous touchés proportionnellement aux exportations que nous faisions. Il y avait un gentlemen's agreement (to) respect home market'.*

([193]) In the original Italian: *'L'occasione e stata opportuna a M. Leboeuf per far cenno al rispetto dei mercati nazionali'.*

19 March 1984 informing it of the suspension (doc. 33126/9977).

(9) At the meeting on 21 May 1984 (doc. 33126/2830-2832), *'a survey shows that none of the members of the restricted WCC wants to have Aalborg back in the committee'* ([194]), a decision confirmed at the meeting on 2 October 1984 (doc. 33126/2815-2817). After this meeting, what at first seemed like a suspension started to look like an expulsion, since it turned out that Aalborg had sold 2 000 tonnes of white cement in Germany, and it was reported on 9 May 1985 (doc. 33126/2791-2792) that Aalborg had sold 3 000 tonnes of white cement in Belgium and was preparing to sell white cement in 5 kg bags in Europe. Accordingly, the members of the WCC, having observed that Aalborg had not replied at all to the letter sent to it on 19 March 1984, decided unanimously not to invite Aalborg any more either to the meetings of the WCC or to those of WCPC, since *'they point out that respecting home markets is the sine qua non for participating in the WCC or the WCPC'* ([195]).

(10) Aalborg contacted some members of the WCC, but the reaction was negative (record of the meeting of 22 January 1986, doc. 33126/9942-9945).

(11) At the meeting on 19/20 June 1986 (doc. 33126/9914-9920), as part of the review of the downturn in overseas exports, it was feared that Aalborg, in view of its attitude, might attack all members' markets as *'is already the case in Belgium, Holland and northern Germany. Dyckerhoff suggested that the problem should be examined with CBR but, to our great surprise, the other members of the WCC thought that the problem concerned them as well. The recent problems created by Greek cement on the grey market probably have something to do with this attitude; it is therefore agreed that a working session of the WCC be held in Brussels on 24 July on the subject: 'What retaliatory measures can be taken to counter a possible attack by Aalborg on our home markets?' The measures may also apply to grey cement. The majority of members present do not want Valenciana* [absent from the meeting] *to be included'* ([196]).

(12) On 24 July 1986 (doc. 33126/2751-2755 and 9876-9883), the five members present — Valencia was not invited — examined a whole set of retaliatory measures and tackled, *inter alia,* the following problems:

— Was the threat from Aalborg genuine? Yes, said Dyckerhoff, which *'reports having lost two customers (a potential of 4 000 t) who had been 'visited' by Aalborg and had bowed to the Danes' arguments (price, ASTM type V cement). In return, they* [i.e. Dyckerhoff] *visited Ole Stevens Larsen and threatened him with retaliation on the Danish grey cement market. Dyckerhoff believes that this is the only language which the Danes understand'* ([197]).

— Had the WCC the right to discuss grey cement? Yes, replied Lafarge: *'One must not hide one's face. It's difficult to discuss white cement without taking grey into account. If CBR or Dyckerhoff are attacked by Aalborg, they may defend themselves by in turn slashing prices on neighbouring markets and everybody would become involved. Aalborg is the enemy.*

As Mr Leboeuf had no mandate to discuss grey cement, the subject will not be discussed today, but each member will reconsult its board to find out whether a scenario based on retaliation in the grey market can be worked out and studied, if not applied' ([198]).

([194]) In the original French: *'un tour de table révèle que personne parmi les membres du WCC restreint ne désire reprendre Aalborg dans le comité'.*

([195]) In the original French: *'ils rappellent que le respect des 'home markets' est la condition sine qua non aux participations au WCC ou au WCPC'.*

([196]) In the original French: *'c'est déjà le cas en Belgique, en Hollande et dans le Nord de l'Allemagne. Dyckerhoff a suggéré d'examiner ce problème avec CBR, mais à notre grande surprise, les autres membres du WCC ont considéré que ce problème les concernait également. Les problèmes récents posés par le ciment grec sur le marché du gris ne sont sans doute pas étrangers à cette attitude; Il est donc convenu d'organiser à Bruxelles le 24 juillet une séance de travail WCC avec pour thème: 'Quels sont les moyens de rétorsion à mettre en oeuvre pour contrer une éventuelle attaque de Aalborg sur nos marchés intérieurs?' Les actions peuvent couvrir le ciment gris également. La majorité des membres présents ne souhaitent pas que la Valenciana (absente excusée, n.d.r.) soit comprise'.*

([197]) In the original French: *'signale avoir perdu deux clients (potentiel de 4.000 T) 'visités' par Aalborg et qui ont succombé face aux arguments des Danois (prix, ciment ASTM type V). Suite à cela, ils (Dyckerhoff, n.d.r.) ont rendu visite à Ole Stevens Larsen et l'ont menacé de représailles en ciment gris sur le marché danois. Dyckerhoff estime que c'est le seul langage que les Danois comprennent'.*

([198]) In the original French: *'Il ne faut pas se voiler la face. On peut difficilement évoquer le blanc sans se soucier du gris. Si CBR ou Dyckerhoff sont attaqués par Aalborg, ils risquent de se défendre en cassant à leur tour les prix sur les marchés voisins et tout le monde sera affecté. Aalborg est bien l'ennemi.*
M. Leboeuf n'étant pas mandaté pour parler de ciment gris, on ne parlera pas de ce sujet aujourd'hui, mais chaque membre reconsultera sa direction pour savoir si un scénario basé sur une riposte en gris peut être échafaudé et étudié, sinon appliqué.'

(13) At the meeting on 2 October 1986 (doc. 33126/9874-9875 and 2737-2739), the five members, in the absence of Valenciana, decided to respond individually and not collectively to Aalborg's attacks (*'each member to react in his own bailiwick'*) and even to reject Aalborg's request to be admitted to the WCPC, since, as Ciments Français reminded Aalborg, one must respect the *'gentlemen's agreement (to) respect home market'*.

(b) *Blue Circle and Alsen*

(14) Blue Circle and Alsen were also first suspended and then excluded from membership of the WCC and the WCPC, because Alsen had stopped producing white cement and Blue Circle no longer produced for export and because both bought from Aalborg in order to supply their foreign customers ([199]) (see records of the meetings of 13 September 1983, January 1984, 21 May 1984 and letters dated 19 March 1984, doc. 33126/2855-2858, 2850-2852, 2830-2832, 9975-9976).

(15) Blue Circle's request of 5 July 1985 to be readmitted to the club was rejected (doc. 33126/2785, 2781-2784). On 19 June 1986, Blue Circle's request was re-examined and, as there was no majority in favour, the decision was negative. *'N.B. 1) CBR referred to its contacts with Blue Circle (position regarding imports from Aalborg into Scotland). 2) Ciments Français thinks that Aalborg is supplying or has supplied white clinker to Blue Circle'* ([200]) (doc. 33126/9914-9920).

The same fate was reserved for Blue Circle's request of 11 November 1986 (doc. 33126/2735), to which it was replied by letter dated 19 January 1987 (doc. 33126/9907-9908) that the situation remained unchanged since Blue Circle's exports were still small.

(c) *Blue Circle-Lafarge*

(16) The record of the WCC meeting on 2 October 1984, compiled by Italcementi (doc. 33126/2815-2817), mentions on page 2, among the information recorded, the following: *'Mr Wiggins, a former secretary of the WCC, asked Mr Balbo of Lafarge about supplies of white cement for the United Kingdom. Mr Balbo replied that he could have considered the request only with Blue Circle's prior agreement'* ([201]).

(d) *Italcementi-Dyckerhoff*

(17) On 23 December 1987, Italcementi's representative on the WCC prepared for his sales director a note entitled *'Reflections on the white cement markets'* (doc. 33126/3370-3375). The note analyses, on pages 5 and 6, the future prospects for each market and, with regard to the German market, comments: *'— in Germany, where we are committed not to disturb Dyckerhoff directly, but where Sebino* [another small Italian white cement producer] *could sell part of its production with our support, with quantitative compensations for us in Austria and Switzerland'* ([202]).

40. Cooperation between members

(1) It emerges from the minutes of the meetings that cooperation within the WCC covers all areas.

(a) *Production capacity and output*

(2) At regular intervals (doc. 33126/2855, 2843, 2833-2836, 2798, 2779, 3376), the WCC members analyse installed and future production capacity and actual output per member producer and per country: the data are compared with the absorption possibilities of the respective home markets and, subtracting the latter from the former, export availabilities are worked out.

When a member plans to increase its production capacity, it immediately informs the other members. Thus, Aalborg informed the WCC of the increase in its production capacity from 100 000 t/yr to 250 000 t/yr and, possibly, 300 000 t/yr (record of the meeting on 13 September 1983, doc. 33126/2855), and Ciments Français informed the other members that *'it will increase its production capacity by 20 000 t/yr by altering the existing kiln. The increased production is intended primarily to cater for the increase in the*

([199]) In the original Italian (Italcementi's note of 27 January 1984, doc. 33126/2850-2852): *'Conseguentemente, diventa anche improponibile la collaborazione con l'inglese Blue Circle, che sembra aver ripreso la produzione di clinker per cemento bianco ma solo per il mercato interno, e la Alsen Breitenburg, che ha cessato la produzione di clinker sino a tempo indeterminato, dato che queste due società si avvarrebbero del prodotto della Aalborg per forniture a loro clienti esteri' Note de Italcementi du 27.1.1984 (doc. 33126/2850-2852).*

([200]) In the original French: *'NB: 1) CBR a fait allusion a ses contacts avec Blue Circle (position vis-à-vis des importations de Aalborg en Ecosse). 2) Ciments Français pense que Aalborg fournit ou a fourni du clinker blanc à Blue Circle'.*

([201]) In the original Italian: *'Mr. Wiggins, ex-segretario del WCC, ha interpellato M. Balbo della Lafarge per forniture di cemento bianco in Inghilterra. M. Balbo ha risposto che avrebbe potuto prendere in considerazione la richiesa solo previ accordi con la Blue Circle'.*

([202]) In the original Italian: *'— in Germania dove siamo impegnati a non disturbare direttamente la Dyckerhoff, ma dove la Sebino potrebbe collocare con il nostro appoggio, parte della propria produzione, con compensi quantitativi a noi sia in Austria che in Svizzera'.*

consumption of white cement in France' ([203]) (record of the meeting on 17 February 1987, doc. 33126/9990).

(b) *Sales on home markets*

(3) During the meetings, WCC members exchange data on the quantities they have sold and/or the percentage change in their sales on their respective home markets for the period prior to the meeting and on forecast sales for the following period (doc. 33126/2882, 2859, 2863, 2851, 9943-9944, 2771, 2756, 2769, 9874, 2739, 9837, 3370, 2726).

(c) *Export sales*

(4) At each meeting, WCC members exchange quantitative data on their exports to and sales forecasts for third countries. They also inform each other of the respective sales contracts concluded in the importing countries and the quantities available per producer for export (see all the records and their annexes).

(d) *Export prices*

(5) The prices to be charged in the various export markets are agreed and/or discussed at the meetings (doc. 33126/2877, 2871-2875, 2842-2843, 2826-2829, 2834, 2815, 9969, 9962-9964, 2764-2767).

It can happen that the agreed prices are not repected and that there is friction between members: *'3. Instance of Tunisia (supply of 50 000 tonnes). Mr Bouzol of Lafarge created a stir in this respect. He mildly reproached CBR for having slightly underquoted the 'agreed' price and sharply rebuked Valenciana for having 'slashed' its prices. Valenciana claims to have quoted f.o.b. to an intermediary, at the normal price. It claims not to know how the intermediary assessed the transport costs and negotiated the barter conditions. Lafarge effectively accepted the principle of compensation. CBR points out that this comes to the same thing and that it's a dangerous practice. Lafarge is attacking Valenciana in order to defend itself more successfully.*

Comments. In my view, this type of practice (i.e. compensation) could become widespread. This is an indirect way of granting discounts. Lafarge has not been playing the game properly. It claims it has been forced to act in this way through its traditional links with Tunisia' ([204]) (comments by CBR following the WCC meeting on 3 October 1985, doc. 33126/9958-9961).

(e) *Prices on home markets*

(6) At regular intervals, the members exchange their current respective prices for white and grey cement on each home market (doc. 33126/2884, 2877-2879, 2859, 2862, 2842, 2849, 2833, 2837, 2815, 2825, 2791, 2797, 2800, 2768, 3377, 2725, 2721).

These exchanges of prices on the respective markets can also cover changes which are still in the pipeline: thus, at the meeting on 19 May 1983 (doc. 33126/2862), the representatives of the French companies communicated the prices that would apply from 1 June 1983, and at the meeting on 9 May 1985 (doc. 33126/2797) the representatives of the French, Belgian and Italian companies communicated the prices that would apply from 1 June 1985.

41. **Fate of the WCC**

The record of the meeting on 26 May 1988 (doc.33126/9885-9887) laid down the following timetable for the subsequent meetings:

'— Dublin: 22 September 1988, morning.

— Italy: Sicily or Portofino: 25 May 1989 (Italcementi)'.

The Commission is unable to say whether these meetings took place or whether other meetings were held subsequently. Some undertakings have maintained in a very general way that, since then (with no indication of the date to which 'then' refers), the WCC has not met. No record of any dissolution was produced either during the investigations or subsequently.

([203]) In the original French: *'elle augmentera sa capacité de production de 20.000 T/an par l'aménagement du four existant. Cette augmentation de production est principalement destinée à faire face à l'augmentation de la consommation de ciment blanc en France'.*

([204]) In the original French: *'3. Cas particulier de la Tunisie (offre de 50.000 tonnes). M. Bouzol de Lafarge a fait un éclat à ce sujet. Il a modérément reproché à CBR d'avoir légèrement coté en dessous du prix 'convenu' mais violemment à Valenciana d'avoir 'dégringolé' les prix. Valenciana prétend avoir coté FOB à un intermédiaire, à un prix normal. Valenciana prétend ne pas savoir comment cet intermédiaire a évalué les coûts de transport et négocié les conditions de troc. Lafarge a effectivement accepté le principe de la compensation. CBR fait remarquer que ceci revient au même et que c'est une pratique dangereuse. En fait, Lafarge attaque Valenciana pour mieux se défendre.*
Commentaires. j'ai le sentiment que ce type de pratique (= la compensation) pourrait se généraliser. De cette façon, des ristournes sur les prix sont accordées de façon détournée. Lafarge n'a pas joué le jeu franchement. Elle prétend y avoir été forcée de par ses relations traditionnelles avec la Tunisie.'

PART II

LEGAL ASSESSMENT

SECTION I

ARTICLE 85(1)

42. Article 85(1) of the EC Treaty prohibits as incompatible with the common market all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which directly or indirectly fix purchase or selling prices or any other trading conditions, limit or control production, markets, technical development, or investment, and share markets or sources of supply.

43. The agreements and concerted practices described below are covered by the prohibition laid down in Article 85(1), and the undertakings concerned are undertakings within the meaning of that Article.

44. **Applicability of Article 85 to associations of undertakings**

(1) This problem will recur a number of times throughout this section; it is therefore useful to establish at the outset the essential principles that apply to situations in which associations participate in behaviour prohibited under Article 85.

(2) Cembureau argues that Article 85 cannot apply to it, since it has no commercial activity; in addition, with a few exceptions, its members are not undertakings, but national trade associations, which, similarly, do not have any commercial or production activity.

Other associations (see replies to the statement of objections by SFIC p. 97, FIC p. 44, p. 73 and ATIC p. 42, and the record of the hearing held on 3 March 1993) argue that, as associations, they cannot enter into commitments having commercial repercussions, since commercial activity is not one of their institutional objects.

They also argue that the Commission could charge them with certain types of conduct only if it demonstrated that the association was able, under its articles or on the basis of the authorization of its members, to entrust to a delegate of the industry the task of discussing restrictions of competition and drawing from such discussions conclusions that might influence the commercial conduct of its members.

The Court of Justice has consistently held that the competition rules also apply to associations of undertakings. In Case 67/63, *Sorema* v *High Authority* ([205]), the Court ruled that an agreement between two associations of undertakings fell within the scope of application of Article 65 of the ECSC Treaty, which, as far as the concepts of agreements, decisions by associations of undertakings and concerted practices are concerned, is drafted in the same terms as Article 85 of the EC Treaty. With regard to the EC Treaty, the Court of First Instance recently held, in paragraphs 76 and 86 in Joined Cases T-39 and T-40/92, that Article 85(1) applies to associations of undertakings and that, where an association has entered into a commitment, it is sufficient for the agreements to be carried out by its members. The Court has also held in a number of judgments ([206]) that Article 85(1) applies to associations of undertakings where their activity or that of the undertakings associated in them is aimed at producing effects which are prohibited under that Article.

It is therefore not necessary for the associations to have a commercial activity of their own for Article 85(1) to be applicable to them; it is sufficient that the prohibited effects stem from the activity of the members of the associations. At the same time, the associations act in the interests of their members and represent them vis-à-vis other institutions, whether public or private. What has just been said regarding national associations also applies to Cembureau, which is an association of associations of undertakings and of undertakings, since Cembureau's activity can ultimately be of benefit only to the cement undertakings, which are not, in most cases, direct members of Cembureau for practical reasons to do with their numbers, but are nevertheless associated with Cembureau indirectly through their national associations.

([205]) [1964] ECR 151.

([206]) Judgment of the Court of First Instance of 23 February 1994, Joined Cases T-39 and T-40/92, *Groupement des Cartes Bancaires* v *Commission*, [1994] ECR II-49 (bank cards); Case 71/74, *Frubo* v *Commission*, [1975] ECR 563; Joined Cases 209 to 215 and 218/78, *Van Landewyck* v *Commission*, [1980] ECR 3125; Joined Cases 96 to 102, 104, 105, 108 and 110/82, *IAZ* v *Commission*, [1983] ECR 3369; Case 123/83, BNIC v Clair, [1985] ECR 391.

Accepting Cembureau's argument would mean, as Advocate General Sir Gordon Slynn stated in his opinion in Case 123/83, giving undertakings scope *'to sidestep the application of the competition rules (. . .) while an association of associations of undertakings may be different in form from an association of undertakings, there is no difference in substance and no reason to exclude the application of Article 85'* ([207]).

(3) The claim made by certain associations (see the replies to the statement of objections by FIC p. 44 and SFIC p. 63) that the Commission can charge them with reprehensible conduct only if it can demonstrate that such conduct was in accordance with the articles or, at least, that the bodies provided for in the articles had delegated to a person the power to discuss competition problems with others cannot be accepted, firstly because the articles give such a vague definition of the objects of the association that it is impossible to know what the limits to its activity are. Secondly, whatever the articles might say, it is a fact that the associations were represented at the various meetings: they appointed to Cembureau the Head Delegates, the members of the Executive Committee and the various other committees, and the persons appointed were not junior-ranking employees, but high-level staff of the member undertakings and in some instances of the associations.

The argument put forward by the associations amounts to denying any effect to the reference in Article 85(1) to associations of undertakings. By extending the prohibition laid down in Article 85(1) to associations, the authors of the Treaty wished to take account of the possible *de facto* participation of associations in agreements and/or concerted practices having as their object or effect the prevention, restriction or distortion of competition. Obviously, such an unlawful object would not appear in the articles of an association; none the less, the authors of the Treaty believed it necessary to include associations amongst the entities covered by Article 85.

In support of its argument, FIC stated at the hearing (see the minutes of the session held on 3 March 1993, p. 10) that its administrative board had received only one record of the meetings of the Head Delegates, namely that of the meeting held on 7 November 1984, and the document in question was a memo addressed by Mr Van Hove, the president of FIC, to the members of the administrative board of that association, ending with the assurance that no internal EC problem had been dealt with.

The Commission would point out firstly that Mr Van Hove's note, to which FIC refers (see doc. 33126/2063-2069 and 2436-2447), does indeed contain a statement at the foot of the page to the effect that *'no internal EEC problem was dealt with or raised'*, but that it also contains, in point 1 of the annexed document, comments on the market in West Germany: one therefore wonders what the author might consider an 'internal' problem to be, so much does the content of the document diverge from the statement included on the cover page. The Commission also notes that the FIC's administrative board discussed the meetings of the Head Delegates and of other Cembureau bodies on at least one other occasion. The minutes of the FIC administrative board meeting No 88 of 23 March 1983 (doc. 33126/2035-2043) state: point *'7 Cembureau — 7.1 preparatory meeting for the meeting of head delegates on 14.1.1983: information noted — 7.2 general assembly 1983 — Kerkyra (Corfu), 30.5-1.6.83: composition of the Belgian delegation (. . .)'; point '18 Liaison Committee: cement market: — cement imports from non-member countries in the EEC; — imports exports of cement between EEC countries. Information noted'*. This means, on the one hand, that the affirmations of FIC are contradicted by its own documents and, on the other, that the FIC's minutes do not always reproduce the real content of the discussions held within the administrative board.

(4) A number of associations and undertakings raised the problem of the representation of an association on certain Cembureau bodies or committees or on certain bodies of the various export committees, such as the Steering Committees, or their absence from certain meetings. Where an association comprises several members, it is quite natural that some bodies, such as the General Assembly, should include all the members and that others should include a more restricted number of persons elected by the General Assembly. These differences in the composition of the bodies does not necessarily mean that the decisions and/or agreements reached within a restricted body do not apply to the members not represented on it. The important point is that the members of such bodies are designated by all the members of the association and that the undertakings consider themselves all concerned by the results of discussions within such bodies. Such decisions and/or agreements apply to all the members of the association.

The fact that members who were entitled to attend the meetings of the bodies did not do so does not mean that the decisions and/or agreements reached within such bodies do not apply to or do not have to be applied by such absent members.

([207]) *Bureau National Interprofessionnel du Cognac* v *Clair*, [1985] ECR 391, at p. 396.

As a general rule, belonging to an association means accepting its rules and conduct and implies awareness that the association and/or organization acts through the direct or indirect contribution of each member and relies on each member's consent and support. Unless dissent is expressed, this applies not only to the activities provided for in the articles of the association, but also to its *de facto* activities.

(5) A final general remark should be made on the charge that the statement of objections is imprecise in that it refers in some instances to infringements committed by the members of Cembureau, most of which are associations, while in others it refers to 'European producers'. This charge is without foundation for two reasons: first, because each party involved in the infringement is identified by name in the legal assessment; second, because, although the statement of objections does sometimes use the term 'European cement producers', it does so to indicate that such producers are the actual beneficiaries of the agreements and restrictive practices. Furthermore, it could not be otherwise, since, as stated earlier, the associations represent the interests of their members, who are cement producers, and if the associations enter into commitments, they do so in the interests of their members and in the name of their members and not in their own interest: in point of fact, the cement producers are the real actors, acting through their trade associations.

CHAPTER 8

The agreements and practices described in Chapters 3 and 4 [208]

45. **Non-transhipment to domestic markets**

(1) At the meeting of Head Delegates held on 14 January 1983, Cembureau and its members reached an agreement on non-transhipment to domestic markets and on the regulation of sales from one country to another, backed up by other agreements relating to the exchange of information, with practical implementation being left to the parties directly concerned through bilateral or multilateral meetings and contacts encouraged by the Cembureau bodies.

The purpose and content of the agreement are evident from the letter convening the meeting held on 14 January 1983 and from the chairman's draft introductory statement (see paragraphs 2 and 5 of recital 19).

(2) The content of the agreement was confirmed at the meeting of Head Delegates held on 19 March 1984 (see point (b) of recital 19): the notes taken at the meeting show that Cembureau and its members re-examined jointly the tensions created by cross-frontier flows, that they pursued the objective of reducing trade in cement between Cembureau member countries and that this objective was achieved. The notes state (see paragraph 10 of recital 19) that *'the pressure from inter-member trade had slackened considerably through improved bilateral contacts. Exports had tended to shrink but there was still a threat from outsiders'*.

The content of the agreement was again confirmed at the meeting of Head Delegates held on 7 November 1984 (see point (c) and in particular paragraph 14 of recital 19), at which the channelling of Greek and Spanish production surpluses was endorsed by Cembureau and its members so as to avoid destabilizing European markets.

(3) The existence of the agreement and its content are confirmed by internal Blue Circle memos (see paragraphs 2 and 3 of recital 18), one dated 1 December 1983 and the other undated, which describe the agreement as the 'Cembureau Agreement or Cembureau principle of not transhipping to internal European markets'. Blue Circle has sought to discredit these memos (see paragraph 7 of recital 18), but the Commission takes the view that they are valid evidence because of Blue Circle's role within Cembureau and Mr Reiss's role within Blue Circle.

With regard to Blue Circle's role within Cembureau, it is sufficient to point out that, first, from 1975 to 1985, Sir J. Milne, the chairman of Blue Circle, and subsequently, from 1985, Dr Gordon Marshall, the deputy managing director of Blue Circle, acted as Head Delegate for the United Kingdom cement industry (see paragraph 7 of recital 18).

As regards the role of Mr Reiss, the author of the memos, the Commission would point out that certain notes and documents in Blue Circle's possession indicate that, at the time the memos were drafted, Mr Reiss was working closely with the BCC review group and had already built up a number of years of experience in European relations on behalf of Blue Circle, including participation in the international cement producers' organizations (see Chapter 6 B — EPC).

[208] Logically, the assessment of the facts set out in Chapter 5 should be included in this Chapter, and reference will also be made from time to time to the facts concerning the Cembureau Task Force or ETF. It is solely for practical rather than for logical and legal reasons that the assessment of the facts dealt with in Chapter 5 will be looked at in a separate chapter.

This is evident from the following documents in particular: it is evident from the internal memo of 9 April 1981 (doc. 33126/11339) to Dr Gordon Marshall stating that Mr Reiss was to represent Blue Circle at the EPC meeting on 7 May 1981, and the EPC minutes (see doc. 33126/11417-11440, 11442-11455, 13845-13850, 14035-14042, 14062-14085, 14094-14097, 14148-14154 and 14401-14418) show that Mr Reiss was present at the EPC meetings as from that date; a handwritten note at the top of the memo of 1 December 1983 shows that the memo was apparently sent to Mr Shepherd, a member of the BCC review group; the minutes of the EPC meeting held on 18 November 1984 (doc. 33126/14062) show that Mr Reiss had direct dealings with Dr Gordon Marshall.

Blue Circle also claims that the term 'Cembureau agreement or Cembureau principle' was merely *'shorthand' to refer to the economic facts of life that naturally limit transhipment of cement between producer countries'* (see paragraph 7 of recital 18). However, this explanation has no foundation, since the economic facts of life did not exclude such cross-frontier trade, and the meetings of the Head Delegates took place precisely in order to curb them, to prevent *'cement transfers between member countries'* from having *'harmful consequences'* for the European cement industry (see letter convening the meeting on 14 January 1983, paragraph 2 of recital 19).

(4) Cembureau itself, while denying the existence of the agreement, stating that there was no Cembureau agreement or Cembureau principle of not transhipping to internal European markets, ended up by admitting to its existence indirectly by stating (see paragraph 4 of recital 18) that what was involved was *'good neighbour rules encouraged by Cembureau'* or *'a type of conduct which is desired by members but does not itself contain any constraint or a fortiori any penalty'* or again *'established practices and ethics that have gradually evolved from contact with businesses and through economic development in the different countries'*. Through these periphrases, Cembureau acknowledges the existence of the agreement on non-transhipment and on regulation of sales, an agreement which moreover emerges from the documents in its possession.

(5) The Commission considers that the rule on non-transhipment to domestic markets and the regulation of sales from one country to another constitute an agreement between undertakings directly or through the intermediary of their associations, in breach of Article 85(1), through the concurrence of wills that the domestic markets of the others should be respected and cement transfers from one country to another regulated and, thus, that the commercial freedom of the undertakings should be restricted. The fact that there was a concurrence of wills is evident from the purpose, discussions and decisions of the meetings of the Head Delegates, particularly those held on 14 January 1983 and 19 March 1983, and from the implementation of the agreement by the undertakings to which this Decision is addressed. The agreement is binding on all the members of Cembureau and hence on all the cement industry represented in Cembureau, since the agreement was acceded to by the Head Delegates, who are ranked on a par with *'government representatives on international bodies'* (. . .) and are appointed *'in order to cast votes in the General Assembly'* (see paragraph 4 of recital 15).

(6) For an agreement to exist, it is not necessary, as Cembureau seems to claim, that provision should be made for constraints or penalties; an agreement exists once the parties agree on *'good neighbour rules'* or *'established practices and ethics'* or *'certain rules of the game which it is in the interests of all of us to follow'* ([209]).

The statement by Mr Kalogeropoulos, recorded in the minutes of the Heracles board meeting held on 15 June 1986 (see paragraph 5 of recital 18) suggests that the agreement not to tranship to internal markets had existed for some 30 years. Since it does not have any other evidence than this statement to indicate that the conduct in question had lasted as long as this, the Commission considers that the agreement took effect on 14 January 1983, the date of the meeting at which *'certain rules of the game which it is in the interests of all of us to follow'*, were discussed (see paragraph 5 of recital 19), rules which were confirmed at the following meetings of the Head Delegates. The Commission does not have any factual evidence to determine the date on which the infringement ended; nor is it indeed in a position to establish that the undertakings in question have put an end to it.

(7) The parties argue that, even if the Commission were to demonstrate that an agreement existed, it is not possible to charge associations of undertakings and an association of associations of undertakings with any market conduct whatsoever pursuant to such agreement. The Commission believes it has given its answer on this in recital 44.

([209]) Joined Cases 209 to 215 and 218/78, *Van Landewyck* v *Commission* [1980] ECR 3125, paras. 85 and 86; Case 277/87, *Sandoz* v *Commission,* [1990] ECR I-45, paras. 8 to 13.

(8) Some undertakings also argue that the Commission has not proven sufficiently that there was concurrence of wills on the part of the undertakings, since it has not identified any document or act showing such concurrence of will. In so far as this charge relates to the sufficiency of the evidence which it has brought in support of its case, the Commission considers that the evidence which has just been set out, and to which the attention of the undertakings was drawn in the statement of objections, is on the contrary more than sufficient; it would further point out that it has also replied above to the comments which the undertakings made in this connection in their replies to the statement of objections and at the hearing.

If, however, the point being made by the undertakings must be taken to mean that, in the case in point, no agreement *stricto sensu* is involved, the Commission would state the following.

In the first place, the Commission considers that what is revealed by the documents that have just been examined is an agreement within the meaning of Article 85(1). Such an agreement may be deduced from any evidence that one party has acceded to behaviour proposed by another ([210]).

Such accession does not moreover concern only the undertakings which initiated bilateral discussions pursuant to the meeting held on 14 January 1983. What was involved was general instructions from the bodies of the association representing the European industry to all its members, with the results of such instructions being subsequently communicated to all such members.

It was inherent in the proposal made at the meeting held on 14 January 1983 that action should be taken only by those undertakings involved in a 'hot spot', i.e. by non-compliance with the home market principle, with such sources of friction being dealt with in bilateral discussions. This proposal was acted on, as the notes on the meeting held on 19 March 1984 attest.

Both the proposal and the results of its implementation were announced in the presence of all the members of Cembureau and not only to those involved in some 'hot spot' or other. It is therefore immaterial whether a given undertaking did or did not, during the period in question, take any concrete action pursuant to the instructions given on 14 January 1983. Both those which did take action and those which did not acceded to the agreement (see recitals 18 and 19).

In the second place, even supposing that the conduct in question should properly be termed a 'concerted practice', this would not be sufficient to shield it from the application of Article 85(1), which prohibits both agreements and concerted practices having as their object or effect the prevention, restriction or distortion of competition within the common market.

An agreement or concerted practice which has as its object or effect non-transhipment to the home markets of the Member States and the regulation of sales to the markets of the other Member States clearly falls within such category, being an example of a type of conduct (market-sharing) expressly referred to in Article 85(1).

The concepts of agreement and concerted practice are not mutually exclusive: nor indeed is there any rigid dividing line between the two ([211]).

(9) The object of the agreement in question is non-transhipment to home markets and the regulation of sales from one country to another, i.e. market-sharing.

(10) The parties to the agreement on non-transhipment to home markets and the regulation of sales from one country to another are: Cembureau, FIC, Aalborg, SFIC, BDZ, the Association of the Greek Cement Industry, Irish Cement, Italcementi, Unicem, Cementir, Ciments Luxembourgeois, VNC, ATIC, Oficemen and BCA. The following also participated indirectly in the agreement, through their participation in the various arrangements and measures agreed on to supplement the general agreement and/or assist in its implementation: Holderbank, Aker, EUROC, Alsen, Nordcement, Dyckerhoff, Heidelberger, CBR, Asland, Hispacement, Hornos Ibéricos, Uniland, Valenciana, Cedest, Ciments Français, Lafarge, Vicat, Halkis, Heracles, Titan, Buzzi, ENCI, Cimpor, Secil, Blue Circle, Castle and Rugby.

(11) In the case of Oficemen and ATIC and their member undertakings, the Commission could deem their accession to the agreement to have had effects within the Community as from the date on which they acceded to the agreement; however, it deems the infringement

([210]) See, *inter alia*, Case 277/87, *Sandoz* v *Commission*, *loc. cit.*, para. 12.

([211]) See the analysis of the concepts of agreement and concerted practice given by Mr Vesterdorf, acting as Advocate General in the polypropylene case, Case T-1/89, *Rhône-Poulenc* v *Commission*, [1991] ECR II-867, and in particular p. II-929 et seq. and p. II-944.

to have occurred as from 1 January 1986, since the participation of the Spanish and Portuguese undertakings did not, according to the Commission's information, produce any significant effects within the Community until after the accession of their countries to the Community. The Commission also deems the infringements to have occurred as from 11 May 1983 in the case of Buzzi, 28 May 1986 in the case of Holderbank and 9 June 1986 in the case of Aker and EUROC.

(12) BCA, which has been a member of Cembureau since 1 June 1988, is also responsible, as its successor, for the conduct of the former Cembureau member, the Cement Makers Federation ([212]). The members of the Cement Makers Federation were members of the Cement and Concrete Association. On 1 June 1988, the Cement Makers Federation was dissolved and its activities together with the representation of the interests of the United Kingdom cement producers were transferred to the Cement and Concrete Association, which, similarly on 1 June 1988, changed its articles and its title to the BCA. There is therefore continuity between the activity of BCA and that of the Cement Makers Federation, and the members of the two associations are identical.

BCA maintains (reply to the statement of objections, p. 38, point 58) that the permanent officers of the Cement Makers Federation were not aware of any agreement not to tranship to home markets and would have had no knowledge of it if it had existed.

The Commission cannot accept this argument. It would refer in this respect to its comments (see paragraph 3 of recital 44) regarding the fact that, whatever the contents of the articles of an association of undertakings, Article 85(1) and Regulation No 17 prohibit associations from engaging *in practice* in the conduct which they prohibit. Furthermore, as regards the facts, the Commission cannot accept that the permanent officers of the Cement Makers Federation did not know of the agreement not to tranship to home markets, since they always appointed the United Kingdom Head Delegate and the other United Kingdom representatives within Cembureau. The Cement Makers Federation represented the United Kingdom within Cembureau as from 1972 (see paragraph 7 of recital 18): anything that went on in the various Cembureau bodies, on which the Cement Makers Federation was represented, must have been known to it.

(13) Unicem stated that none of its representatives ever bore the title of Head Delegate: this does not correspond to the facts, since Mr Nasi of Unicem was at the time of the relevant events, at least until 1988, Head Delegate (see the Cembureau 'Members Directory' of July 1988, p. 56). The fact that he did not attend meetings does not mean that Unicem was not party to the agreement on non-transhipment to home markets and on the regulation of sales from one country to another, first because other Italian Head Delegates were present and represented their country, secondly because the association acts through the contribution of all members present and absent, and lastly because, at the time when Unicem was, with the other Italian producers, suffering the effects of Greek imports, it received the support of the other Cembureau members (see recital 27), thus benefiting from the solidarity inherent in the home market rule.

(14) The three Italian producers argue that Italy could not be involved in the agreement on non-transhipment to home markets, since it did not import or export. This argument is not correct, since Italy is involved in cross-frontier flows to such an extent that the trade between Italy and Switzerland (another Cembureau country) was discussed as a 'hot spot' at the meeting of Head Delegates held on 19 March 1984 (see paragraphs 9 and 10 of recital 19), since Greek exports were the target of Cembureau Task Force measures (see in particular recital 27) and since there are trade flows between Italy and France (see recital 20). At all events, even if it were true that Italy or other countries were not involved in cross-frontier trade, which is not the case, the fact remains that the undertakings of such countries, being members of Cembureau, participated in an agreement whose object was to prevent competition ([213]).

46. **A single and continuous 'agreement'**

(1) The Commission considers that the whole of the arrangements adopted within the framework of Cembureau and the bilateral and/or multilateral meetings and contacts (see recital 45) constituted a 'single and continuous agreement', composed of arrangements that could be regarded as infringements in themselves.

In particular, the Commission considers that this 'single and continuous agreement' may be deduced from the accession of the undertakings in question to the common rule of non-transhipment to home markets that governs and conditions all the other arrange-

([212]) Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, *Suiker Unie and Others* v *Commission*, [1975] ECR 1663, paras. 75 to 87.

([213]) Case T-1/89, *Rhône-Poulenc* v *Commission*, [1991] ECR II — 867, paras. 118 *et seq.*

ments, which were agreed in order to back up the rule and/or assist in its application.

The fact that the dates of the various arrangements may not coincide with one another and/or with the overall rule does not take anything away from the fact that what is involved is a single and continuous infringement, since what is important is the existence of a common rule, for which the implementing or back-up arrangements could be adopted as and when required.

(2) Unicem and Castle (replies to the statement of objections, respectively, pp. 47 *et seq.* and pp. 84 *et seq.*) argue that, in the case in recital, it is not possible to speak of a single and continuous agreement, since the objects and participants are not identical.

In the Commission's view, these two aspects are indeed identical. The objects are identical in all instances, namely the common rule on non-transhipment to home markets, the other arrangements being merely measures to implement or back up that rule. The participants are also identical, since the situation is characterized by the accession of the European cement industry, directly or through the national trade associations, to a common rule and by the implementation of that rule, in the various specific cases, by those most directly involved. In addition, the fact that the situations created by bilateral friction were discussed jointly at the Head Delegates meetings shows that such situations were, in the view of Cembureau and its members, of collective interest.

The fact that different undertakings may play differing roles in the pursuit of the common objective does not mean that there is no identity of participants; on the contrary, it is the very essence of assistance by undertakings in accomplishing a joint plan that there should be different actions and actors which, however, interact to contribute to the common objective pursued.

Where the objective pursued is such that it can be attained by different means or where, from time to time, other actors intervene, this does not prevent the infringement from being described as a single and continuous infringement. Furthermore, Cembureau and its members acknowledged — as from the time when the situations involving bilateral friction were referred for settlement to the meetings — that such situations could *'have harmful consequences for our industry* (see paragraph 2 of recital 19, emphasis added), and that, for such situations, it was necessary to *'identify* [collectively] *possible solutions capable of modifying market developments and to propose, at least in regard to principles, certain rules of the game it is in the interests of all of us to follow'* (see paragraph 5 of recital 19). Cembureau and its members thus acknowledge that the frictions due to inter-member trade are of common interest, because they constitute 'infringements' of the common 'rules of the game'. Such bilateral situations are, thus, a specific manifestation of the general agreement not to tranship to home markets.

It is not necessary in this respect that each bilateral or multilateral situation should have been discussed explicitly at the Cembureau meetings, although such discussion can be demonstrated in the case of some of them. The important point is that the various situations correspond to what was provided for under the general agreement, to which everyone acceded.

It is evident from the Cembureau documents that only those situations which it had obviously not be possible to resolve through direct contacts between the parties concerned were discussed at the meetings. For example, the 'hot spot' between Italy and Switzerland, included in the memorandum to the chairman of the meeting of Head Delegates held on 19 March 1984 (see paragraph 9 of recital 19) does not seem to have been discussed at the meeting because *'the dispute (. . .) was about to be resolved'* (see paragraphs 10 and 11 of recital 19). It follows that the implementation of the general agreement covers not only the situations specifically mentioned in the Cembureau documents, but also those which were apparently resolved through direct contacts between the parties concerned, as in the case of the situations involving France and Italy, and Spain and Portugal.

(3) As regards the infringements committed by the Spanish and Portuguese associations and undertakings under the 'single and continuous agreement', the Commission deems (see paragraph 11 of recital 45) the period covered by the infringements to be that starting on 1 January 1986, the date on which Spain and Portugal joined the Community. This does not mean, however, that the Commission cannot draw on facts and documents prior to that date involving the Spanish and Portuguese associations and undertakings in order to demonstrate the continuity of the infringement.

47. **Price information**

(a) *The exchange of price information at the meetings*

(1) At the meetings of Head Delegates held on 14 January 1983, 30 May 1983 and 19 March 1984 (see recital 16), the price situation in the various Cembureau countries was examined. Such examination was carried out at meetings during which the problem of increases in trade flows between member countries was

discussed and solutions put forward. According to the letter convening the meeting held on 14 January 1983 and the chairman's draft introductory statement (see paragraphs 2 and 5 of recital 19) and the memorandum and session notes of the meeting held on 19 March 1984 (see paragraphs 9 and 10 of recital 19), the purpose of the exchanges was *'to assess the risks entailed by an increase in certain imports coupled with a sharp reduction in certain prices'* (see paragraph 5 of recital 19), to *'highlight potential causes of conflict'* (see paragraph 10 of recital 19) and *'gradually to reduce'* the price differentials so as to remove any temptation to export (see paragraph 9 of recital 19).

(2) Through the exchanges of price information, Cembureau and its members were aiming to achieve another objective, namely the introduction of fair competition rules amongst themselves for inter-member *and external* exports (see recital 17).

The aim of the rules, whose application was recommended for inter-Cembureau exports, was to ensure that each producer aligned prices on the local 'price-leader' in cross-frontier sales and, thus, to ensure that producers did not, through their supplies to another country, disrupt the level of prices on that market (see paragraphs 2, 3, 4, 9 and 10 of recital 17).

The rules on the establishment of 'healthy but realistic' competition in overseas exports (see paragraphs 5 to 8 of recital 17) were intended to reinforce the 'fair competition rules' by establishing, between Cembureau members, a climate of cooperation so as to ensure that aggressive behaviour outside the Cembureau countries did not adversely influence behaviour within them.

(3) The price guidelines established at the meetings on 14 January 1983 and 30 May 1983 were followed, as is evident from the notes on the meeting held on 19 March 1984, which show (see paragraph 10 of recital 19) that *'although the data collected were not fully comparable in view of differences in price quotations, it was agreed that a visual presentation of price ranges was an effective means of highlighting potential causes of conflict'*. It is evident from these notes that the parties were in agreement to compare price information using the form indicated in the above quotation and that the information was indeed exchanged.

(4) It is also evident from the documents mentioned in recitals 16 and 17 and, in particular, from the documents relating to the Head Delegates meetings held on 14 January 1983 and 19 March 1984 that the purpose of the exchange of information was to reinforce the general agreement on non-transhipment to home markets and, thus, to curb intra-Community trade in cement.

(5) Such exchange of information constituted an agreement in breach of Article 85(1) and was therefore an infringement from 14 January 1983 to 14 April 1986.

The following participated in the agreement within Cembureau: FIC, Aalborg, SFIC, BDZ, the Association of the Greek Cement Industry, Irish Cement, Italcementi, Unicem, Cementir, Ciments Luxembourgeois, VNC, BCA, ATIC and Oficemen. As stated in paragraph 11 of recital 45 and paragraph 3 of recital 46, the Commission considers that in the case of ATIC and Oficemen the infringement was committed as from 1 January 1986.

(b) *The periodical price information*

(6) As far as the periodical information is concerned, a distinction must be made between two situations, namely that in the Benelux countries and that in the other countries.

(i) Benelux countries

(7) As noted in paragraph 10 of recital 16, FIC communicates to Cembureau, and Cembureau passes on, the prices of the entire trade, these being the prices authorized by the public authorities in response to an application submitted, on behalf of the three Belgian producers, by FIC. Although the prices authorized are maximum prices and although the price lists published by FIC do not contain any price specification for cement delivered by lorry, i.e. for the bulk of sales, FIC communicates to Cembureau, and Cembureau passes on to its members, not only maximum prices, but also minimum prices for supplies by lorry (see point 101 of FIC's reply to the statement of objections).

(8) The sole Luxembourg producer publishes price lists without any apparent specification of conditions of sale, whereas the figures passed on by Cembureau show the ex-works prices for bulk cement, rebates included (see paragraph 17 of recital 16).

(9) With regard to the Netherlands, the prices communicated to Cembureau and passed on by it comprise a minimum price and a maximum price for supplies by lorry (see paragraph 18 of recital 16).

(10) It should be noted from the above that Cembureau and, through it, all its members receive information that is particularly likely to influence their competitive behaviour vis-à-vis the Belgian, Dutch and Luxembourg producers. The communication of such produc-

ers' minimum prices — or, in the case of the Luxembourg producer, the prices actually charged — prices which are not public, was intended to inform actual or potential competitors of the price level at which their supplies would be likely to compete with those of the local producers. The local producers for their part had no reason to divulge such information except to get actual or potential competitors to charge 'local' prices if they entered the Benelux markets and, hence, to get such competitors to comply with the rules of fair competition for inter-Cembureau exports (see paragraph 2 above).

(11) The Belgian, Dutch and Luxembourg undertakings did not, during the administrative proceedings, put forward any alternative explanation for the fact that they communicate such information to Cembureau and that Cembureau passes it on to all its members: they only referred to their obligation to notify price increases to the national authorities. However, that can obviously apply only to the *maximum* prices. Since the producers did not broach the question in writing, they were requested to reply to an oral question (minutes of the hearing held on 3 March 1993, pp. 22-26). Once again, no explanation was given of the fact that the minimum prices were communicated to Cembureau for it to pass on.

(12) What is involved here is a concerted practice among all the members of Cembureau, implemented through Cembureau, its object being to influence the behaviour on the Belgian, Dutch and Luxembourg markets of any actual or potential competitor by revealing to such competitor the conduct, and in particular the minimum prices, which the Belgian and Dutch producers, and the prices inclusive of rebates which the Luxembourg producer, had themselves decided to charge on their own markets.

According to the price information supplied by Cembureau, covering the period 1984-1988 for these countries (doc. 33126/15096), this infringement lasted at least from 1 January 1984 to 31 December 1988. In the case of Oficemen and ATIC, the Commission considers that the infringement was committed as from 1 January 1986.

The infringement was committed by Cembureau and all its members, specified by name in paragraph 5 above, and not only by Cembureau and the members of the three Benelux countries concerned. The fact that the producers of the other countries received, through their associations, such information of particular value in terms of competition, and did so over a long period, means that they participated in the concerted practice ([214]). It is irrelevant that only some of the other members — direct or indirect — of Cembureau were at any given moment actual or potential competitors on the Benelux markets. As the Court of First Instance held in the polypropylene cases ([215]), for there to be a concerted practice, it is sufficient to participate in concerted action having an anti-competitive object, regardless of whether each member's participation in the infringement is liable to restrict competition.

The fact that such price information was passed on by Cembureau after the prices had entered into force, although transmitted to Cembureau by FIC and ENCI/VNC before they had entered into force, does not reduce the scope of the infringement, since the information contained details such as minimum prices and prices inclusive of rebates that were not accessible on the market, or were accessible with difficulty after lengthy investigation.

(ii) Other countries

(13) The distribution of market price lists by a trade organization to its members is one of the ways in which members may be informed of the functioning of the various markets. Some undertakings argued during the proceeding that the distribution of such market price lists, which generally relate to current prices and not to future prices, has no effect on competition, or less effect than the direct exchange of price information between the undertakings.

While acknowledging that such exchange is less serious than the exchange of information on the Benelux countries, it must be noted that the exchange took place during a period subsequent to the price discussions within Cembureau (see recitals 17 and 19). Even if the exchange of information began in 1981, the Commission cannot in its assessment ignore the fact that the exchange of information continued after the discussions at the Head Delegates meetings (see recitals 16, 17 and 19) and that it is a suitable means of implementing the agreement on non-transhipment to home markets and on the regulation of sales from one country to another, and of prompting compliance with the rules on fair competition in inter-Cembureau exports.

As pointed out in paragraph 1 above, the discussions at the meetings of Head Delegates related essentially to the need to avoid the risks of any increase in imports, to check the causes of conflicts and to reduce price differences so as to prevent any temptation to export.

([214]) See the judgments in the polypropylene cases, and in particular Case T-1/89, *Rhône-Poulenc* v *Commission*, [1991] ECR II — 867, paras. 122 and 123.

([215]) See in particular, Case T-6/89, *Enichem* v *Commission*, [1991] ECR II — 1623, paras. 213-220.

(14) Some undertakings also argued that the distribution of such price information cannot have any influence on the market, since the information is not individualized, giving in some cases the price lists approved by the authorities and in others price averages. It should be noted in this respect that:

— the price lists for Denmark and Ireland relate to individual undertakings. The claim that the information is not individualized is thus invalidated;

— as regards Italy, Greece and Portugal, the price lists transmitted are those approved by the public authorities and relate to the entire trade in each country. The undertakings are able to obtain this information, but, even though it is public, they felt it necessary to send the information and to have it circulated. If the undertakings deemed it necessary to have the price lists for the trade in their country circulated, the reason is that such circulation of information was relevant to the discussions at the Head Delegates meetings, discussions which, as stated in paragraph 1 above, related to the need to avoid the risks entailed by an increase in imports, to identify the causes of conflicts and to reduce price differences so as to avoid any temptation to export;

— the price averages sent for Germany, Spain, France and the United Kingdom did not include any identification of producers. This information was circulated, via Cembureau, in the context of the discussions at the Head Delegates meetings (see paragraph 1 above). The averages were not public and at all events difficult to obtain. The averages related to current prices and thus provided information that could facilitate market penetration, whereas in principle no undertaking or association of undertakings communicating such information had any interest in such market penetration, their only interest being to get actual or potential competitors to enter their market only on the basis of charging the 'local' prices.

(15) In the context described above, the circulation of information on price lists, an arrangement which according to the documents available was engaged in at least from 1984 to 1988, constituted, from 1 January 1984 to 31 December 1988, a concerted practice between Cembureau and its members, identified in paragraph 5 above. In the case of Oficemen and ATIC, the Commission considers that the infringement was committed as from 1 January 1986. The concerted practice restricts competition, within the meaning of Article 85(1) since, as a measure complementing the agreement not to tranship to home markets, it is designed to coordinate the market behaviour of the actors.

It is true that undertakings wishing to export could procure the price lists of their competitors in the country to which they were exporting, but it is also true that this procedure is much more complicated and more time-consuming. At all events, it is clear that Cembureau and its members take the view that such procedure is not sufficiently sure and reliable, since they institutionalized the circulation of price lists. At the same time, it cannot be maintained that the price lists as such do not in many cases allow full comparison between prices in various countries, since, as Cembureau acknowledged, *'a cement producer who is familiar with the standards and with the costs of transport can of course make use of such prices'* (see paragraph 22 of recital 16).

48. **The conduct described in Chapter 4, recital 20: France-Italy**

(1) The conduct described in recital 20 is designed to ensure implementation of the general agreement on non-transhipment to home markets, the aim of which is, on the one hand, to limit inter-Cembureau trade flows and, on the other, to align cross-frontier sales prices on local prices.

(2) Buzzi argues that it is not a member of Cembureau and thus that its conduct does not constitute an application of the Cembureau principle. It is true that Buzzi is not a member of Cembureau, but it is also true that the three French producers in question are indirectly members through their national association. Even though Buzzi was not a member of Cembureau, it applied the agreement through its contacts with the French producers, who were linked to Cembureau. What is important is the objective, which coincides with that of the general agreement. The fact that relations between Buzzi and the French producers were not discussed at the Head Delegates meetings does not mean that what is involved here is not an application of the general agreement (see recital 45, and in particular paragraph 8 thereof, and paragraph 2 of recital 46). Lastly, whatever Buzzi's position vis-à-vis Cembureau and the degree of knowledge which it had of the agreement, the fact remains that the concerted practices described below constitute in themselves an infringement by it of Article 85(1).

(a) *Lafarge-Buzzi*

(3) Buzzi's revelation, during the talks with Lafarge held on 26 November 1988, that it intended to leave the market in the South of France to Lafarge, not to disrupt the Côte d'Azur market, to try to avoid competition ('war') and instead to seek agreements to avoid conflicts, and its revelation of its future plans on the sharing of sources of supply constitute a concerted practice covered by Article 85(1).

Whereas the provisions of that Article prohibit any direct or indirect contact intended to reveal to a competitor the conduct which one has decided or plans to adopt on the market, Buzzi and Lafarge, through the contact which they had on 26 November 1988, took concerted action, as described in paragraphs 3 and 7 of recital 20, to restrict their autonomy of behaviour and, in particular, Buzzi's autonomy of behaviour and, ultimately, to share the market in the South of France and restrict their future autonomy regarding sources of supply in the regions along the Franco-Italian frontier. As may be seen from paragraph 7 of recital 20, Lafarge received from Buzzi information on the conduct which Buzzi planned to adopt on the market and which it did in fact adopt ([216]).

(b) *Ciments Français — Buzzi*

(4) The transmission by Ciments Français to Buzzi on 17 March 1988, at Buzzi's request, of the price list of the Beaucaire factory and of the forecast average increase for the year constitutes a concerted practice, covered by Article 85(1).

(5) Ciments Français affirms (see minutes of the hearing held on 5 March 1993, Annex 4) that it is not a competitor of Buzzi, since its Beaucaire factory is 200 km from the Italian frontier and since the factory achieves about 86% of its sales in the French départements not bordering on Italy, and that it would be unreasonable to expect Buzzi to sell in the Beaucaire region when it was able to sell on its own regional market. It adds that the price list sent had only an historical value and that the increase specified was merely a hypothesis which subsequently proved incorrect, since the actual increase was 2.5%.

The Commission confines itself to pointing out the following facts. The first fact is that Buzzi exports to France; the second fact is that, even accepting the French producers' claim that the radius for cement transport is 150/200 km, the 'natural' markets of Ciments Français, at its Beaucaire factory (situated 200 km from the Italian frontier) and of Buzzi (whose Robilante factory is less than 80 km from the French frontier) overlap: Ciments Français and Buzzi are therefore actual or, at the very least, potential competitors.

The March 1987 price list sent to Buzzi in March 1988 had, contrary to what Ciments Français asserts, a current and not simply an historical value, since Ciments Français altered its Beaucaire prices on 1 September 1988. The price rise forecast communicated was, as its name indicates, a forecast even for Ciments Français, and by communicating the forecast, it enabled Buzzi to plan its pricing policy with a great degree of certainty even after the price changes forecast.

It may be seen from the above that Ciments Français and Buzzi are actual or, at the very least, potential competitors and that any communication to a competitor of the conduct which it is planned to adopt on the market, such as to enable an influence to be exerted on the competitive conduct of such competitor, constitutes an infringement of Article 85(1).

(c) *Vicat-Buzzi*

(6) The exchange of price lists which took place on 11-16 May 1983 and April and July 1986, and Buzzi's communication to Vicat on 23 April 1986 of its intention not to accept orders from Nice and Toulon constitute a concerted practice, covered by Article 85(1).

Even if the price lists can be obtained through customers, the procedure is more complicated and more time-consuming. Furthermore, the exchanges related not only to the price lists, but also, on one occasion, to the forecasts of price increases.

Through this concerted practice, on the one hand Buzzi reassured Vicat of its desire not to disrupt the market in the South of France, and, on the other, through the exchanges of price lists and the notification of price increases, Vicat and Buzzi endeavoured to establish a reasonable degree of certainty that any exports which continued to take place would be carried out on the basis of a pricing policy comparable to that of Vicat. By these means, they eliminated a large part of the normal risk inherent in any autonomous change in market behaviour.

([216]) See the judgments in the polypropylene cases, and in particular Case T-1/89, *Rhône-Poulenc* v *Commission*, loc. cit., para. 123.

(d) *Duration of the infringements*

(7) The duration of the infringements by each of the four producers concerned must necessarily be established on the basis of the dates of the evidence of concerted practices.

Buzzi engaged in concerted practices first with Vicat, subsequently with Ciments Français and finally with Lafarge. The concerted action with Vicat related to prices and to the sharing of the market in the South of France; that with Lafarge related to the sharing of the market in the South of France and to the sharing of sources of supply; that with Ciments Français related to prices.

Continuity is thus evident in Buzzi's conduct, which applied to the three French producers in turn. Buzzi's infringement must therefore be deemed to take effect as from the date of its first concerted action with Vicat, i.e. from 11 May 1983. In the absence of any other precise indications of when the infringement ended, the Commission considers that it lasted at least until the end of 1988, since the last concerted action with Lafarge dates from 26 November 1988 and involved Buzzi's revealing to Lafarge its future conduct on the market.

December 1988 must be deemed to be the end of the infringement as regards the three French producers too. Even though it was provided individually to the three French producers, Buzzi's information ultimately benefited all three. Thus, although the start of the infringement as regards each of the three producers may differ in line with the dates of the evidence, the end of the infringement must be the same.

Consequently, the Commission considers that an infringement of Article 85(1) was committed by:

— Buzzi	from 11 May 1983 to 31 December 1988
— Vicat	from 11 May 1983 to 31 December 1988
— Ciments Français	from 17 March 1988 to 31 December 1988
— Lafarge	from 26 November 1988 to 31 December 1988

49. **The conduct described in Chapter 4, recital 21: Spain — Portugal**

(1) The restrictions agreed at the meetings held from 22 July 1985 to 24 April 1989 between Oficemen, Cimpor and Secil constitute an agreement within the meaning of Article 85(1). Through that agreement, the Spanish association and the Portuguese undertakings in question opted, deliberately and in the knowledge that they were committing infringements of the laws of their countries and of the Community competition rules (see record of the meeting held on 22 July 1985, at paragraph 2 of recital 21), for a form of cooperation designed to restrict, or actually to prevent, trade in cement between the two countries and, in this way, to ensure non-encroachment on their respective traditional sales markets, consolidating the partitioning of the Spanish and Portuguese markets.

The agreement constitutes an infringement as from 1 January 1986, the date on which Spain and Portugal joined the Community, until 24 April 1989 at least.

(2) The agreement was actually implemented. The representative of Secil stated to Hispacement (see paragraph 2 of recital 21) that his firm was determined to abide by the agreement with the Spanish and that Cimpor had resisted any temptation to export even though it had received orders from customers in Spain; the parties to the agreement exchanged all the information necessary to monitor and halt exports by third parties (see paragraph 7 of recital 21); Cimpor refused to sell in Spain on the pretext that 'we have no availabilities for export', although it is proven that, during those same periods, it met specific requests for cement from other countries (see paragraph 8 of recital 21).

It was thus intentionally that the undertakings concerned planned to restrict and actually restricted the competition that would have resulted from the supplies that would have taken place between the two Member States without such restriction.

(3) As stated in paragraph 11 of recital 21, if the parties' concern was to prevent the circulation of cement that did not correspond to the standards of a country, such concern does not explain why the monitoring of cement movements between the two countries by the producers themselves would have brought the cement exported into conformity with the standards of the country of destination. In addition, as the Court of First Instance held in the Hilti case ([217]), it is not the task of an undertaking (or association of undertakings) to act, on its own initiative, in place of the public authorities responsible for implementing the laws of its country and to take *'steps to eliminate products which, rightly or wrongly, it regards as dangerous or at least as inferior in quality to its own products'*.

([217]) Case T-30/89, *Hilti* v *Commission*, [1991] ECR II — 1439, para. 118.

(4) The argument put forward by the parties that the agreement did not prevent cement movements between the two parties, with Portuguese exports to Spain increasing each year up to 1988, carries no weight. As the Court ruled in 1966 ([218]), the fact that an agreement does not in any way prevent or indeed promotes an increase in the volume of trade between Member States does not mean that there may not be a restriction of competition or that the agreement cannot affect trade between Member States, since such trade could have developed under other conditions if there had been no restrictive agreement.

(5) Oficemen's argument that the Commission cannot take the document relating to the meeting on 22 July 1985 into account because the meeting took place before the two countries joined the Community is not well founded. In dealing with an agreement that took place before the accession of a Member State and continued after such accession and the effects of which were also noted after accession, the Commission can take into account any document relating to such agreement, whatever its date.

50. **The conduct described in Chapter 4, recital 22: France-Germany**

(a) *The market-sharing agreements*

(1) The documents listed in recital 22 reveal two agreements, one on the sharing of the Saarland market and the other on more general rules on cement supplies between France and Germany.

(2) The memos of 23 June 1982, 22 July 1982 and 17 November 1982 (see paragraphs 1, 4 and 7 of recital 22) show that the sharing of sales on the Saarland market between Ciments Français, Cedest, Heidelberger and Dyckerhoff was an established fact that was not disputed by any of the undertakings concerned, since it was only other markets that were disputed ('Saarland excluded').

The existence of this agreement is confirmed by the statement made by Dyckerhoff to Ciments Français at the meeting on 9 and 10 May 1983 (see paragraph 9 of recital 22) that it did not intend to sell in Saarland and France the cement obtained through the grinding of 100 000 tonnes of clinker at the factory of Ciments Luxembourgeois.

This agreement on the sharing of the Saarland market initially involved Ciments Français, Cedest, Heidelberger and Dyckerhoff. However, on the basis of the points made in paragraphs 3, 4 and 5 below, the Commission considers that the agreement forms part of the wider arrangements covering relations as a whole between the German and French producers, not just these four producers alone.

(3) Following the exports by Cedest to the German Länder other than Saarland and the German producers' reactions in France, bilateral consultations took place with a view to limiting cross-frontier flows of cement.

Thus, SFIC had talks with BDZ and, together with the other French producers concerned, exerted pressure on Cedest to restrain its exports to Germany (see memo of 23 June 1982, at paragraph 4 of recital 22). Cedest stated to Dyckerhoff and Heidelberger that it wished to sell in Germany only to RMC and PZW and that it agreed *'in future to adjust its supplies to Germany (excluding Saarland) to delivery trends in that country, whether the trend is upward or downward'* (see memo of 17 November 1982, paragraph 7 of recital 22).

Lafarge and Dyckerhoff endeavoured to prevent any aggressiveness and to establish a climate of harmony between the French and German producers involved in exports (see memos of 23 June 1982, 28 July 1982 and 2 September 1982, at paragraphs 4, 5 and 6 of recital 22). Dyckerhoff informed Ciments Français of its plans for dealing with the competition from Cedest and its intention not to sell in France (see memos of 25 January 1983 and 17 May 1983, at paragraphs 8 and 9 of recital 22).

The problem of relations between French and German producers was discussed, as a 'hot spot', at the meeting of Head Delegates on 19 March 1984 (see paragraph 9 of recital 19).

All these concerted practices led to the conclusion of an agreement between the French and German undertakings and associations of undertakings concerned. The letter of 22 September 1986 refers to the progress achieved as compared with 1984 at the periodic meetings between Mr Laplace, Mr Lose and Mr Brenke, an agreement reached in 1984, the possibility of renewing the agreement, and a difference between French and German supplies. The memo of 12 August 1987 refers to continued discussions to resolve the questions raised in the letter of 22 September 1986 (see paragraph 10 of recital 22).

The exchanges of information between the two German and French associations (see paragraph 12 of

([218]) Judgment of 13 July 1966, Joined Cases 56 and 58/64, *Consten and Grundig* v *Commission*, [1966] ECR 299.

recital 22) indicate that the reduction sought in the difference between French and German supplies was achieved.

The concerted practices described here, which took place from 1982 to 1984, and the 1984 agreement resulting from the letter of 22 September 1986 constitute infringements of Article 85(1) committed by SFIC, Cedest, Ciments Français, Lafarge, BDZ, Dyckerhoff and Heidelberger.

(4) In view of the fact that the agreement on the sharing of the Saarland market, the concerted practices involved in the pursuit of a solution on the limiting of sales by Cedest in Germany apart from the Saarland, and the 1984 agreement referred to in the letter of 22 September 1986 all had as their object the sharing of markets and the restriction of cross-frontier flows of cement between France and Germany, the Commission takes the view that the agreements and concerted practices may be deemed to be a single and continuous infringement.

In addition, even though initially SFIC, BDZ and Lafarge were not parties to the agreement on the Saarland, they accepted it as from 23 June 1982, i.e. as from the time when they acted to extend the agreement on the Saarland to other German Länder and to fit the agreement into the broader framework of the regulation of trade flows between France and Germany.

The single and continuous infringement relating to the restriction of cross-frontier flows between France and Germany was committed, from 23 June 1982 to 30 September 1989, by SFIC, Cedest, Ciments Français, Lafarge, BDZ, Dyckerhoff and Heidelberger.

(b) *The exchange of information*

(5) The exchange of statistical information between SFIC and BDZ constitute, on the basis of the data available (see paragraph 12 of recital 22), from 1 January 1985 to 30 September 1989, a concerted practice restricting competition within the meaning of Article 85(1). The exchange of information must be seen in the context of the market-sharing agreements mentioned above, the aim being to allow the two associations concerned to monitor compliance with the quantitative restrictions on exports and the Länder for which they were intended (see paragraph 1.2 of recital 22). As stated in paragraphs 12 and 18 of recital 22, determining which Länder exports were intended for cannot be properly explained in any other terms than concerted action based on the exchange of data. This practice creates an artificial market situation in which abnormal transparency and stability in trade between Member States tend to rigidify the behaviour of economic agents and to eliminate the risks inherent in competition.

51. **The conduct described in Chapter 4, recital 23: Belgium — Netherlands — Germany**

The Commission has already stated (page 34, footnote 10, of the statement of objections) that the CBS agreement would be examined under separate proceedings.

The undertakings and associations of undertakings concerned claimed during the proceeding that they could properly defend themselves against the objection raised against them of sharing the Dutch market only if the Commission adopted an overall position including assessment of the CBS agreement.

In the circumstances, the Commission considers that a position should not be adopted, in this Decision, on the facts set out in Chapter 4, recital 23.

52. **Effect on trade between Member States**

All the agreements and concerted practices mentioned in this Chapter have direct effects on trade between Member States. They form part of a whole aimed at affecting trade between Member States and, moreover, considered in themselves, they are intended to exclude trade between Member States, or to ensure that it takes place within the framework of restrictive agreements on the quantities that can be exported from one country to another.

CHAPTER 9

The agreements and practices described in Chapter 5

53. **A single and continuous 'agreement'**

(1) The Cembureau Task Force or ETF is a serious and flagrant application of the Cembureau agreement or principle of not transhipping to home markets. The Task Force was set up after 1983-84 and the major decisions were adopted by the Head Delegate members

of Cembureau. All those represented on the Task Force were involved in the structure of Cembureau: it does not matter that the agreement entailed the adoption of various measures comprising either action by the undertakings most directly concerned or action by the undertakings best placed to achieve the Task Force's objectives, notably because they occupied an important position in the world cement trade.

(2) Under the 'single and continuous agreement' on non-transhipment to home markets, Cembureau and the undertakings specified below entered into a single and continuous 'agreement' (hereinafter referred to as 'the agreement') consisting of all the measures adopted at the meetings held from 28 May 1986 to the end of May 1987.

The concurrence of wills on the part of each participant was expressed at various meetings and, in particular, at the meetings of the Head Delegates as well as through participation in the various actions undertaken.

(3) The agreement has the following features: (1) a Task Force, set up by common agreement by the participants in the infringement, examined and prepared the various dissuasive and persuasive measures and the market regulation measures (see paragraphs 2 to 6 of recital 25); (2) the measures were put for decision to the Head Delegates, who adopted some of them (see paragraph 10, 24 to 32 and 40 and 41 of recital 25); (3) the measures were then implemented by the various participants in the Task Force (see recitals 26, 27 and 28).

(4) The claim made by certain undertakings and associations of undertakings that, not having participated in the Task Force meetings or sub-group meetings, but only in the meetings of the Head Delegates, they cannot be held responsible for the measures examined, is without any foundation. Even if they did not participate in the Task Force meetings, the Task Force consisting of a restricted group, they did participate in the meetings of the Head Delegates at which the Task Force proposals were endorsed and the measures adopted. As stated in recital 44, the fact that the composition of the various bodies may vary from one to another does not mean that all the activities of the parties to such structure are not attributable to all the members, since the structure acts with and is based on the assistance of all the members.

(5) Other undertakings that participated only in the meetings of the Task Force or were involved only in the implementation of the measures decided on consider that the Commission cannot attribute to them all the conduct relating to the Cembureau Task Force or ETF. The Commission has already replied to this type of comment in recital 44, asserting that belonging to an organization means accepting its rules and conduct; the Commission would also point out that, as the Court of First Instance held in its judgment of 24 October 1991 ([219]). Where a restrictive agreement is complex in character, it is not necessary for all the undertakings to express their formal assent to a particular course of action adopted by the others, since it is sufficient for some of them to have indicated their general support and conducted themselves accordingly. In addition, it is in the nature of the single and continuous 'agreement' that there should be a design, a single objective and a sharing between the participants of the tasks and actions required to achieve it. Lastly, it should be noted that the document drawn up at Céligny-Zurich, which was drafted for the Head Delegates, who were presented with it at the Stockholm meeting, and at least some of whose proposals were adopted, asserts that the strategies developed represent a response based on solidarity and that cooperation by all the producers is essential for the stability of the European cement industry.

(6) The German undertakings argue that the persons present at the meetings in Stockholm, Baden-Baden and Brussels did not have the status of Head Delegates. It should be pointed out that this status was given by the Task Force and by the records of the meetings and not by the Commission.

(7) The record of the ETF meeting held in Geneva on 19 August 1986 (see paragraph 15 of recital 25) makes it clear what the sole objective pursued is: *'ETF's purpose is to evaluate measures to eliminate imports to Western Europe, presently from Greece. ETF shall recommend measures to the Head Delegates'*. The aim is thus general and not simply confined to the problem of Greek exports: it thus falls wholly within the framework of the Cembureau agreement on non-transhipment to home markets.

(8) Lafarge argued at the hearing (record of the 12 March 1993 sitting, Annex II) that Article 85(1) was not applicable to the members of the ETF because they were acting in legitimate self-defense against exports by the Greek producers, who were receiving unlawful aid from the government of their country.

([219]) Case T-2/89, *Petrofina* v *Commission*, [1991] ECR II — 1087, para. 210.

The Commission would point out first that it is not for undertakings to substitute themselves for the Community authorities, which are responsible for the implementation of Articles 92 and 93 of the EC Treaty, and to prevent the movement within the Community of products which they believe, rightly or wrongly, are receiving government aid ([220]). The Commission does of course recognize the right of undertakings not only to notify the competent authorities (including the Commission itself) of any infringements of national or Community provisions, but also to make a joint approach for this purpose, which necessarily presupposes the ability to hold preparatory discussions amongst themselves.

However, the fact that the undertakings were concerned at the State aid granted to other European competitors cannot in any way justify the adoption of private measures in addition to the possibility of bringing the case to the attention of the competent authorities.

Secondly, in contrast to Heracles and Halkis, Titan was not in receipt of any government aid to the cement industry; indeed, it appealed against the Commission's decision, announced on 4 January 1992, to terminate proceedings against the aid granted to Heracles (minutes of the hearing held on 4 March 1993, pp. 1-3). The various measures taken by the ETF members against Titan cannot therefore be justified by alleging that they were necessary or a means of legitimate self-defense. The arguments of the undertakings are groundless.

Thirdly, the documents relating to the meetings of the ETF show that it was not set up to deal with a specific threat, but to achieve more general objectives. It is stated that *'EFT's purpose is to evaluate measures to eliminate imports to Western Europe, presently from Greece'* (see paragraph 15 of recital 25). Such more general objectives are indeed confirmed by the fact that the ETF does not seem to have been dissolved: *'as the tool had been forged it might as well be kept ready for use'* (see paragraph 48 of recital 25).

(9) The associations of undertakings and the undertakings which participated in the single and continuous agreement relating to the setting-up of the Cembureau Task Force or ETF and the various measures adopted at the meetings to eliminate imports into Western Europe and, in particular, to prevent imports of Greek cement into the Member States are the following: Cembureau, the Holderbank group, Blue Circle, Oficemen, Asland, Uniland, Hispacement, SFIC, Lafarge, Ciments Français, BDZ, Heidelberger, Dyckerhoff, CBR, Aker and EUROC, Aalborg, Irish Cement, Italcementi, Unicem and Cementir.

(10) Since the position of certain undertakings and associations has been set out in the facts, it only remains to detail the situation of three undertakings.

(11) By letter dated 16 July 1992, the Commission informed Aker and EUROC that the statement of objections had been sent to them because of their participation in the Cembureau Task Force or ETF, whose object was to prevent supplies of Greek cement in the Community, to absorb Greek cement and to deflect the Greek production surplus outside Europe.

(12) The Commission considers that Cementir, which did not participate in Task Force meetings, gave its concurrence of will to the general agreement through its participation in one of the most important measures decided on by the Cembureau Task Force or ETF, namely the measures to defend the Italian market (see recital 27).

(13) Ciments Français states that Mr Laplace participated in the Task Force in his capacity as President of the Syndicat (i.e. SFIC) and chairman of the Liaison Committee. Even if Mr Laplace did, like other representatives, participate in his capacity as President of an Association or chairman of a committee, he could not, in attending the meetings, disregard the fact that he was chairman of Ciments Français. His presence therefore ensured that SFIC and the Committee, together with the company of which he was chairman, had a role within the Task Force.

(14) The single and continuous agreement relating to the Cembureau Task Force or ETF constitutes, as from 28 May 1986, a clear infringement of Article 85(1), having as its object the prevention of trade in cement in the Community and the partitioning of national markets to the benefit of local producers and the detriment of consumers. The infringement committed is all the more serious as it lasted a long time, and the Commission is entitled to presume that it is still continuing. Despite Holderbank's statement that the Task Force was dissolved at the end of May 1987, the Lafarge memo of 1 June 1987 states that *'the mission of the team formed just a year ago will in future be strictly limited to exchanges of information on very specific subjects. The British were in favour of winding it up, but the Swiss finally convinced their colleagues that this would be a mistake: as the tool had been forged*

([220]) Case T-30/89, *Hilti* v *Commission*, [1991] ECR II — 1439, paras. 115 to 119. See also Joined Cases 100 — 103/80, *Musique Diffusion Française* v *Commission*, [1983] ECR 1825, para. 100.

it might as well be kept ready for use'. It appears therefore that 'the tool' was 'kept ready for use' after May 1987. This is all the more probable as the measures designed to absorb the 'destabilizing' cement were implemented up to 1991 (see recital 28) and as the Joint Trading Company was dissolved only on 26 March 1993 (see paragraph 16 of recital 26).

54. **The agreement relating to the setting-up of the Joint Trading Company**

(1) The decision to set up the Joint Trading Company, Interciment S.A., adopted at the meeting of Head Delegates on 9 June 1986 (see paragraph 1 of recital 26), constitutes an agreement between undertakings within the meaning of Article 85(1). The purpose of the agreement was to implement the 'persuasive' and 'dissuasive' measures ('either for 'stick' or 'carrot' measures'), i.e., as specified in the document drawn up at Céligny-Zurich, to purchase and market cement and clinker from the countries threatening the stability of the member countries' markets, and to take away export markets from the countries threatening the stability of the member countries' markets.

(2) Even if Interciment S.A. did not apparently become operational, the fact remains that it could have become operational at any time, since, although it was decided that the company should for the time being remain 'dormant', everyone agreed that *'it was important to ensure that it be 'ready for operation"*, (see minutes of the meeting of Head Delegates held on 9 September 1986, referred to in paragraph 1 of recital 26). At all events, the Joint Trading Company could be used as a threat against the Greek producers and against any other Cembureau member who was tempted to infringe the home market rule, in accordance moreover with the objective set in the Céligny-Zurich document, which was the implementation of persuasive and dissuasive measures against countries threatening the stability of the member countries' markets. The object pursued, quite apart from the effects, in setting it up thus represents an infringement of Article 85.

(3) In the light of the attendance at the Stockholm meeting, at which it was decided to set up the Joint Trading Company, and at the Baden-Baden meeting, at which the tasks of the Joint Trading Company were confirmed, and the fact that Holderbank requested payment of their quota of shares in Interciment from Blue Circle in respect of its individual holding and from the other addresses of the letter in respect of the holding of their respective countries (see Holderbank's letter of 22 September 1986, referred to in paragraph 6 of recital 26), the Commission considers that the following participated in the agreement to set up Interciment S.A.: the Holderbank group, Blue Circle, Oficemen, Asland, Uniland, Hispacement, SFIC, Lafarge, Ciments Français, BDZ, Heidelberger, Dyckerhoff, Aker and EUROC, CBR, Italcementi, Unicem and Cementir. Holderbank asked all the undertakings directly or indirectly concerned or concerned as representatives of other companies participating in the Cembureau Task Force to pay their quota.

(4) The actual paying up of the shares in Interciment S.A. is of little relevance in establishing the participation of the undertakings in the agreement on the setting-up of the company. The important point is that 'the tool' was already set up as a result of an agreement and was ready for operation on behalf of the participants in the agreement. The company was dissolved only on 26 March 1993 (see paragraph 16 of recital 26) and the persuasive measures consisting in the absorption of Greek cement and clinker were carried out up until 1991 (see recital 28).

(5) Following the setting-up of Interciment S.A., the problem of its compatibility with Article 85 arose (see paragraphs 11, 12 and 13 of recital 26). However, the problem was solved not by winding up the company, but by seeking ways of getting round the obstacle. At the meeting held in Brussels on 6 November 1986, it was decided that no Community company would subscribe to the capital of Interciment S.A., and at the meetings held in Milan on 9 January 1987 and Geneva on 11 February 1987 the solution examined was that of finding another means of collecting the other producers' contributions.

(6) Holderbank stated, without providing any evidence, that it bought back all the shares and thus remained the sole shareholder of Interciment S.A. (see paragraph 9 of recital 26).

(7) The Commission acknowledges that the effects of setting up Interciment were uncertain, but it would stress that, despite this the members decided to keep the company alive until 26 March 1993. It considers moreover that the infringement is serious by its nature. Its object was manifestly restrictive.

(8) In view of the above, the Commission considers that the agreement relating to the setting-up of Interciment S.A. constitutes an infringement of Article 85(1) as from 9 June 1986 until 26 March 1993.

55. **The measures to defend the Italian market**

(a) *The pressure on Calcestruzzi*

(1) The pressure exerted on Calcestruzzi and the non-performance by Calcestruzzi of the contract for the purchase of Titan cement form part of the dissuasive measures taken by the Task Force and are the result of concerted practices between the Italian producers Italcementi, Unicem and Cementir and between them and the other participants in the Cembureau Task Force referred to in paragraph 9 of recital 53, the aim being to take away from the Greek producers a customer who was important to their penetration of the Italian market. The other participants in the Cembureau Task Force are also parties to the concerted practices, since the Calcestruzzi problem was discussed at a number of meetings of the Task Force and Head Delegates (see paragraphs 3 and 5 of recital 27) and since the strategies developed by the Task Force are based on the solidarity of all the participants (see paragraph 3 of recital 25).

These concerted practices constitute an infringement of Article 85(1) from 17 June 1986 to 15 March 1987.

(b) *The contracts and agreements with Calcestruzzi*

(2) The contracts and agreements signed on 3 and 15 April 1987 (see paragraph 6 of recital 27) represent the implementation of an agreement between Italcementi, Unicem and Cementir that is caught by Article 85(1) and, consequently, an infringement as from the date they were signed and throughout their duration, i.e. until 3 April 1992. As may be seen from the minutes of 11 February 1987 and 15 March 1987, the purpose of the agreement was to avoid a threat of the import of 1.5 million tonnes of Greek cement by Calcestruzzi in ten or so ports, which would have been catastrophic for prices (see paragraph 5 of recital 27).

(3) The Italian producers' argument that imports of Greek cement into Italy increased every year and that the agreement did not have any effects on imports and hence did not have any restrictive effects on competition is not relevant. Article 85 prohibits not only conduct that has the effect of restricting competition, but also conduct that has as its object the restriction of competition. In addition, the fact that Greek cement imports increased in spite of the agreement does not mean that there was no infringement or that the agreement could not affect trade between Member States, since trade could have developed under other conditions without the restrictive agreement ([221]). Although Titan was able to sell in Italy, it clearly did so despite the obstacles set by the Italian producers.

56. **The purchases of Greek cement and clinker**

(1) All the purchases and contracts specified in recital 28 represent the implementation of agreements and concerted practices prohibited by Article 85(1). As may be seen from Chapter 5, the purchases and contracts form part of the persuasive measures ('carrot actions') adopted by the Cembureau Task Force with a view to deflecting the Greek production surplus and halting or, at the very least, curbing exports within Europe by the Greek cement producers.

All the purchases and contracts referred to below must therefore be regarded as the implementation of agreements and concerted practices prohibited by Article 85 and are accordingly themselves restrictive of competition within the meaning of Article 85(1). This applies not only to the supplies to Community producers, but also to the contracts for supplies outside the Community, whose purpose was to deflect cement that could otherwise have been sold on the markets of the Member States. This is all the more true as the Greek producers had already begun exporting to the Member States which they considered most vulnerable and as the purpose of such purchases and contracts was to halt and/or curb such exports.

(2) The following agreements and concerted practices constitute infringements of Article 85(1) during the period specified for each of them:

(a) *United Kingdom producers - Greek producers*

(3) (i) The cement purchases by Blue Circle from Titan agreed by telex message on 4 July 1986, 11 August 1986, 14 August 1986, 1 September 1986 and 5 September 1986 (see the first three subparagraphs of paragraph 15 of recital 28) are the result of a concerted practice between Blue Circle, Rugby and Castle aimed at preventing and/or reducing Greek cement imports into the United Kingdom. The concerted practice is evident from the Blue Circle memos of 16 June

([221]) Joined Cases 56 and 58/64, *Consten and Grundig* v *Commission*, [1966] ECR 299.

1986, 7 July 1986, 17 September 1986, 7 September 1987, 22 October 1987, 18 December 1987 and 8 January 1988 (see paragraphs 8 to 12 of recital 28).

The infringement lasted from 16 June 1986 to 5 September 1986.

(4) By letter dated 16 July 1992, the Commission informed Castle that the statement of objections had been sent to it in its own right in respect of the period after April 1988. Since Castle is the successor to and continues the business of RTZ Cement Ltd and, in particular, the operating companies Tunnel Cement Ltd, Castle Cement (Ribblesdale) Ltd, Castle Cement (Ketton) Ltd, Castle Cement (Clyde) Ltd, Castle Cement (Padeswood) Ltd and Castle Cement (Pitstone) Ltd, the statement of objections was sent to it in respect of the infringements committed by those companies prior to April 1988. ([222])

(5) (ii) Blue Circle's purchases from Titan agreed by telex message on 4 July 1986, 11 August 1986, 14 August 1986, 1 September 1986, 5 September 1986, 17 December 1986, 7 January 1987, 15 January 1987, 12 February 1987, 26 February 1987, 1 April 1987 and 3 April 1987 and the contracts concluded on 14 October 1986, 1 August 1987 and 24 October 1988 and their additional clauses, between Blue Circle and Titan (see paragraph 15 of recital 28) embody an agreement between undertakings in breach of Article 85(1) from 4 July 1986 to 31 December 1989. The purpose of the contract was to deflect the quantities concerned to markets other than the European markets, and this was known to the two parties (see paragraphs 1 to 11 and 15 of recital 28).

(b) *Greek producers — Holderbank group*

(6) (i) The purchases made by the Holderbank group in June and July 1986 from Titan and the contracts signed between the Holderbank group and Titan on 16 January 1987, 18 December 1987 and 20 August 1988 (see paragraph 16 of recital 28) embody an agreement between those undertakings in breach of Article 85(1) from 19 June 1986 to 31 December 1990.

(7) (ii) The contracts signed between the Holderbank group and Heracles on 9 May 1986 and 19 May 1988 (see paragraph 17 of recital 28) embody an agreement between those undertakings in breach of Article 85(1) from 9 May 1986 to 31 December 1990.

(8) The purpose of the contracts was to prevent direct sales by the two Greek producers on the European markets and to deflect part of the quantities concerned to other markets, and this was known to the parties in question (see paragraphs 1 to 7 and 16 and 17 of recital 28).

(c) *Greek producers — Lafarge*

(9) (i) The direct or indirect purchases made by Lafarge from Titan on 22 July 1986, 19 August 1986 and 12 June 1987, and the contracts concluded between Lafarge and Titan on 3 June 1988 and 20 October 1988 (see paragraph 18 of recital 28) embody an agreement between those undertakings in breach of Article 85(1) from 22 July 1986 to 31 December 1991.

(10) (ii) The contract concluded between Lafarge and Heracles on 17 June 1988 (see paragraph 19 of recital 28) embodies an agreement between those undertakings in breach of Article 85(1) from 1 June 1988 to 15 June 1991.

(11) The purpose of the contracts was to prevent direct sales by the two Greek producers on the European markets and to deflect a part of the quantities concerned to other markets, and this was known to the parties in question (see paragraphs 1 to 7 and 18 and 19 of recital 28).

(d) *Greek producers — CBR via Holderbank*

(12) The contract concluded between Umar and CBR on 15 July 1988 (see paragraphs 20 and 21 of recital 28), being an indirect application of a concerted practice between CBR, Heracles and Titan on the limitation of sales by those Greek producers in the Benelux countries in return for purchases by CBR, constitutes an infringement of Article 85(1) from 4 May 1988 to 31 December 1990.

The purpose of the contract was to prevent direct sales by the two Greek producers on the Benelux markets, and this was known to the parties in question (see paragraphs 1 to 7, 16, 17, 20 and 21 of recital 28).

([222]) Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, *Suiker Unie and Others* v *Commission*, [1975] ECR 1663, para. 87; Joined Cases 29 and 30/83, *CRAM and Rheinzink* v *Commission*, [1984] ECR 1679, paras. 8 and 9; recital 49 of Commission Decision 85/74/EEC, 'Peroxygen products' case, OJ No L 35, 7.2.1985, p. 1.

(e) *Greek producers — Scancem (Aker/EUROC)*

(13) The contracts concluded between Titan and Scancem (Aker/EUROC) on 28 January 1987, 7 October 1987 and 15 October 1987 and their additional clauses (see paragraph 22 of recital 28) embody an agreement between those undertakings in breach of Article 85(1) from 28 January 1987 to 31 December 1990.

The purpose of the contracts was to deflect the quantities concerned to markets other than the European markets, and this was known to the two parties (see paragraph 1 to 7 and 22 of recital 28).

57. **Effect on trade between Member States**

All the agreements and concerted practices described in this Chapter have direct effects on trade between Member States. They form part of a whole intended to affect trade between Member States and moreover, considered in themselves, they have the object either of deflecting trade flows from one Community country to other Community countries or of preventing the quantities in question from being sold on the markets of the Member States. They are therefore by their nature liable to affect trade between Member States.

CHAPTER 10

The practices described in Chapter 6

58. **The concerted practices within the ECEC**

(1) In order to assess its activity, the ECEC must first be placed in its historical context.

(2) As stated in Chapters 3 and 8, Cembureau and its members established the Cembureau agreement or principle of not transhipping to home markets; although the Commission finds that an infringement was committed in this respect only as from 14 January 1983, there is some evidence (see paragraph 6 of recital 45) that the principle existed before that date. In order to ensure that it was complied with, means had to be found of channelling the production surpluses of the Cembureau members and preventing them from being deflected towards the European markets. Hence the creation first of the European Export Committee within Cembureau, then of the London Club outside Cembureau, and of the ECEC and EPC following the splitting of the Club's activities. Furthermore, even if the establishment of the committees predated the conclusion of the Cembureau agreement or principle of not transhipping to home markets, their activities constituted one of the measures for implementing and backing up the agreement or principle.

Non-transhipment to home markets and the channelling of exports go hand in hand (see Blue Circle memo of 1 December 1983, paragraph 2 of recital 18), since, if it is not possible to find any external outlets, there is a very great risk of the principle of non-transhipment to home markets being violated.

(3) If, therefore, there is in the documents setting up the ECEC no direct link between the home market rule and the channelling of exports, this does not mean that no such link exists. The link may be seen from the following facts:

(a) The members of the ECEC are at the same time either direct members of Cembureau (as in the case of Aalborg, SFIC, the Association of the Greek Cement Industry, Irish Cement, Unicem, Cementir, Oficemen and ATIC) or indirect members through their national associations (as in the case of Dyckerhoff, Alsen, Nordcement, ENCI and Castle) (see recital 44). They are consequently all under the obligation to comply with the home market principle. Their conduct is accordingly influenced by this obligation, in that they have to channel their production surpluses to third countries.

(b) At the same time, the members of the EPC (see paragraph 3 of recital 35) are, with the exception of Blue Circle, indirect members of the ECEC through their national associations. Consequently, the EPC's activity influences the conduct and activity of the ECEC and its members. There was also up to 1986 an institutional link and there has existed as from September 1986 a *de facto* link between the two committees (see recital 32).

(c) At all events, it is evident from the ECEC documents (see paragraphs 4 and 5 of recital 33) that its activities were not in fact confined to the overseas export markets. The members of the ECEC discussed at their meetings imports and supply and demand in the member countries. It was thus the members of the ECEC who themselves established a link between home markets and overseas export markets.

It is true that the ECEC's main activities are the compiling and distribution of information on sales in the various export markets in third countries. In addition, discussions at the meetings include a more thorough analysis of supply and demand in the various export markets, the members' projects

in such markets and the prices chargeable or charged there. However, all of this is closely connected to the ECEC members' concerns regarding home markets. Knowledge of such data reassures the ECEC members that production surpluses are being effectively channelled. The ECEC members are thus assured that the surpluses will not by and large go to the European markets.

(4) As regards the participants involved, it is the ECEC members themselves who established the link between home and export markets. As regards the objectives pursued, as from the time when the ECEC members took concerted action on sales on the export markets (see paragraphs 1, 2 and 3 of recital 33), such concerted action influenced their business decisions regarding the home markets, since, if there had been no such concerted action and if they had not been certain of the quantities exportable and the prices chargeable, they could have decided to market more products in the Member States, thus altering the structure of intra-Community trade ([223]).

Consequently, the concerted practices relating to the business policy to be pursued with respect to exports to third countries cannot be considered in isolation, but as forming an indissoluble whole with the agreement on non-transhipment to home markets.

(5) The argument that the ban laid down in Article 85(1) does not apply to restrictive practices relating to products intended for export since they do not have any effect on intra-Community trade cannot be accepted. The object and effect of the cooperation within the ECEC was to reinforce the rule that there should be no transhipment to home markets.

(6) The concerted practices described in recital 33 relating to examination of the internal situation in member countries and to exports to third countries constitute infringements of Article 85(1) from 14 March 1984 to 22 September 1989, these being the dates of the first and last meetings of which the Commission is aware. Through these practices, the ECEC members waived the pursuit of any autonomous business policy, setting up a system of solidarity and monitoring aimed at preventing any incursions by competitors on to respective home markets within the Community.

(7) These infringements were committed: from 14 March 1984 to 22 September 1989 by FIC, Aalborg, SFIC, Dyckerhoff, Alsen, Nordcement, the Association of the Greek Cement Industry, Irish Cement, Italcementi, Unicem, Cementir and ENCI; and from 1 January 1986 to 22 September 1989 by Oficemen, ATIC and Castle.

(8) As stated in paragraph 4 of recital 56, Castle, as the successor to RTZ Cement, is responsible for the infringements prior to April 1988.

(9) FIC, which is subrogated in the rights and obligations of Cimbel S.A., which was wound up (minutes of the FIC board meeting No 102 of 16 October 1985 doc. 33126/2070-2079) is also responsible, as successor, for the infringements attributable to Cimbel S.A., a former member of the ECEC.

59. **The concerted practices within the EPC**

(1) The same link between the home market rule and the channelling of production surpluses applies to the cooperation within the EPC. It is demonstrated not only by the historical context of the setting-up of the EPC, but also by the following facts.

(a) According to one of its members, Ciments Français, through the setting up of the EPC *'the Chairmen wanted to control exporters'* (see paragraph 5 of recital 35). Defining the WCC by reference to the EPC, Ciments Français states that the WCC is *'an informal club which is to white cement what the Export Policy Committee is to grey'* (see paragraph 6 of recital 35); the WCC rule is non-transhipment to home markets.

(b) The EPC members are indirect members, through their national associations, of Cembureau and are thus required to abide by the home market principle.

(c) The internal problems of the Community countries were examined on several occasions within the EPC.

Thus, Valenciana assured its colleagues that neither it nor Cementos del Mar were involved in exports to the United Kingdom (see paragraph 2 of recital 36); Mr Gac discussed the need to establish the seriousness of the Spanish threat of exporting to the United Kingdom (see paragraph 3 of recital 36); Mr Gac wondered whether, following the threats of Greek exports within Europe, the EPC could continue under the current agreement (see paragraph 4 of recital 36); Mr Gac referred to the danger that European and world overcapacity was posing to domestic markets (see paragraph 5 of recital 36); the chairman of the EPC referred to

([223]) Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, *Suiker Unie and Others* v *Commission*, [1975] ECR 1663, paras. 579 and 580.

the agreements between Greek and United Kingdom producers and wondered whether the Cembureau Task Force was currently displaying sufficient energy and initiative (see paragraph 6 of recital 36); the problem of the increase in intra-European trade and the situation regarding the supply shortfall in the United Kingdom following the increase in demand were discussed (see paragraph 7 of recital 36); Ciments Français reported on the state of negotiations between Lafarge and Heracles and Titan on the absorption of 'destabilizing' products (see paragraph 8 of recital 36). It was therefore the EPC members themselves who established a link between home and export markets; it was the EPC chairman and secretary who wondered whether the EPC could survive in the face of exports by EPC members to the countries of other EPC members.

It is true that the EPC's main activities are the compiling and distribution of information on members' sales on the various export markets in third countries. In addition the members share export markets, set or communicate to one another the prices charged or to be charged on the various markets. However, all of this is closely linked to the EPC members' concerns regarding home markets. Knowledge of such data reassures the EPC members that production surpluses are being effectively channelled. The EPC members are thus assured that the surpluses will not by and large go to the European markets.

(2) Since it is evident from the definition which some members themselves give to the purpose of the EPC and to the rule on which its activity is based, from the concerns which the members themselves express as to whether the EPC could survive in the event of intra-Community trade and from the links which the members establish between home markets, intra-Community trade and overseas export markets, the Commission must take the view that non-transhipment to home markets is the rule underlying the co-operation on overseas exports, since cooperation on overseas exports could be jeopardized if an EPC member were through its exports to threaten the home market of another EPC member. The Commission consequently concludes that one of the EPC's objectives is to restrict competition within the Community.

This means that, as in the case of the ECEC, the fact that the EPC's activities related essentially to the markets of third-countries should not delude us. In point of fact, such cooperation on the overseas export markets was closely linked to the rule that there should be no transhipment to the home markets of the Cembureau countries and was a key factor in ensuring compliance with it.

(3) The cooperation between members in the form of the taking into account of the situation on Community markets, the sharing of third-country markets, the setting of prices for products intended for overseas exports, and the exchange of individualized data on export availabilities and on exports carried out in third countries constitutes a continuous concerted practice between the EPC members.

Through such concerted practice, the EPC members waived the pursuit of an autonomous commercial policy, setting up a system of solidarity and monitoring designed to prevent incursions by competitors on respective home markets within the Community.

(4) This concerted practice constitutes an infringement of Article 85(1), committed from 1 July 1981 to 19 May 1989, the dates of the first and last meetings of which the Commission is aware, by Lafarge, Titan, Heracles and Halkis, from 1 July 1981 to 17 February 1989 by Ciments Français, from 1 July 1981 to 12 October 1987 by Blue Circle and from 1 January 1986 to 19 May 1989 by Hispacement, Hornos Ibéricos, Valenciana and Cementos del Mar.

(5) The objections raised against Cementos del Mar S.A. and Cementos del Atlantico S.A. were communicated to Valenciana, took the view that, at the time of the facts and of the statement of objections, it did not have control of Cementos del Mar and Cementos del Atlantico and it requested a new statement of objections and new access to the file for those companies.

The Commission considers that Valenciana was wrong in claiming not to have had control of Cementos del Mar and Cementos del Atlantico. At the time the objections were notified, Valenciana held 50% of the capital of Cementos del Mar, 25% being held by Banco Bilbao Vizcaya and 25% by Banco Central (according to 'El País' of 21 May 1990, the shares were held by the two banks solely as a guarantee for loans granted to Valenciana: 'Por cuestiones de formalización de la operación de aval, el BBV y el Central tomaron el 25% cada uno de Cementos del Mar, filial de Valenciana'), and 50% of the capital of Cementos del Atlantico, the remainder being held by Cementos del Mar; according to the notice submitted by Cementos del Mar on 23 November 1990 and recorded under No 189 in the Registro Mercantil de Madrid, the administrative board of Cementos del Mar was made up as from 3 October 1990 of the following persons:

Chairman:	Emilio Serratosa Ridaura (who was at the same time managing director of Valenciana);
Deputy-Chairman:	José Antonio Carranza Alonso (who was at the same time a member of the Valenciana administrative board)

Managing director: José M. Garnica Gutierrez (representative of DADA, a company belonging, according to 'El País' of 21 May 1990, to Serratosa and Garnica families: 'una instrumental participada por la mencionada familia (Serratosa) y los Garnica');

Directors:
- José Serratosa Ridaura (who was at the same time vice-chairman and managing-director of Valenciana);
- Carlos Perez-Manglano Rodrigo (who was at the same time commercial director of Valenciana);
- Ramon Marraco Coello de Portugal
- Angel Luis Galán Gil.

It is evident from the above that Valenciana, which since April 1992 has owned 99.95% of the capital of Cementos del Mar, controlled Cementos del Mar at the time of the statement of objections, since at least four directors (indeed five) out of seven represented Valenciana on the administrative board of Cementos del Mar.

Valenciana, which has controlled Cementos del Mar since at least 1990, is, as the successor and continuer of the business activity of Cementos del Mar, responsible for the conduct of that company.

60. **Effect on trade between Member States**

The restrictions of competition described in this Chapter are liable to affect trade between Member States appreciably. They form part of a whole intended to affect trade between Member States and moreover, considered in themselves, they are intended to prevent production surpluses from being supplied within the Community and to ensure that they are channelled to third countries.

Even if the agreement on non-transhipment to home markets could be separated from the practices designed to channel exports, which they cannot, the Commission has to examine the overall effects of the conduct on the maintenance of normal patterns of trade between Member States ([224]).

([224]) Joined Cases 40 to 48, 50, 54 to 56, 111, 113 and 114/73, *Suiker Unie and Others* v *Commission*, [1975] ECR 1663, paras. 579 and 580.

CHAPTER 11

The agreements and practices described in Chapter 7

61. **Non-transhipment to home markets by the members of the WCC**

(1) The documents referred to in recital 39 reveal that the object of the WCC is to protect the members' home markets and to export their production surpluses under a general agreement.

(2) The members of the WCC established close cooperation and a community of interests in which the division of the Community markets forms the basis of a general consensus amongst them. To make it effective, this division of markets was reinforced by the practice of channelling for export to third countries that part of production that was not absorbable by the markets of the countries in which each member is established. The protection of home markets and the channelling of production surpluses for export are thus two inseparable aspects of one and the same obligation.

(3) The home market rule was applied: this may be seen from the cases of Blue Circle-Lafarge (see point (c) of recital 39) and Italcementi-Dyckerhoff (see point (d) of recital 39). Any infringement of the rule was penalized, as may be seen from the case of Aalborg (see point (a) of recital 39) and the cases of Alsen and Blue Circle (see point (b) of recital 39), which are linked to the case of Aalborg.

(4) The home market rule comprises at the same time aspects of a concerted practice and aspects of an agreement. It may be deemed to be a concerted practice from 6 May 1982 to 20 May 1984, since until that date the minutes do not reveal any concurrence of will expressed by the members, and it may be deemed to be an agreement as from 21 May 1984 (see paragraph 9 of recital 39), since, at the meeting held on that date, the members clearly expressed their will to participate in an agreement when they point out *'that respecting home markets is the sine qua non for participation in the WCC and the WCPC'*, and the agreement was confirmed at subsequent meetings. The cases of Italcementi-Dyckerhoff (see point (d) of recital 39) and Blue Circle-Lafarge (see point (c) of recital 39) constitute implementations of the agreement. The concerted practice and the agreement relating to the home market rule constituted a continuous infringement from 6 May 1982 to 26 May 1988, since it may be

considered that there was continuity between the nine-member WCC and the six-member WCC at least as regards the latter six members.

(5) The channelling of production surpluses to third countries, which is a corollary of the concerted practice and agreement on the protection of home markets, constitutes a continuous concerted practice from 1982 to 1988.

(6) The continuous agreement and concerted practices constitute infringements of Article 85(1) committed from 6 May 1982 to 26 May 1988, the dates of the first and last meetings of which the Commission is aware, by Italcementi, Dykerhoff, Lafarge, Ciments Français and CBR and from 1 January 1986 to 26 May 1988 by Valenciana.

(7) The concerted practice and agreement, which have as their object and effect the protection of national markets, are expressly prohibited by Article 85(1)(c). Such protection is contrary to one of the fundamental objectives of the Treaty, namely the establishment of a common market. The restriction of competition is appreciable since it involves most of the trade in the relevant products within the common market.

(8) The concerted practice relating to the channelling of production surpluses for export is also restrictive of competition. Through such practice, members of the WCC waived pursuit of an autonomous commercial policy, setting up a system of solidarity and monitoring aimed at preventing incursions by competitors on respective national markets within the Community.

62. **The exchange of information between members of the WCC**

(1) The system of information exchange (recital 40) under which the WCC members pass on to one another at the meetings data on the production capacities, output, home and export sales, home prices for white and grey cement and export prices of individual undertakings is a sufficiently clear system to constitute, from 6 May 1982 to 26 May 1988 at least, a continuous concerted practice in breach of Article 85(1). The object of the system of information exchange is to make known the conduct which each member plans to pursue on the various Community and export markets, and it creates, between the undertakings participating in it, a system of solidarity and reciprocal influence designed to achieve coordination of their economic activities.

(2) The infringement of Article 85(1) was committed from 6 May 1982 to 26 May 1988 by Italcementi, Dykerhoff, Lafarge, Ciments Français and CBR and from 1 January 1986 to 26 May 1988 by Valenciana.

63. **Effect on trade between Member States**

(1) The home market rule and the rule on the channelling of production surpluses for export to third countries were intended to prevent or restrict marketing between Member States: Community trade is therefore directly and appreciably affected.

(2) The information exchange system is liable to affect trade between Member States to the extent that it contributes to the implementation of agreements and concerted practices having as their object or effect the prevention or restriction of trade in white cement between Member States. Trade between Member States is also affected because each of the undertakings involved in the exchange of information is induced to define its policies on prices and sales on the basis of those of the other participating producers and, consequently, the natural flows of trade between Member States are artificially influenced to an appreciable extent.

SECTION II

REMEDIES

64. **Article 3 of Regulation No 17**

Where the Commission finds that the provisions of Article 85(1) have been infringed, it may require the undertakings concerned to bring such infringement to an end in accordance with Article 3 of Regulation No 17.

The great majority of the undertakings have denied most of the infringements of Article 85(1). Although a fairly limited number of undertakings have informed the Commission that they have taken steps to prohibit their staff from participating in meetings or having any contacts with the representatives of the other undertakings on business matters, the Commission is not certain that the infringements described in recitals 45, 46, 47, 49, 50, 53, 55, 56, 61 and 62 have in fact ever ceased. Similarly, the Commission is not certain that the concerted practices within the EPC are not continuing under the new CDICT Committee.

The Commission must therefore not only find that infringements have been committed, but also require the undertakings to terminate them.

65. **Article 15(2) of Regulation No 17**

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

(2) The undertakings and associations of undertakings to which this Decision is addressed intentionally infringed Article 85(1). The infringements are expressly covered by Article 85(1). Although fully aware of the prohibition laid down by Community law and the risk of having substantial fines imposed on them (see in particular recital 19, paragraphs 3 and 5, recital 21, paragraph 2, recital 25 and recital 26), they intentionally adopted, within the framework of Cembureau and a system of bilateral or multilateral meetings and contacts and within the framework of the three export committees, measures and arrangements aimed at ensuring non-transhipment to home markets, the sharing of markets and the exchange of information. The infringements were therefore such as to thwart a basic principle of the common market, namely the removal of obstacles to the free movement of goods.

(3) **Undertakings and associations of undertakings having participated in the Cembureau agreement or principle**

All the undertakings and associations of undertakings to which this Decision is addressed acceded to the agreement or principle of not transhipping to home markets (grey cement market), concluded on 14 January 1983 between the associations and undertakings which were direct members of Cembureau. As from that date, that agreement bound those undertakings and the undertakings which were members of the national associations concerned. Buzzi, which was not linked to Cembureau through a national association, acceded at a later date (see paragraph 4 below). However, for the purposes of this Decision, the Commission takes into consideration only the undertakings which were represented within Cembureau by their association and which, in addition to their membership of the association, clearly manifested their accession to the agreement by participating in the various actions described in Chapters 4, 5 and 6 and set out below.

As may be seen from the Cembureau documents referred to in recital 19, the agreement provided for market sharing under which each producer sold only on its national market or, in the event of sales on another market, complied with the prices and terms and conditions of sale applied by local producers. It is evident from the documents quoted in recital 19 that it was only in the event of non-compliance with this rule that specific measures had to be taken in order to ensure implementation of the agreement (measures such as those specified in the documents referred to in recital 19 and the measures described in Chapter 4). The measures described in Chapters 5 and 6 fall within the same framework as, respectively, a joint response to non-compliance with the agreement and joint monitoring of the effective channelling of production surpluses to third countries. All these actions constitute specific implementation of a principle which had itself been in force since 14 January 1983.

In particular:

(a) The associations Cembureau, BDZ, FIC, Oficemen, SFIC, Association of the Greek Cement Industry, VNC, ATIC and BCA and the undertakings Aalborg, Irish Cement, Cementir, Italcementi, Unicem and Ciments Luxembourgeois acceded, as members of Cembureau, to the agreement or principle of not transhipping to home markets at the time when it was agreed and established. These associations and undertakings, with the exception of Ciments Luxembourgeois, also participated in the measures and arrangements agreed to supplement the agreement or principle and/or assist in its application.

Aker and EUROC, as the parent companies of respectively the producers Norcem and Cementa, which are members of Cembureau, acceded to the agreement or principle at the time when it was established and agreed.

(b) The undertakings Blue Circle, CBR, Ciments Français, Lafarge, Dyckerhoff, Heidelberger, Titan, ENCI, Asland and Cimpor, though not direct members of Cembureau, represented their national associations as Head Delegates at the meetings organized by Cembureau on 14 January 1983, 19 March 1984 and 7 November 1984: there is thus no doubt as to the participation of these undertakings in the agreement. Furthermore, these undertakings participated in the measures described in point (c) below.

(c) Other undertakings implemented the agreement or principle of not transhipping to home markets by participating in the various measures and arrangements designed to supplement the agreement or principle and/or assist in its application. More precisely, each of the undertakings referred to in this point (c) and in point (b) above participated in the following measures and arrangements:

— Holderbank participated in the agreement relating to the Cembureau or European Task Force;

— Alsen participated in the concerted practices within the framework of the ECEC;

— Nordcement participated in the concerted practices within the framework of the ECEC;

— Dyckerhoff participated in the agreements and concerted practices relating to the regulation of cement supplies between France and Germany, in the agreement relating to the Cembureau or European Task Force and in the concerted practices within the framework of the ECEC;

— Heidelberger participated in the agreements and concerted practices relating to the regulation of cement supplies between France and Germany and in the agreement relating to the Cembureau or European Task Force;

— CBR participated in the agreement relating to the Cembureau or European Task Force;

— Asland participated in the agreement relating to the Cembureau or European Task Force;

— Hispacement participated in the agreement relating to the Cembureau or European Task Force and in the continuous concerted practice within the framework of the EPC;

— Hornos Ibéricos participated in the continuous concerted practice within the framework of the EPC;

— Uniland participated in the agreement relating to the Cembureau or European Task Force;

— Valenciana participated in the continuous concerted practice within the framework of the EPC;

— Cedest participated in the agreements and concerted practices relating to the regulation of cement supplies between France and Germany;

— Ciment Français participated in the concerted practice with Buzzi, in the agreements and concerted practices relating to the regulation of cement supplies between France and Germany, in the agreement relating to the Cembureau or European Task Force and in the continuous concerted practice within the framework of the EPC;

— Lafarge participated in the concerted practice with Buzzi, in the agreements and concerted practices relating to the regulation of cement supplies between France and Germany, in the agreement relating to the Cembureau or European Task Force and in the continuous concerted practice within the framework of the EPC;

— Vicat participated in the concerted practice with Buzzi;

— Halkis participated in the continuous concerted practice within the framework of the EPC;

— Heracles participated, within the framework of the Cembureau or European Task Force, in the agreements with Holderbank and Lafarge and in the concerted practice with CBR aimed at preventing direct sales of cement in Europe and in the continuous concerted practice within the framework of the EPC;

— Titan participated, within the framework of the Cembureau or European Task Force, in the agreements with Blue Circle, Holderbank, Lafarge, Aker and EUROC and in the concerted practice with CBR aimed at preventing direct sales of cement in Europe and in the continuous concerted practice within the framework of the EPC;

— Buzzi, although not a member of Cembureau, applied, through the concerted practices with Ciment Français, Laforge and Vicat, which were associated with Cembureau, the agreement or principle of not transhipping to home markets;

— ENCI participated in the concerted practices within the framework of the ECEC;

— Cimpor participated in the agreement relating to the monitoring of cement movements between Spain and Portugal;

— Secil participated in the agreement relating to the monitoring of cement movements between Spain and Portugal;

— Blue Circle participated in the agreement relating to the Cembureau or European Task Force and in the continuous concerted practice within the framework of the EPC;

— Castle participated, within the framework of the Cembureau or European Task Force, in the concerted practice aimed at preventing and/or reducing Greek cement imports into the United Kingdom and in the concerted practices within the framework of the ECEC;

— Rugby participated, within the framework of the Cembureau or European Task Force, in the concerted practice aimed at preventing and/or reducing cement imports into the United Kingdom.

(4) **Duration of the infringement**

The infringement was of long duration.

The infringement constituted by the Cembureau agreement or principle is deemed to have occurred as from 14 January 1983, even if the acts constituting proof of the active participation of the undertakings occurred later. Similarly, although some of the activities described in this Decision could have begun before that date, in the same way as there are indications that the Cembureau principle itself was in force previously (see paragraph 6 of recital 45), they are taken into account as measures implementing the agreement or principle only as from 14 January 1983.

However, in the case of the undertakings mentioned below, the Commission deems the infringement to have occurred as from the following dates:

— in the case of Buzzi, 11 May 1983. Buzzi was not, either directly or indirectly, a member of Cembureau. It is therefore the start of the concerted practice in which Buzzi participated which must be regarded as providing evidence of its participation in the Cembureau agreement or principle of not transhipping to home markets (see recital 48);

— in the case of Oficemen, Asland, Hispacement, Hornos Ibéricos, Uniland, Valenciana, ATIC, Cimpor and Secil, 1 January 1986 (see paragraph 11 of recital 45). In the case of these undertakings and associations of undertakings, the Commission has no evidence that their participation in the Cembureau agreement or principle had any effect within the Community before that date;

— in the case of Holderbank, 28 May 1986 (see paragraph 14 of recital 53). In the case of this undertaking, the Commission has no evidence that its participation in the Cembureau agreement or principle had any effect within the Community before that date;

— in the case of Aker and EUROC, 9 June 1986 (see paragraph 11 of recital 53). In the case of these undertakings, the Commission has no evidence that their participation in the Cembureau agreement or principle had any effect within the Community before that date.

While the Commission is able to establish the date on which the infringement constituted by the Cembureau agreement or principle commenced, it has no certainty that the infringement ever really ceased, and it cannot therefore establish a date for the ending of the infringement. However, since the apparently final manifestation of the agreement, known to the Commission, is the liquidation of Interciment S.A. on 26 March 1993, the Commission has used that date for determining the reference period for the fine.

On the separate white-cement market, the WCC infringement lasted from 6 May 1982 to 26 May 1988 at least. In the case of Valenciana, the infringement is deemed to have commenced on 1 January 1986, since the Commission has no evidence that its participation had any effect within the Community before that date.

(5) **Gravity of the infringement**

In determining the general amount of the fines, the Commission has taken account of the fact that the infringement constituted by the Cembureau agreement or principle and by the various actions implementing it is of particular gravity, warranting substantial fines, for the following reasons:

— the collusion on market-sharing and the associated exchange of information is in itself a very serious restriction of competition;

— the cement market is a basic industrial sector that is highly important to the building and construction industry and to the economy in general;

— the undertakings and associations of undertakings participating in the infringements account for virtually the whole of the Community cement market, in which there are moreover no new market entrants;

— the collusion was institutionalized in a system of international organizations or bilateral or multilateral meetings or contacts designed to regulate and organize the cement market;

— despite the fact that the collusion took place within an institutional framework that also had legitimate objectives, the undertakings took care, in the case of conduct that might infringe the competition rules, to shroud their actions and/or decisions in secrecy (see in particular recitals 19 and 24 to 28). Although there was discussion of notifying certain practices to the Commission, such notification did not take place (see recital 26).

(6) In determining the amount of the fines, the Commission has taken account of the fact that the Community undertakings had, during the period in question, to cope with a sudden increase in cement imports at a time when the Community industry was having difficulty in overcoming the bad economic situation.

(7) The Commission has established separate fines for the infringements relating to the grey-cement and white-cement markets, namely:

— fines for the group of infringements described in Chapters 8, 9 and 10 and relating to the grey-cement market;

— fines for the infringements described in Chapter 11 and relating to the white-cement market.

(8) In the case of the group of infringements relating to the grey-cement market, the Commission has set:

— an overall fine on Cembureau and the associations of undertakings in respect of the infringements in which they participated, as described in Chapters 8 and 9 and in recital 58. The Commission considers that the associations must also be penalized so as to dissuade them from taking the initiative in or facilitating such restrictive agreements and practices in future;

— an aggregate fine on each undertaking in respect of its participation in the Cembureau agreement or principle and in the measures implementing it. Since all these actions are connected, the Commission does not feel it necessary to impose separate fines in respect of the various implementing measures.

(9) In determining the amount of the fine for each undertaking in respect of the infringements described in Chapters 8, 9 and 10, the Commission started from the fact that, as it specified in paragraph 3 above, all the undertakings acceded to the agreement or principle of non-transhipment to home markets. However, within this general approach, it has taken account of the role played by each undertaking in the conclusion of the home market agreement or principle of not transhipping to home markets and the arrangements and measures agreed to supplement the agreement or principle and/or assist in its implementation, the participation of each undertaking in the various measures or arrangements agreed to supplement the agreement or principle and/or assist in its implementation, and the duration of such measures and arrangements. On the basis of what has just been stated, the Commission takes into account the following considerations:

(a) most of the undertakings participated in the Cembureau agreement or principle through accession to it and/or application of the measures and arrangements agreed to supplement the agreement or principle and having direct effects tending to partition home markets:

— Aker, EUROC, Aalborg, Irish Cement, Cementir, Italcementi and Unicem, as Cembureau members, participated directly in the conclusion of the agreement or principle of non-transhipment to home markets and participated in the implementing measures aimed at directly protecting home markets;

— Dyckerhoff, Heidelberger, CBR, Asland, Ciments Français, Lafarge, ENCI, Cimpor and Blue Circle performed, through their most senior staff, the function of Head Delegates within Cembureau either at the time when the agreement or principle of non-transhipment to home markets was agreed or during the period of its implementation: there is thus no doubt as to the essential role of these undertakings in the conclusion and/or implementation of the agreement. Furthermore, these undertakings, with the exception of ENCI, participated in measures implementing the agreement or principle that were designed directly to protect home markets; ENCI participated in the concerted practices aimed at channelling production surpluses to third countries;

— Holderbank, Hispacement, Uniland, Vicat, Buzzi, Secil, Castle and Rugby participated in measures implementing the Cembureau agreement or principle that were designed directly to protect home markets.

(b) The other undertakings bear a lesser responsibility for the reasons specified for each of them.

— Alsen, Nordcement, Hornos Ibéricos, Valenciana and Halkis participated only in the measures implementing the Cembureau agreement or principle that were designed to channel production surpluses to third countries. These measures have less direct effects on the protection of home markets than those described in Chapters 4 and 5.

— Cedest, Titan and Heracles, though participating in measures implementing the Cembureau agreement or principle that were designed directly to protect home markets, tried to avoid implementing the Cembureau agreement to which they acceded.

— Ciments Luxembourgeois, though a direct member of Cembureau and though participating in the Head Delegate meetings at which the Cembureau agreement or principle was agreed, did not, as far as the Commission is aware, put into effect any implementing measure. Its less active role therefore warrants its inclusion in the group of undertakings that bear a lesser responsibility.

(10) In determining the amount of the fine to be imposed on Buzzi, Oficemen, Asland, Hispacement, Hornos Ibéricos, Uniland, Valenciana, Atic, Cimpor, Secil, Holderbank, Aker and EUROC, the Commission has in this Decision taken account of the fact that these undertakings participated in the infringement over a shorter period (see paragraph 4 of recital 65).

(11) In determining the amount of the fine on each undertaking in respect of the infringements described in Chapter 11, the Commission has taken account of the fact that these infringements were less serious as a whole and that all the undertakings played an important role. In the case of Valenciana, account has been taken of the fact that it participated in the infringements over a shorter period,

HAS ADOPTED THIS DECISION:

Article 1

Cembureau-The European Cement Association, the Fédération de l'Industrie Cimentière a.s.b.l., S.A. Cimenteries CBR, Aalborg Portland A/S, the Syndicat Français de l'Industrie Cimentière, Lafarge Coppée S.A., Société des Ciments Français S.A., Vicat S.A., Cedest S.A., the Bundesverband der Deutschen Zementindustrie, Heidelberger Zement AG, Dyckerhoff AG, Alsen-Breitenburg Zement- und Kalkwerke GmbH, Nordcement AG, the Association of the Greek Cement Industry, Titan Cement Company S.A., Heracles General Cement Company, Halkis Cement Company S.A., Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A., Unicem S.p.A., Cementir-Cementerie del Tirreno S.p.A., S.A. des Ciments Luxembourgeois, the Vereniging Nederlandse Cement-Industrie, Eerste Nederlandse Cement Industrie N.V., the British Cement Association, Blue Circle Industries Plc, Rugby Group Plc and Castle Cement Limited, from 14 January 1983, Fratelli Buzzi S.p.A. from 11 May 1983, ATIC-Associação Tecnica da Industria do Cimento, Cimpor-Cimentos de Portugal S.A, SECIL-Companhia Geral de Cal e Cimento S.A., Agrupación de Fabricantes de Cementos de España-Oficemen, Asland S.A., Corporación Uniland S.A., Hispacement S.A., Hornos Ibéricos Alba S.A. and Compañia Valenciana de Cementos Portland S.A., from 1 January 1986, Holderbank Financière Glaris S.A, from 28 May 1986, and Aker a.s. and EUROC AB, from 9 June 1986, infringed the provisions of Article 85(1) of the EC Treaty by participating in an agreement designed to ensure non-transhipment to home markets and to regulate cement transfers from one country to another.

Article 2

1. Cembureau-The European Cement Association, the Fédération de l'Industrie Cimentière a.s.b.l., Aalborg Portland A/S, the Syndicat Français de l'Industrie Cimentière, the Bundesverband der Deutschen Zementindustrie, the Association of the Greek Cement Industry, Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A., Unicem S.p.A., Cementir-Cementerie del Tirreno S.p.A., S.A. des Ciments Luxembourgeois, the Vereniging Nederlandse Cement-Industrie and the British Cement Association, from 14 January 1983 to 14 April 1986, and ATIC-Associação Tecnica da Industria do Cimento and Agrupación de Fabricantes de Cementos de España-Oficemen, from 1 January 1986 to 14 April 1986, infringed the provisions of Article 85(1) of the EC Treaty by participating in agreements on the exchange of price information, designed to facilitate the implementation of the agreement referred to in Article 1, at the Cembureau Head Delegates and Executive Committee meetings.

2. Cembureau-The European Cement Association, the Fédération de l'Industrie Cimentière a.s.b.l., Aalborg Portland A/S, the Syndicat Français de l'Industrie Cimentière, the Bundesverband der Deutschen Zementindustrie, the Association of the Greek Cement Industry, Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A., Unicem S.p.A., Cementir-Cementerie del Tirreno S.p.A., S.A. des Ciments Luxembourgeois, the Vereniging Nederlandse Cement-Industrie and the British Cement Association, from 1 January 1984 to 31 December 1988, and ATIC-Associação Tecnica da Industria do Cimento and Agrupación de Fabricantes de Cementos de España-Oficemen, from 1 January 1986 to 31 December 1988, infringed the provisions of Article 85(1) of the EC Treaty by participating in concerted practices designed to facilitate the implementation of the agreement referred to in Article 1 and relating to:

(a) the circulation of information on the Belgian and Dutch producers' minimum prices for supplies of cement by lorry and of the Luxembourg producer's prices, inclusive of rebates;

(b) the circulation of information on the Danish and Irish producers' individual price-lists, on the trade price-lists in force in Greece, Italy and Portugal, and on the average prices charged in Germany, France, Spain and the United Kingdom.

Article 3

1. (a) Lafarge Coppée S.A. and Fratelli Buzzi S.p.A. infringed, from 26 November 1988 to 31 December 1988, the provisions of Article 85(1) of the EC Treaty by participating in a concerted practice involving the sharing of the market in southern France and the restriction of their autonomy of conduct with regard to production sources.

(b) Société de Ciments Français S.A. and Fratelli Buzzi S.p.A. infringed, from 17 March 1988 to 31 December 1988, the provisions of Article 85(1) of the EC Treaty by participating in a concerted practice

involving information on current prices and a forecast of price increases, with a view to the restriction of their autonomy of conduct.

(c) Vicat S.A. and Fratelli Buzzi S.p.A. infringed, from 11 May 1983 to 31 December 1988, the provisions of Article 85(1) of the EC Treaty by participating in a concerted practice involving the exchange of price information with a view to the restriction of their autonomy of conduct as regards cement supplies in southern France.

2. Agrupación de Fabricantes de Cementos de España-Oficemen, Cimpor-Cimentos de Portugal S.A, SECIL-Companhia Geral de Cal e Cimento S.A. infringed the provisions of Article 85(1) of the EC Treaty from 1 January 1986 to 24 April 1989 by participating in an agreement on the monitoring of cement movements between Spain and Portugal and on non-transhipment to their respective home markets.

3. (a) The Syndicat Français de l'Industrie Cimentière, Lafarge Coppée S.A., Société de Ciments Français S.A., Cedest S.A., the Bundesverband der Deutschen Zementindustrie, Dyckerhoff AG and Heidelberger Zement AG infringed the provisions of Article 85(1) of the EC Treaty from 23 June 1982 to at least 30 September 1989 by participating in agreements and concerted practices involving the regulation of cement supplies from France to Germany and from Germany to France.

(b) The Syndicat Français de l'Industrie Cimentière and the Bundesverband der Deutschen Zementindustrie infringed the provisions of Article 85(1) of the EC Treaty from 1 January 1985 to 30 September 1989 by participating in a concerted practice involving the exchange of information designed to monitor compliance with the quantitative restrictions on exports between France and Germany and to monitor the destination of such exports in terms of the various German Länder.

Article 4

1. Cembureau-The European Cement Association, the Holderbank Financière Glaris S.A. group, Blue Circle Industries Plc, Agrupación de Fabricantes de Cementos de España-Oficemen, Asland S.A., Corporación Uniland S.A., Hispacement S.A., the Syndicat Français de l'Industrie Cimentière, Lafarge Coppée S.A., Société de Ciments Français S.A., the Bundesverband der Deutschen Zementindustrie, Dyckerhoff AG, Heidelberger Zement AG, S.A. Cimenteries CBR, Aker a.s. and EUROC AB, Aalborg Portland A/S, Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A., Unicem S.p.A. and Cementir-Cementerie del Tirreno S.p.A. infringed the provisions of Article 85(1) of the EC Treaty as from 28 May 1986 by participating in the agreement on the setting-up of the Cembureau Task Force or European Task Force.

2. The Holderbank Financière Glaris S.A. group, Blue Circle Industries Plc, Agrupación de Fabricantes de Cementos de España-Oficemen, Asland S.A., Corporación Uniland S.A., Hispacement S.A., the Syndicat Français de l'Industrie Cimentière, Lafarge Coppée S.A., Société de Ciments Français S.A., the Bundesverband der Deutschen Zementindustrie, Dyckerhoff AG, Heidelberger Zement AG, Aker a..s. and EUROC AB, S.A. Cimenteries CBR, Italcementi-Fabbriche Riunite Cemento S.p.A., Unicem S.p.A. and Cementir-Cementerie del Tirreno S.p.A. infringed the provisions of Article 85(1) of the EC Treaty from 9 June 1986 to 26 March 1993 by participating in an agreement on the setting-up of the Joint Trading Company, Interciment S.A., having as its purpose the carrying-out of the persuasive and dissuasive measures against those threatening the stability of the member countries' markets.

3. (a) Cembureau-The European Cement Association, the Holderbank Financière Glaris S.A. group, Blue Circle Industries Plc, Agrupación de Fabricantes de Cementos de España-Oficemen, Asland S.A., Corporación Uniland S.A., Hispacement S.A., the Syndicat Français de l'Industrie Cimentière, Lafarge Coppée S.A., Société de Ciments Français S.A., the Bundesverband der Deutschen Zementindustrie, Dyckerhoff AG, Heidelberger Zement AG, S.A. Cimenteries CBR, Aker a.s. and EUROC AB, Aalborg Portland A/S, Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A, Unicem S.p.A. and Cementir-Cementerie del Tirreno S.p.A. infringed the provisions of Article 85(1) of the EC Treaty from 17 June 1986 to 15 March 1987 by participating in concerted practices designed to withdraw Calcestruzzi S.p.A. as a customer from the Greek producers, and from Titan in particular.

(b) Italcementi-Fabbriche Riunite Cemento S.p.A, Unicem S.p.A. and Cementir-Cementerie del Tirreno S.p.A. infringed the provisions of Article 85(1) of the EC Treaty from 3 April 1987 to 3 April 1992 by participating in an agreement relating to the contracts and agreements signed on 3 and 15 April 1987 having as their aim the prevention of imports of Greek cement by Calcestruzzi S.p.A.

4. The following undertakings infringed the provisions of Article 85(1) of the EC Treaty by participating in agreements and concerted practices designed to deflect the Greek production surplus and to curb Greek cement imports into the Member States, and in particular:

(a) Blue Circle Industries Plc, Castle Cement Ltd and Rugby Group Plc, from 16 June 1986 to 5 September 1986, by participating in a concerted practice

designed to prevent and/or reduce Greek cement imports into the United Kingdom;

(b) Blue Circle Industries Plc and Titan Cement Company S.A., from 4 July 1986 to 31 December 1989, by participating in an agreement designed to deflect quantities of cement and clinker produced by Titan Cement Company S.A. to the United States and Nigeria and to prevent direct sales of such products by Titan Cement Company S.A. on the European markets;

(c) the Holderbank Financière Glaris S.A. group and Titan Cement Company S.A., from 19 June 1986 to 31 December 1990, by participating in an agreement designed to deflect quantities of cement and clinker produced by Titan Cement Company S.A. to the United States and Africa and to prevent direct sales of such products by Titan Cement Company S.A. on the European markets;

(d) the Holderbank Financière Glaris S.A. group and Heracles General Cement Company, from 9 May 1986 to 31 December 1990, by participating in an agreement designed to prevent direct sales of cement by Heracles General Cement Company on the European markets and to deflect quantities of cement and clinker produced by Heracles General Cement Company to other markets;

(e) Lafarge Coppée S.A. and Titan Cement Company S.A., from 22 July 1986 to 31 December 1991, by participating in an agreement designed to deflect quantities of clinker produced by Titan Cement Company S.A. to Canada and to prevent direct sales by Titan Cement Company S.A. on the European markets;

(f) Lafarge Coppée S.A. and Heracles General Cement Company, from 1 June 1988 to 15 June 1991, by participating in an agreement designed to deflect quantities of cement and clinker produced by Heracles General Cement Company outside Europe and to prevent direct sales of such products by Heracles General Cement Company on the European markets;

(g) S.A. Cimenteries CBR, Heracles General Cement Company and Titan Cement Company S.A., from 4 May 1988 to 31 December 1990, by participating in a concerted practice relating to supplies, through UMAR — Union Maritima Internacional S.A., of clinker intended for the companies S.A. Cimenteries CBR and Eerste Nederlandse Cement Industrie N.V. in Belgium and the Netherlands and designed to prevent direct sales by the two Greek producers on the European markets;

(h) Aker a.s. and EUROC AB and Titan Cement Company S.A., from 28 January 1987 to 31 December 1990, by participating in an agreement designed to deflect quantities of cement and clinker produced by Titan Cement Company S.A. to Africa, the United States and the Bahamas and to prevent direct sales of such products by Titan Cement Company S.A. on the European markets.

Article 5

The Fédération de l'Industrie Cimentière, Aalborg Portland A/S, the Syndicat Français de l'Industrie Cimentière, Dyckerhoff AG, Alsen-Breitenburg Zement- und Kalkwerke GmbH, Nordcement AG, the Association of the Greek Cement Industry, Irish Cement Ltd, Italcementi-Fabbriche Riunite Cemento S.p.A, Unicem S.p.A., Cementir-Cementerie del Tirreno S.p.A. and Eerste Nederlandse Cement Industrie N.V., from 14 March 1984 to 22 September 1989, and Castle Cement Ltd, ATIC-Associação Tecnica da Industria do Cimento and Agrupación de Fabricantes de Cementos de España-Oficemen, from 1 January 1986 to 22 September 1989, infringed the provisions of Article 85(1) of the Treaty by participating, within the framework of the ECEC, in concerted practices relating to the exchange of information, the supply and demand situation in the importing third countries, the export prices chargeable, the import situation in the member countries and the supply and demand situation on the home markets and designed to prevent incursions by competitors on respective national markets in the Community.

Article 6

Lafarge Coppée S.A., Titan Cement Company S.A., Heracles General Cement Company and Halkis Cement Company S.A, from 1 July 1981 to 19 May 1989, Société de Ciments Français S.A., from 1 July 1981 to 17 February 1989, Blue Circle Industries Plc, from 1 July 1981 to 12 October 1987, and Hispacement S.A., Hornos Ibéricos Alba S.A., Compañia Valenciana de Cementos Portland S.A. and its subsidiary Cementos del Mar S.A., from 1 January 1986 to 19 May 1989, infringed the provisions of Article 85(1) of the EC Treaty by participating, within the framework of the EPC, in a continuous concerted practice involving the examination of the situation on Community markets, the sharing of third-country markets, the setting of prices for products intended for overseas export, the exchange of individualized data on export availabilities and on actual exports to third countries and designed to prevent incursions by competitors on respective national markets in the Community.

Article 7

Italcementi-Fabbriche Riunite Cemento S.p.A., Dyckerhoff AG, Lafarge Coppée S.A., Société de Ciment Français S.A. and S.A. Cimenteries CBR, from 6 May 1982 to 26 May 1988, and Compañia Valenciana de Cementos Portland S.A., from 1 January 1986 to 26 May 1988, infringed the provisions of Article 85(1) of the EC Treaty by participating, within the framework of the WCC, in the concerted practice and agreement relating to non-transhipment to home markets, in the continuous concerted practice relating to the

channelling of production surpluses for export to third countries, and in a continuous concerted practice relating to exchanges of information on the production capacities, output, domestic and export sales, domestic prices for white and grey cement and export prices of individual undertakings.

Article 8

The undertakings specified in Articles 1 to 7 shall forthwith bring the infringements referred to in those Articles to an end (if they have not already done so) and shall henceforth refrain, in relation to the markets for grey cement and white cement, from any agreement or concerted practice which may have the same or similar object, including any exchange of confidential commercial information designed to monitor the performance of any express or tacit agreement or any concerted practice involving the sharing of markets in the Community.

Article 9

The following fines are hereby imposed on the associations and undertakings concerned, in respect of the infringement found in Article 1, which was put into effect, in particular, by the conduct set out in Articles 2-6:

1. Cembureau-The European Cement Association: a fine of ECU 100 000
2. Holderbank Financière Glaris S.A.: a fine of ECU 5 331 000
3. Aker a.s.: a fine of ECU 40 000
4. EUROC AB: a fine of ECU 40 000
5. Bundesverband der Deutschen Zementindustrie: a fine of ECU 100 000
6. Alsen-Breitenberg Zement- und Kalkwerke GmbH: a fine of ECU 3 841 000
7. Dyckerhoff AG: a fine of ECU 12 296 000
8. Heidelberger Zement AG: a fine of ECU 15 652 000
9. Nordcement AG: a fine of ECU 1 850 000
10. Fédération de l'Industrie Cimentière a.s.b.l.: a fine of ECU 100 000
11. S.A. Cimenteries CBR: a fine of ECU 7 196 000
12. Aalborg Portland A/S: a fine of ECU 4 008 000
13. Agrupación de Fabricantes de Cementos de España-Oficemen: a fine of ECU 70 000
14. Asland S.A.: a fine of ECU 5 337 000
15. Hispacement S.A.: a fine of ECU 102 000
16. Hornos Ibéricos Alba S.A.: a fine of ECU 1 784 000
17. Corporación Uniland S.A.: a fine of ECU 1 971 000
18. Compañia Valenciana de Cementos Portland S.A.: a fine of ECU 1 312 000
19. Syndicat Français de l'Industrie Cimentière: a fine of ECU 100 000
20. Cedest S.A.: a fine of ECU 2 522 000
21. Société des Ciments Français S.A.: a fine of ECU 24 716 000
22. Lafarge Coppée S.A.: a fine of ECU 22 872 000
23. Vicat S.A.: a fine of ECU 8 272 000
24. Association of the Greek Cement Industry: a fine of ECU 100 000
25. Halkis Cement Company S.A.: a fine of ECU 1 856 000
26. Heracles General Cement Company: a fine of ECU 5 748 000
27. Titan Cement Company S.A.: a fine of ECU 5 625 000
28. Irish Cement Ltd: a fine of ECU 3 524 000
29. Fratelli Buzzi S.p.A.: a fine of ECU 3 652 000
30. Cementir-Cementerie del Tirreno S.p.A.: a fine of ECU 8 248 000
31. Italcementi-Fabbriche Riunite Cemento S.p.A.: a fine of ECU 32 492 000
32. Unicem S.p.A.: a fine of ECU 11 652 000
33. S.A. des Ciments Luxembourgeois: a fine of ECU 1 052 000
34. Vereniging Nederlandse Cement-Industrie: a fine of ECU 100 000
35. Eerste Nederlandse Cement-Industrie N.V.: a fine of ECU 7 316 000
36. ATIC-Associação Tecnica da Industria do Cimento: a fine of ECU 70 000
37. Cimpor-Cimentos de Portugal S.A.: a fine of ECU 9 324 000
38. SECIL-Companhia Geral de Cal e Cimento S.A.: a fine of ECU 3 017 000
39. British Cement Association: a fine of ECU 100 000
40. Blue Circle Industries Plc: a fine of ECU 15 824 000
41. Castle Cement Ltd: a fine of ECU 7 964 000
42. The Rugby Group Plc: a fine of ECU 5 144 000

Article 10

The following fines are hereby imposed on the undertakings named herein in respect of the infringements found in Article 7:

1. Italcementi-Fabbriche Riunite Cemento S.p.A.: a fine of ECU 1 088 000
2. Dyckerhoff AG: a fine of ECU 988 000
3. Lafarge Coppée S.A.: a fine of ECU 1 028 000
4. Société des Ciments Français S.A.: a fine of ECU 1 052 000
5. S.A. Cimenteries CBR: a fine of ECU 836 000
6. Compañia Valenciana de Cementos Portland S.A.: a fine of ECU 554 000

Article 11

The fines imposed in Articles 9 and 10 shall be paid within three months of the date of notification of this Decision to the following bank account:

Account No 310-0933000-43 Commission of the European Communities
Banque Bruxelles-Lambert
Agence Européenne
5 Rond Point Schuman
B-1040 BRUSSELS.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Institute on its ecu operations on the first working day of the month in which this Decision was adopted, plus 3.5 percentage points, i.e. 9.25%.

Article 12

This Decision is addressed to:

1. Cembureau — Association Européenne du Ciment
Rue d'Arlon 55
B-1040 BRUXELLES

2. Holderbank — Financière Glarus AG
c/o Alsen-Breitenburg Zement- und Kalkwerke GmbH
Ost-West-Straße 69
D-20457 HAMBURG

3. Aker A/S
Fjordalléen 16
N-0250 OSLO

4. EUROC AB
Annetorpsvägen 100
S-21610 MALMÖ

5. Bundesverband der Deutschen Zementindustrie e.V.-BDZ
Pferdmengesstraße 7
D-50968 KÖLN

6. Heidelberger Zement AG
Berliner Straße 6
D-69120 HEIDELBERG

7. Dyckerhoff AG
Biebricher Straße 69
D-65203 WIESBADEN

8. FIC — Fédération de l'Industrie Cimentière
Rue César Franck 46
B-1050 BRUXELLES

9. Cimenteries CBR S.A.
Chaussée de La Hulpe 185
B-1170 BRUXELLES

10. Aalborg Portland
Rørdalsvej 44
DK-9000 AALBORG

11. Agrupación de Fabricantes de Cementos de España — Oficemen
José Abascal, 53-1°
E-28003 MADRID

12. Asland S.A.
Córcega, 325
E-08037 BARCELONA

13. Corporación Uniland S.A.
Córcega, 299-5°
E-08008 BARCELONA

14. Hispacement S.A.
Moll del Contadic s/n
E-08039 BARCELONA

15. SFIC — Syndicat Français de l'Industrie Cimentière
Avenue de Friedland 41
F-75008 PARIS

16. Lafarge Coppée S.A.
Rue des Belles Feuilles 61
F-75782 PARIS CEDEX 16

17. Société des Ciments Français
Tour Ariane
Place de la Pyramide 5
Quartier Villon
F-92800 PUTEAUX

18. Vicat S.A.
Tour GAN
Place de l'Iris 16
F-92082 PARIS LA DÉFENSE CEDEX 13

19. Cedest S.A.
Rue de la Pompe 183
F-75116 PARIS

20. Association of the Greek Cement Industry
Karirsi Square 10
GR-10561 ATHENS

21. Irish Cement Ltd
Stillorgan Road
Stillorgan
IRL-Co. DUBLIN

22. Italcementi — Fabbriche Riunite Cemento S.p.A.
Via G. Camozzi, 124
I-24100 BERGAMO

23. Unicem S.p.A.
Via Carlo Marenco, 25
I-10126 TORINO

24. Cementir — Cementerie del Tirreno S.p.A.
Corso di Francia, 200
I-00191 ROMA

25. Fratelli Buzzi S.p.A.
Corso Giovane Italia, 39
I-15033 CASALE MONFERRATO (Alessandria)

26. Ciments Luxembourgeois S.A.
Boîte postale 146
L-4002 ESCH-SUR-ALZETTE

27. Vereniging Nederlandse Cementindustrie-VNC
Gebouw Cementrum
Sint Teunislaan 1
NL-5231 BS 's-HERTOGENBOSCH

28. Eerste Nederlandse Cement Industrie NV-ENCI
Gebouw Cementrum
Sint Teunislaan 1
NL-5231 BS 's-HERTOGENBOSCH

29. ATIC — Associação Técnica da Indústria do Cimento
Av. 5 Outubro, 54, 2° D
P-1000 LISBOA

30. Cimpor — Cimentos de Portugal, EP
Rua Alexandre Herculano, 35
Apartado 2211
P-1106 LISBOA CODEX

31. SECIL — Companhia Geral de Cal e Cimento S.A.
Av. Cons. Fernando de Sousa, 19, 16°
P1092 LISBOA CODEX

32. British Cement Association
Century House
Telford Avenue
Crowthorne
GB-BERKSHIRE RG11 6YS

33. Blue Circle Industries Plc
84 Eccleston Square
GB-LONDON SW1V 1PX

34. The Rugby Group Plc
Crown House
GB-RUGBY CV21 2DT

35. Castle Cement Limited
Park Square
3160 Solihull Parkway
Birmingham Business Park
GB-BIRMINGHAM B37 7YN

36. Alsen-Breitenburg Zement- und Kalkwerke GmbH
Ost-West-Straße 69
D-20457 HAMBURG

37. Nordcement AG
Warmbüchenstraße 19
D-30159 HANNOVER

38. Titan Cement Company
Chalkidos Street 22A
GR-11143 ATHENS

39. Heracles General Cement Company
S. Venizelou Street 49-51
GR-14123 LYCOVRISSI

40. Halkis Cement Company
Athens Tower
GR-11527 ATHENS

41. Hornos Ibéricos Alba S.A.
Núñez de Balboa, 35-A
E-28001 MADRID

42. Compañía Valenciana de Cementos Portland S.A.
Cólon, 66-68
E-46004 VALENCIA

This Decision is enforceable pursuant to Article 192 of the EC Treaty.

Done at Brussels, 30 November 1994

For the Commission
Karel VAN MIERT
Member of the Commission

ANNEX I

Production capacity — cement

(1 000 tonnes)

	1983	1984	1985	1986	1987	1988	1989	1990	1991
Belgium	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	8 400	8 400
Denmark	1 850	2 050	2 050	2 050	2 050	2 270	2 270	2 270	2 635
France	26 833	26 553	23 057	23 057	23 403	22 355	23 392	23 951	n.a.
Germany	41 400	39 900	39 600	39 500	38 800	36 700	36 300	36 300	36 100
Greece	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	11 930	11 980	12 010
Ireland	2 460	2 460	2 460	2 390	2 390	1 990	1 990	2 040	2 040
Italy	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.
Luxembourg	960	1 000	1 000	1 000	1 000	1 000	1 000	1 000	1 000
Netherlands	1 700	n.a.	n.a.	n.a.	n.a.	n.a.	1 270	n.a.	n.a.
Portugal	7 220	6 400	7 104	7 512	7 512	7 428	7 528	7 528	7 528
Spain	35 443	35 433	35 868	34 618	34 618	34 558	34 013	34 500	36 000
United Kingtom	15 191	14 980	14 067	14 354	n.a.	n.a.	n.a.	n.a.	n.a.

Source: Cembureau.
n.a.: not available.

ANNEX 2

Production capacity — cement

(1 000 tonnes)

	1983	1984	1985	1986	1987	1988	1989	1990	1991
Belgium	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	8 520	8 520
Denmark	2 110	2 335	2 335	2 435	2 240	2 500	2 515	2 485	2 875
France	37 213	37 382	33 437	33 437	33 360	33 882	34 159	35 581	34 000
Germany (a)	n.a.	n.a.	n.a.	n.a.	n.a.	n.a.	48 356 (b)	63 486 (c)	35 132 (d)
Greece	17 000	16 400	16 500	16 200	16 200	15 300	15 350	15 550	15 450
Ireland	2 585	2 585	2 585	3 200	3 200	2 900	2 900	2 170	2 170
Italy	53 730	54 685	54 470	55 735	55 743	58 598	58 894	59 156	59 073
Luxembourg	420	420	420	600	600	600	360	650	650
Netherlands	5 060	4 700	4 700	4 700	4 700	3 900	5 200	3 900	3 900
Portugal	n.a.	8 316	8 376	8 376	8 436	7 856	8 300	8 300	8 300
Spain	41 113	41 113	41 607	40 157	40 157	40 087	39 455	40 050	38 500
United Kingdom	15 996	15 776	14 817	15 118	n.a.	n.a.	n.a.	n.a.	n.a.

(a) World Cement Directory 1991.
(b) West Germany only.
(c) including former GDR.
(d) not all companies have disclosed their figures.
Source: Cembureau.
n.a.: not available.

ANNEX 3

Production (1) includes cement produced with imported clinker and includes also exported clinker

(1 000 tonnes)

	1991	% 1991/1990	1990 (3)	1990	% 1990/1989	1989	% 1989/1988	1988	% 1988/1987	1987	% 1987/1986	1986	% 1986/1985	1985	% 1985/1984	1984	% 1984/1983	1983
Belgium	7 184	3,7	6 929	6 929	2,4	6 766	4,9	6 451	13,4	5 689	– 1,2	5 760	4,0	5 537	– 3,0	5 708	– 0,2	5 719
Denmark	1 623	33,3	1 218	1 218	– 23,7	1 597	19,4	1 338	– 13,3	1 543	– 7,6	1 670	17,8	1 418	– 2,2	1 450	10,8	1 309
France	25 799	– 4,6	27 052	27 052	0,8	26 827	3,1	26 031	7,9	24 121	1,9	23 668	0,5	23 548	– 2,0	24 025	– 6,9	25 817
Germany (2)	31 137	– 10,9	34 939	27 712	4,6	26 505	8,6	24 398	6,0	23 018	– 5,6	24 373	6,2	22 944	– 12,5	26 224	– 5,9	27 874
Greece	13 424	0,2	13 394	13 394	8,1	12 392	– 4,0	12 902	– 0,6	12 975	– 1,4	13 159	– 2,7	13 520	0,4	13 460	– 4,1	14 032
Ireland	1 510	– 13,7	1 750	1 750	– 6,4	1 869	10,0	1 699	16,4	1 460	4,4	1 398	– 6,0	1 487	8,0	1 377	– 7,2	1 484
Italy	40 806	– 0,1	40 855	40 855	0,8	40 522	5,1	38 556	4,2	37 008	2,9	35 973	– 3,7	37 361	– 3,9	38 891	– 3,2	40 175
Luxembourg	1 282	– 2,8	1 319	1 319	6,3	1 241	– 0,9	1 252	24,2	1 008	13,9	885	3,8	853	– 12,3	973	– 3,8	1 011
Netherlands	3 302	– 4,0	3 439	3 439	– 1,1	3 479	4,3	3 337	14,7	2 910	– 6,3	3 105	7,9	2 877	– 9,4	3 176	2,7	3 093
Portugal	7 473	2,7	7 277	7 277	7,9	6 743	2,9	6 556	11,2	5 896	8,3	5 444	1,5	5 364	– 2,2	5 483	– 10,0	6 095
Spain	28 008	– 2,3	28 662	28 662	1,6	28 217	9,5	25 776	4,8	24 588	2,3	24 042	– 0,6	24 197	– 9,2	26 643	– 14,7	31 229
United Kingdom	12 506	– 10,1	13 910	13 910	– 11,8	15 761	– 2,8	16 221	13,3	14 311	6,3	13 465	0,5	13 403	– 1,1	13 552	0,7	13 457
European Union	172 209	– 3,5	178 464	173 237	2,70	168 682	4,2	161 957	5,9	152 887	0,95	151 442	0,32	150 959	– 5,33	159 462	– 6,1	169 795

(1) Excluding intra-trade clinker.
(2) Western part only until 1990.
(3) Including eastern part of Germany.
Source: Cembureau.

ANNEX 4

Consumption of cement

(1 000 tonnes)

	1983	1984	1985	1986	1987	1988	1989	1990
Belgium	4 107	4 051	4 028	4 083	4 115	4 793	5 137	5 431
Denmark	1 226	1 359	1 435	1 704	1 593	1 404	1 367	1 326
France	22 859	21 428	21 024	21 742	22 359	24 146	24 740	25 157
Germany	27 712	26 170	22 802	24 371	23 183	24 194	25 791	27 325
Greece	6 257	6 118	5 925	6 126	6 036	6 515	7 330	7 546
Ireland	1 469	1 367	1 278	1 206	1 221	1 288	1 547	1 589
Italy	39 820	38 619	37 273	36 442	37 392	40 290	42 297	43 089
Luxembourg	296	284	271	286	331	385	393	430
Netherlands	4 750	4 798	4 659	5 020	4 892	5 132	5 753	5 539
Portugal	6 301	5 476	5 293	5 424	5 833	6 428	6 638	7 124
Spain	17 924	16 186	16 551	18 297	20 235	22 671	26 026	28 572
United Kingdom	13 547	13 792	13 720	13 829	(d) (a) (b) 15 050/15 064	17 738	18 267	16 232

(a) European Annual Review N° 11 (88-89).
(b) World Statistics Review N° 11 (87-88).
(d) World Statistics Review N° 10 (86-87).
Source: Cembureau.

ANNEX 5

Total exports falling within (CN code 2523)

1983

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	360 413	319	23 300	5 422	1 108	0	5	0	0	0	390 567
Belgium-Luxembourg 60-87	1 968	0	73 855	88 001	410	133	0	1	0	0	0	164 368
Netherlands 60-87	13 331	1 495 193	0	1 529 363	701	484	0	28	0	0	0	3 039 100
Germany 60-87	259 696	530 854	167 669	0	2 303	175	0	426	0	0	0	961 121
Italy 60-87	59 967	13	20	673	0	120	0	2	0	0	0	60 795
United Kingdom 73-87	31	4 663	96 115	81 440	3	0	87 655	84	0	0	0	269 991
Ireland 73-87	0	0	2 462	25 464	10	21 525	0	1	0	0	0	49 462
Denmark 73-87	0	0	1 500	17 373	0	130	0	0	0	0	0	19 003
Greece 81-87	6	0	2	42	431	57	0	5	0	0	0	543
Intra-EC 58-87	334 997	2 391 135	341 941	1 765 652	9 280	23 732	87 656	551	0	0	0	4 954 944

1984

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	344 174	37	55 717	6 321	801	0	9	0	0	0	407 059
Belgium-Luxembourg 60-87	1 755	0	175 321	108 673	450	525	0	0	0	0	0	286 724
Netherlands 60-87	11 327	1 493 279	0	1 564 840	1 519	130	0	35	0	0	0	3 071 130
Germany 60-87	787 134	492 384	190 715	0	2 215	492	10	219	0	0	0	1 473 169
Italy 60-87	62 850	0	4	1 154	0	55	0	1	0	0	0	64 064
United Kingdom 73-87	6 086	17 405	64 966	79 328	110	0	80 311	101	0	0	0	248 307
Ireland 73-87	0	0	3 130	0	85	46 664	0	0	0	0	0	49 879
Denmark 73-87	2 000	0	0	15 201	25	94	0	0	0	0	0	17 320
Greece 81-87	11	0	0	37	295	3	0	5	0	0	0	351
Intra-EC 58-87	871 163	2 347 240	434 172	1 824 950	11 019	48 763	80 321	370	0	0	0	5 617 998

1985

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	357 219	41	52 843	7 365	745	0	8	35 782	0	0	454 003
Belgium-Luxembourg 60-87	1 050	0	198 583	102 173	418	182	0	4	0	0	0	302 410
Netherlands 60-87	15 284	1 336 123	0	1 487 050	2 325	286	0	37	0	0	0	2 841 105
Germany 60-87	262 584	454 286	153 959	0	1 883	133	0	247	0	0	0	873 092
Italy 60-87	55 541	2	26	771	0	166	0	5	0	0	0	56 511
United Kingdom 60-87	37 440	9 303	66 731	45 153	159	0	257 266	270	0	0	0	416 322
Ireland 73-87	0	0	3 566	0	131	51 169	0	0	0	0	0	54 866
Denmark 73-87	5	51	231	25 684	9	159	0	0	0	0	0	26 139
Greece 81-87	19	0	0	0	121	0	0	5	0	0	0	145
Intra-EC 58-87	371 922	2 156 987	423 136	1 713 673	12 411	52 839	257 266	579	35 782	0	0	5 024 595

1986

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	323 063	298	54 461	10 785	737	0	0	0	0	57	389 401
Belgium-Luxembourg 60-87	1 301	0	179 350	111 179	339	148	0	0	0	0	0	292 317
Netherlands 60-87	12 478	1 473 914	0	1 570 807	2 680	922	0	17	0	0	0	3 060 818
Germany 60-87	270 585	520 855	150 909	0	1 723	139	0	853	0	0	0	945 064
Italy 60-87	57 435	0	0	1 082	0	151	0	0	0	0	0	58 668
United Kingdom 60-87	74 058	10 511	36 547	25 878	300	0	144 469	1 601	5 523	72	47 835	346 794
Ireland 73-87	0	0	3 702	44	38	44 520	0	0	0	0	10 469	58 773
Denmark 73-87	0	0	55	10 704	17	215	0	0	0	0	0	10 991
Greece 81-87	35	0	0	17	111	32	0	10	0	0	0	205
Portugal 86-87	0	0	0	60	5	43	0	0	0	0	136 422	136 530
Spain 86-87	12	0	33	413	84	196	0	0	0	2 594	0	3 332
Intra-EC 58-87	415 902	2 328 344	370 895	1 774 641	16 080	47 103	144 469	2 482	5 523	2 666	194 781	5 302 886

1987

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	366 871	1 089	65 184	16 866	483	0	2	0	26	3 035	453 556
Belgium-Luxembourg 60-87	2 103	0	175 191	111 122	390	174	0	2	0	0	0	288 982
Netherlands 60-87	29 585	1 451 022	0	1 355 499	2 917	311	0	0	0	0	58 933	2 898 267
Germany 60-87	222 944	600 642	142 953	0	1 156	294	0	935	0	0	10	968 934
Italy 60-87	61 357	0	25	751	0	87	0	0	105 316	0	90	167 626
United Kingdom 73-87	96 179	13 700	40 782	33 464	163	0	227 013	2 008	161 856	18	35 958	611 141
Ireland 73-87	1 320	0	932	56	44	44 722	0	0	0	0	28 523	75 597
Denmark 73-87	24	0	965	12 075	25	128	0	0	0	0	0	13 217
Greece 81-87	23	0	0	4	133	0	0	6	0	0	1	167
Portugal 86-87	0	0	30	0	24	39	0	0	48 769	0	55 678	104 540
Spain 86-87	17	0	0	537	30	108	0	0	12 569	31 797	0	45 058
Intra-EC 58-87	413 553	2 432 237	361 967	1 578 692	21 746	46 343	227 013	2 953	328 510	31 840	182 228	5 627 082

1988

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	389 131	4 233	69 241	12 898	632	0	0	0	156	2 859	479 150
Belgium-Luxembourg 60-92	3 111	0	247 217	123 742	12	193	0	0	85 901	0	0	460 176
Netherlands 60-92	35 263	1 491 065	0	1 520 563	1 108	341	0	32	41 190	0	90 948	3 180 510
Germany 60-92	234 738	570 067	134 955	0	457	532	0	150	0	15	50	940 964
Italy 60-92	61 635	29	219	687	0	21	0	1	1 183 438	0	0	1 246 030
United Kingdom 73-92	388 103	171 129	38 718	313 757	128	0	490 906	56 683	261 119	50 879	341 354	2 112 776
Ireland 73-92	25	1 690	2 026	3	0	54 313	0	0	0	0	31 543	89 600
Denmark 73-92	36	0	603	11 670	21	159	0	0	0	0	5	12 494
Greece 81-92	10	0	0	5	46	21	0	10	0	0	0	92
Portugal 86-92	27	0	0	0	16	4	0	0	0	0	4 181	4 228
Spain 86-92	117	9	0	363	149	154	0	0	0	79 293	0	80 085
Intra-EC 58-92	723 064	2 623 117	427 973	2 040 031	14 835	56 368	490 906	56 875	1 571 648	130 343	470 939	8 606 099

1989

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	341 721	7 639	85 800	15 412	904	4	0	88 743	8	392	540 623
Belgium-Luxembourg 60-92	2 312	0	300 585	94 937	44	148	0	3	60 000	0	66	458 095
Netherlands 60-92	39 846	1 462 188	0	1 585 006	1 221	246	0	0	88 000	0	97 546	3 274 053
Germany 60-92	252 457	583 518	145 865	0	462	323	0	332	0	0	0	982 957
Italy 60-92	67 646	0	29	618	0	3	0	7 085	1 304 000	0	0	1 379 381
United Kingdom 73-92	745 057	252 194	33 998	821 819	33	0	516 362	237 272	527 398	14 481	296 461	3 445 075
Ireland 73-92	8 001	8 670	5 066	2 890	0	156 036	0	0	0	0	30 753	211 416
Denmark 73-92	0	0	24	11 789	0	57	0	0	0	0	6	11 876
Greece 81-92	2 762	0	0	3	5 024	0	0	15	0	0	0	7 804
Portugal 86-92	190	6	0	20	36	0	22	0	3 300	0	3 902	7 476
Spain 86-92	515	6	0	259	235	149	0	0	42 705	17 340	0	61 209
Intra-EC 58-92	1 118 787	2 648 301	493 205	2 603 140	22 467	157 866	516 388	244 706	2 114 146	31 830	429 125	10 379 961

1990

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	367 547	9 124	86 185	4 931	301	0	26	90 318	1 494	51 224	611 150
Belgium-Luxembourg 60-92	4 502	0	447 928	88 906	90	188	0	2	84 283	0	0	625 899
Netherlands 60-92	30 163	1 550 822	0	1 606 326	1 436	612	1	0	44 977	0	135 683	3 370 020
Germany 60-92	281 516	641 537	144 347	0	444	1 819	0	3 447	57 040	0	31 300	1 161 450
Italy 60-92	107 961	23	183	563	0	5 500	0	0	1 796 152	0	0	1 910 382
United Kingdom 73-92	466 368	204 673	29 392	369 772	75	0	342 487	14 575	560 383	0	107 396	2 095 121
Ireland 73-92	57	8	4 913	32	11	203 240	0	0	0	10 040	35 796	254 097
Denmark 73-92	0	625	186	13 423	409	86	0	0	0	0	1	14 730
Greece 81-92	8	0	0	119	79	466	0	12	0	0	0	684
Portugal 86-92	606	0	0	11	0	21	3 170	0	0	0	52	3 860
Spain 86-92	5 960	4	0	339	69	341	56	0	170 456	4 425	0	181 650
Intra-EC 58-92	897 139	2 765 237	636 072	2 165 675	7 543	212 573	345 713	18 064	2 803 609	15 959	361 452	10 229 036

1991

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	554 848	1 539	98 181	3 954	484	0	0	109 909	1	7 454	776 370
Belgium-Luxembourg 60-92	5 051	0	381 128	97 299	31	135	0	36	57 191	0	0	540 871
Netherlands 60-92	16 039	1 545 882	0	1 637 209	1 994	345	0	50	50 038	0	243 935	3 495 492
Germany 60-92	314 044	665 538	175 019	0	792	2 371	5	42 174	22 002	13 180	85 358	1 320 483
Italy 60-92	77 173	18	0	950	0	120	0	0	2 015 123	0	0	2 093 384
United Kingdom 73-92	235 838	97 939	77 284	193 617	182	0	275 461	198 842	656 521	0	52 039	1 787 723
Ireland 73-92	31	1 255	4 631	0	109	229 562	0	0	0	5 173	53 908	294 669
Denmark 73-92	15	157	179	10 996	0	28 718	0	0	0	0	4 268	44 333
Greece 81-92	273	45	0	134	687	26	0	60	0	0	0	1 225
Portugal 86-92	1 360	2	0	20	24	6	3 702	0	0	0	232	5 346
Spain 86-92	31 101	22	0	467	84	478	0	49	485 239	7 510	0	524 950
Intra-EC 58-92	680 926	2 865 705	639 779	2 038 870	7 854	262 243	279 168	241 211	3 396 023	25 864	447 192	10 884 835

1992

(in tonnes)

Partner countries	Reporting countries											
	France 60-93	Belgium-Luxembourg 60-93	Netherlands 60-93	Germany 60-93	Italy 60-93	United Kingdom 73-93	Ireland 73-93	Denmark 73-93	Greece 81-93	Portugal 86-93	Spain 86-93	EUR12 70-93
France 60-93	0	1 320 660	103	126 377	4 244	470	0	25	120 815	4 008	1 346	1 578 048
Belgium-Luxembourg 60-93	4 201	0	448 847	151 363	25	808	0	22	23 978	23	0	629 267
Netherlands 60-93	23 897	1 481 973	0	1 740 531	1 475	196	0	0	27 493	6 120	182 243	3 463 928
Germany 60-93	301 172	785 318	150 220	0	490	10 337	131	240 089	21 678	0	41 307	1 550 742
Italy 60-93	154 590	8	0	1 025	0	201	0	32	2 635 211	0	22	2 791 089
United Kingdom 73-93	136 474	40 342	21 495	161 849	4	0	281 314	148 982	605 777	0	67 077	1 463 314
Ireland 73-93	34	0	5 653	51	23	268 067	0	0	0	5 274	55 380	334 482
Denmark 73-93	0	3	0	21 209	16	40 271	0	0	52 086	0	19 462	133 047
Greece 81-93	34	0	0	160	788	86	0	255	0	0	18 466	19 789
Portugal 86-93	382	634	22	44	21	27	25	10	0	0	417	1 582
Spain 86-93	3 350	4	104	553	205	356	6	171	354 943	6 296	0	365 988
Intra-EC 58-93	624 137	3 628 940	626 445	2 203 162	7 292	320 822	281 476	389 589	3 841 981	21 721	385 721	12 331 286

Source: Eurostat.

ANNEX 6

Total imports falling within (CN code 2523)

1983

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	1 492	13 821	365 201	56 538	61	83	0	0	0	0	437 196
Belgium-Luxembourg 60-87	354 486	0	1 480 023	503 657	72	11 340	0	11	0	0	0	2 349 589
Netherlands 60-87	23	91 444	0	172 627	72	161 058	2 366	6	0	0	0	427 596
Germany 60-87	23 894	88 956	1 452 539	0	120	79 492	25 438	12 086	7	0	0	1 682 532
Italy 60-87	6 650	426	562	1 780	0	3	0	1	139	0	0	9 561
United Kingdom 73-87	359	48	661	109	28	0	22 574	100	0	0	0	23 879
Ireland 73-87	0	0	0	0	0	87 200	0	0	29	0	0	87 229
Denmark 73-87	6	0	104	252	2 500	88	10	0	6 380	0	0	9 340
Greece 81-87	0	1	0	0	0	0	0	0	0	0	0	1
Intra-EC 58-87	385 416	182 365	2 947 712	1 043 625	59 329	339 238	50 472	12 201	6 556	0	0	5 026 914

1984

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	1 421	15 610	294 116	60 333	6 138	2	2	5	0	0	377 627
Belgium-Luxembourg 60-87	315 000	0	1 446 617	501 596	1	8 534	0	1	0	0	0	2 271 749
Netherlands 60-87	18	147 441	0	184 601	92	114 218	500	0	40	0	0	446 910
Germany 60-87	56 343	108 778	1 483 720	0	827	63 268	148	11 570	4	0	0	1 724 658
Italy 60-87	6 376	328	1 960	1 981	0	22	74	12	7	0	0	10 760
United Kingdom 73-87	889	27	333	185	12	0	48 421	47	0	0	0	49 914
Ireland 73-87	0	0	0	0	0	73 452	0	0	0	0	0	73 452
Denmark 73-87	8	0	61	2 926	0	105	0	0	50	0	0	3 150
Greece 81-87	0	0	235	0	0	0	0	0	0	0	0	235
Intra-EC 58-87	378 634	257 996	2 948 536	985 404	61 265	265 739	49 145	11 632	106	0	0	4 958 457

1985

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	1 051	15 691	262 744	55 707	2 124	21	0	14	0	0	337 352
Belgium-Luxembourg 60-87	352 712	0	1 382 883	456 127	0	3 780	0	4	0	0	0	2 195 506
Netherlands 60-87	49	199 102	0	158 948	30	121 313	587	1	100	0	0	480 130
Germany 60-87	52 792	132 133	1 417 271	0	345	40 431	68	15 255	0	0	0	1 658 295
Italy 60-87	9 938	466	2 505	1 525	0	0	115	22	26	0	0	14 597
United Kingdom 73-87	759	235	99	91	112	0	64 181	81	34	0	0	65 592
Ireland 73-87	0	0	0	0	0	105 715	0	0	0	0	0	105 715
Denmark 73-87	7	7	84	481	3 133	88	31	0	122	0	0	3 953
Intra-EC 58-87	416 253	332 996	2 818 534	879 915	59 327	273 452	65 004	15 363	295	0	0	4 861 139

1986

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	1 104	12 514	261 557	57 426	8 628	0	23	15	0	7	341 274
Belgium-Luxembourg 60-87	332 766	0	1 491 489	516 052	17	5 534	0	0	0	17	0	2 345 875
Netherlands 60-87	0	209 783	0	136 671	71	84 539	560	125	0	3	15	431 767
Germany 60-87	54 236	111 819	1 534 256	0	516	23 904	23	10 332	3	24	109	1 735 222
Italy 60-87	14 123	141	2 957	1 070	0	225	78	35	6	0	1	18 636
United Kingdom 73-87	1 094	96	345	153	49	0	48 655	40	0	0	56	50 488
Ireland 73-87	0	0	0	0	0	121 199	0	0	0	0	0	121 199
Denmark 73-87	0	0	8	845	48	689	0	0	105	0	0	1 695
Greece 81-87	0	0	0	0	0	223	0	0	0	0	0	223
Portugal 86-87	0	0	0	0	0	0	12	0	0	0	2 439	2 451
Spain 86-87	22	0	24	6	46	43 810	10 469	0	88	135 563	0	190 028
Intra-EC 58-87	402 238	322 943	3 041 591	916 353	58 173	288 752	59 797	10 555	217	135 606	2 627	5 238 852

1987

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	2 147	29 215	210 967	60 817	9 642	2 054	2	32	0	11	314 887
Belgium-Luxembourg 60-87	304 475	0	1 452 598	592 360	26	8 391	0	15	0	41	0	2 357 906
Netherlands 60-87	979	172 231	0	157 561	172	26 473	0	993	0	0	0	358 409
Germany 60-87	66 179	114 746	1 375 325	0	824	6 769	31	10 990	0	0	34	1 574 898
Italy 60-87	23 330	393	2 716	927	0	6	20	32	1	0	645	28 070
United Kingdom 73-87	610	1	53	125	116	0	50 943	19	2	2	61	51 932
Ireland 73-87	0	0	0	0	0	167 285	0	0	0	0	0	167 285
Denmark 73-87	3	0	104	1 217	1 768	23	41	0	50	0	2	3 208
Greece 81-87	0	0	0	3	270 746	151 487	0	0	0	48 769	0	471 005
Portugal 86-87	0	0	0	0	0	20	0	0	0	0	28 968	28 988
Spain 86-87	2 923	24	59 055	5	175	27 436	23 567	1	0	55 727	0	168 913
Intra-EC 58-87	398 498	289 541	2 919 067	963 165	334 643	397 534	76 655	12 053	84	104 539	29 721	5 525 500

1988

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	2 968	35 010	237 782	61 355	361 316	0	0	81	0	227	698 739
Belgium-Luxembourg 60-92	386 763	0	1 505 727	576 446	161	180 449	0	2	47	26	31	2 649 652
Netherlands 60-92	3 718	249 386	0	139 450	0	130 261	50	757	1	2	24	523 649
Germany 60-92	66 742	147 131	1 686 839	0	445	134 729	292	9 538	4	1	56	2 045 777
Italy 60-92	13 191	18	477	498	0	706	0	0	22	1	42	14 955
United Kingdom 73-92	940	20	159	89	5 436	0	53 936	312	23	6	85	61 006
Ireland 73-92	0	0	0	0	0	492 994	0	0	5	0	0	492 999
Denmark 73-92	0	0	229	240	0	49 375	0	0	0	0	29	49 873
Greece 81-92	0	98 105	28 185	0	1 043 594	329 723	0	0	0	0	0	1 499 607
Portugal 86-92	27	2	39	0	24	46 918	0	0	0	0	67 373	114 383
Spain 86-92	2 916	0	90 981	107	0	311 729	32 039	4	0	4 182	0	441 958
Intra-EC 58-92	474 295	497 628	3 347 646	954 611	1 111 014	2 038 198	86 317	10 611	182	4 219	67 867	8 592 588

1989

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	2 191	606	268 869	67 342	557 980	0	76	128	149	720	898 061
Belgium-Luxembourg 60-92	360 465	0	1 472 239	611 445	120	238 539	8 671	0	20	0	26	2 691 525
Netherlands 60-92	7 102	297 300	0	140 186	1	566 432	0	52	6	0	0	1 011 079
Germany 60-92	86 342	118 011	1 670 038	0	189	215 473	0	11 700	0	9	207	2 101 969
Italy 60-92	17 196	77	488	521	0	31	0	1	6	0	63	18 383
United Kingdom 73-92	155	174	1 542	109	3	0	156 415	30	7	7	78	158 520
Ireland 73-92	0	0	0	0	0	530 915	0	0	0	0	0	530 915
Denmark 73-92	77	28	0	186	0	263 683	0	0	79	0	0	264 053
Greece 81-92	99 955	38 339	11 190	32 040	1 361 769	552 362	0	0	0	3 152	23 105	2 121 912
Portugal 86-92	0	0	26	0	0	24 988	0	0	0	0	2 576	27 590
Spain 86-92	411	0	276	84	0	292 357	30 794	0	0	3 898	0	327 820
Intra-EC 58-92	571 701	456 121	3 156 406	1 053 439	1 429 424	3 242 760	195 878	11 858	245	7 214	26 773	10 151 819

1990

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	3 528	364	317 350	106 589	278 028	0	55	108	590	4 269	710 881
Belgium-Luxembourg 60-92	371 901	0	1 557 435	666 449	126	40 330	40	27	0	1	1	2 636 310
Netherlands 60-92	8 713	447 589	0	153 526	23	231 447	0	533	0	120	0	841 951
Germany 60-92	91 768	93 836	1 728 747	0	1 784	24 766	51	8 471	16	0	352	1 949 791
Italy 60-92	3 654	42	395	556	0	24	0	0	54	0	54	4 779
United Kingdom 73-92	583	165	194	577	48	0	200 908	9 241	0	4	246	211 966
Ireland 73-92	0	0	2	0	0	267 096	0	0	0	3 170	0	270 268
Denmark 73-92	63	43	50	4 915	0	22 997	0	0	30	0	4	28 102
Greece 81-92	96 106	69 417	60 888	0	1 599 852	421 768	0	0	0	0	226 792	2 474 823
Portugal 86-92	1 500	5	0	0	0	22	10 027	0	0	0	78	11 632
Spain 86-92	50 509	24	97	31 322	44	78 375	37 362	4	0	24	0	197 761
Intra-EC 58-92	624 796	614 648	3 348 172	1 174 694	1 708 468	1 364 850	248 388	18 331	207	3 909	231 795	9 338 258

1991

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR12 70-92
France 60-92	0	5 075	654	329 383	73 085	201 270	4	3	232	1 370	12 586	623 662
Belgium-Luxembourg 60-92	535 798	0	1 560 668	684 727	62	52 510	48	150	0	2	1	2 833 966
Netherlands 60-92	2 589	380 899	0	172 616	18	75 545	22	268	0	142	1	632 100
Germany 60-92	105 183	102 939	1 658 729	0	413	48 477	55	14 187	78	1	342	1 930 404
Italy 60-92	1 944	0	139	366	0	13	0	0	65	0	103	2 630
United Kingdom 73-92	1 065	135	1 290	9 207	1	0	229 021	29 243	11	27	471	270 471
Ireland 73-92	28	24	0	4	0	162 417	0	0	0	3 702	0	166 175
Denmark 73-92	27	92	14	56 357	0	218 911	0	0	60	1	44	275 506
Greece 81-92	66 809	52 096	45 986	22 000	2 004 224	362 418	0	0	0	0	484 960	3 038 493
Portugal 86-92	2	0	0	13 180	5 124	0	3 220	0	0	0	2 161	23 687
Spain 86-92	6 830	24	23	115 510	26	0	55 886	17	0	179	0	178 495
Intra-EC 58-92	720 272	541 281	3 267 500	1 403 349	2 082 954	1 121 559	288 257	43 867	446	5 424	500 668	9 975 577

1992

(in tonnes)

Partner countries	Reporting countries											
	France 60-93	Belgium-Luxembourg 60-93	Netherlands 60-93	Germany 60-93	Italy 60-93	United Kingdom 73-93	Ireland 73-93	Denmark 73-93	Greece 81-93	Portugal 86-93	Spain 86-93	EUR12 70-93
France 60-93	0	6 950	220	331 925	155 365	141 322	23	68	27	491	4 418	640 809
Belgium-Luxembourg 60-93	1 313 048	0	1 469 739	818 569	3	37 597	0	0	0	0	1	3 638 957
Netherlands 60-93	1 230	448 747	0	159 911	1	50 589	0	37	0	0	0	660 515
Germany 60-93	128 189	153 332	1 734 300	0	282	21 768	166	30 038	71	0	714	2 068 860
Italy 60-93	3 271	52	214	331	0	10	0	0	22	9	52	3 961
United Kingdom 73-93	135	796	59	9 130	33	0	265 052	46 875	55	17	344	322 496
Ireland 73-93	0	24	0	0	0	159 312	0	0	0	22	15	159 373
Denmark 73-93	36	22	26	249 655	22	149 122	0	0	100	8	123	399 114
Greece 81-93	159 624	23 978	0	18 593	2 297 372	401 819	0	112 830	0	0	479 089	3 493 305
Portugal 86-93	17	23	1 568	0	54	7	3 824	0	0	0	85	5 578
Spain 86-93	1 264	276	0	41 351	48	272	61 934	19 500	0	238	0	124 883
Intra-EC 58-93	1 606 816	634 201	3 398 746	1 629 467	2 453 182	961 819	331 000	209 347	275	785	484 842	11 710 480

Source: Eurostat

ANNEX 7

Total exports falling within CN codes 2523 20 (1983/87), 2523 21 and 2523 21 00 (1988/92)

1983

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	0	4	97	865	47	0	0	0	0	0	1 013
Belgium-Luxembourg 60-87	133	0	19	7 974	0	78	0	0	0	0	0	8 204
Netherlands 60-87	0	0	0	9 038	0	77	0	0	0	0	0	9 115
Germany 60-87	1 327	0	351	0	38	36	0	0	0	0	0	1 752
Italy 60-87	616	0	1	50	0	18	0	0	0	0	0	685
United Kingdom 73-87	5	0	530	20	0	0	1 058	0	0	0	0	1 613
Ireland 73-87	0	0	0	1 960	0	4 180	0	0	0	0	0	6 140
Denmark 73-87	0	0	0	471	0	25	0	0	0	0	0	496
Greece 81-87	0	0	0	0	6	0	0	0	0	0	0	6
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	2 081	0	905	19 610	909	4 462	1 058	0	0	0	0	29 025

1984

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	0	0	230	1 850	50	0	0	0	0	0	2 130
Belgium-Luxembourg 60-87	104	0	1 063	2 426	0	48	0	0	0	0	0	3 641
Netherlands 60-87	0	0	0	11 621	0	5	0	0	0	0	0	11 626
Germany 60-87	5 856	0	284	0	52	68	0	0	0	0	0	6 260
Italy 60-87	857	0	0	0	0	0	0	0	0	0	0	857
United Kingdom 73-87	0	0	0	0	43	0	91	0	0	0	0	134
Ireland 73-87	0	0	0	1 360	0	5 607	0	0	0	0	0	6 967
Denmark 73-87	0	0	10	395	0	105	0	0	0	0	0	510
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	6 817	0	1 357	16 033	1 945	5 883	91	0	0	0	0	32 126

1985

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	0	0	188	4 960	0	0	0	0	0	0	5 148
Belgium-Luxembourg 60-87	124	0	1 662	20 128	0	13	0	0	0	0	0	21 927
Netherlands 60-87	21	0	0	10 612	43	8	0	0	0	0	0	10 684
Germany 60-87	3 029	0	188	0	225	3	0	0	0	0	0	3 445
Italy 60-87	919	0	0	3	0	0	0	0	0	0	0	922
United Kingdom 73-87	44	0	0	25	164	0	85	0	0	0	0	318
Ireland 73-87	0	0	0	718	0	2 740	0	0	0	0	0	3 458
Denmark 73-87	0	0	23	256	53	0	0	0	0	0	0	332
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	4 137	0	1 872	31 929	5 445	2 763	85	0	0	0	0	46 231

1986

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	0	0	8	10 109	0	0	0	0	0	0	10 117
Belgium-Luxembourg 60-87	591	0	3 223	271	25	0	0	0	0	0	40	4 150
Netherlands 60-87	0	0	0	9 485	0	149	0	0	0	0	0	9 634
Germany 60-87	2 645	0	105	0	1 197	0	0	0	1	0	0	3 948
Italy 60-87	1 160	0	0	0	0	0	0	0	0	0	0	1 160
United Kingdom 73-87	0	0	1	0	24	0	72	0	0	0	0	97
Ireland 73-87	0	0	0	1 100	0	1 217	0	0	0	0	0	2 317
Denmark 73-87	0	0	0	45	26	0	0	0	0	0	0	71
Greece 81-87	0	0	0	0	200	0	0	0	0	0	0	200
Portugal 86-87	0	0	0	0	0	18	0	0	0	0	0	18
Spain 86-87	67	0	0	0	25	0	0	0	0	0	0	92
Intra-EC 58-87	4 463	0	3 328	10 909	11 607	1 383	72	0	1	0	40	31 803

1987

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	0	0	2	6 756	11	0	0	0	0	29	6 798
Belgium-Luxembourg 60-87	564	0	1 779	42	0	0	0	0	0	0	0	2 385
Netherlands 60-87	0	0	0	9 980	23	657	0	0	0	0	0	10 660
Germany 60-87	1 018	0	152	0	219	0	0	0	0	0	0	1 389
Italy 60-87	1 121	0	0	0	0	0	0	0	257 589	0	0	258 710
United Kingdom 73-87	5	0	0	0	57	0	12 195	0	0	0	0	12 257
Ireland 73-87	0	0	0	639	0	1 260	0	0	0	0	0	1 899
Denmark 73-87	0	0	0	5	49	100	0	0	6 500	0	0	6 654
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	99	0	99
Intra-EC 58-87	2 708	0	1 931	10 669	7 104	2 028	12 195	0	264 089	99	29	300 852

1988

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	0	51	711	0	31	0	0	0	0	0	793
Belgium-Luxembourg 60-92	780	0	3 728	7 886	0	0	0	0	0	1	0	12 395
Netherlands 60-92	0	0	0	13 275	0	1 104	0	0	0	0	0	14 379
Germany 60-92	1 230	0	156	0	0	0	0	0	0	0	0	1 386
Italy 60-92	925	0	0	29	0	6	0	0	4 235	0	0	5 195
United Kingdom 73-92	0	0	49	6	0	0	0	0	794	0	0	849
Ireland 73-92	0	0	0	506	0	3 073	0	0	0	0	0	3 579
Denmark 73-92	0	0	0	176	0	12	0	0	0	0	0	188
Greece 81-92	0	0	0	1	0	0	0	0	0	0	0	1
Portugal 86-92	22	0	0	0	0	0	0	0	0	0	2	24
Spain 86-92	64	0	0	0	99	5	0	0	0	31	0	199
Intra-EC 58-92	3 021	0	3 985	22 589	99	4 230	0	0	5 029	32	2	38 987

1989

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	0	25	853	327	25	0	0	0	0	0	1 230
Belgium-Luxembourg 60-92	254	0	2 849	6 875	0	177	0	0	0	0	0	10 155
Netherlands 60-92	1	0	0	10 290	0	2 762	0	0	0	0	21	13 074
Germany 60-92	658	0	363	0	49	6	0	0	0	0	0	1 076
Italy 60-92	796	0	0	26	0	0	0	0	4 076	0	0	4 898
United Kingdom 73-92	160	0	0	0	20	0	0	0	0	0	0	180
Ireland 73-92	0	0	0	528	0	2 327	0	0	0	0	21	2 876
Denmark 73-92	0	0	0	52	0	0	0	0	0	0	0	52
Greece 81-92	6	0	0	0	0	0	0	0	0	0	0	6
Portugal 86-92	63	0	0	0	0	21	0	0	0	0	1	85
Spain 86-92	578	0	0	0	0	0	0	0	20	0	0	598
Intra-EC 58-92	2 515	0	3 237	18 624	396	5 318	0	0	4 096	0	44	34 230

1990

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	0	16	1 032	0	68	0	0	0	0	195	1 311
Belgium-Luxembourg 60-92	158	0	6 571	191	0	6	0	0	0	0	0	6 926
Netherlands 60-92	0	0	0	9 464	0	2 491	0	0	0	0	0	11 955
Germany 60-92	786	0	121	0	5	114	0	0	0	0	0	1 026
Italy 60-92	679	0	0	9	0	0	0	0	1 211	0	0	1 899
United Kingdom 72-92	27	0	0	7	0	0	8	0	0	0	0	42
Ireland 73-92	0	0	0	572	0	3 391	0	0	0	0	0	3 963
Denmark 73-92	0	0	0	120	0	6 851	0	0	0	0	0	6 971
Greece 81-92	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-92	45	0	0	0	0	20	0	0	0	0	1	66
Spain 86-92	1 439	0	0	0	0	112	0	0	0	0	0	1 551
Intra-EC 58-92	3 133	0	6 708	11 394	5	13 052	8	0	1 211	0	196	35 707

1991

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	0	27	1 320	37	54	0	0	0	0	454	1 892
Belgium-Luxembourg 60-92	418	0	4 024	31	0	12	0	0	0	0	0	4 485
Netherlands 60-92	0	0	0	10 812	0	14	0	0	0	0	0	10 826
Germany 60-92	855	0	143	0	90	11 190	0	0	0	0	0	12 278
Italy 60-92	590	0	0	24	0	0	0	0	396	0	0	1 010
United Kingdom 73-92	0	0	1 422	0	0	0	6 750	0	0	1	0	8 173
Ireland 73-92	0	0	80	990	0	1 578	0	0	0	0	0	2 648
Denmark 73-92	0	0	0	93	0	17	0	0	0	0	0	110
Greece 81-92	4	0	0	0	0	22	0	0	0	0	0	26
Portugal 86-92	48	0	0	0	0	0	0	0	0	0	43	91
Spain 86-92	1 375	0	0	0	0	1	0	0	0	0	0	1 376
Intra-EC 58-92	3 289	0	5 696	13 271	126	12 887	6 750	0	396	1	497	42 913

1992

(in tonnes)

Partner countries	Reporting countries											
	France 60-93	Belgium-Luxembourg 60-93	Netherlands 60-93	Germany 60-93	Italy 60-93	United Kingdom 73-93	Ireland 73-93	Denmark 73-93	Greece 81-93	Portugal 86-93	Spain 86-93	EUR 12 70-93
France 60-93	0	0	0	2 035	47	3	0	0	0	5	0	2 090
Belgium-Luxembourg 60-93	225	0	3 110	333	1	43	0	0	0	0	0	3 712
Netherlands 60-93	163	0	0	9 111	23	150	0	0	0	0	0	9 447
Germany 60-93	1 120	0	42	0	1 614	1 103	0	0	0	1	0	3 880
Italy 60-93	512	0	0	19	0	6	0	0	99	0	0	636
United Kingdom 73-93	0	0	0	0	0	0	440	0	0	0	0	440
Ireland 73-93	0	0	0	769	0	3 826	0	0	0	0	0	4 595
Denmark 73-93	0	0	0	232	0	47	0	0	0	0	0	279
Greece 81-93	0	0	0	0	22	0	0	0	0	0	0	22
Portugal 86-93	15	0	0	0	0	0	0	0	0	0	31	46
Spain 86-93	0	0	0	8	0	0	0	0	0	0	0	8
Intra-EC 58-93	2 035	0	3 153	12 508	1 707	5 178	440	0	99	5	31	25 156

Source: Eurostat

ANNEX 8

Total imports falling within CN codes 2523 20 (1983/87), 2523 21 and 2523 21 00 (1988/92)

1983

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	163	74	1 753	394	9	0	0	0	0	0	2 393
Belgium-Luxembourg 60-87	5 230	0	14 007	18 787	1	0	604	0	0	0	0	38 629
Netherlands 60-87	0	0	0	360	0	1 898	170	0	0	0	0	2 428
Germany 60-87	447	418	9 036	0	77	4 449	1 979	57	0	0	0	16 463
Italy 60-87	85	0	0	11	0	0	0	0	36	0	0	132
United Kingdom 73-87	368	46	43	0	0	0	3 525	0	1	0	0	3 983
Ireland 73-87	0	0	0	0	0	21	0	0	56	0	0	77
Denmark 73-87	1	0	2 945	5 831	0	119	40	0	0	0	0	8 936
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	6 130	627	26 105	26 742	472	6 496	6 318	57	92	0	0	73 039

1984

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	73	356	5 912	614	0	0	0	0	0	0	6 955
Belgium-Luxembourg 60-87	3 992	0	15 005	136	0	108	1 080	0	0	0	0	20 321
Netherlands 60-87	0	166	0	308	0	51 002	100	0	0	0	0	51 576
Germany 60-87	414	354	8 245	0	25	21 806	1 440	0	0	0	0	32 284
Italy 60-87	1 599	0	0	4	0	0	0	0	37	0	0	1 640
United Kingdom 73-87	315	14	0	63	22	0	3 597	0	1	0	0	4 012
Ireland 73-87	0	0	26	0	0	142	0	0	0	0	0	168
Denmark 73-87	0	0	6 736	4 540	0	40	40	0	0	0	0	11 356
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	6 320	607	30 368	10 963	661	73 098	6 257	0	37	0	0	128 311

1985

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	102	48	3 367	517	40	0	0	0	0	0	4 074
Belgium-Luxembourg 60-87	4 729	0	18 021	499	0	0	1 300	0	0	0	0	24 549
Netherlands 60-87	0	1 105	0	379	0	12 264	317	0	0	0	0	14 065
Germany 60-87	31	51	9 782	0	30	7 275	736	137	0	0	0	18 042
Italy 60-87	3 854	0	0	170	0	0	0	0	36	0	0	4 060
United Kingdom 73-87	110	0	12	0	0	0	1 309	0	0	0	0	1 431
Ireland 73-87	0	0	0	0	0	120	0	0	0	0	0	120
Denmark 73-87	0	0	6 628	6 317	127	1 852	62	0	0	0	0	14 986
Greece 81-87	0	0	0	0	0	0	0	0	0	0	0	0
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Intra-EC 58-87	8 723	1 258	34 492	10 732	674	21 551	3 723	137	36	0	0	81 326

1986

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	438	47	10 415	469	915	0	0	0	44	24	12 352
Belgium-Luxembourg 60-87	6 290	0	20 949	148	0	40	1 180	0	0	0	0	28 607
Netherlands 60-87	0	1 488	0	38	0	20 884	194	0	0	0	0	22 604
Germany 60-87	7	166	10 465	0	0	10 529	924	0	0	0	353	22 444
Italy 60-87	8 360	0	0	1 191	0	0	0	0	0	0	0	9 551
United Kingdom 73-87	101	0	118	0	0	0	1 254	0	0	18	0	1 491
Ireland 73-87	0	0	0	0	0	40	0	0	0	0	0	40
Denmark 73-87	1	0	5 250	4 762	55	1 310	44	0	0	0	0	11 422
Greece 81-87	0	0	0	5	30	18 025	0	0	0	0	0	18 060
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-87	0	501	0	0	0	4 400	0	0	0	807	0	5 708
Intra-EC 58-87	14 759	2 592	36 829	16 558	554	56 143	3 596	0	0	868	377	132 276

1987

(in tonnes)

Partner countries	Reporting countries											
	France 60-87	Belgium-Luxembourg 60-87	Netherlands 60-87	Germany 60-87	Italy 60-87	United Kingdom 73-87	Ireland 73-87	Denmark 73-87	Greece 81-87	Portugal 86-87	Spain 86-87	EUR 70-87
France 60-87	0	475	408	7 782	1 024	0	0	0	20	16	15	9 740
Belgium-Luxembourg 60-87	6 704	0	28 526	79	0	773	900	0	0	0	0	36 982
Netherlands 60-87	177	1 499	0	56	0	10 508	64	0	0	0	0	12 304
Germany 60-87	28	474	10 423	0	6	25 248	639	0	0	0	554	37 372
Italy 60-87	1 047	0	9	165	0	0	0	0	0	0	24	1 245
United Kingdom 73-87	52	0	638	0	0	0	1 822	0	0	0	0	2 512
Ireland 73-87	0	0	0	0	0	3 080	0	0	0	0	0	3 080
Denmark 73-87	0	0	9 401	5 659	26	5 589	22	0	92	0	0	20 789
Greece 81-87	0	0	0	0	101 532	25 174	0	0	0	0	9 040	135 746
Portugal 86-87	0	0	0	0	0	0	0	0	0	0	30	30
Spain 86-87	40	0	0	0	0	6 845	0	0	0	0	0	6 885
Intra-EC 58-87	8 048	2 448	49 404	13 740	102 588	77 216	3 447	0	112	16	9 662	266 681

1988

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	778	406	7 708	925	970	0	0	0	8	69	10 864
Belgium-Luxembourg 60-92	5 994	0	27 427	7 530	208	82	1 252	0	0	0	39	42 532
Neerland 60-92	180	1 965	0	56	0	19 037	77	0	0	0	0	21 315
Germany 60-92	8 693	1 501	13 406	0	0	53 167	397	1 210	0	3	362	78 739
Italy 60-92	92	0	5	0	0	0	0	0	1	0	47	145
United Kingdom 73-92	58	7	1 174	10	0	0	1 106	0	0	14	7	2 376
Ireland 73-92	0	0	0	0	0	20	0	0	0	0	0	20
Denmark 73-92	0	0	10 108	4 821	0	12 623	0	0	62	0	0	27 614
Greece 81-92	0	10	0	0	10 568	800	0	0	0	0	20	11 398
Portugal 86-92	0	0	0	0	0	0	0	0	0	0	8 650	8 650
Spain 86-92	28	0	0	0	0	29 777	0	0	0	0	0	29 805
Intra-EC 58-92	15 046	4 260	52 526	20 125	11 701	116 475	2 832	1 210	63	25	9 195	233 458

1989

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	247	56	9 376	728	138 668	0	0	0	9	85	149 169
Belgium-Luxembourg 60-92	17 106	0	26 440	2 641	198	16 698	1 137	0	0	13	2	64 235
Netherlands 60-92	26	2 706	0	490	0	7 563	0	0	0	0	0	10 785
Germany 60-92	1 085	1 478	10 676	0	28	92 525	484	2	0	0	97	106 375
Italy 60-92	108	0	17	27	0	0	0	0	0	0	0	152
United Kingdom 73-92	15	177	2 781	6	0	0	1 685	0	0	0	13	4 677
Ireland 73-92	0	0	28	0	0	14 809	0	0	0	0	0	14 837
Denmark 73-92	275	27	10 891	6 947	0	13 991	0	0	94	0	0	32 225
Greece 81-92	0	0	0	0	2 451	0	0	0	0	0	0	2 451
Portugal 86-92	0	0	0	0	0	0	0	0	0	0	141	141
Spain 86-92	0	0	0	0	0	7 675	0	0	0	1	0	7 676
Intra-EC 58-92	18 614	4 635	50 888	19 488	3 404	291 928	3 305	2	94	23	338	392 719

1990

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	103	72	10 637	655	113 872	0	0	0	46	216	125 601
Belgium-Luxembourg 60-92	10 443	0	25 911	669	241	173 600	1 335	0	0	55	4	212 258
Netherlands 60-92	53	6 576	0	38	0	15 681	221	0	0	0	19	22 588
Germany 60-92	893	1 093	10 151	0	0	114 794	396	0	0	1	0	127 328
Italy 60-92	104	0	0	5	0	0	0	0	0	0	0	109
United Kingdom 73-92	7	27	2 553	0	0	0	3 300	0	0	20	0	5 907
Ireland 73-92	0	0	0	0	0	141 096	0	0	0	0	0	141 096
Denmark 73-92	18	0	10 377	7 775	0	24 441	40	0	159	0	0	42 810
Greece 81-92	0	0	0	0	5 886	0	0	0	0	0	0	5 886
Portugal 86-92	0	0	0	0	0	0	0	0	0	0	5	5
Spain 86-92	1	0	0	0	0	26 229	0	0	0	2	0	26 232
Intra-EC 58-92	11 518	7 797	49 064	19 123	6 782	609 713	5 291	0	159	125	244	709 816

1991

(in tonnes)

Partner countries	Reporting countries											
	France 60-92	Belgium-Luxembourg 60-92	Netherlands 60-92	Germany 60-92	Italy 60-92	United Kingdom 73-92	Ireland 73-92	Denmark 73-92	Greece 81-92	Portugal 86-92	Spain 86-92	EUR 12 70-92
France 60-92	0	492	0	3 564	563	16 956	0	0	0	64	155	21 794
Belgium-Luxembourg 60-92	13 123	0	30 906	8 893	309	102 544	1 816	0	0	42	142	157 775
Netherlands 60-92	0	4 018	0	54	0	100 626	66	0	0	0	0	104 764
Germany 60-92	1 528	4 377	12 572	0	8	26 895	662	0	0	0	68	46 110
Italy 60-92	0	4	0	4	0	0	0	0	0	0	0	8
United Kingdom 73-92	65	2	48	67	0	0	2 769	0	0	2	0	2 953
Ireland 73-92	0	0	0	0	0	139 922	0	0	0	0	0	139 922
Denmark 73-92	0	0	12 196	9 716	0	77 428	0	0	60	2	0	99 402
Greece 81-92	0	0	0	0	347	81 712	0	0	0	0	0	82 059
Portugal 86-92	0	0	0	0	0	0	0	0	0	0	0	0
Spain 86-92	1 104	0	0	0	0	47 710	0	0	0	23	0	48 837
Intra-EC 58-92	15 819	8 892	55 722	22 297	1 227	593 791	5 313	0	60	132	365	703 618

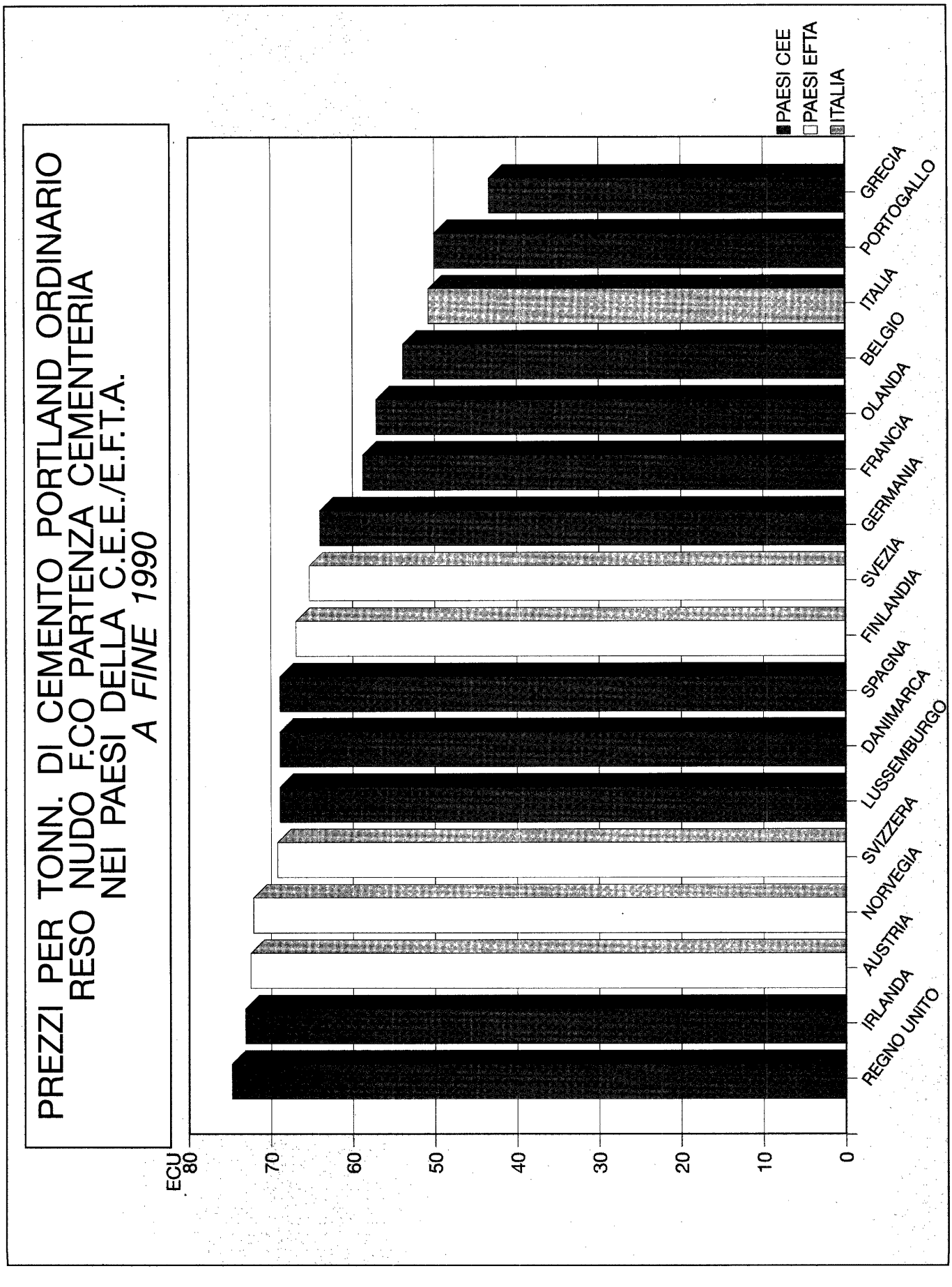
1992

(in tonnes)

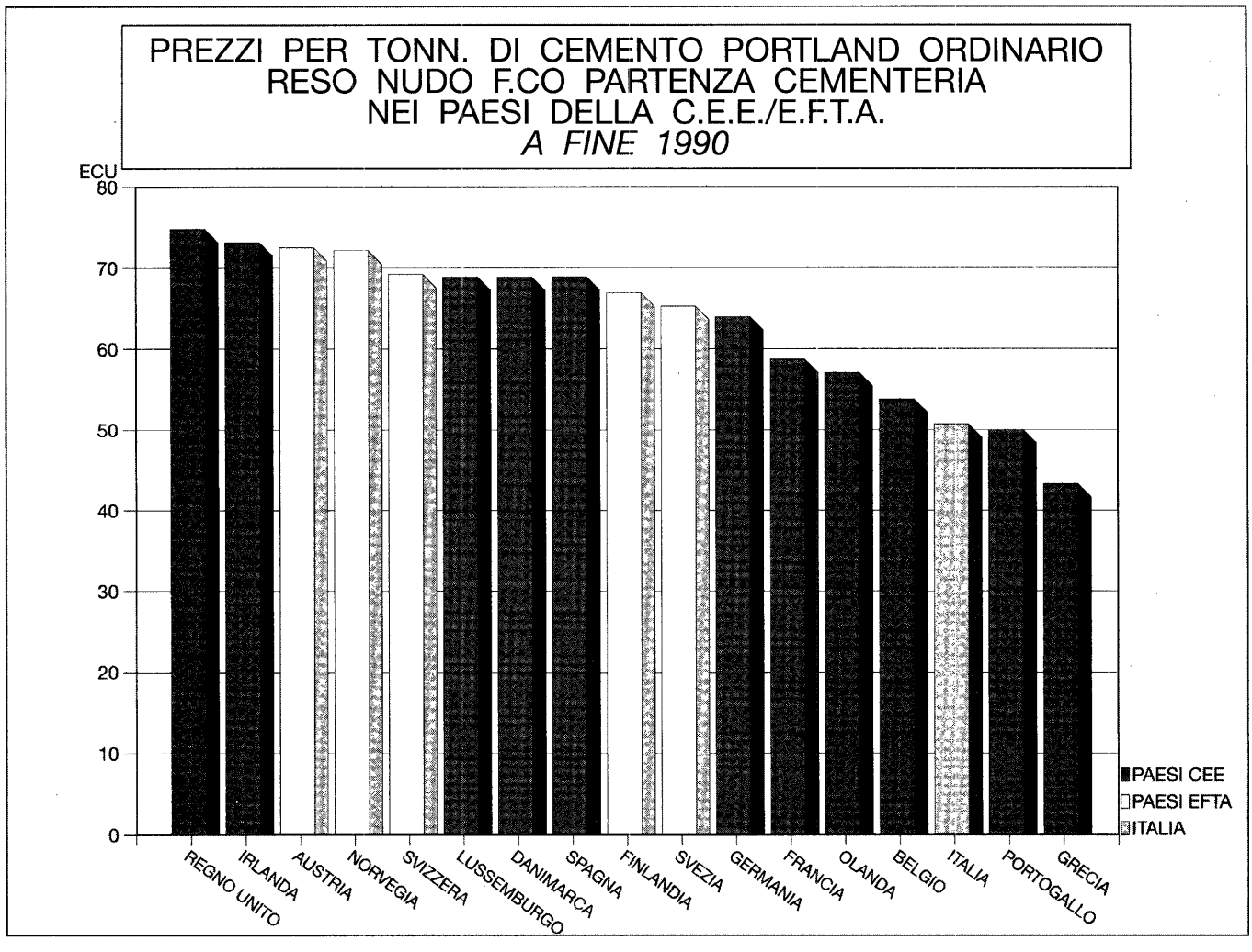
Partner countries	Reporting countries											
	France 60-93	Belgium-Luxembourg 60-93	Netherlands 60-93	Germany 60-93	Italy 60-93	United Kingdom 73-93	Ireland 73-93	Denmark 73-93	Greece 81-93	Portugal 86-93	Spain 86-93	EUR 12 70-93
France 60-93	0	131	0	2 671	510	6 003	21	0	0	0	34	9 370
Belgium-Luxembourg 60-93	7 451	0	33 434	10 070	209	136	2 218	0	0	91	291	53 900
Netherlands 60-93	25	3 138	0	41	0	45 359	66	0	0	0	0	48 629
Germany 60-93	1 729	3 451	10 896	0	0	63 528	579	48	19	0	24	80 274
Italy 60-93	85	0	0	1 345	0	0	0	0	0	0	7	1 437
United Kingdom 73-93	6	0	0	22	0	0	3 152	0	0	1	0	3 181
Ireland 73-93	0	0	0	0	0	113 946	0	0	0	0	0	113 946
Denmark 73-93	25	0	10 516	13 079	0	74 092	0	0	0	0	0	97 712
Greece 81-93	0	0	0	0	49	0	0	0	0	0	0	49
Portugal 86-93	2	0	0	0	0	1	0	0	0	0	24	27
Spain 86-93	112	0	0	0	0	52 975	0	0	0	2	0	53 089
Intra-EC 58-93	9 436	6 721	55 101	27 229	768	356 040	6 036	48	19	94	380	461 872

Source: Eurostat

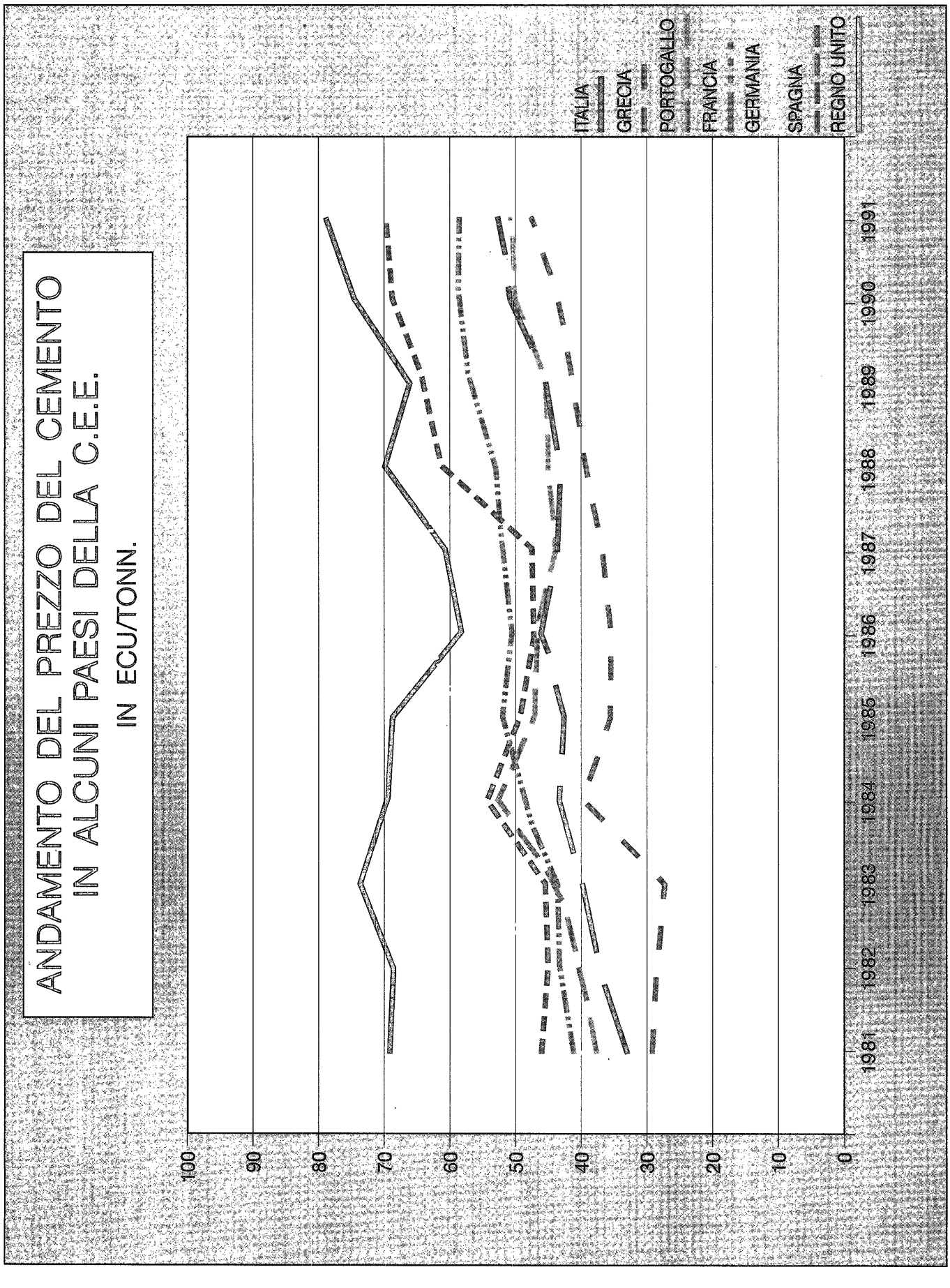
ANNEX 9-1


PREZZI PER TONN. DI CEMENTO PORTLAND ORDINARIO
RESO NUDO F.CO PARTENZA CEMENTERIA
NEI PAESI DELLA C.E.E./E.F.T.A.
A FINE 1990
PAESI CEE
PAESI EFTA
ITALIA
ECU
80
70
60
50
40
30
20
10
0
GRECIA
PORTOGALLO
ITALIA
BELGIO
OLANDA
FRANCIA
GERMANIA
SVEZIA
FINLANDIA
SPAGNA
DANIMARCA
LUSSEMBURGO
SVIZZERA
NORVEGIA
AUSTRIA
IRLANDA
REGNO UNITO

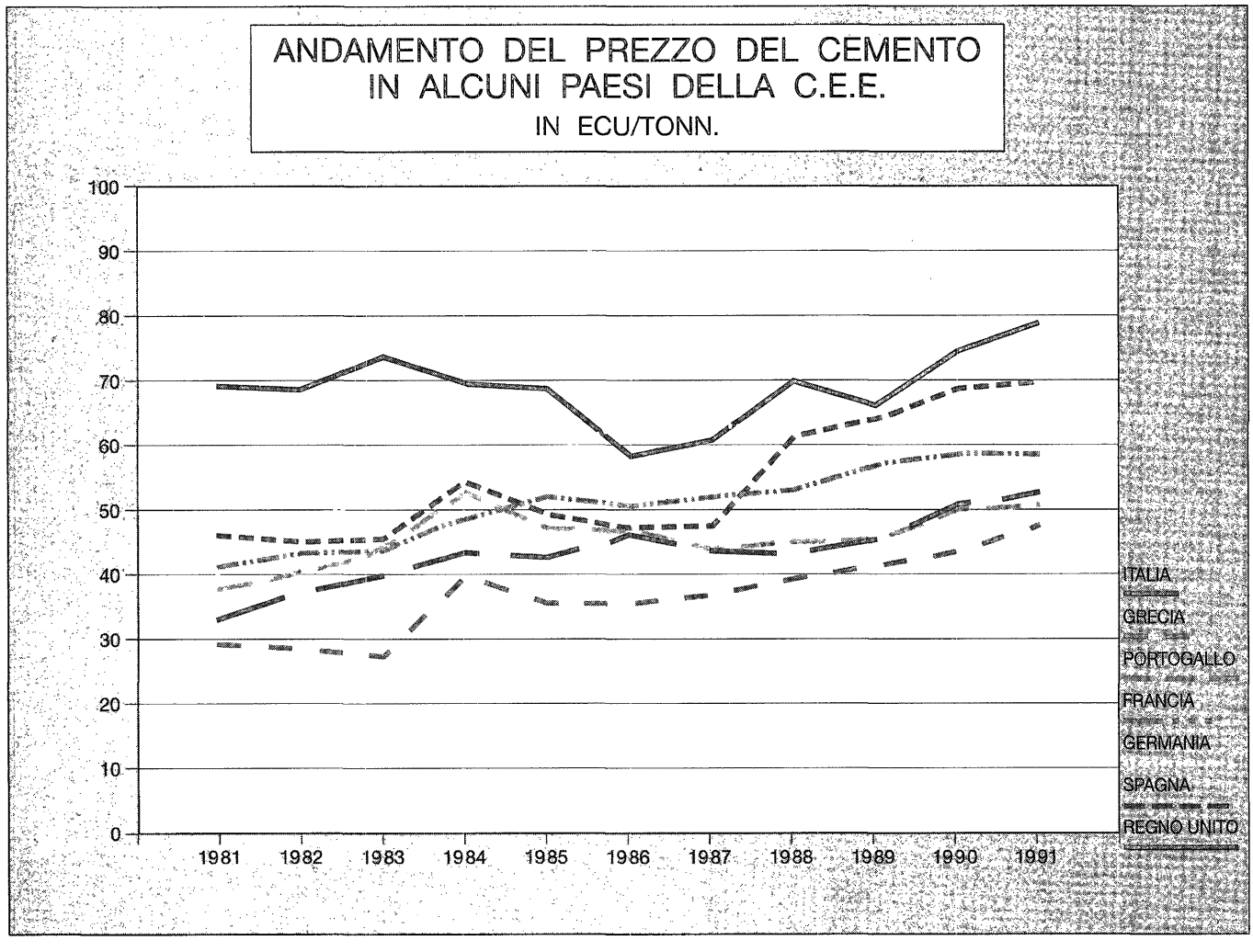
ANNEX 9-2


PREZZI PER TONN. DI CEMENTO PORTLAND ORDINARIO
RESO NUDO F.CO PARTENZA CEMENTERIA
NEI PAESI DELLA C.E.E./E.F.T.A.
A FINE 1990
ECU
80
70
60
50
40
30
20
10
0
REGNO UNITO
IRLANDA
AUSTRIA
NORVEGIA
SVIZZERA
LUSSEMBURGO
DANIMARCA
SPAGNA
FINLANDIA
SVEZIA
GERMANIA
FRANCIA
OLANDA
BELGIO
ITALIA
PORTOGALLO
GRECIA
PAESI CEE
PAESI EFTA
ITALIA

ANNEX 9-3


ANDAMENTO DEL PREZZO DEL CEMENTO
IN ALCUNI PAESI DELLA C.E.E.
IN ECU/TONN.
ITALIA
GRECIA
PORTOGALLO
FRANCIA
GERMANIA
SPAGNA
REGNO UNITO
100
90
80
70
60
50
40
30
20
10
0
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991

ANNEX 9-4


ANDAMENTO DEL PREZZO DEL CEMENTO
IN ALCUNI PAESI DELLA C.E.E.
IN ECU/TONN.
100
90
80
70
60
50
40
30
20
10
0
1981
1982
1983
1984
1985
1986
1987
1988
1989
1990
1991
ITALIA
GRECIA
PORTOGALLO
FRANCIA
GERMANIA
SPAGNA
REGNO UNITO