II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 August 1989

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.553 — Welded steel mesh)

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

(89/515/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to the Commission Decision of 26 January 1987 to open on its own initiative a proceeding under Article 3 of Regulation No 17,

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

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

Whereas:

I. THE FACTS

A. The relevant products

(1) Welded steel mesh is a prefabricated reinforcement product made from smooth or ribbed cold-drawn reinforcing steel wires joined together by right-angle spot welding to form a network. It is a technically mature and proven reinforcement material that is used in almost all areas of reinforced concrete construction, both on the building site and for inclusion in prefabricated components. Welded mesh can be laid out more quickly and satisfactorily than reinforcing bars, a related product which is delivered in the form of long bars to the site, where they are cut to size, bent and installed. The use of welded mesh results in a saving on time and wage bills and in a smaller scrapped material loss.

Welded mesh is laid in concrete to increase its tensile strength and is employed exclusively for the reinforcement of flat or bar shaped constructional components.

(2) The value added in welded mesh compared with its intermediate material, wire rod, is relatively small (20 to 25 %). Its final price depends greatly, therefore, on the price of the intermediate material.

(3) There are different types of welded mesh:

(a) mesh from stock or standard mesh;

(b) catalogue mesh;

(c) tailor-made mesh (3).

(1) OJ No 13, 21. 2. 1962, p. 204/62.

(2) OJ No 127, 20. 8. 1963, p. 2268/63.

(3) One of the undertakings to which this proceeding relates, the Dutch producer ZND, maintains that there is a fourth type of welded mesh (special mesh). The Commission is not, however, of the opinion that such differences as there may be between special mesh and tailor-made mesh are sufficiently big to justify the addition of a separate, fourth category.

As far as the purpose for which they are used is concerned, these types are in competition with one another. A high degree of substitutability exists, especially between standard mesh and catalogue mesh (see also 138 and 141). There is also a close connection as far as prices are concerned in that the price of one type of mesh exercises an appreciable influence on the price of another, especially as the value added is small for all types. This is acknowledged by some of the participant undertakings themselves (see 114). The relevant product market can therefore be said to be the market for welded steel mesh in general, within which there is a sub-market for tailor-made mesh.

B. The market

(4) There is substantial trade in welded mesh between Member States. Trade with third countries, on the other hand, is smaller. The following table gives a picture of intra-Community trade and of trade with third countries.

Table 1

EEC import and export data for welded mesh

(in tonnes)

Year	Imports			Exports		
	from other Member States	from non-Member States	Total	to other Member States	to non-Member States	Total
	(6)	(1)	(2)	(3)	(4)	(5)
1980	212 392	3 197	215 589	210 852	58 501	269 353
1981	177 737	1 812	179 549	184 132	101 294	285 426
1982	160 805	973	161 778	153 188	84 827	238 015
1983	195 955	3 264	199 219	190 734	67 515	258 249
1984	230 374	8 417	238 791	224 141	74 789	289 930
1985	265 090	27 260	292 350	272 956	104 470	377 426
1986	310 335	12 708	323 043	338 282	72 207	410 489
1987	358 402	26 115	386 517	376 052	94 342	470 394

Source: Eurostat, NIMEXE code 73.27-20.

The following table gives figures for total production and consumption in the six original Member States, in which the undertakings to which this Decision relates are based:

Table 2

Total produced and consumed in the six original Member States
(B, D, F, I, L, NL) [1]

(in tonnes)

Year	Production	Consumption
1980	2 097 658	2 068 576
1981	2 146 839	2 079 227
1982	1 827 231	1 781 942
1983	2 095 785	2 063 708
1984	1 869 969	1 816 439
1985	1 797 349	1 705 929
1986	1 863 314	1 775 977
1987	1 994 358	1 877 719

[1] These figures are in part based on estimates, as data for the Italian market are incomplete.

(5) Intra-Community trade is most intensive in the border regions. This is because transport costs are high having regard to the high volume of welded mesh compared with that of the intermediate product, wire rod. Accordingly many integrated welded mesh producers prefer to deliver wire rod rather than welded mesh to neighbouring countries and produce welded mesh there in local subsidiaries or in other undertakings with whom they have a long-term cooperation arrangement regarding deliveries.

However, when the price of the product is relatively high in a particular market, transport costs do not present an insurmountable obstacle.

(6) The building and construction industry is a principal source of demand for welded mesh. The sale and hence the production of welded mesh therefore depends essentially on trends in building activity.

C. Survey of the different relevant national and regional markets

I. FRENCH MARKET

(7) The French market shows the following picture for the years 1980 to 1987:

Table 3

France: market data for welded mesh 1980 to 1987

(in tonnes)

Year	Total deliveries by home producers	Imports			Exports			Market supply
		from Member States	from non-Member States	Total (2) + (3)	to other Member States	to non-Member States	Total (5) + (6)	(total (1) + (4))
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1980	213 104	64 109	1 983	66 092	25 343	6 915	32 258	279 196
1981	205 245	73 184	901	74 085	19 118	17 444	36 562	279 330
1982	158 493	56 687	413	57 100	14 406	9 500	23 906	215 593
1983	186 986	61 926	632	62 558	16 471	10 915	27 386	249 544
1984	134 925	77 516	3 094	80 610	19 401	11 234	30 635	215 535
1985	148 883	91 725	748	99 207	17 070	16 422	33 492	248 090
1986	163 857	114 695	3 138	117 833	17 366	3 078	20 444	253 246
1987	201 124	132 712	3 159	135 871	18 241	3 013	21 254	315 741

Source: Eurostat and Syndicat national du trefilage d'acier (STA).

II. BENELUX-MARKET

(8) The market data for the Benelux market for the years 1980 to 1987 show the following picture:

Table 4

BLEU (1) *and NL-Market data for welded mesh*

(in tonnes)

Year	Total deliveries by home producers		Imports		Exports		Market supply (demand)	
	BLEU	NL	BLEU	NL	BLEU	NL	BLEU (total (1) + (3) − (5))	NL (total (2) + (4) − (6))
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1980	96 752	126 461	28 869	56 665	76 145	31 614	49 476	151 512
1981	85 444	136 825	31 782	47 345	65 517	33 058	51 709	151 112
1982	76 496	119 136	26 561	42 975	55 118	28 947	47 739	133 164
1983	93 103	128 439	30 219	49 704	75 082	31 976	48 240	146 167
1984	86 544	128 187	32 999	44 585	72 009	34 234	47 534	138 538
1985	104 525	161 762	41 834	35 488	88 730	46 760	57 629	150 490
1986	103 639	189 492	46 552	39 845	97 960	58 803	52 231	170 534
1987	96 347	209 431	52 451	43 233	71 016	80 982	77 782	174 882

(1) BLEU = Belgo-Luxembourg Economic Union.
Source: Benelux manufacturers + Eurostat.

III. GERMAN MARKET

(9) The market data for the Federal Republic of Germany can be seen from the following table:

Table 5

Federal Republic of Germany: market data(¹) for welded mesh 1980 to 1987

(in tonnes)

Year	Production	Exports	Home deliveries (total (1) – (2))	Imports	Market supply (total (3) + (4))
	(1)	(2)	(3)	(4)	(5)
1980	1 374 083	86 919	1 287 164	84 573	1 371 737
1981	1 417 763	112 977	1 304 786	53 510	1 358 296
1982	1 194 200	100 703	1 093 497	51 888	1 145 385
1983	1 409 871	97 323	1 312 548	77 177	1 389 725
1984	1 206 678	101 863	1 104 815	74 745	1 179 560
1985	1 098 687	124 117	974 570	83 503	1 058 073
1986	1 159 451	133 969	1 025 482	99 675	1 125 157
1987	1 195 110	188 439	1 006 671	101 674	1 108 345

(¹) These figures include lattice girders, which account for approximately 10 % of each quantity.
Source: Data of the Fachverband Betonstahlmatten e. V.

IV. ITALIAN MARKET

(10) The Italian market is strongly export-oriented, as is shown by the following table:

Table 6

Italy: import and export data for welded mesh

(in tonnes)

Year	Imports			Exports		
	from other Member States	from non-Member States	Total	to other Member States	to non-Member States	Total
1980	1 371	26	1 397	51 276	39 087	90 363
1981	1 107	31	1 138	36 381	34 558	70 939
1982	1 498	29	1 527	26 261	35 170	61 431
1983	1 508	11	1 519	31 621	40 772	72 393
1984	1 894	6 275	8 169	39 056	42 723	81 779
1985	2 070	18 781	20 851	41 740	61 001	102 741
1986	1 717	8 661	10 378	66 790	46 406	113 196
1987	3 139	23 979	27 118	76 452	56 670	133 122

Source: Eurostat, external trade, analytical tables

Note: In Italy a distinction is made between welded mesh with a diameter of 3 mm or more (Nimexe code 73.27-20) and welded mesh with a diameter of less than 3 mm (Nimexe code 73.27-39). The latter is taken into account to the extent of 80 % in the above table. Precise figures for production and market supply are available in Italy only for welded mesh with a diameter of 3 mm or more; these are given in the following table:

Table 7

Italy: production and market supply, welded mesh (diameter 3 mm or more)

(in tonnes)

Year	Production	Market supply
1980	255 000	216 655
1981	265 000	238 780
1982	255 000	240 061
1983	250 000	230 032
1984	283 000	235 272
1985	250 000	191 647

Source: Assider.

Note: Assider has no figures for welded mesh with a diameter of less than 3 mm because most producers are not Assider members.

D. The participating undertakings

(11) The following undertakings participated in one or more of the agreements or concerted practices dealt with here:

1. Tréfilunion SA, Petite-route de Marnaval, F-52102 Saint-Dizier Cedex ('TU');

2. Société Métallurgique de Normandie, 42 rue de la Boétie, F-75008 Paris ('SMN');

3. Tecnor [until 1983 Chiers-Chatillon-Gorcy ('CCG')], La Défense 9, 4 Place de la Pyramide, F-92800 Puteaux (Hauts-de-Seine);

4. Société des treillis et panneaux soudés, La Défense 9, 4 Place de la Pyramide, F-92800 Puteaux (Hauts-de-Saine) ('STPS');

5. Sotralentz SA, 24 rue du Professeur Froehlich, F-67320 Drulingen ('Sotral' or 'Sotralentz');

6. Tréfilarbed Luxembourg-Saarbrücken Sarl (formerly Tréfilarbed SA), 16 a avenue de la Liberté, L-2339 Luxembourg ('TA') and its subsidiaries in France, Belgium and the Netherlands;

7. Tréfileries Fontaine L'Evêque, 1 ruelle aux Loups, B-6140 Fontaine l'Evêque ('TTE');

8. Frère-Bourgeois Commerciale SA, B-6090 Couillet ('FBC');

9. NV Usines Gustave Boël, Afdeling Trébos, B-2991 Tildonk (Haacht) ('Boël/Trébos');

10. Thibo Draad- en Bouwstaalprodukten BV, NL-5740 SX Beek en Donk, Bosscheweg 28 ('Thibodraad');

11. Van Merksteijn Staalbouw BV, Kanaalstraat O Z 8, NL 8102 Raalte ('Van Merksteijn');

12. ZND Bouwstaal BV, J. F. Kennedylaan 22, NL-5555 XD Valkenswaard ('ZND');

13. Baustahlgewebe GmbH, Burggrafenstr. 5, D-4000 Düsseldorf 11 ('BStG');

14. ILRO SpA, Via G. B. Vico 8, I-22053 Lecco-Pescarenico ('ILRO');

15. Ferriere Nord SpA (Pittini), I-33010 Osoppo (Ud), Franzione Rivali ('Ferriere Nord');

16. GB Martinelli fu GB Metallurgica SpA, Via Breda 152, Milano, Italia ('Martinelli').

E. Particulars of the participating undertakings

I. France

(12) The participant French undertakings are as follows:

1. *Undertakings belonging to the former Sacilor group*

(a) Tréfilunion (TU)

Until 1 January 1987 Tréfilunion, based in Saint-Dizier, was a wholly owned subsidiary of Sacilor, via Unimetal, with a capital of FF 150 000 000 (Tréfilunion I). Apart from welded steel mesh, TU also made other wire products. TU was the leading French producer of welded steel mesh, with a market share of about 30 % in France (1984). On 1 January 1986 TU's welded mesh business was transferred to ACOR, which likewise belonged to what is now the Usinor-Sacilor group. In the course of the second half of 1987 Tréfilunion was absorbed by Tecnor (see 2 (a) below) with retroactive effect from 1 January of that year. The company which thereby emerged was renamed Tréfilunion (Tréfilunion II). In what follows 'Tréfilunion' and 'TU' refer to Tréfilunion I except where otherwise indicated.

(b) Société Métallurgique de Normandie (SMN)

SMN is likewise a wholly-owned subsidiary of Sacilor (now via Unimétal), based in Paris, with a capital of FF 100 000 000. Its main activity is the production of wire rod and bars. In 1984 it accounted for about 3 % of the French welded mesh market. SMN has since ceased welded mesh production.

2. *Undertakings belonging to the former Usinor group*

(a) Chiers-Chatillon-Gorcy (CCG), in 1983 renamed Tecnor

Tecnor was formerly a wholly owned subsidiary of Usinor, based in Puteaux. Its capital amounted to FF 231 121 000. In 1984 its share of the French welded steel mesh market came to about 7,5 %. In the first half of 1987 it halted its welded mesh activities. In the second half of 1987 it absorbed Tréfilunion with retroactive effect from 1 January 1987 and was renamed Tréfilunion (Tréfilunion II, see 1 (a) above).

(b) Société des treillis et panneaux soudés (STPS)

Until 1987 STPS was a wholly owned subsidiary of Usinor (via Usinor Tréfileries), based in Puteaux, with a capital of FF 12 000 000. Since 1987 STPS has been a subsidiary of ACOR (see 1 (a)). In 1984 its share of the French welded steel mesh market came to about 8,8 %.

3. *Independent undertakings*

Sotralentz (Sotral)

This undertaking, based in Drulingen, has a capital of FF 12 500 000. Its activities included welded mesh production. In 1984 it had about 7 % of the French market.

Sotral is the only French producer of welded mesh which exports to the Federal Republic of Germany.

II. LUXEMBOURG

Tréfilarbed (TA)

(13) Tréfilarbed SA was until 1 August 1984 responsible for coordinating sales of and sales policy relating to the relevant products in the Arbed group, including that part of the production on the St Ingbert works which was intended for export. Since that date the company has changed its name to Tréfilarbed Luxembourg/Saarbrücken Sarl. Its market share in 1983 was about 38 % in Belgium and 22 % in the Netherlands. In France its share during the year ended June 1984 was about 7 %.

III. BELGIUM

(14) The participant Belgian undertakings are as follows:

1. *Tréfileries de Fontaine l'Evêque (TFE)*

TFE is a company based in Fontaine-L'Évêque with a capital of Bfr 121 000 000. It belongs to the Cockerill-Sambre group, which owns 67 % of the shares. The remaining 33 % are held by the Belgian State and the Société Régionale d'Investissement de Wallonie. Welded mesh is TFE's staple product, accounting for about 75 % of its total output. In 1984 this came to about 25 400 tonnes. In 1983 its market share in Belgium was about 14,5 %.

2. *Frère-Bourgeois Commerciale SA (FBC)*

FBC is a wholly owned subsidiary of Cockerill-Sambre (on 1 April 1986 it was renamed Steelinter SA). Its activities include selling welded steel mesh made by TFE.

3. *NV Usines Gustave Boël, afdeling Trébos, Tildonk (Haacht) (Boël/Trébos)*

Boël/Trébos, which is part of the Boël group, produces welded steel mesh. In 1983 it had around 15 % of the Belgian market.

IV. NETHERLANDS

(15) The participant Dutch undertakings are as follows:

1. *Thibo Draad- en Bouwstaalprodukten BV, Beek en Donk (Thibodraad)*

This undertaking is a wholly-owned subsidiary of Hoogovens NV. On 1 January 1987 it was divided into two companies, likewise wholly owned by the Hoogovens group, namely: Thibo Draad BV and Thibo Bouwstaal BV. Up to the end of 1985 annual sales of welded steel mesh amounted to some 30 000 tonnes. In 1983 it had about 23,5 % of the Dutch market.

2. *Van Merksteijn Staalbouw BV, Raalte (Van Merksteijn)*

This undertaking produces about 80 000 tonnes a year (1985 figure). Its market share in the Netherlands is about 50 % and in Belgium 24 % in the field of standard mesh. In addition to its exports to Belgium, it recently started exporting also to the Federal Republic of Germany.

3. *ZND Bouwstaal BV, Valkenswaard (ZND)*

This undertaking is the third largest Dutch producer of welded steel mesh with an annual output of about 6 000 tonnes. In 1983 its market share in the Netherlands was about 4 %.

V. FEDERAL REPUBLIC OF GERMANY

Baustahlgewebe GmbH, Düsseldorf (BStG)

(16) BStG is a joint venture owned:

— 34 % by Thyssen Draht AG, Hamm (Westf.) (until 31 December 1985: Thyssen Draht AG):

— 33,5 % by Klöckner Draht GmbH,

— 25,001 % by Saarstahl Völklingen GmbH: (since 4 July 1986: before that date this share was held by Arbed Saarstahl and until 1 January 1986 by Arbed) and,

— 7,499 %by Roesler Draht AG, Schwabenthal.

Its capital amounts to DM 20 million. BStG has its own production facilities (Aalen near Stuttgart and Glinde near Hamburg) but it also sells part of the output of the works of the owners Thyssen (Hamm I and Gelsenkirchen), Klöckner (Hamm II and Kehl) and Roesler (Waldneil) and of the St Ingbert works, which is now under the control of Technoarbed Deutschland.

In addition, BStG sells all the mesh that is delivered from Arbed's Roermond works (NL) to the Federal Republic of Germany, the entire output of Bayerische Stahlmatten GmbH, Neufahrn, in which BStG has a 51 % holding, and the entire output of Baustahlmatten Hochheim GmbH (BStG holding: 49 %).

With annual sales of some 320 000 tonnes, BStG controls by far the largest share (about 36 %) of the German market.

VI. ITALY

(17) The participant Italian undertakings are as follows:

1. *ILRO SpA, Civate (Lecco) (Ilro)*

ILRO is the largest Italian exporter of welded steel mesh to France.

2. *Ferriere Nord SpA (Pittini), Rivali di Osoppo (Udine) (Ferriere Nord)*

Ferriere Nord exports mostly to Germany.

3. *Martinelli GB fu GB Metallurgica SpA, Milano (Martinelli)*

Martinelli is a relatively small welded mesh producer.

F. Commission investigations

(18) On 6 and 7 November 1985, Commission officials acting under Article 14 (3) of Regulation No 17 carried out simultaneous investigations without prior warning at the premises of seven undertakings and two associations, viz: TU, Sotralentz, TA, Ferriere Nord, BStG, Thibodraad, NV Bekaert, Syndicat national du tréfilage d'acier (STA) (1) and Fachverband Betonstahlmatten eV (2).

(19) On 4 and 5 December 1985, Commission officials acting under Article 14 (2) of Regulation No 17 conducted further investigations at the premises of ILRO, Martinelli, Boël/Trébos, TFE, FBC, Van Merksteijn and ZND.

(20) In all these investigations certain documents were secured which, together with further information which the Commission obtained under Article 11 of Regulation No 17, constitute the evidence on which this Decision is based.

G. Further procedure

(21) On 12 March 1987 the undertakings concerned were sent a Statement of Objections. The undertakings made known their views on the objections it contained.

On 23 and 24 November 1987 a hearing took place attended by representatives of the undertakings and associations concerned.

H. Summary of the restrictions of competition considered

(22) The restrictions of competition considered below derive from a set of agreements or concerted practices (hereinafter referred to as 'agreements') fixing prices and delivery quotas and sharing markets for welded steel mesh. Particular agreements essentially concerned just one part of the common market (the French, Benelux or German market as the case may be); but there was always an effect on cross-border trade, especially because almost all those operating on the relevant market, including importers, were parties.

(1) STA (Syndicat national du tréfilage de l'acier) is the professional association of french wire drawers. It includes all French welded steel mesh producers except one (Tecta).

(2) This is the professional association of the German welded steel mesh manufacturers. Almost all manufacturers are members.

There was no general agreement between all manufacturers in all the Member States concerned, but rather a complex of different agreements, the parties to which were not always the same.

Nevertheless, as a result of the regulation of the individual sub-markets this complex of agreements had the effect of producing far-reaching regulation of a substantial part of the common market.

J. The restrictions of competition in detail

I. French market

1. *The first set of agreements in 1981/82 between French producers and producers from Italy, the Federal Republic of Germany and Belgium who traditionally exported to France*

(23) The first set of agreements, between French producers and producers from Italy, Germany and Belgium who exported welded mesh to France, came into being in 1981 and 1982. These agreements covered both prices and market shares; they lasted from April 1981 to March 1982.

The parties to these agreements, in addition to the French producers, were the Italian undertakings ILRO, Ferriere Nord and Martinelli; the Belgian undertakings Boël/Trébos, TFE and FBC, which markets TFE's products, and the German-Benelux undertaking TA. The following paragraphs set out the evidence for the existence of these agreements (24 to 29) and for the participation of Italian, German and Belgian producers (31 to 50).

(a) The 1981/82 agreements in detail

(24) Mr Duroux, Sales Director of TU's Structural Steels Division, in a memorandum dated 1 December 1981, reported in relation to the year 1981:

> 'Tréfilunion succeeded in damming-up the flow of imports by preparing and securing acceptance of a barrage in the form of an agreement among the producers including the significant foreigners. There followed an artificial situation in which prices became relatively high on our market in 1981 and import tonnages were broadly maintained at their 1980 level.'

(25) This agreement enabled prices to rise spectacularly. In April 1981 they stood at about FF 1 900 per tonne. By the end of 1981, they had reached FF 3 000 per tonne, a level much higher than in other Community producing countries, e.g. the equivalent of FF 2 243 per tonne in Germany, FF 2 444 per tonne in Italy, FF 2 220 per tonne in Belgium and FF 2 264 per tonne in the Netherlands. These figures were obtained from the abovementioned memorandum of 1 December 1981.

(26) The share of the French market accounted for by imports rose from 21 % in January 1981 to 30 % in July/August 1981, but remained stable during the last four months of the year (29 %, 29 %, 32 % and 29 %).

(27) The memorandum referred to above indicates that the agreement was concerned not only with prices but also with market shares and that the allocation of those shares to the participants depended to a large extent on their past performance. Thus the memorandum states:

> 'In the discussions between producers from different countries dealing with the market shares to be granted, the arguments of those who have gained access profiting from the positions they have acquired are obviously very strong.
>
> The example offered in France, in the context of the recent agreement, shows the importance of these previously acquired positions. It should be noted that the object of these discussions was not to fix bilateral quotas, but simply to "cash in" on a *de facto* situation created from outside.'

The same memorandum recognizes that security in relation to prices is bound up with self-limitation on tonnages:

> 'The secure maintenance of the agreement on prices means for the French producers at least self-limitation of their tonnages on their own market at the present level.'

(28) In the same vein the memorandum, referring to TU's exports to Belgium and Holland, remarks:

> 'Finally it should be noted that it is in our interests to ensure acceptance of our position in these countries with a view to the talks which will not fail to be set in motion for the improvement of selling prices, which has clearly become a necessity for the Belgian and Dutch producers.'

(29) The 1981 agreement ran from April 1981 to March 1982. The quotas allocated to the French producers are known to the Commission from a document sent with a covering letter dated 1 October 1982 found at TU. The document contains the following tables:

Deliveries of welded steel mesh, smooth and ribbed, in France

Undertakings	1978		1979		1980		1981		Averages 1978—1981		Quotes	
	tonnes	%	tonnes	%	tonnes	%	tonnes	%	tonnes	%		(¹)
CCG + MD	26 526	13,27	25 939	14,44	27 173	12,90	26 535	13,03	26 543	13,37	13,84	13,40
Gantois	1 355	0,68	1 274	0,71	976	0,46	1 587	0,78	1 298	0,65	1,03	1,00
FFM	9 692	4,85	7 869	4,38	7 970	3,78	7 559	3,71	8 273	4,17	3,72	3,60
SMN	12 249	6,13	11 190	6,23	12 121	5,75	11 852	5,82	11 853	5,97	5,99	5,80
Sotralentz	20 458	10,23	17 273	9,61	20 446	9,70	20 742	10,19	19 730	9,94	10,02	9,70
STPS	21 355	10,68	21 565	12,00	30 456	14,46	24 308	11,94	24 421	12,30	12,91	12,50
TSE	8 520	4,26	9 029	5,03	9 485	4,50	9 786	4,81	9 205	4,64	4,03	3,90
TU	92 770	46,39	77 212	42,97	92 602	43,95	90 116	44,25	88 175	44,42	44,10	42,70
Tecta	7 039	3,52	8 324	4,63	9 450	4,49	11 149	5,47	8 990	4,53	4,36	
											100,00	92,60
Total French producers	199 964	100,00	179 675	100,00	210 679	100,00	203 634	100,00	198 488	100,00		
Estimate of imports	53 200	21,03	67 600	27,37	67 500	24,28	75 200	26,95	65 900	24,96		
Total market approx.	253 000		247 000		278 000		279 000		264 000			

(¹) + Tecta — Arbed.

Source: First half of 1982: French plants = 70 650
Imports = 42 350
113 000 tonnes = 37,50 %.

As can be seen from minutes dated 23 March 1982 discovered at TU, a TU executive committee meeting agreed that TU would 'continue to the end in carrying out the current agreement which expires on 31 March'.

(30) The evidence of the involvement of Italian, German and Belgian producers in the 1981 agreement is set out below.

(b) Italian involvement in the 1981/82 French market agreement

(31) As early as October 1980 Italian producers were involved in concerted practices with French producers on the French market. Thus a telex dated 15 October 1980 from Italmet, the agent for France of Ferriere Nord and Martinelli, to Martinelli states:

'We inform you that the participants at the meeting on welded mesh held in Paris on 9 October have unanimously accepted the conditions agreed during the Milan meeting of 3 October, which will be applied in the following manner . . .'.

In the same telex mention is made of the discounts on list prices to be granted in different parts of France. It is stated that the French producers will apply a discount smaller by FF 50 to 60 per tonne, thus allowing the Italians a certain margin of penetration.

(32) On 17 March 1981 Italmet sent a telex to Martinelli (which was found at Martinelli) announcing that the French producers had 'taken the initiative in calling a meeting of all producers (not only Tréfilunion but every French maker) with a view to studying the possibility of improving current market conditions.' The two main items on the agenda for the meeting were the adoption of a true price list ('listino verità') and the allocation of penetration quotas ('the main exporters to France are the Italians and Belgians, German penetration is almost negligible'). It is clear from the context that this last remark excludes Arbed, which accounted for 20 000 out of the 24 000 tonnes imported into France from Germany in 1980.

The telex also stated that TU, Usinor (the parent company of CCG and STPS), the Italians and the Belgians would attend the meeting, which was to be chaired by Mr Charbaut of STA. The telex added that ILRO had already agreed to take part. In another telex found at Martinelli dated 25 March 1981, Martinelli informed Italmet that it would attend the meeting, which was scheduled for 1 April 1981 in Paris.

(33) The meeting duly took place and a telex dated 9 April 1981 from Italmet to Martinelli (found at Martinelli) set out the agreed list prices and the discounts and penetration rebates agreed for the Italians. These terms were to apply to orders confirmed between 13 April and 15 May for delivery up to 29 May 1981. On the subject of quotas, the telex states: 'Stays fixed at 32 000 to 33 000 tonnes for Italy; our quota being, however, 8 000 tonnes to be divided between you (i.e. Martinelli) and Ferriere Nord.' The telex gives an example of how to make a price quotation for standard mesh, code No 88, as follows: FF 2 400 per tonne, less temporary rebates, 250 FF per tonne less penetration rebate, FF 50 = effective price carriage paid, not cleared through customs.

(34) A memorandum dated 9 April 1981 by Mr Marie, Director of TU's Welded Mesh Division and President of ADETS from 1983, found at Ferriere Nord and Martinelli, sets out the main points agreed at the meeting of 1 April:

'We have noted your agreement on the following points:

(i) Deliveries by your company to the French market during the period 1 April 1981 to 31 March 1982 will be 4 000 tonnes maximum . . .

(ii) These deliveries must take place as far as possible at regular intervals.

(iii) Monthly declarations of tonnages . . .

(iv) Correction of excesses and shortfalls: differences recorded and brought to your notice between the tonnages agreed and your actual deliveries will be reabsorbed within two months of the recording of such differences.

(v) Prices charged: these must be those of the price lists in force, which will be communicated to you in due course . . .

(vi) Information: the French producers will take care to inform you regularly of the state of the market, price movements, etc. . . . (records, forecasts).

(vii) Undertaking: you undertake not to depart from these agreements.

(viii) Italian market: in the event of an agreement being reached on welded mesh in the Italian market, the French producers undertake, after negotiation, to respect its operative clauses.

(ix) The French producers give you the opportunity of applying a so-called penetration margin with a maximum of:

— FF 40 per tonne on sales invoiced carriage paid, cleared through customs;

— FF 50 per tonne on sales invoiced carriage paid, not cleared through customs.'

(35) The Italian producers who participated in the French market agreement of 1981/82 were ILRO, Ferriere Nord and Martinelli. As can be seen from the abovementioned telex and memorandum and from a Tréfilunion table headed 'Imports of welded mesh from Italy', found at Ferriere Nord, the quotas for the 12-month period were: ILRO 24 000 to 25 000 tonnes, Ferriere Nord 4 000 tonnes and Martinelli 4 000 tonnes.

(36) It should be noted that, whereas Italian exports to France had been 37 000 tonnes in 1979 and 37 500 tonnes in 1980, the agreement was designed to secure a reduction to 32 000 to 33 000 tonnes in the 12 months from April 1981 to March 1982. Apparent consumption in France had been 279 000 tonnes in 1980, but at the time of the April 1981 meeting was not expected to be more than 240 000 to 250 000 tonnes in 1981. On 4 May 1981, Mr Cattapan, Sales Director of Ferriere Nord, sent Mr François of Italmet, who had asked for comments on Mr Marie's memorandum, a letter in which he stated: '*Re* points 1—2 of Mr Marie's memorandum, deliveries will be within the limits indicated by you if the market remains within the limits discussed'.

(37) It would appear that for several months the agreement between the French and Italian producers worked smoothly. Thus a Ferriere Nord note on a meeting of 20 October 1981 attended by TU, ILRO, Ferriere Nord, Martinelli and Italmet reports:

'The results of the March agreement (from 1. 4. 81) are satisfactory on the whole and have caused the price quotations to rise both for the French and for the Italians'.

(38) On 18 February 1982 a meeting took place in Paris between TU, ILRO, Martinelli, Italmet and Ferriere Nord. Mr Marie (TU) stated that an analysis of market trends showed that

'the agreement made at the beginning of 1981 has yielded the results hoped for in terms of quantity and price'.

This is reported in a note (found at Ferriere Nord) by the representative of Ferriere Nord, who writes:

'In 1981 the French market reached approximately 275 000 tonnes instead of the expected 253 000 tonnes. This should mean an improvement for the Italians as well, an improvement which will be discussed at the next meeting at the end of June.'

(39) However, there were signs that relations between the parties to the agreement were becoming strained. Statistics for the first nine months of the agreement showed ILRO to be slightly above its quota and Ferriere Nord and Martinelli comfortably below their quotas according to the producers' voluntary returns. Customs statistics suggested, however, that exports from Italy to France had been considerably above the overall quota limit. This is apparent from TU statistical tables found at Ferriere Nord.

(40) A telex (found at Ferriere Nord) dated 15 March 1982 from Mr Castelnuovo of Boël, Belgium, to Mr Pittini of Ferriere Nord states:

'Mr Montanelli of ILRO is selling in France, through a company in Briançon, fairly large quantities of mesh at prices well below those agreed in the context of the Franco-Belgian-Italian agreement of early 1981'.

(41) The Italians in turn were concerned in March 1982 about prices that were being charged by the 'integrated' French producers, i.e. in particular, TU, SMN, CCG and STPS. At a meeting in Italy on 8 March 1982 between Mr Marie (TU), Mr Cattapan (Ferriere Nord) and Messrs Montanelli, Locatelli and Tedeschi (ILRO), Mr Marie explained that the French integrated producers had applied a temporary rebate of FF 325 during the month of March. According to a telex dated 9 March 1982 from Mr François of Italmet to Mr Cattapan:

'Mr Marie stressed that this was a temporary measure, of limited duration only, and that the French producers were not bound to ask the permission of their Italian, Belgian and German partners to revise their list but only to inform them of the decision taken'.

The telex continues with a reference to Mr Montanelli, who:

'stood by the fairly strong wording of the telex he sent Marie some days ago, i.e. his intention to leave the Club and apply rebates of 600 to 700 francs, etc.'

'So we are at war . . .', states Mr François.

(42) Attempts were made to resolve the differences between the parties in discussions involving Mr Marie, Mr Boël ('for mesh on the French market'), Mr Charbaut (STA), Mr Cattapan (Ferriere Nord), Mr Montanelli (ILRO) and Mr Martinelli (Martinelli), as can be seen from Mr Cattapan's note of a meeting held in Brussels on 6 April 1982 and from Mr Cattapan's telex to Italment (Mr François) of 20 April 1982. Mr Cattapan informed Mr Marie in a telex dated 19 April 1982 of the Italian interpretation of the agreed measures. This interpretation included a continuation of the Franco-Italian agreement for a further three months, from April to June 1982, under certain conditions concerning prices and quotas. The telex of 19 April states as follows:

'. . .

(c) Given the common determination to try to improve a sector already under pressure owing to weakness of demand, the Italian producers agree to the proposal that a reduction of FF 325 on the list price plus a small so-called penetration rebate be applied. The maximum quantities which the Italian producers undertake to export to France during the months of April, May and June amount to a total of 7 200 tonnes i.e. three times 1 800 + 300 + 300, on the express condition that the above estimates prove correct and that the situation evolves normally.

. . .

I think it is true to say that our common purpose and common ambitions have been achieved.

Consequently, as they are in keeping with our agreements, the decisions reached will be applied as from today.'

In a telex from Mr Marie to Mr Cattapan dated 23 April 1982, this interpretation is accepted by Mr Marie with certain additions designed to introduce safeguards on behalf of French producers, with the possible exception of Sotral whose definitive position was not yet known. A copy of the telex was sent to ILRO on 26 April 1982.

(43) Ferriere Nord and Martinelli proceeded to give immediate effect to the extended agreement and on 20 April 1982 their agent Italmet reported to them by telex that it had sent the following telex to French customers:

'We are pleased to inform you that from today we are in a position to book orders for deliveries April/May/June on the following terms:

1—3. Tréfilunion list price (including allowances provided for in the list) less FF 385 delivered, not cleared through customs on the French side (FF 385 = FF 325 discount + FF 60 penetration rebate as agreed between the Italians and the French).

4. We are unable to sell more than 600 tonnes per month (300 tonnes Martinelli/300 tonnes Ferriere Nord) up to the end of June 1982.

5. For logistical reasons we cannot consider mixed loads Martinelli/Ferriere Nord. Any orders from you should take account of this.

6. After being out of action for two months, a step we took to avoid aggravating an already tense situation, we sincerely hope you will be able to entrust to us those tonnages you need in order to sustain the welded mesh market.'

(Mr Cattapan (Ferriere Nord) wrote 'OK' on his copy of the telex.)

(44) The evidence suggests that Ferriere Nord and Martinelli did their best to keep to the 1981/82 agreement and supported its extension. It also appears, however, that ILRD did not always abide by the 1982/83 agreement, and the Commission has no documentary evidence in its possession that would prove that that company agreed to the extension.

(45) As for the French producers themselves, they agreed at a meeting on 21 April 1982, at which they, together with TA, were all present (except Sotral), that they would apply a maximum discount of FF 325 per tonne for all new orders deliverable in May, reduced to FF 275 per tonne in June (source: note of 23 April 1982 by Mr Knap of TA France reporting on this meeting to Mr Schurr, TA Luxembourg).

(c) German involvement in the 1981/82 French market agreement

(46) The German involvement in the French market agreement of 1981/82 was essentially that of TA, which accounted for 85 % of German exports to France. TA had a quota under the agreement, about which information is available from a TU note dated 23 October 1981 concerning a meeting between TU and TA on 20 October 1981. At that meeting

'TU stated that TA had to deliver monthly about 500 tonnes to Woippy and Strasbourg (two warehouses belonging to Davum), which would leave it some 800 tonnes for other customers'.

This means that the TA quota was 1 300 tonnes a month or 15 600 tonnes a year. This corresponds to a share of 7,4 %, taking as a basis total deliveries by French producers in 1980, i.e. excluding other imports. (This percentage is confirmed by the document dated 1 October 1982 referred to at point 29 above). At the same meeting TA:

'Complained about what, in its view, was the excessive share given to the Italians and Belgians in the latest arrangements, which also favoured TU and CCG. TA considered, moreover, that it had always been treated as a poor relation in our (i.e. the French) market, where it had been one of the leading suppliers'.

(d) Belgian involvement in the 1981/82 French market agreement

(47) The Belgian producers involved in the 1981/82 agreement were mainly Frère-Bourgeois/Fontaine-L'Evêque (FBC/TFE) and Boël/Trebos. There was, however, also a TA interest through its Belgian producing subsidiary Tréfilarbed Bouwstaal NV, Ghent ('TA Ghent').

(48) As regards FBC/TFE, it is known from the TU note of 23 October 1981, referred to at point 46 above, that the FBC/TFE quota was 4 000 tonnes a year.

'As for the recent agreement, TA claimed for Frère-Bourgeois a tonnage of 2 000 tonnes per month, whereas in fact it was 4 000 tonnes per year, as shown by written proof furnished to TA by Mr Marie. In reality, Frère-Bourgeois had only delivered 58 tonnes since April'.

(49) As regards Usines Gustave Boël and its Trébos works (Boël/Trébos), a manuscript note of a meeting held in Paris on 1 April 1981 states:

'On Friday 3 April (the French) will have a meeting with Jacques Boël + Charleroi' (i.e. Boël + Frère Bourgeois).

The note also states that the volumes proposed for the Belgians 'already negotiated' were 8 000 tonnes. Since the FBC/TFE quota is known to have been 4 000 tonnes, the Boël/Trébos quota must also have been 4 000 tonnes.

(50) As already mentioned in 40, in a telex dated 15 March 1982 Mr Daniele Castelnuovo of Boël complained to Mr Pittini of Ferriere Nord that ILRO was selling mesh in France at prices well below those agreed in the Franco-Belgian-Italian agreement of early 1981. The telex states that Mr Jacques Boël thanks Mr Pittini in advance for taking action, while the writer joins Mr Boël in expressing his gratitude to Mr Pittini for

'preserving the market from blows'. Mr Boël himself took part in discussions with French and Italian producers' representatives in Brussels in April 1982 in an attempt to bring ILRO back into the fold (source: Mr Cattapan's note of Brussels meeting held on 6 April 1982 and Mr Cattapan's telex of 20 April 1982 to Mr François of Italmet, referred to in 42. The Boël group was interested in this matter both as a Belgian producer and as a producer in France through its subsidiary Fabrique de Fer de Maubeuge).

2. *The set of agreements in 1983/84 between French producers and producers from Italy, the Federal Republic of Germany and Belgium*

(51) The second set of agreements mainly concerned quotas; these agreements were concluded by the integrated French manufacturers (TU and SMN (Sacilor Group) and CCG and STPS (Usinor Group), the non-integrated French manufacturers including Sotralentz, and the other foreign undertakings operating on the French market, from Belgium (TFE/FBC, Boël/Trébos and TA), Italy (Ferriere Nord, ILRO and Martinelli), and Germany and Benelux (TA). The results of the negotiations which took place were set out comprehensively in a 'protocole d'accord' at the beginning of October 1983.

Alongside these quota arrangements there were also various price agreements between the same manufacturers.

The following paragraphs describe the agreements in detail.

(a) Preparing the ground

(52) In the second half of 1982 the agreements to protect the French market did not appear to be working well for most participants, the main reason being that certain companies, in particular ILRO, and probably Sotralentz, were no longer cooperating. In early 1983, however, efforts were made to re-establish the agreed restrictions on the French market. Thus, on 4 January 1983, Mr Charbaut of STA met Mr Montanelli of ILRO and the latter's agent, Mr Barouch of SOVEP. Mr Montanelli was asked whether he would be writing to conclude an agreement limiting penetration into the French market. He replied that he 'wished to conclude a new agreement and stated he would enter into commitments on behalf of ILRO and Pittini . . . The problem of Martinelli would remain to be solved, but this could be the subject of a separate agreement if Mr Montanelli was unable to intervene' (source: note of 'welded mesh meeting' held at Hotel Michelangelo, Milan, on 4 January 1983).

(53) At a further meeting between the 'French integrated producers and some Italian producers interested in the French market' (including Mr Haller, Managing Director of CCG, Mr Marie of TU and Mr Montanelli, Mr Martinelli and Mr Cattapan, of ILRO, Martinelli and Ferriere Nord respectively) held on 23 February 1983 (source: notes by Mr Cattapan found at Ferriere Nord) French consumption for 1983 was estimated at about 225 000 tonnes. The French integrated producers claimed 61 % of this and were not prepared to discuss this level. It was agreed at the meeting that the remaining 39 % should be distributed as follows:

'19 % (non-integrated) French producers;

3 % Belgium;

7 % Germany;

10 % Italy, corresponding to some 23 000 tonnes per year. This figure will need to be divided among ILRO, Martinelli and Ferriere Nord and will have to be agreed precisely . . .'

'At the same time a recovery of FF 200 to 300 per tonne is envisaged from April 1983. Our quota (i.e. that of Ferriere Nord) will not exceed 2 500 tonnes for 1983 if the market remains at the size mentioned . . . A further FF 300 rise is expected arround July'.

(54) A note by Mr Haller (CCG) confirms the above quotas:

'Agreement was reached on a penetration rate of 10 % for the Italians, but the Italians requested a rapid rise in prices. Mr Marie said that we had to secure the agreement of Arbed to 7 %, of the Belgians to 3 % and of the other French to 19 % . . . Absolute discretion about these conversations was requested both *vis-à-vis* the representatives in France of the Italian companies and *vis-à-vis* other importing companies or French suppliers.'

Mr Stabiumi, representing the Industrie Siderurgiche Associate (ISA) was also at the meeting as 'guarantor of the agreement' on behalf of the whole Italian welded mesh sector.

(55) After the above meeting, negotiations proceeded between the various interested parties and by 24 May 1983 the handling of the affair had risen to a senior level in Sacilor, TU's parent company. On that day Mr Choppin de Janvry, Directeur Stratégique et Affaires

Internationales of Sacilor, sent a telex to Mr F. Buck of Tradearbed (like TA, an Arbed subsidiary). This telex stated *inter alia*:

'Following the meeting TU (Mr Marie)/CCG (Mr Haller)/Arbed (Mr Schürr . . .) of 7 March 1983 in Luxembourg and the meeting TU/Arbed of 28 March 1983. The prospects of the price rise currently depend on Arbed's agreeing to the quotas which we (the French sector) propose to them. We recall that the Italians for their part have agreed to reduce their deliveries to 10 % of French consumption and that the agreement of the Belgians is virtually secured. The integrated French producers claim for their part 61 % of consumption, a figure presented as non-negotiable. This figure has been accepted by the whole French sector.'

The telex goes on to refer to difficulties which have arisen between the French producers and TA regarding the appropriate level of the quota for TA. Mr Buck replied on 25 May 1983 with a telex to Mr Choppin de Janvry, explaining the Arbed/TA point of view and making a 'final conciliatory gesture' in relation to TA's quota. This was followed by a 'compromise proposal' from the French producers, the terms of which are set out in a telex dated 14 June 1983, found at TU, conveying to Mr Marie the text of a telex dated 13 June 1983 to Mr Buck from Mr Jacques Michel, Deputy Managing Director of Usinor, CCG's parent company. The terms of the proposal, which related to 'Arbed's share of deliveries of welded mesh on the French market' and was aimed at 'facilitating the speedy conclusion of a welded mesh agreement on this market, an agreement which has already received the assent of the other parties concerned', are as follows:

'— right to supply 6,3 % of the market from Arbed's Luxembourg works (this is a mistake for 'German' works, Arbed having no works making welded mesh in Luxembourg),

— right to supply 0,75 % of the market from Arbed's Belgian works, as already agreed,

— full integration of tailor-made mesh to ensure complete clarity in the returns,

— in exchange, the granting to the Arbed group of a right to 0,5 % (bringing 6,3 % up to 6,8 %) to take account of such integration.'

This offer was accepted, as is evidenced by a telex from Mr Albert of CCG to Mr Marie dated 22 June 1983 quoting the text of a telex from Mr Buck to Mr Michel:

'Following receipt of your telex of 13 June, I have attended to the matter personally and am pleased to inform you that we agree for a period of a year and a half to a right to supply 7,55 % from Arbed works, tailor-made mesh being included in the percentage. This means, therefore, that we have accepted your compromise proposal and I hope thus to have given satisfaction; I hope our collaboration will now lead to a rapid improvement in prices.'

(NB: 7,55 % = 6,3 % + 0,5 % + 0,75 %).

(56) This wish in fact came true: the temporary rebate on the TU basic price of FF 3 075 per tonne was FF 700 per tonne in June 1983, in July it was FF 650 per tonne; in August FF 600 per tonne; in September FF 400 per tonne and in October FF 275 per tonne, followed by a rise in the basic price of FF 125 per tonne to FF 3 200 per tonne on 1 November 1983, with the rebate remaining at FF 275 per tonne. On 1 January 1984 the basic price was raised by a further FF 80 per tonne while the temporary rebate remained unchanged at FF 275 per tonne at least until October 1984. The total rise in the price was FF 630 per tonne between June 1983 and January 1984, or 26 %.

(57) The acutal operation of the agreement by Martinelli during July/August/September 1983 is shown by the following telex sent by Martinelli to Italmet on 14 July 1983:

'We can authorize you to sell 3 to 4 trailer loads of standard mesh for delivery by our lorry to locations near the frontier on the terms of FF 400 rebate on the Tréfilunion list prices, for delivery in the second half of September, unless, that is, you have sold the remainder of the production quota.'

(58) On 3 November 1983 Mr Duroux (TU) sent to Mr François of Italment (representing Ferriere Nord and Martinelli) a 'green sheet' *(feuille verte)* showing the basic prices of FF 3 200 and FF 3 290 and the temporary maximum rebate of FF 275 per tonne applicable to orders for delivery in December 1983.

(59) On 4 November 1983 Mr Knap of TA France complained to Mr Schürr (TA) in a note found at TU that the TA forecasts for sales in France in 1984 could have been 27 000 tonnes of welded mesh, or 11,75 % of a market estimated at 230 000 tonnes, whereas the quota of 7,55 % would restrict TA sales to 17 350 tonnes. He adds 'it is not very clear to us how we are going to be able to apportion the 17 350 tonnes of

welded mesh to complete the tables attached to your note'. This shows that TA was being prevented by the agreement from delivering to France the full quantity which it could otherwise have delivered.

(b) The 'protocole d'accord', October 1983

(60) On 4 October 1983 the so-called 'protocole d'accord' came into being. In it are set out comprehensively the results of various negotiations, in particular those between:

(a) the French producers themselves, including their associations Adets and STA [1] (source: manuscript note on the meeting of 28 September 1983 at which the allocation of quotas between French producers and Arbed was discussed and which was attended by representatives of TU, Adets and STA),

(b) French producers and Arbed (see 55), and

(c) the French, Italian (see 52 to 54) and Belgian producers (except Arbed-Ghent). The Belgian involvement is apparent from the 'protocole d'accord' itself.

(61) The 'protocole d'accord' contains the following main provisions:

(i) the parties undertake to 'apply strictly the *price directives* defined by the Secretariat (STA) for each month of deliveries'; the Secretariat is also charged with the management of the *market-sharing* part of the agreement, including the issue of monthly delivery programmes;

(ii) the share of imports from Belgium, Italy and Germany (apart from those of Tréfilarbed) is fixed at 13,95 % of consumption on the French market 'within the framework of an agreement between those producers and French producers';

(iii) the remaining 86,05 % of deliveries on the French market is divided among 'the undersigned producers (who) have decided to respect between themselves the following delivery shares':

(in %)

— integrated works		60,50
of which Sacilor group (TU and SMN)	40,50	
Usinor group (CCG and STPS)	20,00	
— other French works including Sotralentz (7,60)		18,00
— TA/Arbed		7,55
of which St. Ingbert	6,80	
Ghent	0,75	
		86,05

(iv) penalties are payable for deliveries in excess of quota;

(v) the duration of the protocole d'accord is from 1 July 1983 to 31 December 1984, 'with renewal possible for 1985 in the light of consultations beginning September 1984'.

(62) The allocation to TA's German works at St. Ingbert was 6,8 % of the market, as already indicated. There was no other quota for German works. Of the 13,95 % allocated to Italy and Belgium, 10 % was the Italian share and 3,95 % was the Belgian share (excluding TA's Ghent works). The 10 % for Italy was not subdivided by the French producers as between Ferriere Nord, ILRO and Martinelli, who were left to arrange their own subdivision. ILRO was, however, given a 'theoretical right' to 9 % in calculations dated 10 August 1984 used in preparing the TU budget for 1985 and 1986. Belgium's 3,95 % was divided among Boël/Trébos and FBC/TFE, which had 2,86 % and 1,09 % respectively. This is evidenced by documents found at TU recording monthly and cumulative comparisons between quotas and actual deliveries.

(63) The abovementioned documents also indicate that the penalty for excess deliveries was FF 150 per tonne.

(c) The operation of the 1983/84 agreements

(64) Several documents with statistics for individual undertakings show not only that the 'protocole d'accord' functioned, but how it functioned. Some of these statistics are headed Adets. From these it appears that Adets played a coordinating role by regularly collecting and distributing statistical data to its members showing each month their individual deliveries and market share, which enabled the operation of the agreement to be monitored.

(65) The same documents also show that the agreement worked effectively, at least during the first nine months of its existence, i.e. from July 1983 to

[1] Adets (Association technique pour le développement de l'emploi du trillis soudé) is the association of French welded steel mesh producers (except for Tecta). A further member is Tréfilarbed-France, TA's French subsidiary. The object of the association is to promote the use of welded steel mesh in France. For STA see 18 above.

March 1984. At the end of March 1984 the cumulative figures compared with the quotas were as follows:

Welded mesh deliveries on the French market July 1983 to March 1984

Undertakings	Tonnes delivered	Percentage share	
		Quota	Actual
Usinor group	29 815	20,00	19,56
(of which CCG)	(14 422)	(10,35)	(9,46)
(STPS)	(15 393)	(9,65)	(10,10)
Sacilor group	61 995	40,50	40,67
(of which TU)	(54 933)	(35,80)	(36,04)
(SMN)	(7 062)	(4,70)	(4,63)
French integrated works	91 810	60,50	60,24
French independent works	26 761	18,00	17,56
(of which Sotral)	(11 927)	(7,60)	(7,83)
TA/Arbed	11 746	7,55	7,71
Italians (Ferriere Nord, ILRO Martinelli)	16 243	10,00	10,66
Belgians (Boël, Frère-Bourgeois)	5 840	3,95	3,85
Total contracting parties	152 400	100,00	100,00

It will be noticed that only the Italians delivered appreciably in excess of their quota. It will be noted also that the quota shares are expressed as percentages of total deliveries by the contracting parties to the French market. This does not allow for deliveries by parties outside the agreements, but such deliveries (coming mainly from Germany and Italy) represented only 8 % of the total French market during the seven months September 1983 to March 1984.

(66) The Italian excess of deliveries appears to have been due to one producer, namely ILRO. Mr Marie first expressed concern about this in a telex dated 15 March 1984 to Mr Cattapan of Ferriere Nord. He states:

'You will remember that the Italian share in relation to French consumption has been agreed to by both sides at 10 %. The report of performances over the last months shows a slight excess of 0,6 % which can easily be corrected, this performance being essentially attributable to one of the Italian partners . . . It is indispensable that the three Italian partners should establish a clear policy which enables the sum of Italian sales not to exceed the 10 % provided for, agreed and accepted in our discussions last July. Meanwhile I should be grateful if you would refrain from making any quotations'.

(67) On 13 April 1984 Mr Marie sent a further telex to Mr Cattapan on behalf of the French producers inviting him to a meeting of Belgian, French and Italian producers together with Arbed. The invitees included Boël, Frère-Bourgeois, ILRO, Martinelli, Ferriere Nord, Arbed, CCG, STPS, Sotral, TU and SMN and the meeting was held on 15 May 1984 in Paris. Two of the items on the agenda for the meeting were 'the drawing up of a timetable for price rises with amounts to be established' and 'interpenetration of markets'.

(68) It appears from Mr Cattapan's note of the meeting that:

1. 'in the last four months of 1983 the quotas agreed were fairly well respected. First three months of 1984, anomalies';
2. there are 'discounts' in 'Belgium and Holland – agreements have not been observed';
3. there is 'the grave matter as far as Italy is concerned of the 10 % accounted for by a single producer'.

(69) The delivery figures reported in documents found at TU show that ILRO was not in practice observing the agreement as from January 1984. This can be seen from the following table:

Italian deliveries to France as reported

Month	ILRO or its agent Sovep		Italmet for Ferriere Nord and Martinelli		total Italy
	tonnes	share (%)	tonnes	share (%)	tonnes (%)
January 1984	1 629	11,14	59	0,41	11,55
February 1984	1 044	8,03	228	1,75	9,78
March 1984	1 850	10,81	0	0,00	10,81
April 1984	not known		not known		not known
May 1984	2 071	12,81	125	0,78	13,59
June 1984	1 932	12,22	145	0,92	13,14

(70) The statistics of ILRO deliveries to France in the months concerned are consistently higher than the above-reported figures, although they confirm that in February 1984 ILRO was temporarily back within the limits of the agreement. It can be assumed from the wording 3 of Mr Cattapan's note of the meeting of 15 May 1984 (see 68) and the absence of further comment on that point that ILRO was not represented at that meeting. The Commission takes it that ILRO was no longer a cooperating member of the agreement from May 1984 onwards.

(71) A TU memorandum of 19 September 1984 entitled 'Current state of the welded mesh market in France' contains, among other things, a progress report on the agreements. It states:

'The very substantial increase in the selling price of welded mesh in the course of 1983 (more than FF 1 000 per tonne) resulted at the end of the year in a "maximum permissible" level having regard particularly to prices on neighbouring markets: BLEU, Federal Republic of Germany, Switzerland, Italy and Spain. Despite the weakness of sales volumes and a fairly strong thrust by two importers in the first half of 1984, prices continued to improve after the end of 1983 during the first quarter of 1984 . . . This is the direct result of a new awareness on the part of European producers operating on the French market, with two exceptions: ILRO (Italy) and Horath (Germany) (a company outside the agreement) . . . In view of the differences in prices charged, this currently gives cause for a great deal of concern and is certainly harmful as it is likely to undermine the state of awareness referred to, which is next due to run out at the end of 1984. In just a few weeks' time, talks will have to be entered into which will have a direct bearing on the shape of our plans for 1985 and 1986. Our most ambitious and demanding partner will be Arbed.'

(72) On 30 October 1984, Mr Marie stated in an internal TU memorandum that:

'The results of the plans for 1985 and 1986 are dependent on two fundamental factors, namely:

— our investments in wire-drawing and welding,

— negotiations for 1985 and, if possible, for 1986, which I must conduct on the same basis as those which have been applied since September 1983 and which expire at the end of December 1984'.

(73) Meanwhile, it would appear that by May/June 1984 the Belgian companies were beginning to exceed their combined quotas. The following picture emerges from the statistics:

Producer	Quota	May 1984		June 1984		July 1983 to June 1984 combined total	
		tonnes	share (%)	tonnes	share (%)	tonnes	share (%)
1. Boël/Trébos	2,86	549	3,40	449	2,84		
2. FBC/TFE	1,09	297	1,84	472	2,99		
Total 1 + 2	3,95	846	5,23	921	5,83	8 324	4,16
Total contracting parties	100,00	16 161	100,00	15 801	100,00	200 333	100,00

(74) In 1984 as a whole, total imports into France from Belgium/Luxembourg, i. e. mainly from Boël/Trébos, FBC/TFE and TA Ghent, were 7,4 % of total deliveries to the French market, which is well above the combined quota of 3,95 % + 0,75 % (Ghent) = 4,7 % of total deliveries by the contracting parties.

(75) As far as the Arbed group is concerned, its combined deliveries into France between July 1983 and June 1984, i. e. the first year of the 1983/84 agreements, were slightly above quota (7,61 % compared with 7,55 %). Statistics for the first eight months of 1984 showing the Arbed share as a percentage of total deliveries by Arbed and the French contracting parties, i. e. excluding the Italians, Belgians (except Ghent), Germans (except St Ingbert) and other (small) imports, indicate that Arbed started to exceed its quota seriously in about July/August 1984. The figures are given below.

Arbed share (actual)

1984

Month	As defined above (%)	As defined for quota agreement (%)
January	7,72	6,42
February	9,20	7,85
March	8,47	7,00
April	8,46	not known
May	9,11	7,40
June	not known	7,35
July	13,73	not known
August	17,90	not known

(76) The Commission takes it that Boël/Trébos, FBC/TFE and Arbed ceased to comply with the agreements after the first year of their operation, i.e. after June 1984.

The Commission has no proof that the intended extension of the agreements after the end of 1984 actually took place.

(77) In 1985 there was a further agreement between German and French undertakings, dealing with interpenetration between Germany and France. This agreement is described in 135 to 143, which discuss the German market.

II. BENELUX MARKET

(78) The agreements concerning the Benelux market consisted mainly of:

(a) *price agreements* between the main operators on the Benelux market, including the non-Benelux manufacturers, which were concluded at regular meetings between them which took place at least from August 1982 to November 1985;

(b) *quota agreements* between German manufacturers who exported to the Benelux countries and the other parties operating on the Benelux market and *agreements concerning compliance with the prices set* for the Benelux market by those parties;

(c) agreements between Benelux manufacturers concerning prices or agreeing not to produce certain types of welded steel mesh for competitors.

1. *The first attempts at an agreement for the Benelux market*

(79) The efforts to arrive at an agreement for the Benelux market between those operating on that market date back at least to 1980.

As is shown by a letter from TU to STA, there was a meeting on 27 May 1980 in Brussels between the major firms operating on this market (Thibodraad, Arbed, Van Merksteijn, TU and TFE).

Despite certain points of conflict concerning above all the attribution of blame for the low price level on the Dutch market, the meeting was constructive to the extent that it was agreed 'for a trial period of one month to respect a minimum price of Hfl 900 per tonne for standard mesh (present market price: Hfl 850 to 880 per tonne)'. The parties agreed to hold a further meeting on 27 June 1980 'in order to draw conclusions from this first attempt at coordination'.

2. *Regular meetings and price arrangements between the major participants in Breda and Bunnik (Netherlands)*

(a) General: time, place and object of meetings

(80) The meetings took place from August 1982 at the latest until at least October 1985 in Breda (NL) and Bunnik (NL).

(81) Their main purpose was to agree prices for the Benelux market.

(82) The evidence regarding these meetings comprises:

— several telex messages sent to TU by Mr R. Peters, its agent in the Benelux countries; these telexes contain precise information about each meeting (time, place, participants, those absent, object of meeting (discussion of market situation, proposals or decisions about quotas and/or prices), agreement on date and place of next meeting),

— statements made by some of the participants to Commission officials during the investigations,

— references to these meetings in other documents (correspondence, internal memoranda, etc.).

(83) The meetings known to the Commission are as follows:

Date	Place
1982	
26. 8. 1982	Breda

1983	
12. 1. 1983	Breda
11. 3. 1983	Breda
30. 8. 1983	Breda
3. 10. 1983	Breda
5. 12. 1983	Breda
1984	
5. 1. 1984	Breda
28. 2. 1984	Bunnik
29. 3. 1984	Breda
11. 5. 1984	Breda
24. 8. 1984	Breda
28. 9. 1984	Bunnik
22. 10. 1984	Bunnik
6. 11. 1984	Bunnik
19. 12. 1984	Bunnik
1985	
22. 1. 1985	Breda
5. 3. 1985	Bunnik
28. 3. 1985	Bunnik
24. 4. 1985	Breda or Bunnik
10. 6. 1985	Bunnik
26. 8. 1985	Bunnik
18. 10. 1985	Breda
24. 10. 1985	Breda

(b) The meetings in detail

(84) Meeting of 26 August 1982 in Breda. Present were representatives of Thibodraad, TA, Van Merksteijn, FBC, Boël/Trébos and TU. The meeting was called by Trébos on the initiative of Mr Boël.

First the market situation was discussed. It was noted that 'current prices are extremely low' (less than Bfr 14 000 or Hfl 800 per tonne). This was due to the 'catastrophic situation' in Germany (DM 685 per tonne delivered). The preparations for the structural crisis cartel in Germany were mentioned. Mr Boël demanded a solution for the Belgian market. As far as he was concerned this was a pre-condition for participation in the agreement ('l'accord') in Germany. The following proposal was made: 'The previous plan based on the allocation of quotas to the various participants should be looked at again.' It would be studied by the representatives of Thibodraad (Mr Broekman) and TA (Mr Van den Bossche). Meanwhile the following minimum price was agreed:

Bfr 15 000 per tonne (Hfl 860 per tonne).

Importers from other countries were authorized to reduce this price by 1 %, thus making penetration possible (*source:* telex from Mr Peters to TU dated 27 August 1988 reporting on the meeting.).

(85) As can be seen from the documentation, one of the key issues discussed at the meeting was the preparation of a quota cartel. This idea was clearly not new. The report of the meeting (telex from Mr Peters to TU) talked about 'looking again at the previous plan'.

In an internal Thibodraad memorandum ('Operational Marketing Plan Thibodraad 1981/1982/1983'), the desire is expressed for agreements ('afspraken') with competitors. But price agreements alone were apparently not thought enough. It would be 'ideal' to aim at a quota cartel as well as a price cartel owing to the fact that there was no growth in the market and export opportunities were declining, leading to excess capacity.

After the meeting of 26 August 1982 the first steps were evidently taken to set up such a quota cartel. The sales of the participating producers on the Benelux market in the previous four years 1978/1979/1980/1981 were most probably used as a basis for the allocation of quotas. Contacts took place between the parties with the object of exchanging data on delivery tonnages on the Benelux market.

A telex from TU (signed C. Marie) to Boël/Trébos (Boël group, on whose initiative the meeting of 26 August 1982 had taken place) dated 2 September 1982 reads as follows:

'For the attention of Mr de Hornois. Further to our telephone conversation of 1 September 1982, here as promised are the figures for our deliveries of welded steel mesh to the Belgian and Dutch markets:

Year	Belgium	Netherlands
1978	9 800 tonnes	1 900 tonnes
1979	8 700 tonnes	5 450 tonnes
1980	5 200 tonnes	4 200 tonnes
1981	4 600 tonnes	850 tonnes
1982 (first half)	1 800 tonnes	120 tonnes'

The telex closes with a request that he (Mr Marie) be kept informed of developments'.

These statistics were clearly intended for the preparation of the quota cartel in which Mr Marie was very interested, as is shown by other documents of a later date (see 98 and 101 below).

(86) At the meeting of 12 January 1983, attended by representatives of Thibodraad, TA, ZND, Boël/Trébos, FBC and TU, a new attempt was made to fix minimum prices in stages for the following three

months, February, March and April 1983. Each month the price of the various products was to be raised by Hfl 20 or Bfr 350 as follows:

Product	February 1983		March 1983		April 1983	
	Hfl	Bfr	Hfl	Bfr	Hfl	Bfr
Standard mesh	800	14 250	820	14 600	840	14 950
Catalogue mesh	835	14 850	855	15 200	875	15 575

(Source: telex from Mr Peters to TU dated 17 January 1983).

(87) At the meeting of 11 March 1983, attended by representatives of Thibodraad, TA, Van Merksteijn, ZND, FBC, Boël/Trébos and TU, it was first noted that the minimum prices fixed at the previous meeting on 12 January 1983 had not been observed — prices were lower than had been decided and in Germany they were somewhat higher than in Benelux. Van Merksteijn accused some other producers (Thibodraad, TA, FBC and Boël/Trébos) of failing to keep their trading subsidiaries under control; their behaviour was helping to keep market prices low. The participants agreed to wait for possible movements in the price of wire rod before taking another decision. Meanwhile new prices for two types of welded mesh (standard and catalogue) were fixed:

Standard mesh: Hfl 840 = Bfr 14 950

Catalogue mesh: Hfl 870 = Bfr 15 500

(Source: telex from Mr Peters to TU dated 14 March 1983)

(88) At the meeting of 30 August 1983, which was attended by representatives of Thibodraad, TA, Van Merksteijn, FBC, Boël/Trébos, ZND and TU, the market situation was discussed and prices for standard mesh were reported to be in the region of Bfr 17 000 per tonne. The Germans seemed to be less active in Benelux, so a price rise was possible. Prices of Hfl 1 000 per tonne or Bfr 18 000 per tonne for standard mesh and Hfl 1 100 or Bfr 20 000 per tonne for catalogue mesh were agreed (source: telex from Mr Peters to TU dated 8 September 1983).

(89) At the meeting of 3 October 1983, which was attended by representatives of Thibodraad, TA, Van Merksteijn, FBC, Boël/Trébos, ZND and TU, it was noted that prices were currently between Bfr 17 000 and Bfr 17 800 per tonne. It was agreed to continue aiming for the prices agreed at the previous meeting (30 August 1983) (i.e. Hfl 1 000 or Bfr 18 000 for standard mesh and Hfl 1 100 or Bfr 20 000 for catalogue mesh) (source: telex from Mr Peters to TU dated 7 October 1983).

(90) At the meeting of 5 December 1983, which was attended by representatives of Thibodraad, TA, Van Merksteijn, FBC, Boël/Trébos, ZND, BStG and TU, the discussion of the market situation revealed a sharp fall in prices (from Bfr 17 800 to 17 000 or even to 16 800 per tonne in Belgium and from Hfl 980 to 950 or even 930 in the Netherlands).

The main culprits were the Germans and Van Merksteijn, which had followed their lead. For this reason two representatives of BStG, Messrs Schmitz and Buschmann (in the telex of 7 December 1983 from Mr Peters to TU their names are misspelt 'Schmit' and 'Durschmann') had been invited to the meeting. It emerged during the meeting that the 'German representatives' were not in control of all German producers regarding their exports to Benelux. The producers Crampe and Hochwald, it was reported, were putting considerable quantities onto the Benelux market at very low prices. The Dutch producers were therefore going to take the matter up directly with Düsseldorf to arrange a meeting with the German firms in question. Meanwhile it was pointless to set a specific price. They should merely aim at a price between Hfl 930 and 980 per tonne for the Netherlands and between Bfr 16 800 and 17 800 per tonne for Belgium (source: telex from Mr Peters to TU dated 7 December 1983).

(91) This 5 December meeting was significant in that it was the first to be attended by representatives of BStG who, as is clear from the wording of the telex, were regarded as representing all German producers.

(92) The meeting had a remarkable sequel. On 15 December 1983 Mr M. Müller, Chief Executive of BStG, sent the following telex to Thibodraad:

'*For the attention of Messrs Broekmann and Houtbraken*

Re: Meeting in Breda on 5. 12. 1983

Gentlemen,

My colleagues, Messrs Buschmann and Schmitz, have informed me of the outcome of the abovementioned meeting. Before the meeting took place, I had already carefully analysed trends in interpenetration between Belgium, Germany and the Netherlands, but unfortunately Mr Buschmann and Mr Schmitz were not fully briefed on this matter.

Whilst it is true that quite specific individual problems do exist, they are nowhere near as serious as has been made out. The decline in volumes currently complained of in all countries is typical for the time of year and only to be expected.

Instead of just criticizing the German Cartel Association and its Chairman and making demands of them, people in neighbouring countries should stop to think about the immense benefits they, too, derive, in terms of higher prices from the regulation of the German market. After all, where would prices be in all our countries without the cartel?

As you are aware, I am naturally concerned in all our interests to curb or at least contain the activities of the small maverick producers. I should like to make it absolutely clear, however, that the biggest increase in cross-border trade has been in that from Belgium to Germany, which in view of the close cooperation with Boël is quite clearly attributable to the second Belgian producer. These are not — repeat, not — reimports. There have been a few lorry-loads of these, but they were put a stop to long ago.

In Germany, too, the prices of mesh from stock have fallen everywhere from the peak price level in October to the floor level and are hence in fact several tens of German marks lower than in October.

I do not deny that one German mesh producer in particular has increased its deliveries to neighbouring countries to the west. However, your complaint about Crampe leaves me somewhat perplexed as you know as well as I do that that firm delivers to the Netherlands almost exclusively reinforcing wire and not mesh.

As I said, there are problems, but they are manageable. We must solve them, and solve them we shall. I place myself at your disposal for that purpose. But I am not prepared to stand by and see only German manufacturers put in the dock.

The German cartel agreement does not allow a legally binding export arrangement to be made. There can therefore only be sensible cooperation talks between our groups, talks which, through the cartel agreement in Germany, should have become not harder but easier.

Naturally, I have no objections to direct contacts between Belgian and/or Dutch groups and some German producers. A meeting between all participants before Christmas is out of the question, however, for lack of time.

I hear that the next Dutch/Belgian meeting is scheduled for 5 January 1984 in Breda. If invited, I shall be glad to attend and I am confident of having fairly accurate export figures for the German producers referred to.

I wish to express a continuing readiness to maintain the *status quo* in relation to exports to neighbouring countries or at least not to increase them any more than imports from those countries.

However, because the end-of-year holidays will still be on in the first week in January, it will scarcely be possible for other German producers to accompany me on the fifth.

I should be grateful if you would discuss what I have said with your colleagues in the Breda group and let me know their reactions.

Yours faithfully,
Michael Müller.'

(93) Thibodraad sent a copy of this telex to TA in Gentbrugge, asking it to reply by Tuesday, 20 December 1983 at the latest so that 'we can then inform Mr Müller of our point of view' (source: letter from Thibodraad to TA Gentbrugge dated 16 December 1983).

Mr M. Müller is Chairman both of the Fachverband Betonstahlmatten (German Welded Steel Mesh Association) and of the supervisory body of the structural crisis cartel in the Federal Republic of Germany which was authorized by the Federal Cartel Office in May 1983. (In the telex he describes himself as 'Chairman' ('Vorsitzender') of the German Cartel Association ('Kartellgemeinschaft').

In his telex Mr Müller conceded that at least one producer (i.e. Hochwald) had increased its deliveries to Benelux. It can be concluded from this that at least BStG had adhered to the terms of the arrangement, for the complaints directed at BStG concerned not BStG but other German producers. That BStG observed the arrangement regarding prices and quantitative restrictions on German deliveries to Benelux can be seen from another sentence of the telex from Mr Müller to Thibodraad in which he states that he is 'concerned in all our interests to curb or at least contain the activities of the small maverick producers'. BStG, the company of which Mr Müller is Chief Executive and which has a market share of at least 36 % in Germany, does not by any means number among the 'small maverick producers'.

This arrangement already existed before the telex was sent, i.e. before 15 December 1983 (it was concluded not long after the cartel was founded) and lasted at least until the beginning of the Commission's investigations (6 to 7 November 1985).

The arrangement covered not only quotas but also adherence to the prices agreed for the Benelux market. This is clear from the close connection between quotas and prices, and increase in exports being associated with price-cutting. It is also clear from the accusation levelled during the meeting of 5 December 1983 (see 90) at the German producers Hochwald and Crampe that they were 'putting considerable quantities onto the Benelux market at very low prices'.

(94) It is highly significant that in the telex Mr Müller describes himself as 'Chairman of the German Cartel Association', speaks in defence of all German producers, offers explanations of the conduct of other producers, favours 'cooperation talks between our groups', says he is willing to give 'fairly accurate export figures for the German producers referred to' and expresses 'a continuing readiness to maintain the *status quo* in relation to exports to neighbouring countries or at least not to increase them any more than imports from those countries', a phrase which covers all imports and exports between the countries concerned and not just those accounted for by individual companies. Mr Müller thus sought to convey the impression that he was not only speaking and entering into obligations on behalf of his own company but also acting as representative of the German 'group', i.e. the Fachverband, or the structural crisis cartel, which, from the economic viewpoint, was identical with the Fachverband and had the same membership (with the exception of three small firms), quite apart from other staff links.

This impression was reinforced by the fact that Mr Müller ended his telex to Thibodraad with the request that the addressees 'discuss what I have said with your colleagues in the *Breda group* (i.e. the Belgo-Dutch "group") and let me know their reactions'.

(95) The meeting of 5 January 1984 was attended by representatives of BStG (Messrs Müller, Buschmann and Ruthotto) as well as the usual participants (Benelux producers and TU). A discussion was held of the contents of Mr Müller's telex to Thibodraad.

In reply to charges by the Benelux producers that German producers were exporting substantial quantities at very low prices to the Benelux markets, the German representatives referred to the export of comparable tonnages to Germany by Belgian producers (Boël and, more recently, TFE/FBC). The Belgian producers pointed out in reply that (a) they observed prices on the German market and (b) the proper basis of comparison was percentage of the market and not tonnages.

A price reduction of Hfl 50 per tonne was agreed 'so as to get closer to the reality of the markets'. The following prices were to apply throughout the first quarter of 1984:

Standard mesh: Hfl 950 per tonne or Bfr 17 100 per tonne

Catalogue mesh: Hfl 1 050 per tonne or Bfr 18 900 per tonne

(Source: telex from Mr Peters to TU dated 11 January 1984)

(96) Besides the usual participants, BStG representatives were again present at the meeting held on 28 February 1984 in Bunnik. In the discussion of the market situation it was reported that the agreed prices had not been observed, not only by the Germans (Crampe and Hochwald) but also by Van Merksteijn and even by Thibodraad, with the majority of the other producers following in order to get business.

The BStG representatives said they were trying to get Crampe and Hochwald to observe the prices on the Benelux market, but they had little influence over the two firms, which had their own way of doing business. It can be concluded from this that BStG, at least, was observing the agreed prices.

At the meeting it was also proposed that a crisis cartel arrangement with quota allocations be introduced, plainly based on the German model. This proposal was categorically rejected by Van Merksteijn, which attacked Thibodraad and accused the steel groups of allowing their trading subsidiaries to cause price erosion by stepping up competition between producers.

The wish was again expressed that the agreed minimum prices be adhered to in future.

An immediate price increase of Hfl 10 per tonne was agreed for two types of mesh (standard and catalogue), as follows:

Standard mesh: Hfl 960 per tonne or Bfr 17 300 per tonne

Catalogue mesh: Hfl 1 060 per tonne or Bfr 19 100 per tonne

A further price increase of Hfl 40 per tonne or Bfr 700 per tonne would take effect on 15 March 1984. Another meeting was scheduled for 29 March 1984 (source: telex from Mr Peters to TU dated 4 March 1984).

(97) Meanwhile a special meeting devoted to the Belgian market was held on 22 March 1984. The meeting is referred to in a telex sent from Boël/Trébos (Mr De Hornois) to TU (Mr Marie) dated 26 March 1984. It reads:

'Following the Belgian market meeting of 22 March 1984, the prices for welded mesh have been raised from Bfr 17 400 to Bfr 18 500 for March/April. A price increase of Bfr 500 is planned for May. We would be grateful if you would give these instructions to Mr Peters (TU's agent for the Benelux market) because we have noticed you are active on and interested in the Belgian market, despite what Mr Peters said at the last meeting in Breda'.

TU replied by telex on 3 April 1984. Mr Marie welcomed the price increase and gave details of TU's recent exports to Belgium and of price quotations made during the first 20 days of March 1984 for various tonnages, which he said where in line with what had been agreed at the Bunnik meeting on 28 February 1984. TU had also taken steps to avoid upsetting the decisions on prices in the Belgian market.

(98) The telex went on to say that TU still wanted to sell to the Belgian market and reminded Boël of its sales figures for previous years. It suggested holding talks about the conditions under which it could sell in Belgium, which could be similar to those governing Boël's sales in France, within a small volume allocation, as had been discussed with Mr J. Boël in Paris on 6 July 1983.

(99) The meeting held on 29 March 1984 in Breda was attended by all the usual producers except Van Merksteijn, plus a BStG representative.

A fall in demand was reported. It was also noted that the prices agreed at the previous meeting had not held. This was blamed on the Germans, Van Merksteijn and Thibodraad.

As agreed at the previous meeting, the following new basic prices were decided:

Standard mesh: Netherlands Hfl 1 000 per tonne, Belgium Bfr 18 500 per tonne;

Catalogue mesh: Netherlands Hfl 1 120 per tonne, Belgium Bfr 20 400 per tonne.

Once again the members were exhorted to 'observe the agreed prices in future' (source: telex from Mr Peters to TU dated 4 April 1984).

(100) The next meeting was scheduled for 4 May 1984 but was postponed until 11 May 1984 because many of the intending participants were unavailable on 4 May 1984. Thibodraad informed TU among others about the change of date by telex on 3 May 1984 and invited them to the meeting on 11 May 1984. What was discussed at the 11 May meeting is related in a telex which Mr Peters sent to TU on 15 May 1984. Mr Peters himself could not attend, but was informed of the outcome by Messrs Van den Bossche (TA) and De Rijbel (FBC).

A price reduction of Hfl 20 per tonne was agreed, to bring prices more closely into line with the market price level.

The prices to apply in the months of May, June and July 1984 were:

Standard mesh: Netherlands Hfl 980 per tonne, Belgium Bfr 17 850 per tonne;

Catalogue mesh: Netherlands Hfl 1 100 per tonne, Belgium Bfr 20 000 per tonne.

Another meeting was scheduled for 24 August 1984.

(101) In the mean time, Thibodraad tried to call an emergency meeting for 26 June 1984 to discuss a fall in prices in Belgium and the Netherlands.

TU replied to the invitation by telex on 21 June 1984. It began by asserting that 'it had done everything it could' to help achieve the objective of raising the price level. By everything it meant 'applying the recommended prices, withdrawing offers where prices were expected to rise, and selling just seven tonnes since the beginning of the year, no more'. However, TU could not stay forever out of the Belgian market 'since our previous years' sales figures are known'. It was prepared to attend the meeting only if an allocation of market shares was decided, in which TU wished to have the same say as Belgian producers had for the French market.

(102) At the meeting of 24 August 1984 a price reduction of Hfl 40 per tonne was agreed to bring prices closer to the depressed market level, which was blamed on the Germans, Van Merksteijn and Boël/Trébos. The new prices were:

Standard mesh: Netherlands Hfl 940 per tonne, Belgium Bfr 17 000 per tonne;

Catalogue mesh: Netherlands Hfl 1 060 per tonne, Belgium Bfr 19 300 per tonne

(Source: telex from Mr Peters to TU dated 31 August 1984).

(103) At the meeting held on 28 September 1984 in Bunnik a further Hfl 20 per tonne price reduction was agreed

because of the weak demand, which was attributed mainly to price-cutting by the Germans. The new prices were:

Standard mesh: Hfl 920 per tonne, or Bfr 16 560 per tonne;

Catalogue mesh: Hfl 1 040 per tonne, or Bfr 18 720 per tonne;

(Source: telex from Mr Peters to TU dated 1 October 1984).

(104) The 22 October 1984 meeting in Bunnik decided to stick to the prices agreed at the meeting on 28 September 1984 despite continuing weak demand and German price-cutting (source: telex from Mr Peters to TU dated 30 October 1984).

(105) The next two meetings took place in Bunnik on 6 November and 19 December 1984. A statement to this effect was made to Commission officials by ZND on 6 December 1985.

(106) At the meeting on 22 January 1985 the following prices were decided for the first quarter:

Standard mesh: Netherlands Hfl 900 per tonne, Belgium Bfr 16 400 per tonne;

Catalogue mesh: Netherlands Hfl 1 030 per tonne, Belgium Bfr 18 400 per tonne.

Van Merksteijn again attended and declared itself in agreement with the fixing of these prices (source: telex from Mr Peters to TU dated 24 January 1985).

(107) At the meeting of 5 March 1985 Van Merksteijn was accused of undercutting the price in Belgium by Bfr 1 500 per tonne. Despite the continuing price-cutting, a price increase was agreed for the second quarter of 1985. The following prices were agreed:

Standard mesh: Netherlands Hfl 980 per tonne, Belgium Bfr 17 450 per tonne;

Catalogue mesh: Netherlands Hfl 1 090 per tonne, Belgium Bfr 19 400 per tonne.

(Source: telex from Mr Peters to TU dated 15 March 1985).

(108) Two further meetings took place on 28 March and 24 April 1985, as is confirmed by statements made to Commission officials by some of the participants (e.g. Van Merksteijn) and by internal memoranda (note of 24 April 1985 from Mr Debelle (FBC) to Mr Wylenmann; see also 153).

(109) A telex from ZND to Thibodraad dated 1 July 1985 shows that at these meetings prices were agreed for the third quarter of 1985.

Referring to a telex from a customer (Heusden-Zolder) to Thibodraad dated 28 June 1985 which had gone to ZND by mistake and in which the customer confirmed an order for mesh at Bfr 20,5 per kilogram ZND points out to Thibodraad that this price, which was equivalent to Hfl 1 140 per tonne was *'not wholly in keeping with our agreements in Breda'*.

From this it may be inferred that:

— a meeting for the third quarter was held in Breda (the meeting of 5 March 1985 for the second quarter had been held in Bunnik),

— the prices agreed there were higher than those agreed for the second quarter, because a price of Hfl 1 140 per tonne would not have undercut the second quarter price of Hfl 1 090 per tonne,

— Thibodraad was being reminded by ZND to keep to the agreed prices.

(110) The meeting of 18 October 1985 in Breda (the holding of which was confirmed by Boël/Trébos's representative, Mr de Hornois, in a statement to Commission officials) also discussed prices. Although Mr de Hornois did not wish to describe the 'outcome' of this meeting as a price agreement, the wording of his statement, namely that it was established that a price of Bfr 19 000 was 'acceptable' on the Belgian market points to the conclusion that at this meeting, too, prices were agreed.

(111) The last meeting of which the Commission is aware took place on 24 October 1985 in Breda, as some of the participants (Van Merksteijn, BStG) admitted in the course of the investigations. The Commission also has a copy of a telex from Thibodraad to BStG dated 15 October 1985 explaining to Mr Müller how to get to the venue for the meeting.

(112) The documentary evidence of meetings that is in the Commission's possession proves that a price cartel existed on the Benelux market at least from the end of August 1982 and at least until the beginning of the Commission's investigations (November 1985). The attempts to form a cartel covering quotas also were apparently unsuccessful, at least at these meetings (see 84, 85, 96, 98 and 101). They do not seem to have gone beyond the stage of supplying sales or export data to competitors (see 85).

While most of the firms which took part in the meetings in Breda and Bunnik did not deny, either in their written replies or in the statements they made at the hearing on 24 November 1987, their participation in those meetings, they maintained that the purpose of the meetings was not to fix prices but only to exchange information about prices. The meetings were an attempt 'to bring some order to the market' or 'to gain a better understanding of the market, in order to assume responsibility for it and correct commercial policies'. In any case, those prices had, so it was claimed, no real impact on the market. To justify the meetings, reference was made to the formation of the structural crisis cartel in Germany (see 126). Some non-Benelux firms (TU, BStG) pointed out that they had only a small share of the Benelux market (on these contentions see below, Part II, Legal Assessment, 168 *et seq*.).

3. *Contacts and agreements between Benelux producers*

(113) At least from 1980 onwards, sporadic contacts took place between various Benelux producers. The agreements that arose from such contacts were initially bilateral in character. The contacts were gradually stepped up and developed into regular meetings attended by almost all welded steel mesh producers operating on the Benelux market.

Even after regular meetings began, there were still occasional bilateral contacts to iron out specific problems between individual producers and to make the market regulation more complete.

These agreements concerned prices or mutual undertakings to refrain from manufacturing stated types of welded steel mesh in favour of competitors.

(a) Trilateral contacts and agreements between TA, Van Merksteijn and Thibodraad

(114) Such contacts date from at least 1980. Considerable light is thrown on them by an internal TA report dated 7 May 1980 about a visit made to Van Merksteijn on 28 April 1980. TA attached great importance to this visit. Although Van Merksteijn produced almost exclusively standard mesh, unlike Tréfilarbed Roermond (NL), which made almost exclusively catalogue mesh, the report stated that Van Merksteijn's prices for standard mesh had some influence on catalogue mesh prices. This is borne out by the accusations of price-cutting which standard mesh producers (like Van Merksteijn) and catalogue mesh producers (like Thibodraad, TA) levelled at one another at the meetings in Breda and Bunnik (e.g., those on 11 March 1983, 5 December 1983 and 28 February 1984) (see 87, 90 and 96). Discounting by Van Merksteijn is also complained of in an internal TA memorandum of 8 December 1983 about a meeting with the management of its Roermond subsidiary on 23 November 1983.

(115) The visit on 28 April 1980 was clearly not the first contact between TA and Van Merksteijn, for the report of that meeting says that 'It (Van Merksteijn) is prepared to *resume* regular talks if it is accepted as an equal partner by Thibo/Staalmat and Tréfilarbed'. This implies that regular talks had previously taken place between the three companies.

(116) At any rate, these contacts led to a 'gentlemen's agreement' between TA and Thibodraad on the one hand and Van Merksteijn on the other that Van Merksteijn would not produce catalogue mesh and Thibodraad and TA (in its Ghent and Roermond plants) would not produce standard mesh.

This can be seen from an internal TA memorandum dated 18 December 1981 *Re* visits to Merksteijn, ZND, Thibo on 1 December 1981', in which it is stated: 'Our gentlemen's agreement: Merksteijn produces no catalogue mesh, Tréfilarbed no standard mesh (in Ghent and Roermond) *was confirmed*.'

It is also clear from the memorandum, part of which reports on the visit to Thibodraad, and especially from the statement that 'Thibo, too, was again urged to abide by our gentlemen's agreement with Van Merksteijn', that Thibodraad was party to the gentlemen's agreement.

This 'gentlemen's agreement' already existed before 1 December 1981, or at least came into being not later than on that date, and lasted at least until the beginning of the Commission's investigations (6 and 7 November 1985).

(b) Bilateral contacts and agreements between Tréfilarbed and Thibodraad

(117) An internal Thibodraad report dated 3 March 1980 gives details of a meeting with Arbed on 27 February 1980. The purpose of the meeting was to consider 'to what extent the cooperation between Arbed and Thibodraad can be *continued* after Thibodraad has merged with Staalmat and Van Merksteijn has left the scene'. This indicates that there had been cooperation between TA and Thibodraad before then. The subjects discussed at the meeting included the exchange of information about their sales volume in order to keep their market shares constant, intensive consultation about enquiries from and quotations to customers, the application of uniform prices and a uniform pricing system for the various product types.

(118) Another meeting between TA and Thibodraad took place on 1 December 1981 when TA representatives paid a visit to Thibodraad after visiting Van Merksteijn and ZND earlier the same day (source: TA report of 18 December 1981; see 116 and 125).

At this meeting TA and Thibodraad agreed to increase their prices for catalogue mesh to contract customers in the first quarter of 1982 by Hfl 110 per tonne. This agreement was highly significant, because TA and Thibodraad were by then the only producers of catalogue mesh in the Netherlands. The third large Dutch mesh producer, Van Merksteijn, was producing almost exclusively standard mesh under the gentlemen's agreement with TA and Thibodraad (see 114 to 116).

The report about the meeting on 1 December 1981 states that TA strongly urged Thibodraad, too, to 'abide by our gentlemen's agreement with Van Merksteijn'. This shows that a similar gentlemen's agreement also existed between Thibodraad and Van Merksteijn at least since 1 December 1981, lasting at least until the beginning of the Commission's investigations (6 and 7 November 1985) (see 116).

At their meeting on 1 December 1981 TA and Thibodraad also agreed to continue the other talks as before.

(119) The two companies did in fact continue their contacts and arrangements in the years that followed. An internal Thibodraad memorandum dated 11 February 1982 about a meeting with Arbed on 10 February 1982 complained about Arbed's pricing: 'Several instances of discounting in January (were) in *blatant breach of agreements*'.

(120) As one of its 'conclusions', the memorandum found that 'formulation of a *pricing policy* or *selective measures,* especially as regards the implications for profitability/liquidity, seems necessary pending developments in the coming days/weeks'.

(121) The agreement to formulate joint pricing policies was also applied in the case of *tailor-made mesh.* An internal TA memorandum of 29 March 1984 states:

'*Re: Tailor-made mesh in NL*

We have agreed with Thibo to raise our prices to contract customers for delivery in the second quarter (1984) by Hfl 60 per tonne.

(122) This agreement between TA and Thibodraad on *tailor-made mesh* shows that the company which participated in an agreement with TA about tailor-made mesh for the *fourth quarter* of 1983, but which is not mentioned by name in the relevant internal TA memorandum of 23 November 1983, was likewise Thibodraad. The memorandum states, *inter alia:*

'1. *Market price trends in NL:*

The planned increase of Hfl 50 to 70 per tonne for *tailor-made mesh* in the fourth quarter was fully implemented . . . Market prices for this mesh are now at the *agreed level* of Hfl 1 200 to 1 250 per tonne. Competition, especially from Germany, is hotting up. At the moment we see no chance of being able to raise prices from 1 January 1984.'

Although Thibodraad is not specifically mentioned in the latter memorandum, its involvement is clear from the context, in that both memoranda refer to price agreements in *the Netherlands.*

Thibodraad, like TA, is a major producer of tailor-made mesh in the Netherlands. Thibodraad had previously (on 1 December 1981, see point 118 above) entered into an agreement with TA on *catalogue mesh* prices for the first quarter of 1982 and had agreed to continue the other talks (i.e. including those about tailor-made mesh prices) as before. An agreement on the prices of *tailor-made mesh* for the last quarter of 1983 (which is said to have been 'fully implemented' on the Dutch market) is therefore unthinkable without Thibodraad's participation.

The impossibility of raising prices from 1 January 1984 (i.e. for the first quarter of 1984) is also attributed in the TA memo not to Thibodraad's behaviour but to increased imports from Germany.

(123) The agreements between TA and Thibodraad on prices in the respective following quarter were continued. An internal Thibodraad memorandum of 11 December 1984 about talks with TA records that:

(We) 'agreed not to raise the price for *tailor-made mesh* in the *fourth quarter or 1984* and to charge dealers ± Hfl 1 250 per tonne and final consumers ± Hfl 1300 per tonne.'

(124) It follows from the above that there existed between TA and Thibodraad at the latest from 1 January 1982 a price agreement concerning *catalogue mesh* and at the latest from 1 October 1983 a price agreement concerning *tailor-made mesh.* The bilateral price agreement concerning catalogue mesh was then clearly replaced by the comprehensive price agreements reached in Breda and Bunnik (see 79

to 110), the bilateral price agreement concerning *tailor-made mesh* being continued at least until the end of 1984.

(c) Contacts between Tréfilarbed and ZND

(125) During the visit TA representatives made to ZND on 1 December 1981 (see 118), Mr Langeberg Jr. of ZND is reported to have said that, having reached the limits of its expansion, ZND was now (i.e. at the end of 1981) ready at any time to adopt a more cooperative stance towards its competitors. Mr Pellikaan of TA would 'attend to the matter'.

The Commission does not know whether any bilateral agreements were in fact reached between TA and ZND. The meeting is therefore to be regarded only as background information. Nevertheless, this willingness to cooperate gains in significance when it is viewed in the context of the regular meetings that began to be held the following year in Breda and Bunnik. The contacts with ZND therefore helped to pave the way for the price cartel on the Benelux market (see 80 to 112).

III. THE GERMAN MARKET

1. *The welded steel mesh structural crisis cartel*

(126) The agreements concerning the German market should be seen against the background of the establishment and operation of the structural crisis cartel.

On 31 May 1983 the Federal cartel office authorized under Section 4 of the German Restraints of Competition Act for an initial period of three years a welded steel mesh structural crisis cartel consisting of almost all German producers. On 17 October 1986 the authorization was renewed for a further two years with effect from 3 June 1986. It expired on 3 June 1988.

Besides capacity cuts, the cartel agreement authorized by the Federal cartel office provided for the setting of quotas and for price fixing, the latter being authorized, however, for only the first two years of its operation.

The arrangements concerning the German market either arise out of the cartel agreement itself or are reflected in the endeavours to protect the cartel against uncontrolled imports.

2. *Arrangements arising out of the cartel agreement itself*

(127) The cartel agreement, and in particular subsections 5 (2) and 7 (1) thereof, imply that the arrangements made by the cartel members have taken effect even outside of the German market. Subsection 5 (2) provided that a member exceeding its monthly delivery quota for the German market had to pay DM 80/tonne into the cartel's trust fund, while under subsection 7 (1) a member not taking up its full monthly delivery quota on the German market received DM 80/tonne from the fund.

The provisions indicate the interest of the cartel members to sell as little as possible on the German market. As the delivery quota granted to each member did not comprise the quantities exported, the cartel created an incentive for the participating firms to market a part of their production outside the Federal Republic of Germany and particularly in other Member States. Conversely, the cartel members had to make sure that their efforts to regulate the demand and supply on the German market by limitation of their deliveries was not counterbalanced by an increase of deliveries originating from other Member States.

(128) In his reply to the Statement of Objections, Mr M. Müller (BStG, Fachverband Betonstahlmatten, structural crisis cartel) justified the setting of delivery quotas for the German market by saying that Section 4 of the Restraints of Competition Act had in view only structural improvements on the German market and that the inclusion of exports under the Restraints of Competition Act was not in keeping with the principles of German cartel law. The setting of quotas had, moreover, been accepted by the Federal Cartel office only as a back-up measure as Section 4 of the Restraints of Competition Act did not allow pure quota arrangements.

In response to the remark by Commission representatives that export deliveries could lawfully have been included by referring, not to delivery quotas, but to production quotas (which, as a back-up to capacity cuts, would naturally have been just as compatible with Section 4 of the Restraints of Competition Act as delivery quotas), Mr Müller acknowledged the possibility; but, while it was considered at the time, it was not thought admissible.

(129) The Commission's departments were informed by the Federal cartel office in 1983 of the formation of the structural crisis cartel. In the light of the talks that took place at the time, they at first assumed it was a pure capacity reduction plan and as such was not likely to affect trade between Member States.

Subsequently, however, the Commission took action against the relevant provisions. Following contacts with the Federal cartel office and representatives of the structural crisis cartel and a trilateral meeting in October 1987, the provisions were amended.

(130) There is much to support the view that the reference (in subsections 5 (2) and 7 (1) of the cartel agreement) to *delivery quotas for the German market* and not to *production quotas*, which would have better served the purpose of capacity reduction and whereby export deliveries could lawfully have been included, was chosen knowingly and deliberately in order to use the cartel as an instrument for reaching bilateral agreements with foreign producers the object of which was the reduction of mutual market penetration (see 132 *et seq.*). As a result, the leading German manufacturer BStG, which had a particular interest in the conclusion of interpenetration agreements, could now act as representative of the 'German cartel association' and convey the impression that it could rely on the discipline of most members of the German structural crisis cartel (see 91, 93 and 96).

This is apparent from the abovementioned (see 92) telex from Mr M. Müller (BStG) to Thibodraad, which is concerned mainly with cross-border trade between the Federal Republic of Germany and Belgium/Netherlands and in which Mr Müller styled himself 'Chairman of the German cartel association'.

In it it is stated that the German cartel agreement (in its then form) did not allow a legally binding export arrangement to be made. There could therefore 'only be sensible cooperation talks between our groups (i.e. the German and Belgian/Dutch "groups"), talks which, through the cartel agreement in Germany, should have become not harder but easier'.

It was on this basis, therefore, that observance of the agreements with foreign producers was to be ensured at "group" level.

3. *Agreements to protect the structural cirsis cartel against uncontrolled imports*

(131) The German producers and their association, the Fachverband Betonstahlmatten, which had been instrumental in forming the structural crisis cartel and whose secretariat acted as its trustee under Section 17 of the cartel agreement, were aware that the formation of such a cartel, the purpose of which was, among other things, to fix prices and set quotas, would tempt foreign producers to step up their exports to Germany in order to benefit from the higher prices there.

This helps to explain the content of an internal memorandum dated 15 October 1985 (found at the Fachverband Betonstahlmatten eV), which Mr Günter Müller, Executive Secretary of the German Wire Drawing and Cold Rolling Mills Association (to which the Fachverband is subordinate) and official representative of the structural crisis cartel under Section 36 of the Restraints of Competition Act, sent to Mr Ruthotto, a member of the cartel's market committee and a senior executive of BStG. The memorandum states as follows:

> 'With regard to the wording under TOP 2 in the minutes of the market committee's meeting of 10 October, I have misgivings from where I stand. You gave as the reasons for the weak market in the north west substantial quantities of imports and quantities offered by non-cartel members.
>
> These reasons are no doubt correct. But they will not help us in our efforts to secure an extension of the cartel. One of the key conditions for authorization is that the capacity cuts are not exploited by imports and outsiders. In that case, a classic restriction of competition under Section 4 of the Restraints of Competition Act would no longer be justified.
>
> I wonder whether an innocuous formulation could not be found.'

Replying in a memorandum to Mr Müller dated 16 October, Mr Ruthotto proposed a neutral form of words in which 'quantities of imports and quantities offered by non-cartel members' were no longer mentioned.

It is clear from this that the members of the cartel not only had an interest in concealing imports from the Federal cartel office, but if possible preventing or regulating them.

(132) To avert this danger of uncontrolled imports, the representatives of the leading German producer, BStG, began to approach foreign producers who exported to Germany with a view to reaching agreement on the volume of imports into the country.

One of the main arguments used by these representatives to win over foreign producers was that the cartel had a favourable effect on prices both in Germany and in other Member States. This positive aspect is also stressed in the telex referred to above (see 92) from Mr. M. Müller (BStG) to Thibodraad. The telex states that foreign producers were 'greatly benefiting in terms of *higher prices* from the regulation of the German market, "because the cartel had brought about a rise in prices" in all our countries'. The reference to the advantages of higher *prices* and *not* to the *quantity* aspect likewise makes it clear that the rise in imports into Germany, which was normally to be expected following the price rise achieved by the cartel, was successfully avoided by bilateral arrangements with the producers from other Member States.

(133) All this helps explain the declared readiness, expressed long before the cartel was set up, of certain foreign producers who traditionally exported to Germany to accept a fixed import quota into Germany if the cartel were approved [1]. Such an explicit undertaking is contained in a letter dated 24 October 1978 from the Italian producer Pittini (Ferriere Nord) to the then Executive Secretary of the Fachverband Betonstahlmatten, Mr Thomé. Assuming a total market of around 1 100 000 tonnes a year, Pittini said it would keep its sales in Germany in 1979 and 1980 to 45 000 and 55 000 tonnes respectively. It could not be expected to divide this tonnage by 12 to arrive at a monthly amount, however.

If the underlying size of the market changed, Pittini would increase or reduce its exports to Germany accordingly. Pittini expected 'market stabilization' to result from the initiative on the part of German producers and asked for a copy of the agreement (following approval of the cartel by the Bundeskartellamt) signed by all German welded mesh producers plus the quota allocation. The Fachverband, in its reply of 27 October 1987, saw in Pittini's letter the seeds of constructive cooperation.

On 28 July 1983, after the structural cirsis cartel had been approved, the Fachverband sent various pieces of documentation about the cartel to a representative of the Italian Company M + M, Mr G. Born, 'hoping that they will be of assistance to you in your efforts among Italian producers'.

The Commission draws no conclusions regarding the conclusion and application of a quota agreement for the German market by German and Italian producers.

(134) The Commission has in its possession the following information on the contacts and agreements which *followed the formation of the structural crisis cartel:*

(a) German-French contacts and agreements

(135) German-French contacts and agreements were concerned mainly with mutual interpenetration of markets. At least BStG on the German side and TU and Sotralentz on the French side were parties to these agreements.

(136) On 7 June 1985 Mr M. Müller, Chief Executive of BStG, who, as already indicated, was also Chairman of the Fachverband and had a leading position in the structural crisis cartel, met Mr C. Marie, Director of TU (Welded Mesh Division) and Chairman of Adets, in Düsseldorf. Both parties wrote a short report of the meeting and probably sent each other a copy (the BStG report was found at TU with TU's own report). The subject of the meeting was the trends in welded mesh consumption in the various Community countries, especially France and Germany, and the balance of trade and interpenetration in welded mesh between those two countries.

(137) In Mr Marie's report, which was dated 16 July 1985, the following is to be found:

'*Summary of our talks in Düsseldorf on 7 June*

1. (. . .)

2. (. . .)

3. (. . .)

4. How can BStG promote access by French producers to the German market when there are considerable differences between the two countries as regards rules and controls?

5. Certification of Gelsenkirchen [2];

   BStG seeks such certification, essentially for catalogue mesh, and thus hopes for an increase in total welded mesh consumption in France. This request also has a political side to it on account of BStG's relations with Arbed Luxembourg and Arbed-Saarstahl . . .

6. "Kartellvertrag"

   Its consequences are damaging for the BLEU and for France. A feasibility study has concluded that it is possible to attack this cartel in Brussels.

   The cartel has not been sanctioned by Brussels, having simply been publicized (paragraph 188 of the 13th Report of the Brussels Commission 1983).

7. Comparison of trends in imports into France.

[1] A corresponding readiness on the part of *French producers* in the event of an agreement being reached on welded mesh *in the Italian market* is discussed at 34 (VIII).

[2] Note: The output of the Gelsenkirchen works is marketed by BStG (see 16).

8. Shares in the welded mesh market in France.

Conclusions

For the time being and pending our next meeting:

— BStG undertakes not to go ahead with a complaint planned for the next Franco-German economic summit,

— BStG will not take up the "Gelsenkirchen" matter again before our next meeting,

— No complaint will be lodged in Brussels against the "Kartellvertrag", as BStG considers that any stir in Brussels could only impede the desired extension of the cartel for another year,

— BStG will contact the other German producers in order to:

  — make it easier for French producers to gain access by abolishing certain measures and negotiate a penetration figure,

  — try to reduce the activity of Moselstahl (via Stinnes) and explore the possibility of integrating Gelsenkirchen into the German total, the share to be attained on the French market remaining to be determined.

. . .

. . .

I for my part have stuck to the line we agreed on: no action to be taken in Brussels.'

(138) The corresponding report by Mr Müller dated 27 August 1985 contains the following:

'*Re:* Meeting with Mr Marie on 7 June 1985. Mr Marie reported on trends in deliveries of welded mesh on the French market . . . Between 1982 and 1985 the proportion accounted for by imports had increased from 6 % to 12,1 % in 1984 and 13 % in the first four months of 1985. Against this background Mr Marie complained about the growth of imports from the Federal Republic, especially as these had a destabilizing effect on prices. He identified the Mosel/Stinnes group as the chief culprit and said that the French mesh industry would have to consider lodging a complaint with the European Commission . . .

It was thought that these modified cross-border movements of goods were not least a consequence of the structural crisis cartel in the Federal Republic in that exports were being indirectly subsidized by firms not taking up their full quotas at home.

French mesh producers would also have to consider stepping up or starting deliveries to the Federal Republic, as so far only Sotral supplied the German market from a plant near the frontier'.

Mr Müller went on to say in his report that he had opposed the lodging of a complaint on a number of grounds:

'— The deliveries by the Mosel/Rass group, which is likewise situated close to the frontier, are to my knowledge smaller than those by Sotral, and the deliveries by Arbed/St Ingbert have traditionally been *subject to quota and regulated on the French domestic market via Adets.*

. . .

BStG's sales drive in France is confined to the non-mesh market and is in our opinion likely to mobilize growth potential for the mesh market from the existing concrete reinforcing bar field and hence not affect the former. (On this point Mr Marie took a different view, referring among other things to a conversation he had had with Mr Thomé, namely that catalogue mesh deliveries were largely replacing standard mesh)'.

As regards the effects of the cartel agreement on German exports to France, i.e. the increase therein, Mr Müller does not seem to have denied that they existed. His report simply states:

'On this complex of questions *Mr Marie agreed to refrain from* lodging a complaint pending a further discussion after I promised to obtain before the next meeting more information about the true scale of German mesh deliveries and any possibilities of limiting interpenetration'.

Mr Müller then mentions that Mr Marie put forward a number of proposals or wishes concerning long-term cooperation:

'1. . . .

2. Balance between interpenetration deliveries between both countries in absolute tonnages.

3. As far as our request for certification of Gelsenkirchen is concerned, the decision lay in pratice largely in his hands. He was willing to agree to such certification if it was not made

use of for two to three months, i.e. until the next meeting, and if after certification BStG was prepared to become a member of Adets.'

Mr Müller 'accepted the two to three month waiting period and did not rule out joining Adets, pointing out lastly that we for our part were concerned at a similar doubling of imports into the Federal Republic and were altogether anxious to limit mutual interpenetration deliveries . . .'

(139) These reports show that the structural crisis cartel, and in particular the abovementioned effects of subsections 5 (1) and 7 (2), was one of the key issues discussed by Mr Müller and Mr Marie.

(140) The concessions made by each side at the meeting were adhered to. The concerted practice consists in the fact that neither TU nor the other French producers complained to the Commission of the European Communities about the structural crisis cartel and that Gelsenkirchen did not start exporting catalogue mesh to France.

It is clear, moreover, from the two reports that any future exports were to be linked to a certain delivery quota.

(141) This behaviour also confirms the high degree of substitutability between standard mesh and catalogue mesh. The claims to the contrary by Mr Müller, which can be explained by the fact that that was where his interest lay, did not convince Mr Marie.

(142) As can be seen, moreover, from Mr Müller's report, exports by Arbed/St. Ingbert to France were already 'traditionally subject to quota and regulated on the French domestic market via Adets' (see also 22 to 77 concerning the French market).

(143) It is also clear from both reports that Mr Müller and Mr Marie included at least their own firms (BStG and TU) in the arrangements. But it is particularly significant that at these meeting mention was made not only of the activities of BStG and TU but also of the export activities of other producer members of the two associations, in particular the Moselstahl-Stinnes/Mosel-Rass Group on the German side and Sotralentz on the French side. This reflects the two leading firms' intention to bring other firms under the agreements and to ensure that the effects were as far-reaching as possible. As Mr Müller and Mr Marie were also chairmen of their respective associations, it is easy to surmise that these associations were involved too. But the Commission does not consider this circumstance as constituting conclusive evidence.

(144) With regard to imports by *Sotralentz*, the only French producer then importing mesh into Germany, the Commission has in its possession the following exchange of telex messages between BStG and Sotralentz:

On 24 October 1985 BStG sent the following telex to Sotralentz:

'Dear Mr Jansen,

Total deliveries on the German market in September 1985 came to 99 000 tonnes. Please let me have your delivery figures for that month. Yours sincerely, Ruthotto'.

On 4 November 1985 Sotralentz telexed the following reply:

'*For the attention of Mr Ruthotto*

Volume of deliveries in September 1985: 997 tonnes;

Volume of deliveries in October 1985: 728 tonnes.

Yours sincerely,

H. Jansen, Fa Staku
Drulingen (France)'

In answer to questions put by Commission officials during the investigations on 6 and 7 November 1985, Mr Müller (BStG) said that this exchange of information took place every month.

(145) BStG and Sotralentz tried to justify this correspondence by pointing to the existence of a patent licensing agreement between the two companies under which Sotralentz produced catalogue mesh in France using a BStG-patented process. The communication of quantities delivered by Sotralentz was necessary in order to fulfil notification and payment obligations imposed on Sotralentz under the agreement.

However, this argument can be refuted as follows:

(a) The notification obligations of a licensee concern his entire production and not only deliveries to a specific market, as is the case here with the German market.

(b) Besides asking for Sotralentz's delivery figures, BStG also indicates the exact size of the German market. This reference to market size cannot be justified and explained by the existence of a patent licensing agreement. In the Commission's opinion, it can be explained only by the existence of a quota arrangement.

(c) BStG's patent for the production of catalogue mesh had long since expired. At the material time, therefore, Sotralentz was under no notification and payment obligations towards BStG.

(146) To sum up, it can be said that this exchange of information not only reveals the existence of a quota arrangement between Sotralentz and BStG but is also a clear sign of BStG's efforts to monitor precisely imports from France in order that wherever possible deliveries might be adjusted, not on an annual, but *on a monthly basis* so as to keep them within the quotas set. This method of calculation also formed the basis of the cartel agreement (see 127 and is referred to, moreover, in the letter dated 24 October 1978 from Pittini (Ferriere Nord) to the Fachverband concerning imports from Italy (see 133).

(b) German-Benelux contacts and agreements

(147) The German-Benelux agreements covered quota and price arrangements. The quota arrangements were aimed at restricting or regulating exports into Germany by the Benelux producers. The price agreements called for compliance with the prices obtaining on the German market, which had risen considerably after the structural crisis cartel was established. At least BStG on the German side and TA (Roermond Works), Boël/Trébos/TFE/FBC and Thibodraad on the Benelux side were parties to these agreements. The agreements should be viewed in relation to the agreements concerning the Benelux market (see 79 to 125).

(148) BStG's desire to restrict or regulate imports into Germany can be seen, as far as imports from the Netherlands are concerned, from two supply contracts in the Commission's possession concluded between BStG and Bouwstaal Roermond BV (later Tréfilarbed Bouwstaal Roermond) and Arbed SA Afdeling Nederland on 24 November 1976 and 22 March 1982 respectively (there being appended to the latter a signed memorandum of the same date). Under the contracts BStG agreed to take delivery of a certain annual tonnage of mesh from the Roermond works at a price fixed according to agreed criteria and to distribute the mesh in Germany as Roermond's exclusive distributor (exclusive distribution agreements). Bouwstaal Roermond and Arbed SA Afdeling Nederland undertook *not to make any other direct or indirect deliveries to Germany during the term of the contract.* This undertaking was apparently not always kept, and in a letter to Arbed SA Afdeling Nederland dated 26 September 1979 BStG complained about deliveries to Germany without its knowledge, which had been *in breach of the agreement* and 'considerably below the attainable market price'.

(149) In their replies to the Statement of Objections, BStG and TA maintained that the contracts were a *purely intergroup matter* as Arbed had a 25 % interest in BStG (the other shareholders being Thyssen Draht AG (34 %), Klöckner Draht GmbH (33,5 %) and Roesler Draht AG (7,499 %) — see 16). On this contention see II. Legal Assessment, 178.

(150) The efforts to control imports which are apparent from the exclusive distribution agreements and from the abovementioned letter must also be viewed against the background of the comprehensive arrangements concerning the prices of and quantitative restrictions on Belgian/Dutch exports to Germany, whose existence is to be inferred from the abovementioned (92) telex dated 15 December 1983 from Mr M. Müller (BStG — Fachverband Betonstahlmatten — structural crisis cartel) to Thibodraad about trends in interpenetration between Belgium, Germany and the Netherlands.

In his telex Mr MÜller complained about the 'increase in cross-border trade between Belgium and Germany, which in view of the close cooperation with Boël is quite clearly attributable to the second Belgian producer'. He continued: 'These are not — repeat, not — reimports'. For 'there have been a few lorry-loads of these, but they were put a stop to long ago'.

It is clear from this that Boël/Trébos kept to the arrangement limiting its exports to Germany.

BStG contested this finding, maintaining that Boël had nothing to gain from exporting to Germany as it participated in the quota arrangements of the structural crisis cartel via its German subsidiary (Drahtwerk Ebersbach).

This can be countered by arguing that the participation of the German subsidiary in the cartel should not have prevented Boël from continuing to export to Germany. On the contrary: the subsidiary's share was guaranteed by the cartel agreement. Further exports by Boël/Trébos to Germany would have reduced that share fractionally at most, the major part being taken from other producers. The interpretation of the phrase 'close cooperation with Boël' suggested by BStG is therefore unconvincing.

(151) It is also clear from Mr Müller's telex that reimports from Belgium back to Germany were tightly controlled and had finally been put a stop to.

(152) The efforts of BStG and the Fachverband to stop reimports are also apparent from another telex which Mr Müller sent on 27 April 1984 to Messrs Rimbeaux (St Ingbert) and Schürr (TA). Here Mr Müller complained of reimports of welded mesh made at the St Ingbert works via Luxembourg back to Germany, 'and, what is more, below the minimum cartel prices'. He described the incidents as breaches of the 'clear and unambiguous agreements made in response to similar incidents last year'. Mr Müller threatened to use whatever means were necessary to prevent such disruptive practices.

Such means included fines, as is clear when Mr Müller asks in the letter for details and the transfer to Germany of fines that Socam, a trading company, claimed to have paid for 'mistakenly reimporting products into Germany'.

In his reply to the Statement of Objections, Mr Müller (in his capacity as Chief Executive of BStG) described the stopping of reimports and the imposition of fines as measures to combat fictitious exports (aimed at obtaining or not paying the DM 80 per tonne fixed in the cartel agreement, see 127).

In view of this argument the Commission states that the provisions of subsections 5 (2) and 7 (1) of the cartel agreement to which it objects (see 127 to 130) had a tangible impact on interstate trade. The abovementioned occurrences are individual embodiments of the distortions of competition contained in those provisions. Moreover, the reference to Socam makes it clear that the restrictions affected not only cartel members (producers) but also independent traders.

(153) The 'second Belgian producer' to whom Mr Müller refers in his telex to Thibodraad of 15 December 1983 (see 92 and 150) and to whom the increase in imports into Germany was attributed, was TFE/FBC. It is possible that at that time TFE/FBC was not adhering to the comprehensive arrangements governing exports to Germany. Later evidence indicates, however, that TFE/FBC was a party to *price agreements* concerning the German market and that it did adhere to those agreements. This is apparent from the telex dated 11 January 1984 from Mr Peters to TU concerning the Breda meeting of 5 January 1984 (see 95), in which it is stated that the Belgian producers made it clear to the BStG representatives that they observed prices on the German market. This affirmation by the two Belgian producers was not challenged by the BStG representatives. The only area of disagreement was the method of calculating quotas.

Thus, in a telex dated 17 April 1985 from the German Rolled Steel Producers' Association to Cockerill-Sambre (headed 'Belgian welded steel mesh deliveries to the Federal Republic of Germany'), the Cockerill-Sambre subsidiary TFE was accused of undercutting the general price level in Germany (DM 810 per tonne) with quotations of DM 770 per tonne. Cockerill-Sambre was asked to make it clear to its subsidiary that prices on the German market were picking up and to put pressure on it to observe better price discipline. The telex shows that at that time there was a price agreement for the German market and that it was known of at a higher level, having been discussed in the international Wire Rod Committee.

The allegations of price-cutting on the German market were repudiated by TFE/FBC. On the Rolled Steel Producers' Association telex, which was found at FBC, is a handwritten comment, 'faux', (wrong).

In an internal memorandum from Mr Debelle (FBC) to Mr Wylemann (Deputy Managing Director of FBC) dated 24 April 1985 about the mesh producers' meeting that had taken place that same day, it is said that the German representative, Mr Ruthotto, had confirmed during the meeting that *'the two Belgian producers were scrupulously observing the price agreements made at BStG'*.

Mr Debelle continues:

> 'Moreover, he (Mr Ruthotto) personally telephoned Mr Libert (TFE/FBC) at 4 p.m. to inform him of the position he had adopted at the meeting and confirmed that he was satisfied with the observance of prices in Germany . . . This news is therefore diametrically opposed to the telex (of 14 April 1984) from Mr Huelsmann (Rolled Steel Producers' Association) criticising the price policy of Fontaine (TFE/FBC) by asserting that we still sell at a basic DM 770'.

(154) This evidence shows that price agreements were made with the Benelux producers at BStG's initiative and with its active involvement. These agreements concerned the observance of the minimum cartel prices (still) applicable in Germany. The Commission assumes that these agreements together with the quota arrangements were made after the structural crisis

cartel was formed (beginning of June 1983). Boël Trébos and TFE/FBC were parties to the agreements and adhered to them, as TFE/FBC was pleased to have confirmed by the initiator of the agreements, BStG. TFE/FBC, however, in contrast to Boël/Trébos, did not comply with the agreements until later, i.e. the beginning of 1984.

(155) The Dutch producer Thibodraad observed the *arrangement to limit imports into Germany* referred to at 150. This is clear from an exchange of telexes between Thibodraad and German dealers concerning several offers made by the latter between March and September 1985. The German dealers were interested in buying from Thibodraad but Thibodraad was not particularly interested in supplying to Germany.

To fend off the unwanted offers from Germany, Thibodraad either asked exorbitant prices (source: telex of 8 March 1985 from Kleiner to Thibodraad) or claimed to be short of capacity (source: telexes from Thibodraad to ÇEFGS dated 17 July 1985, to Kalt D dated 20 August 1985, to Sid D dated 10 September 1985 and to Kalt D dated 17 September 1985). Another reason given for its inability to supply Germany was a large volume of domestic orders (source: telex dated 26 March 1985 to Kleiner).

That lack of capacity was only a pretext is shown by another telex dated 16 July 1985 to a British customer (CALOND G) to whom Thibodraad made a concrete offer in reply to the customer's enquiry. This telex proves that Thibodraad was not short of capacity in July-August 1985, so that the real reason for its refusal to supply Germany was the existence of an export limitation arrangement.

(156) The existence of a comprehensive *arrangement covering trade interpenetration* between Germany, Belgium and the Netherlands is also apparent from the telex from Mr M. Müller (BStG) to Thibodraad referred to above (92 and 150). Thibodraad sent a copy of this telex to TA in Gentbrugge for comment, so that they could give a joint answer (source: letter dated 16 December 1983 from Thibodraad to TA Gentbrugge).

Although the telex was addressed to Thibodraad, Mr Müller only complains of increases in exports by one *Belgian* producer (TFE/FBC), thus implying that the other members of the 'Breda group' were abiding by the arrangement.

II LEGAL ASSESSMENT

A. Article 85 (1)

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

(158) The agreements and/or concerted practices described in the 'Facts' part constituted infringements of Article 85 (1) of the EEC Treaty.

The details are set out below:

I. FRENCH MARKET

(159) The first set of agreements in 1981/1982 between French producers and producers from Italy, the Federal Republic of Germany and Belgium who traditionally exported to France involved the setting of quotas for imports into France. These restrictions on the volume of foreign deliveries to the French market made it possible to enter into a price agreement; the prices charged on the French market were set at a higher level, far above the average in other Community countries, without this producing an increase in imports as could normally be expected.

These agreements have therefore to be viewed as establishing a quota and price cartel which substantially restricted and distorted competition between the parties and appreciably affected trade between Member States as it directly regulated cross-border trade in goods.

The parties to the 1981/1982 agreements were the French companies TU, SMN, CCG, STPS and Sotralentz and at least Ferriere Nord, Martinelli and ILRO (Italy), TFE/FBC and Boël/Trébos (Belgium) and TA (Germany/Benelux).

(160) The second set of agreements in 1983/1984 between French producers and producers from Italy, Germany and Belgium (see 51 to 76) likewise restricted and distorted competition between the participants and appreciably affected trade between Member States.

In particular, the 'protocole d'accord' of October 1983 (see 60 *et seq.*), with its comprehensive and detailed provisions covering every possible aspect was of special importance. It covers quotas, prices, manner of operation, special cases and enforcement including contractual penalties. It had the object of totally eliminating competition between the participants and to a large extent succeeded in that object (see 64 *et seq.*).

The parties to this set of agreements were at least the French companies TU, SMN, CCG, STPS and Sotralentz and the French associations STA and Adets and the following foreign companies: Ferriere Nord, Martinelli and ILRO (Italy), TFE/FBC and Boël/Trébos (Belgium) and TA (Germany/Benelux).

(161) An important role was played in the operation of the agreements by the indirect exchange of information between the members of Adets, including the importer TA, on their individual deliveries to the French market, which was coordinated by Adets (see 64). The collection and circulation of individual sales figures among competitors constitute a concerted practice, according to the principles established by the Court of Justice in its Judgment in the European sugar cartel case (¹). These principles were formally adopted by the Commission in a statement in paragraphs 5 to 8 of its Seventh (1977) Report on Competition Policy. Accordingly, the communication of data about individual firms to their competitors in the present case constituted a restriction and distortion of competition, which in view of the involvement of TA was likely to affect trade between Member States.

(162) In their reply to the Statement of Objections, the representatives of the French producers claimed above all that the abovementioned agreements of 1981/1982 and 1983/1984 should be viewed against the background of an alleged restructuring of the French welded steel mesh industry, which was altogether comparable to the restructuring aimed at in Germany through the structural crisis cartel.

However, the agreements of 1981/1982 and 1983/1984 contain no clauses on restructuring, capacity reduction and the like, as was the case in Germany with the structural crisis cartel. The Commission therefore rejects this argument.

The Belgian undertakings parties to the agreements maintain, moreover, with regard to the agreements of 1983/1984 that there was no written agreement between them and the French producers signed by TFE/FBC and Boël/Trébos; nor could the existence of such an agreement be deduced from the *'protocole d'accord'* of October 1983.

The Commission does not accept this argument. The existence of an agreement need not be evidenced by a signed document alone. Furthermore, the quantities actually delivered by the undertakings concerned during the first seven months of the period covered by the *'protocole d'accord'* correspond roughly to the figures contained in the *'protocole'*, at least for the first year of the agreement.

The argument put forward by several non-French companies challenging the finding that interstate trade had been appreciable affected by their conduct, i.e. that they had only a small share of the French market, is rejected (see 77 *et seq.*). The effects of participation in the agreements are to be assessed, not individually for each of the participating companies, but in the wider context of the overall agreements concluded by all participants, including the arrangements made with respect to the other national and regional markets (Benelux and Germany). As a result of the reciprocal obligations entered into with producers from those markets, the conduct of even a relatively small operator gains in significance.

Thus where a general agreement affects trade between Member States, Article 85 of the EEC Treaty applies to all undertakings party to it.

II. BENELUX MARKET

(163) The agreements on the general fixing of prices for the various types of welded steel mesh that were made at the meetings in Breda or Bunnik (see 85 to 112) had the object of preventing, or at least considerably restricting, competition between the producers concerned on the Benelux market, and largely succeeded in that object.

(164) No quotas were agreed at the meetings in Breda and Bunnik (proposals for quotas were discussed but nothing apparently came of them). The fact remains, however, that data for individual companies were communicated to competitors with a view to preparing the ground for a quota cartel. This applies in particular to the transmission of export figures by TU to Boël/Trébos (see 85). In the light of what is said above (161), such conduct also constituted an infringement of Article 85 of the EEC Treaty.

(165) The fact that the price agreements made at these meetings were not in a binding form does not make them any the less contrary to the Treaty. The regularity of the meetings and the fact that at each

(¹) Judgment of 16 December 1975 in Joined Cases 40—48, 50, 54—56, 111, 113 and 114/73 *Suiker Unie and Others v. Commission* [1975] ECR 1663 at 1942, grounds 173 and 174.

meeting new prices were agreed according to the prevailing state of the market shows that there was a basic consensus between the participants to control the market on an ongoing basis. For this purpose, they replaced normal competition by continuous, virtually institutionalized cooperation.

(166) The agreed prices were largely observed. This is shown by the fact that at the meetings there were only rarely complaints that the prices agreed at a previous meeting had been ignored, and then only by particular producers.

Nor does the fact that the agreed prices could not always be achieved because of weakness of the market diminish the significance of the agreements. The agreed prices were targets at which the participants collectively aimed. The prices actually achieved were often below the aimed-for target prices, but certainly in excess of those that could have been achieved on the market under normal competitive conditions, i.e. without the agreements.

(167) As regards the reference by several participants to the formation of the structural crisis cartel in Germany (see 112), it should be pointed out that the meetings began on 26 August 1982 (see 84), that is to say long before the cartel was set up (beginning of June 1983, see 126). The fact that the planned formation of the cartel was discussed at the first meeting in no way justifies the making of price agreements with an eye to some future danger.

(168) Nor does the Commission accept the argument put forward by several non-Benelux producers (TU, BStG) with a view to challenging the finding that interstate trade had been appreciably affected by their conduct i.e. that they had only a small share of the Benelux market (see 112), any more that it accepts the argument relating to the French market (see 162).

The following companies at least were parties to the Breda and Bunnik agreements: Thibodraad, TA, Boël/Trébos, (FBC), Van Merksteijn, ZND, TU and, of the German producers, at least BStG (as far as BStG is concerned, see 93 and 94).

(169) Some of the participants did not attend the meetings regularly or from the very beginning. While this is a mitigating factor in their favour, it should be made clear that the physical absence of a particular producer from a particular meeting does not necessarily mean that the absentee did not help to put the results of the meeting into effect. Absentees were generally informed of what had been agreed at a meeting (see, for example, 100).

(170) The price agreements made at Breda and Bunnik were likely to affect trade between Member States, because companies or groups of companies from five Member States that operated on the Benelux market were parties to them.

(171) Of particular importance in this connection were the contacts and arrangements between Benelux producers and TU (the 'Breda group') and the German 'group' (see 91 to 96), and in particular the promise made by Mr M. Müller in his telex of 15 December 1983 to Thibodraad (see 92 *et seq.*) to abide by the arrangements on deliveries to Holland/Belgium and to 'curb' or at least 'contain' the activities of the other members of the German 'group' ('the small maverick producers'). He also promised to supply the *export figures* of the German producers concerned for the next meeting in Breda. The existence of an arrangement to restrict German exports to Belgium/Netherlands *(quota arrangement)* which is implied by the telex and the *supply of export figures* for individual German producers to the Belgian/Dutch 'Breda group' represented a clear restriction and distortion of competition between the participants which was likely to affect trade between Member States to an appreciable extent.

The Commission proceeds on the basis that on the German side at least BStG and on the Benelux side, all the Benelux companies in the 'Breda group' were parties to this arrangement.

(172) The 'gentlemen's agreement' between TA and Thibodraad on the one hand and Van Merksteijn on the other, under which Van Merksteijn did not manufacture any catalogue mesh and TA (in Ghent and Roermond) and Thibodraad did not manufacture any standard mesh (see 116), must be regarded as a restriction of competition between the parties which was likely to affect trade between Member States, since each party thereby relinquished the right to manufacture and sell the product yielded to the other party through its own sales network, which in each case covered several Member States and was not identical with the sales network of the other.

(173) The arrangements made following bilateral contacts between TA and Thibodraad (see 117 to 124) were practical applications of a basic agreement between

the two companies on the exchange of information about their sales volume in order to keep their market shares constant, on intensive consultation regarding enquiries from and quotations to customers, and on the application of uniform prices and a uniform pricing system for the various product types. This basic agreement formed the framework within which the clearly documented price agreements on *catalogue mesh* and *tailor-made mesh* were concluded.

The arrangement had the object and effect of eliminating or at least substantially reducing competition between the parties. They were also likely to affect trade between Member States as both companies are substantial exporters and TA has establishments in several Member States.

III. GERMAN MARKET

(174) The cartel arrangement, and in particular subsections 5 (2) and 7 (1) thereof, not only restricted competition between the cartel members in the Federal Republic of Germany, but also distorted competition in respect of intra-Community trade because it led to artificial changes in the conditions for deliveries of German producers to other European markets and for deliveries of foreign producers to the German market (127 to 130). This being so, the cartel arrangement was liable to affect trade between Member States.

(175) These provisions had, moreover, as their object, or at least as their effect, the use of the structural crisis cartel as an instrument for reaching bilateral arrangements between German producers on the one hand and producers from other Member States on the other. The representatives of the German producers, in particular BStG, could now appear as representatives of the 'German cartel association' in contacts and negotiations and could thereby rely on the discipline of most members of the German structural crisis cartel (see, for example, 130). In this way the creation of general agreements limiting interpenetration was facilitated, as was likewise stressed by leading representatives of the German producers (see 92 and 130).

These bilateral arrangements had the object of shutting off the German market or at least of preventing unregulated imports, so that the object of the cartel (reduction of capacity, setting of delivery quotas and price rises) should not be endangered. This was admitted by the cartel representative himself (see 131).

More specifically:

(176) The arrangements which were made at the meeting of 7 June 1985 between Mr M. Müller (BStG, Fachverband Betonstahlmatten, structural crisis cartel) and Mr Marie (TU, Adets) (see 135 to 143) concerning trade between France and Germany, and which were adhered to, constituted a restriction of competition between French and German producers which was likely to affect trade between Member States.

(177) The quota arrangement governing Sotralentz's exports to Germany, the existence of which is indicated by the exchange of telexes between BStG and Sotralentz referred to at 144 to 146, was also a restriction of competition between Sotralentz and at least BStG which was likely to affect trade between Member States. The exchange of information between Sotralentz and BStG was itself a concerted practice within the meaning of the Court's judgment in the sugar cartel case (see 159) which was likely to affect trade between Member States.

(178) The exclusive distribution agreements between BStG and Bouwstaal Roermond (later Tréfilarbed Roermond) and between BStG and Arbed SA Afdeling Nederland, Roermond (see 148) whereby BStG distributed the Roermond plant's welded mesh in Germany on an exlusive basis also represented a restriction of competition between two competitors from different Member States which was likely to affect trade between Member States. The Commission rejects the argument advanced by BStG and TA that this was a purely intragroup matter (see 149). A mere 25,001 % interest does not give rise, in view of the larger shares held by other companies (Thyssen 34 % and Klöckner 33,5 %), to a parent-subsidiary relationship such as would mean that any restrictive agreement between these companies would be deemed not to be caught by Article 85 (1) of the EEC Treaty.

(179) The arrangement between at least BStG and Boël/Trébos about the volume of its exports to Germany which can be inferred from Mr M. Müller's telex to Thibodraad (see 150) of 15 December 1983 *(quota arrangement)* represented a restriction of competition between Boël/Trébos and German producers that was likely to affect trade between Member States.

(180) The same applies to the agreed stopping of reimports of welded mesh produced at the St Ingbert works via Luxembourg back to Germany (see 152) and the stopping of reimports from Belgium back to Germany which is also referred to in the telex of 15 December 1983 (see 151).

(181) The *price agreements* concerning the German market between the two Belgian producers Boël/Trébos and TFE/FBC and at least BStG of the German producers (see 152—154) also represented a restriction of competition between the parties likely to affect trade between Member States.

(182) The *comprehensive set of agreements* between at least BStG on the one hand and the Belgian/Dutch producers (the 'Breda group') on the other, which is described at 147—156, formed the framework and the background against which the conduct described in that section should be seen. This complex of restrictive arrangements substantially restricted and distorted competition between German and Belgian/Dutch producers on the German market and affected trade between Member States.

(183) The magnitude of the effect on trade is clear from the fact that virtually all Belgian/Dutch producers were parties to the *agreements concerning import quotas and prices* on the German market and that the agreements rested on reciprocity, since of the German producers, at least the largest, BStG, had undertaken similar obligations with regard to exports to Belgium/Holland (see 93, 94 and 171).

B. **Article 85 (3)**

(184) Pursuant to Article 85 (3) of the EEC Treaty, Article 85 (1) may be declared inapplicable in the case of:

— any agreement or category of agreements between undertakings;

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

— any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

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

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

(185) In order to qualify for exemption under Article 85 (3), agreements, decisions or concerted practices falling within Article 85 (1) must have been notified to the Commission under Article 4 (1) of Regulation No 17, unless they are dispensed from notification by Article 4 (2) of the Regulation.

(186) The agreements and/or concerted practices concerned in the present case were neither notified to the Commission nor fall within any of the categories dispensed from notification by Article 4 (2) of Regulation No 17.

(187) Even if the agreements and/or concerted practices had been duly notified, no exemption under Article 85 (3) could be entertained in view of the serious infringements involved (price and/or quota agreements, protection of national markets against imports, and market sharing) and the number and size of the participants, which meant that competition for a substantial part of the products in question (welded steel mesh) was potentially or actually eliminated. Such arrangements strike at the very principles on which the common market is based.

C. **Regulations Nos 67/67/EEC and (EEC) 1983/83**

(188) Commission Regulations No 67/67/EEC (1), as last amended by Regulations (EEC) No 3577/82 (2), and (EEC) No 1983/83 (3) grant a block exemption for exclusive distribution agreements fulfilling certain specified conditions. Under Article 7 of Regulation (EEC) 1983/83 agreements that were in force before 1 July 1983 and satisfy the exemption conditions of Regulation 67/67/EEC continue to be covered by the latter Regulation until 31 December 1986.

(189) The exclusive distribution agreements between BStG and Bouwstaal Roermond (later Tréfilarbed Roermond) and between BStG and Arbed SA Afdeling Nederland (see 148 and 178), however, have not satisfied the exemption conditions of Regulation No 67/67/EEC at least since the making of the wider arrangements on trade between Germany and Benelux. Since then the exclusive distribution agreements must be regarded as part of a comprehensive market-sharing arrangement to which more than two undertakings are party, a type of arrangement not covered by Regulation No 67/67/EEC (Article 1 in conjunction with Article 8 of Regulation No 67/67/EEC).

(1) OJ No 57, 25. 3. 1967, p. 849/67.
(2) OJ No L 373, 31. 12. 1982, p. 58.
(3) OJ No L 173, 30. 6. 1983, p. 1.

D. **Regulations** (EEC) **No 2779/72, No 3604/82 and No 417/85**

(190) Commission Regulations (EEC) No 2779/72 [1], as last amended by Regulation (EEC) No 2903/77 [2], (EEC) No 3604/82 [3] and (EEC) No 417/85 [4] grant a block exemption for specialization agreements fulfilling certain specified conditions. Article 7 of Regulations (EEC) No 2779/72 and (EEC) No 3604/82 and Article 9 of Regulation (EEC) No 471/85 provide that the Regulations also apply to concerted practices.

(191) The 'gentlemen's agreement' between TA and Thibodraad on the one hand and Van Merksteijn on the other, under which Van Merksteijn did not produce catalogue mesh and TA (in Ghent and Roermond) and Thibodraad did not produce standard mesh (see 116 and 172) cannot be regarded as an exempted agreement because the aggregate turnover of the parties, including the consolidated group turnover af Arbed and Hoogovens (see Article 4 of Regulation (EEC) No 2779/72, Articles 4 (3) and 5 of Regulation (EEC) No 3604/82 and Articles 6 and 7 of Regulation (EEC) No 471/85), exceeded the limits of ECU 150, 300 and 500 million which applied under Article 3 of the Regulations in force during the relevant period while the agreement was in operation.

E. **Article 15 (2) of Regulation 17**

(192) Under Article 15 (2) of Regulation No 17 the Commission has the power to fine undertakings or associations of undertakings found to have intentionally or negligently infringed Article 85 (1) of the EEC Treaty sums of from ECU 1 000 to ECU 1 000 000 or a higher sum not exceeding 10 % of the turnover of the undertaking concerned in the preceding financial year. In deciding the size of the fine, the Commission is to have regard to the gravity and the duration of the infringement.

(193) The undertakings listed in part I, section D, 11 of this Decision all participated in one or more of the agreements and/or concerted practices described in part I, section H, and part II, section A; they thereby infringed Article 85 (1) of the EEC Treaty.

(194) There has been far-reaching restructuring in the European welded steel mesh industry, linked to the general restructuring in the steel industry, a process which has received the support of the Commission.

For the application of the competition rules of the EEC Treaty to undertakings, this raises the question whether an undertaking existing after restructuring can be held liable for the involvement of a predecessor in the restrictive agreements.

The concept of an 'undertaking' under the competition rules of the EEC Treaty is not necessarily identical with that of legal personality for the purposes of national law. The term 'undertaking' is not defined in the Treaty. It may refer to any entity engaged in commercial activities, and in the case of a large industrial group it may be appropriate (according to the circumstances) to apply the term to a parent or to a subsidiary company or to the economic unit formed by the parent and subsidiaries together.

Where a producer has been subject to reorganization, or has divested itself of its welded steel mesh activity, the essential task is:

(i) to identify the undertaking which committed the infringement;

(ii) to determine whether that undertaking in its essential form is still in existence or whether it has been liquidated.

The question of an undertaking's identity is one to be determined according to Community law, and changes in organization under national company laws are not decisive. It is thus irrelevant that an undertaking may have sold its welded steel mesh business to another: the purchaser does not thereby become liable for the participation of the seller in the agreement. If the undertaking which committed the infringement continues in existence it remains responsible in spite of the transfer. On the other hand, where the infringing undertaking itself is absorbed by another producer, its responsibility may follow it and attach to the new or merged entity.

It is not necessary that the acquirer be shown to have carried on or adopted the unlawful conduct as its own. The determining factor is whether there is a functional and economic continuity between the original infringer and the undertaking into which it was merged.

Although the concept of an undertaking as the subject of EEC competition rules does not depend upon company law, for the purposes of enforcement it is always necessary to identify an entity possessing legal personality. There might be considerable difficulties with regard to collection of a fine under Article 192 of

[1] OJ No L 292, 29. 12. 1972, p. 23.
[2] OJ No L 338, 28. 12. 1977, p. 14.
[3] OJ No L 376, 31. 12. 1982, p. 33.
[4] OJ No L 53, 22. 2. 1985, p. 1.

the Treaty if the decision were not addressed to an entity possessing legal personality. In the case of a large industrial group it is therefore normal to address any decision to the group holding company or headquarters company, although the undertaking itself consists of the unit formed by the parent and all its subsidiaries.

(195) For certain of the undertakings party to the agreements concerned here these principles lead to the following conclusions.

(a) In 1983 CCG was renamed Tecnor. In 1987 Tecnor absorbed Tréfilunion (TU) (Tréfilunion I) and was itself renamed Tréfilunion (Tréfilunion II), Tréfilunion II is therefore the successor to Tréfilunion I and to CCG and Tecnor.

(b) At the end of the first quarter of 1984 SMN ceased its welded steel mesh activities, but it continues to exist, and is therefore still liable for acts done by it before that time.

(c) In 1987 STPS became a subsidiary of ACOR, itself a sudsidiary of Usinor-Sacilor (Holding). Despite the changes in ownership STPS continues to exist as an independent undertaking and is therefore to be held liable for acts done by it in the relevant period. But ACOR, which took over TU's welded steel mesh activities, cannot be held liable for acts done by TU.

(d) On 1 August 1984 Tréfilarbed SA became Tréfilarbed Luxembourg/Saarbrücken Sarl. Tréfilarbed Luxembourg/Saarbrücken is therefore the successor to Tréfilarbed SA, and is liable for acts done by Tréfilarbed SA and for its own conduct after that time. It is liable in particular for participation in the agreements covering the Benelux market which were concluded at the meetings in Breda and Bunnik (see 80 *et seq.*), and the agreements between Bouwstaal Roermond (later Tréfilarbed Roermond and Arbed SA Afdeling Nederland) and BStG (see 146 and 176). The conduct for which Tréfilarbed Luxembourg/Saarbrücken is liable also includes the actions of its subsidiaries in France, Belgium and the Netherlands. This is because Tréfilarbed SA or Tréfilarbed Luxembourg/Saarbrücken and its subsidiaries are to be regarded as a single undertaking. The Decision has therefore to be addressed to Tréfilarbed Luxembourg/Saarbrücken Sarl.

(e) On 1 April 1985 FBC was renamed Steelinter SA. Steelinter is therefore liable for acts done by FBC, and also for acts done by TFE, which belongs to the same Cockerill-Sambre group; TFE is merely a manufacturing unit with no commercial activities, whose output was marketed by FBC in the relevant period (see 14 (1) and (2)).

(f) Boël/Trébos is a division of NV Usines Gustave Boël which has no legal personality. The Commission therefore considers it appropriate to address the Decision to NV Usines Gustave Boël, to which the Trébos division belongs.

(g) On 1 January 1987 Thibodraad was divided into two companies likewise belonging to the Hoogovens group, namely Thibo Draad BV and Thibo Bouwstaal BV (see 15 (1)). After the division Thibo Bouwstaal BV took over the welded steel mesh activities, and during the administrative proceedings replied to the objections raised by the Commission in respect of the original Thibodraad. Thibo Bouwstaal BV should therefore be regarded as the successor to Thibodraad for these purposes, and be held liable for its conduct.

(196) Under Council Regulation (EEC) No 2988/74 (1) the Commission's power to impose fines or penalties for the type of infringements concerned in the present case is subject to a limitation period of five years. The period starts to run on the day the infringement is committed. However, where the infringement continues or is repeated, the period starts to run on the day the infringement ceases.

Under Article 2 of Regulation (EEC) No 2988/74, the limitation period is interrupted by the commencement of Commission investigations or proceedings in respect of the infringement. After each interruption time begins running afresh.

In the present case, the limitation period for all infringements committed between 6 November 1980 and 6 November 1985 was interrupted by the inspections that were carried out by Commission officials under Article 14 (3) of Regulation No 17, on 6 November 1985.

The infringement of 27 May 1980 referred to in 79 (price agreement) was repeated on and after

(1) OJ No L 319, 29. 11. 1974, p. 1.

26 August 1982 (beginning of the regular meetings in Breda and Bunnik, see 80 *et seq.*). An action in respect of this infringement is therefore not out of time.

(197) The participants in the abovementioned arrangements infringed Article 85 (1) deliberately. This is shown by the fact that most of the participants either denied having had contacts with their competitors or concealed the purpose of such contacts or the real subject-matter of their arrangements. Many of the documents referring to the arrangements were marked and treated as confidential. Nor were official minutes drawn up of most meetings, although detailed price agreements were made during the meeting (e.g. those in Breda and Bunnik).

The Commission therefore obtained most of its evidence by exercise of its powers under Article 14 (3) of Regulation No 17.

(198) With regard to the gravity and duration of the infringements mentioned in part II, section A, it must be noted that, while the individual infringements were of varying duration and intensity, they amounted to a sustained effort, carried on for a long period covering at least the five years up to November 1985, to frustrate in various ways one of the main aims of the Treaty, namely the creation of a common market, by interference in the price mechanism, restrictions on import penetration of one another's domestic markets, quantity restrictions and market-sharing. Almost all the major producers in the six original Member States were involved in the practices, which helped to make them even more effective.

(199) The Commission is therefore of the opinion that the offences committed in the present case were serious infringements for which fines are warranted. In determining the size of the fines, the Commission has had regard to the economic importance of the industry and the economic impact of the infringements.

The economic impact of the infringements was assessed in the light of the fact that they directly or indirectly influenced prices in the six Member States throughout the period 1981 to 1985. Under normal circumstances heavy fines would therefore be called for.

(200) Account has been taken, however, of underlying changes in the supply/demand position for welded mesh during the relevant period and of the evidence that price and quota discipline among the parties was sometimes poor. These two factors will have diminished to some extent the direct economic effect of the infringements.

(201) Account has been taken also of the fact that 75 to 80 % of the price of welded mesh is attributable to the price of its intermediate material, wire rod, and ECSC product which, throughout the relevant period, was subject to a system of production quotas imposed officially by the Commission under Article 58 of the ECSC Treaty as part of its policy for dealing with the structural crisis in the steel industry. The welded mesh sector has also been suffering from a structural decline in demand and the associated problems of excess capacity, which overrides the short-term market fluctuations which occurred during the relevant period. In general, therefore, the welded mesh sector is not a profitable one.

(202) Account has also been taken of the relationship between welded mesh and reinforcing bars. The latter are an ECSC product, which was also subject to the Commission's 'crisis' measures for the steel industry during the relevant period. As indicated in part I, section A, 1, welded mesh offers certain cost-saving advantages over reinforcing bars, which justify a higher price. So welded mesh is not a perfect product of substitution for reinforcing bars. Nevertheless, there is a limit to the extent of the price gap which can economically exist between the two products. This acts as a restraint on the degree of excess pricing which can practically be achieved by a price cartel in the welded mesh sector.

(203) In fixing the individual fines, the Commission has taken into account the degree and duration of the involvement of the undertakings involved, together with their financial and economic position and importance.

(204) The Commission has also taken into consideration in mitigation the fact that some undertakings, although initially involved in the forbidden arrangements, later withdrew from them, thus reducing their effectiveness. One undertaking also gave the Commission some assistance in its investigations.

(205) The Commission has also noted the Decision taken by the French authorities (Decision of 4 September 1985) imposing fines on some undertakings involved for violations of French domestic competition law (Article 50 of Decree No 45 — 1483) in respect of the same conduct. These fines totalled FF 1 520 000 for the relevant undertakings concerned in the present case. The Decision in question was concerned mainly with the 1981/1982 and 1983/1984 arrangements concerning the French market. The present Decision is concerned with the wider effect of those

arrangements, including their effect on trade between Member States. In addition, the Commission's inspectors discovered important additional evidence about those agreements, including in particular the involvement of undertakings from other Member States. Nevertheless, since the infringements found by the French authorities were committed within the organizational framework of those agreements, the Commission has taken account of the fines already imposed by the French authorities in assessing the fines to be fixed in the present case (see Judgment in Case 14/68 *Walt Wilhelm* [1969] ECR 1 at 15.).

(206) The Commission has also taken into consideration the fact that on 31 May 1983 the Federal cartel office authorized the formation of the structural crisis cartel by German welded mesh producers which, after the authorization of an extension, was finally terminated in June 1988. Certain clauses in the cartel agreement were objected to by the Commission, and modifications were made after discussion between the Commission, the Federal cartel office and the cartel administrators. However, the existence of this authorized cartel gave to the parties in other Member States a motive for seeking to protect themselves. This does not justify the illegal measures which they took but it does provide an element of mitigation. Conversely the use of the cartel to protect the German market against competition from other Member States by measures which are illegal under Community law cannot be validated by the existence of a cartel authorization by the Federal cartel office.

(207) So far as the three associations STA, Adets and Fachverband Betonstahlmatten are concerned, the Commission takes the view that the available evidence strongly suggests that they too were involved in agreements contrary to the Treaty; however, in view of the fact that the senior management of the associations consisted of leading personalities from the largest undertakings among their members, the Commission does not propose to draw any final conclusions as to the associations' own involvement. The main role in bringing about the agreements was played by the largest of the associations' member undertakings. The associations were used by those members to give the agreements stronger and wider impact. Without the initiative and active participation of the leading individuals in these undertakings, who also held senior positions and important roles in their respective associations, the agreements could not have come into being. In these circumstances the Commission judges that the main fines should be imposed on those leading member undertakings without taking account of the associations in question.

(208) In the light of the considerations mentioned in 199 to 207, the Commission considers that the Community's objectives would not be promoted by very large fines in this case. It therefore deems it appropriate to reduce the fines considerably below the level which would normally be justified and to fix the fines for the individual parties at the levels indicated in Article 3 of this Decision.

F. Termination of the infringements

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

(210) In the present case, many of the arrangements were in operation up to the day the investigations began, i.e. 6 November 1985. This applies both to the regular meetings of producers operating on the Benelux market in Breda and Bunnik and to the arrangements on trade between the various national or regional markets. It is not known whether all participating undertakings have ceased all the infringements established in Part II of this Decision. The Commission therefore considers it necessary to prohibit the practices officially under Article 3 (1) of Regulation No 17. The participants must also be prohibited from making arrangements to similar effect in the future and from engaging in any other practices that have the effect of determining the commercial conduct of the companies concerned.

As far as the provisions of Articles 5 (2) and 7 (1) of the welded steel mesh producers' structural crisis cartel agreement of 22 December 1982 are concerned (see 127 to 129 and 174), these have been modified after intervention by the Commission and the structural crisis cartel itself has meanwhile been terminated.

The Commission thus limits itself to stating in 174 that these clauses were incompatible with Article 85 (1) of the EEC Treaty.

HAS ADOPTED THIS DECISION:

Article 1

Tréfilunion SA, Société Métallurgique de Normandie (SMN), Chiers-Châtillon-Gorcy (Tecnor), Société de Treillis et Panneaux Soudés, Sotralentz SA, Tréfilarbed SA, or Tréfilarbed Luxembourg/Saarbrücken Sarl, Tréfileries Fontaine l'Évêque, Frère-Bourgeois Commerciale SA (now Steelinter SA), N.V. Usines Gustave Boël, Afdeling Trébos, Thibo Draad- en Bouwstaalprodukten BV (now Thibo Bouwstaal BV), Van Merksteijn Staalbouw BV, ZND Bouwstaal BV, Baustahlgewebe GmbH, ILRO SpA, Ferriere

Nord SpA (Pittini), and G. B. Martinelli fu G. B. Metallurgica SpA have infringed Article 85 (1) of the EEC Treaty by participating from 27 May 1980 until 5 November 1985 on one or more occasions in one or more agreements or concerted practices (hereinafter referred to as 'agreements') consisting in the fixing of selling prices, the restricting of sales, the sharing of markets and in measures to implement these agreements and to monitor their operation.

Article 2

The undertakings named in Article 1 which are still involved in the welded steel mesh sector in the Community shall forthwith bring the said infringements to an end (if they have not already done so) and shall henceforth refrain in relation to their welded steel mesh operations from any agreement or concerted practice which may have the same or similar object or effect.

Article 3

The following fines are hereby imposed on the undertakings named below in respect of the infringements found in Article 1:

1. Tréfilunion SA (TU): a fine of ECU 1 375 000;

2. Société Métallurgique de Normandie (SMN): a fine of ECU 50 000;

3. Société des Treillis et Panneaux Soudés (STPS): a fine of ECU 150 000;

4. Sotralentz SA: a fine of ECU 228 000;

5. Tréfilarbed Luxembourg Saarbrücken Sarl.: a fine of ECU 1 143 000;

6. Steelinter SA: a fine ECU 315 000;

7. NV Usines Gustave Boël, Afdeling Trébos: a fine of ECU 550 000;

8. Thibo Bouwstaal BV: a fine of ECU 420 000;

9. Van Merksteijn Staalbouw BV: a fine of ECU 375 000;

10. ZND Bouwstaal BV: a fine of ECU 42 000;

11. Baustahlgewebe GmbH (BStG): a fine of ECU 4 500 000;

12. ILRO SpA: a fine of ECU 13 000;

13. Ferriere Nord SpA (Pittini): a fine of ECU 320 000;

14. G. B. Martinelli fur G. B. Metallurgica SpA: a fine of ECU 20 000.

Article 4

The fines imposed under Article 3 shall be paid within three months of the date of notification of this Decision to the following bank account:

No 310-0933000-43,
Banque Bruxelles Lambert,
Agence Européenne,
Rond-Point Schuman 5,
B-1040 Bruxelles.

On expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund 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. 12,50 %. Should payment be made in the national currency of the Member State in which the bank nominated for payment is situated, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 5

This Decision is addressed to:

1. Tréfilunion SA,
33 Place des Corolles, Tour Europe,
F-92080 Courbevoie la Défense 7;

2. Société Métallurgique de Normandie,
route de Cabourg, B.P. 52,
F-14125 Mondeville Cedex;

3. Société des Treillis et Panneaux Soudés,
20, rue de Bonne Garde, B.P. 19,
F-92390 Villeneuve-la-Garenne;

4. Sotralentz SA,
24 rue du Professeur Froehlich,
F-67320 Drulingen;

5. Tréfilarbed Luxembourg/Saarbrücken Sarl,
16 (a), Avenue de la Liberté,
L-2339 Luxembourg;

6. Steelinter SA,
Rue de l'Usine, 1,
B-6090 Couillet;

7. NV Usines Gustave Boël,
21, rue Ducale,
B-1000 Bruxelles;

8. Thibo Bouwstaal BV,
Julianastraat 1,
NL-5741 EP, Beek en Donk;

9. Van Merksteijn Staalbouw BV,
Kanaalstraat O.Z. 8.,
NL-8102 Raalte;

10. ZND Bouwstaal BV,
J. F. Kennedylaan 22,
NL-5555 XD Valkenswaard;

11. Baustahlgewebe GmbH,
Burggrafenstrasse 5,
D-4000 Düsseldorf 11;

12. ILRO SpA,
Via G.B. Vico 8,
I-22053 Lecco-Pescarenico;

13. Ferriere Nord SpA (Pittini),
I-33010 Isoppo (Ud),
Frazione Rivali;

14. G.B. Martinelli fu G.B. Metallurgica SpA,
via Breda 152,
Milano, Italia.

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

Done at Brussels, 2 August 1989.

For the Commission
Leon BRITTAN
Vice-President