COMMISSION OF THE EUROPEAN COMMUNITIES

SPECIAL COMMITTEE
OF INQUIRY

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Brussels, 17 January 1980

ANNEXES TO THE

REPORT CONCERNING GUARANTEE SECTION OF THE
E.A.G.G. F., CEREAL SECTION

(transmitted by the Commission to the Council, the European Parliament and the Court of Auditors)

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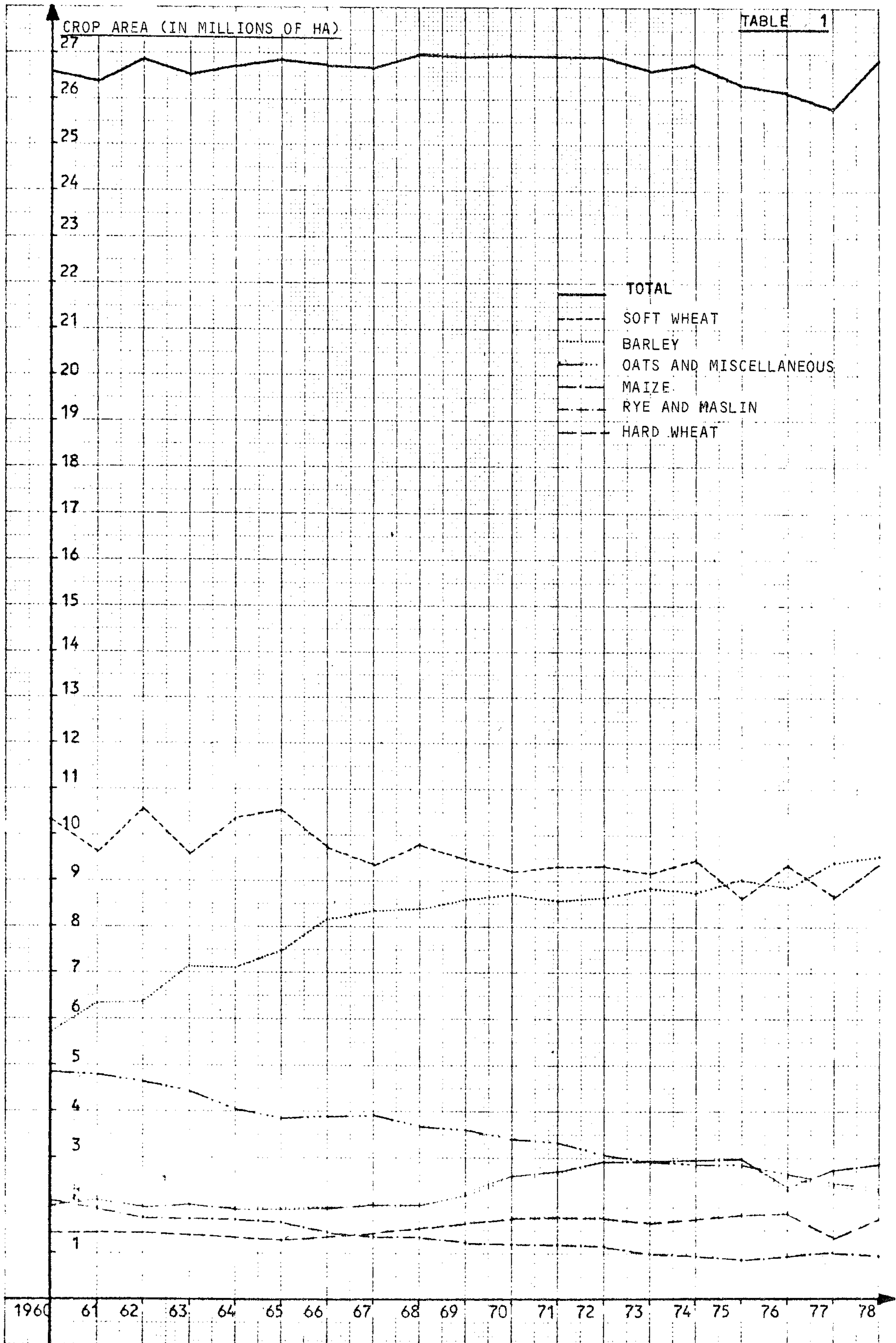
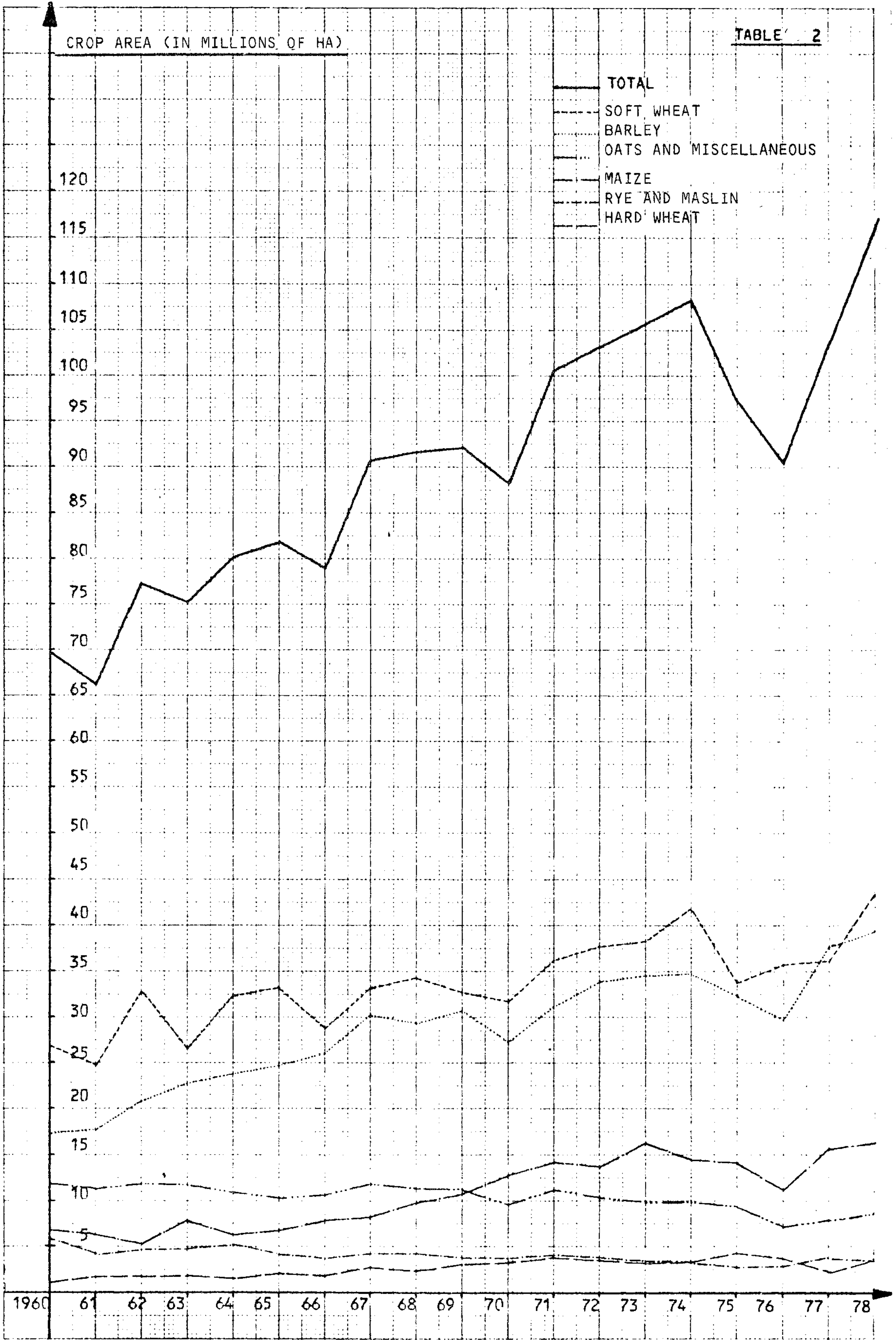
ANNEX I

GRAPHS ILLUSTRATING THE DEMAND FOR CEREALS


CROP AREA (IN MILLIONS OF HA)
TABLE 1
27
26
25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
1
TOTAL
SOFT WHEAT
BARLEY
OATS AND MISCELLANEOUS
MAIZE
RYE AND MASLIN
HARD WHEAT
1960
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78


CROP AREA (IN MILLIONS OF HA)
TABLE 2
TOTAL
SOFT WHEAT
BARLEY
OATS AND MISCELLANEOUS
MAIZE
RYE AND MASLIN
HARD WHEAT
120
115
110
105
100
95
90
85
80
75
70
65
60
55
50
45
40
35
30
25
20
15
10
5
1960
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78

YIELD (100KG/HA)
TABLE 3
58
56
54
52
50
48
46
44
42
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
1960
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
TOTAL
SOFT WHEAT
BARLEY
OATS AND MISCELLANEOUS
MAIZE
RYE AND MASLIN
HARD WHEAT

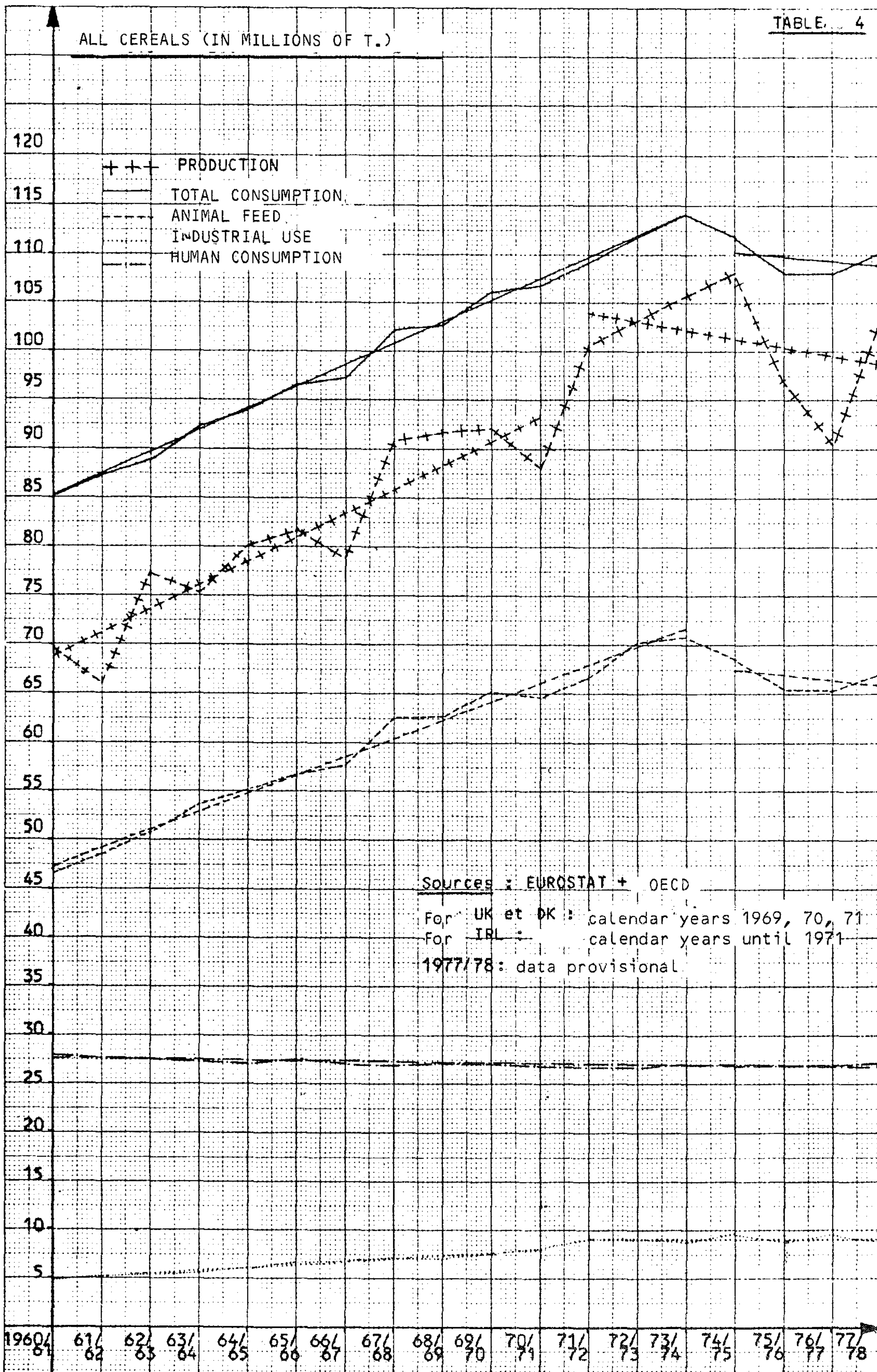
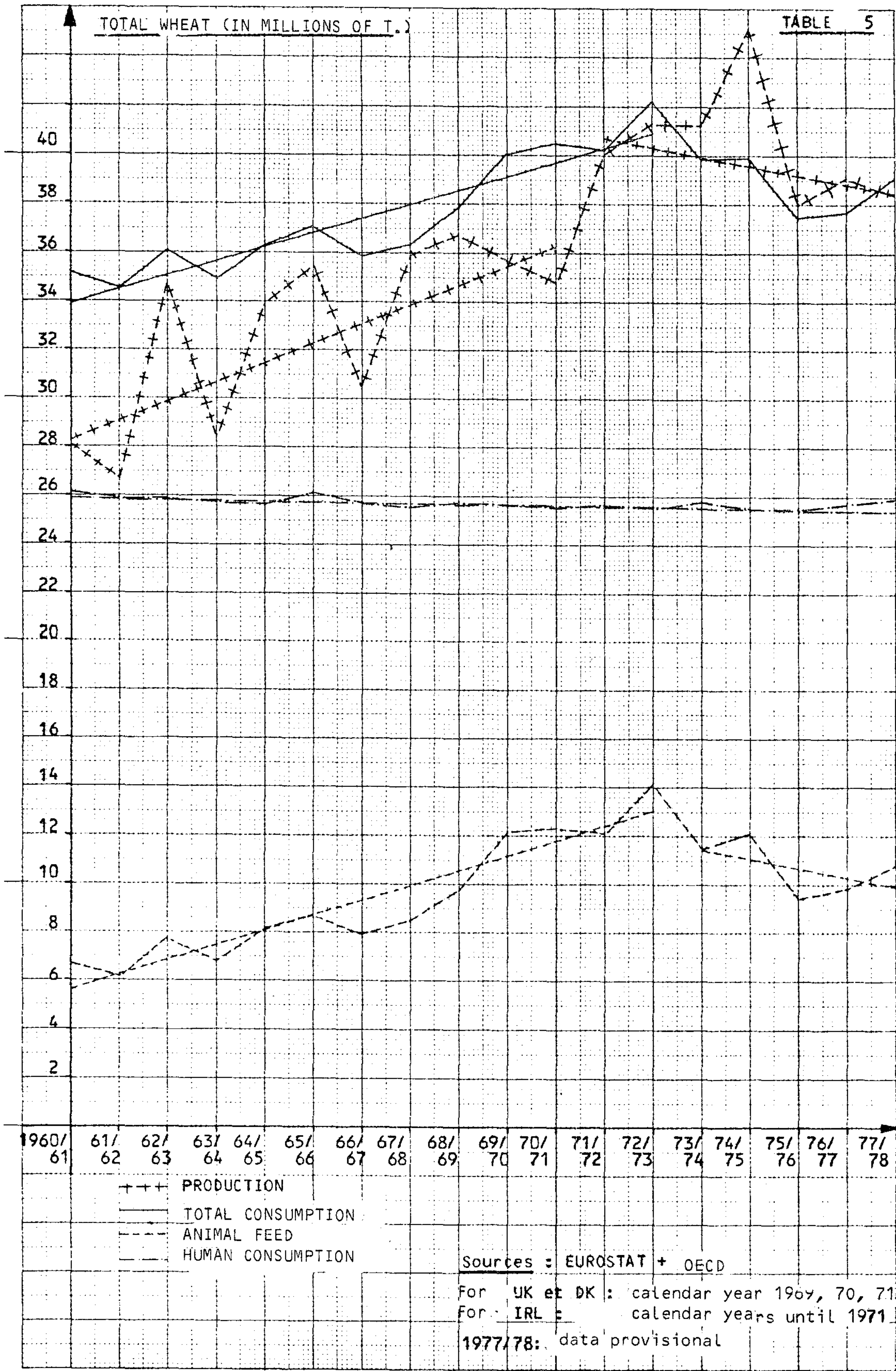


TABLE 4
ALL CEREALS (IN MILLIONS OF T.)
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED
INDUSTRIAL USE
HUMAN CONSUMPTION
120
115
110
105
100
95
90
85
80
75
70
65
60
55
50
45
40
35
30
25
20
15
10
5
Sources : EUROSTAT + OECD
For UK et DK : calendar years 1969, 70, 71
For IRL : calendar years until 1971
1977/78 : data provisional
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78


TOTAL WHEAT (IN MILLIONS OF T.)
TABLE 5
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED
HUMAN CONSUMPTION
Sources : EUROSTAT + OECD
For UK et DK : calendar year 1969, 70, 71
For IRL : calendar years until 1971
1977/78: data provisional

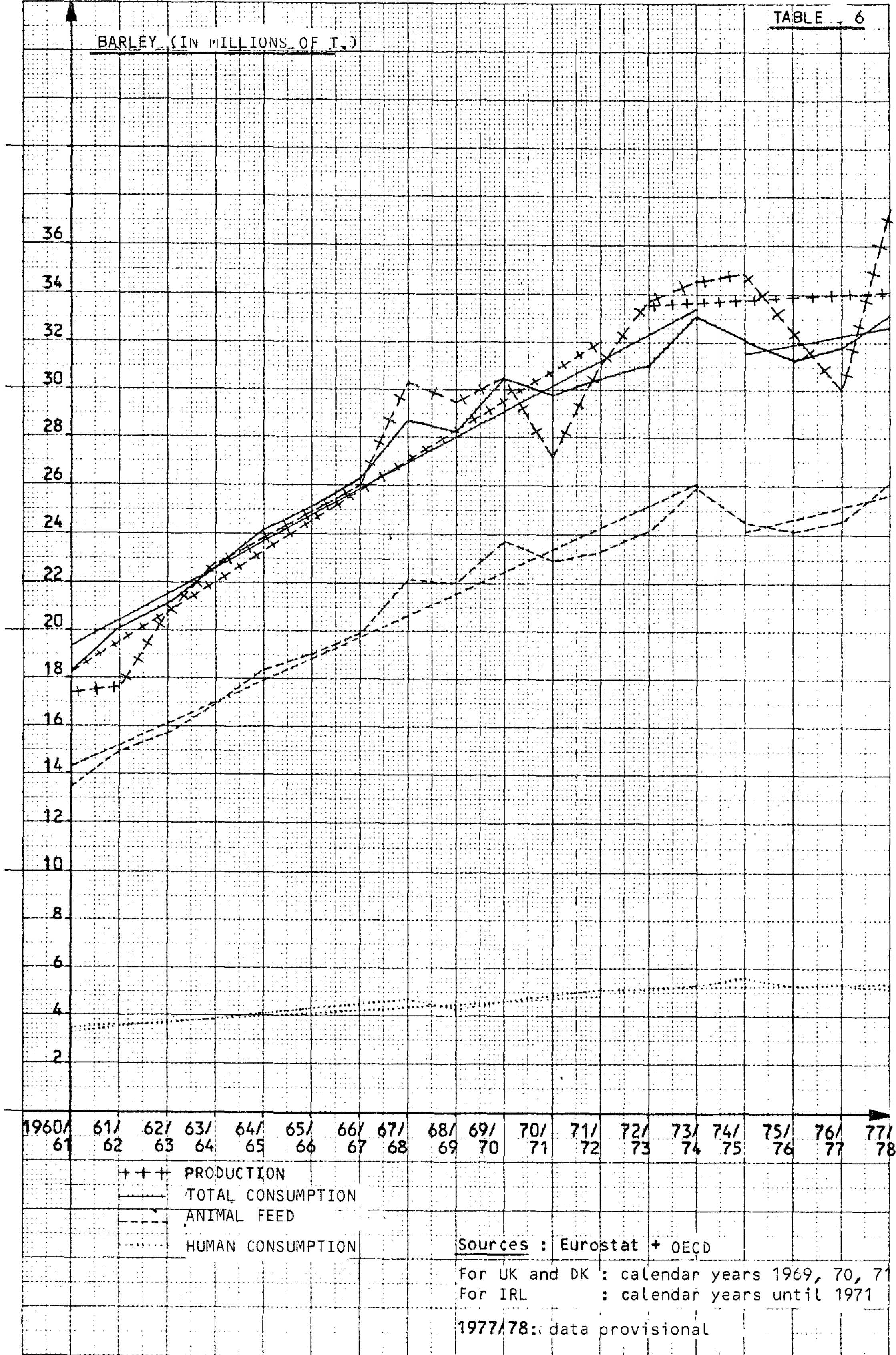


TABLE 6
BARLEY (IN MILLIONS OF T.)
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED
HUMAN CONSUMPTION
Sources : Eurostat + OECD
For UK and DK : calendar years 1969, 70, 71
For IRL : calendar years until 1971
1977/78: data provisional

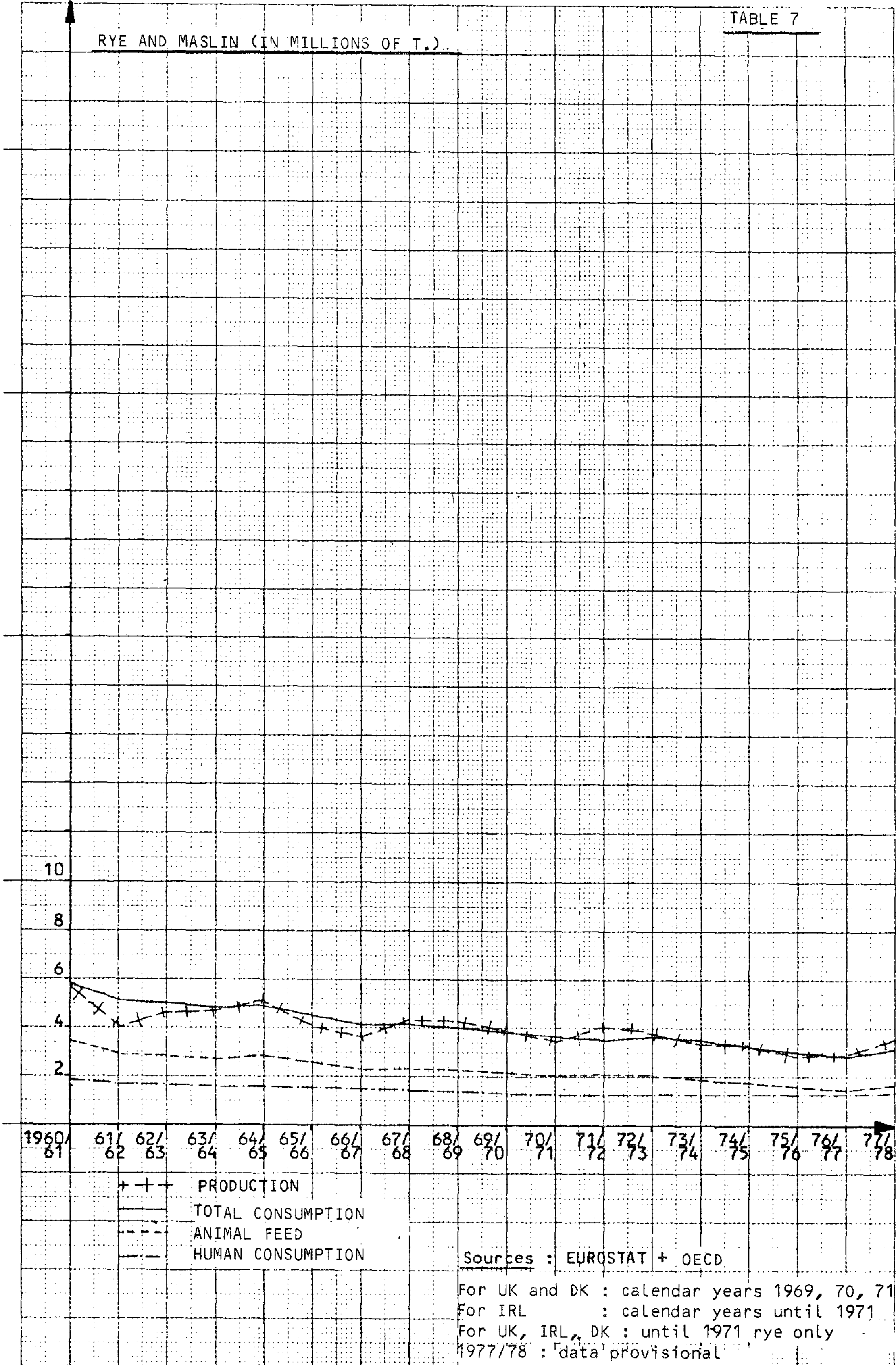


TABLE 7
RYE AND MASLIN (IN MILLIONS OF T.)
10
8
6
4
2
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED
HUMAN CONSUMPTION
Sources : EUROSTAT + OECD
For UK and DK : calendar years 1969, 70, 71
For IRL : calendar years until 1971
For UK, IRL, DK : until 1971 rye only
1977/78 : data provisional

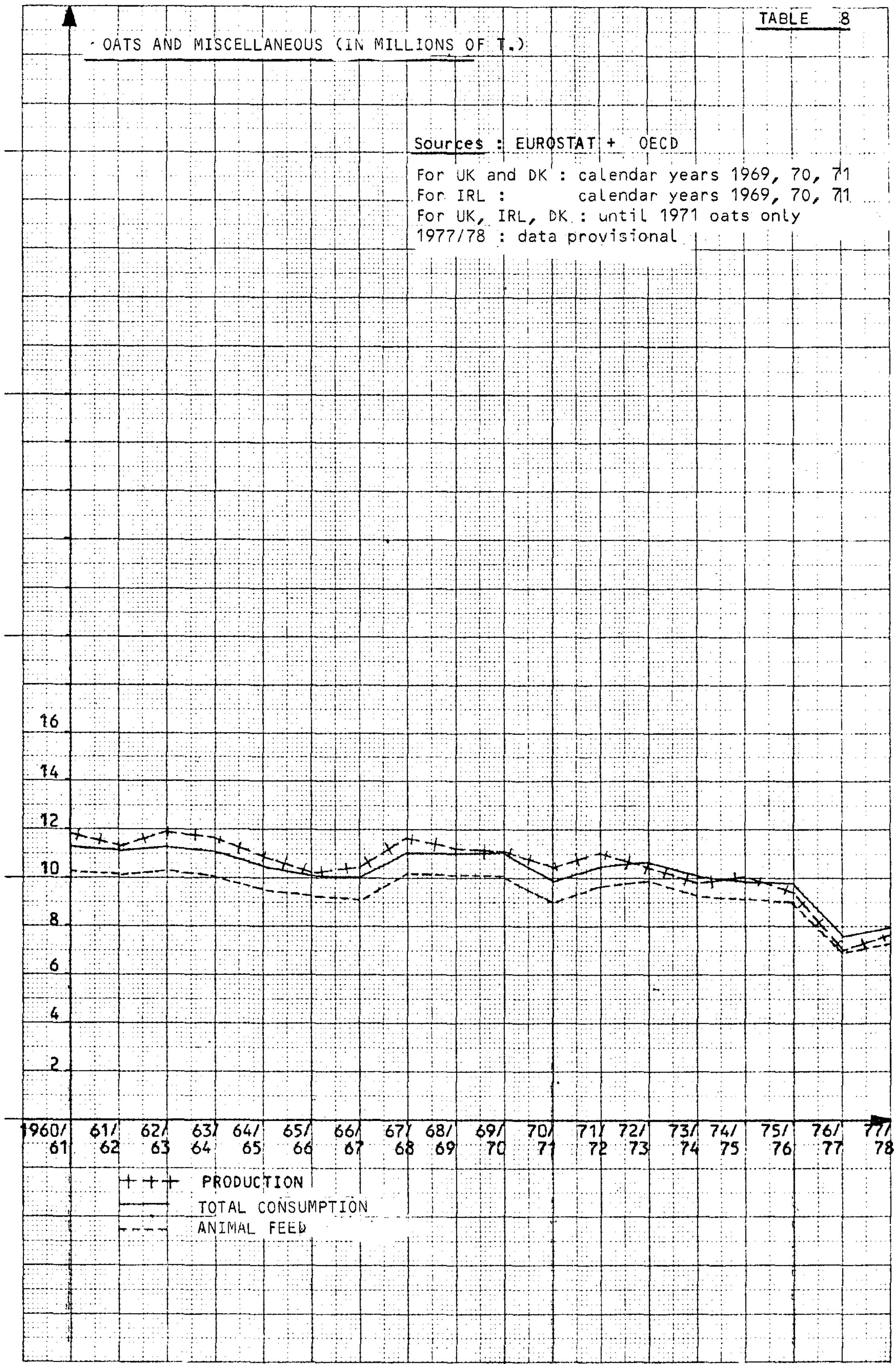


TABLE 8
OATS AND MISCELLANEOUS (IN MILLIONS OF T.)
Sources : EUROSTAT + OECD
For UK and DK : calendar years 1969, 70, 71
For IRL : calendar years 1969, 70, 71
For UK, IRL, DK : until 1971 oats only
1977/78 : data provisional
16
14
12
10
8
6
4
2
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED

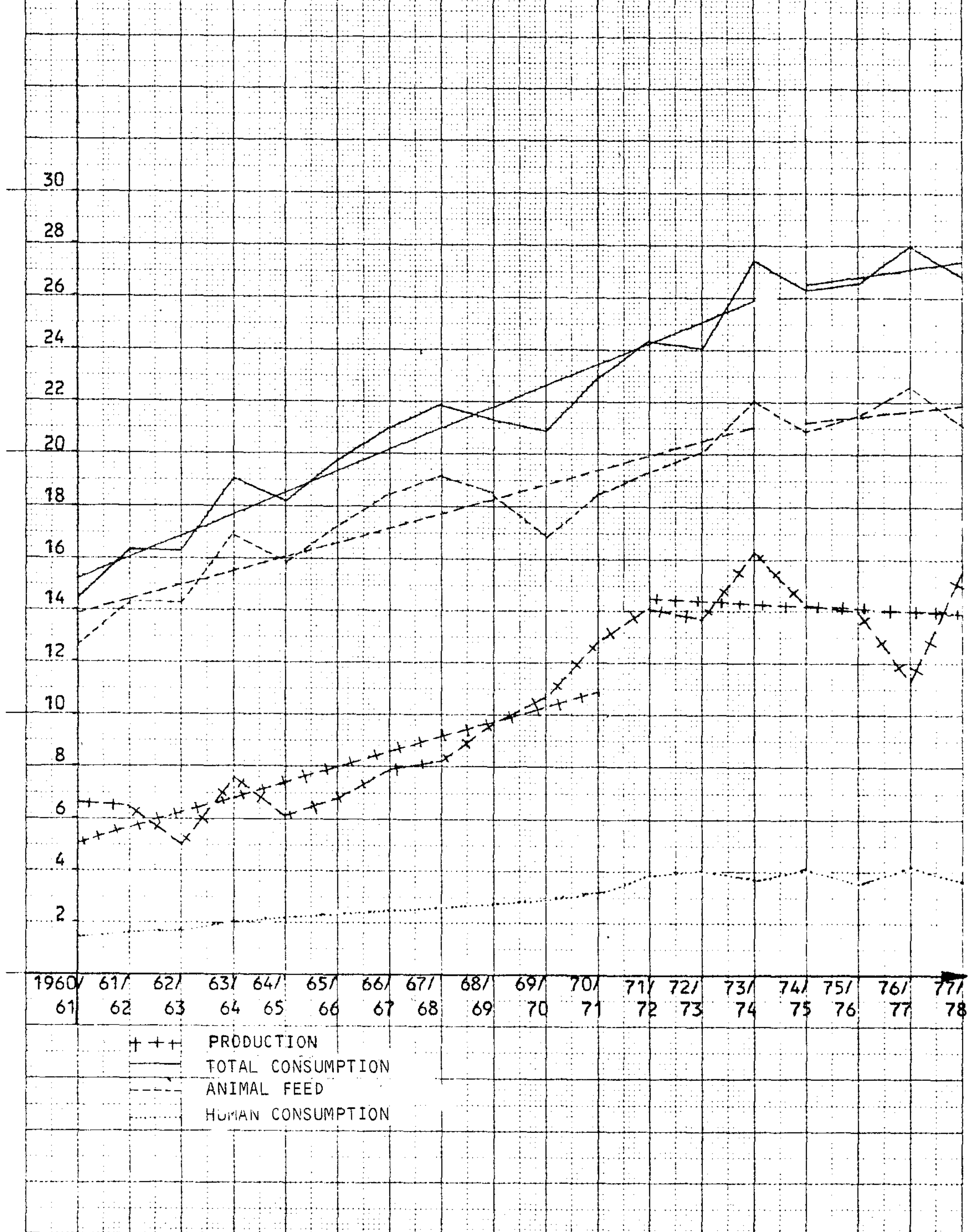


TABLE 9
MAIZE (IN MILLIONS OF T.)
Sources : EUROSTAT + OECD
For UK and DK : calendar years 1969, 70, 71
For IRL : calendar years until 1971
1977/78: data provisional
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
1960/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78
PRODUCTION
TOTAL CONSUMPTION
ANIMAL FEED
HUMAN CONSUMPTION

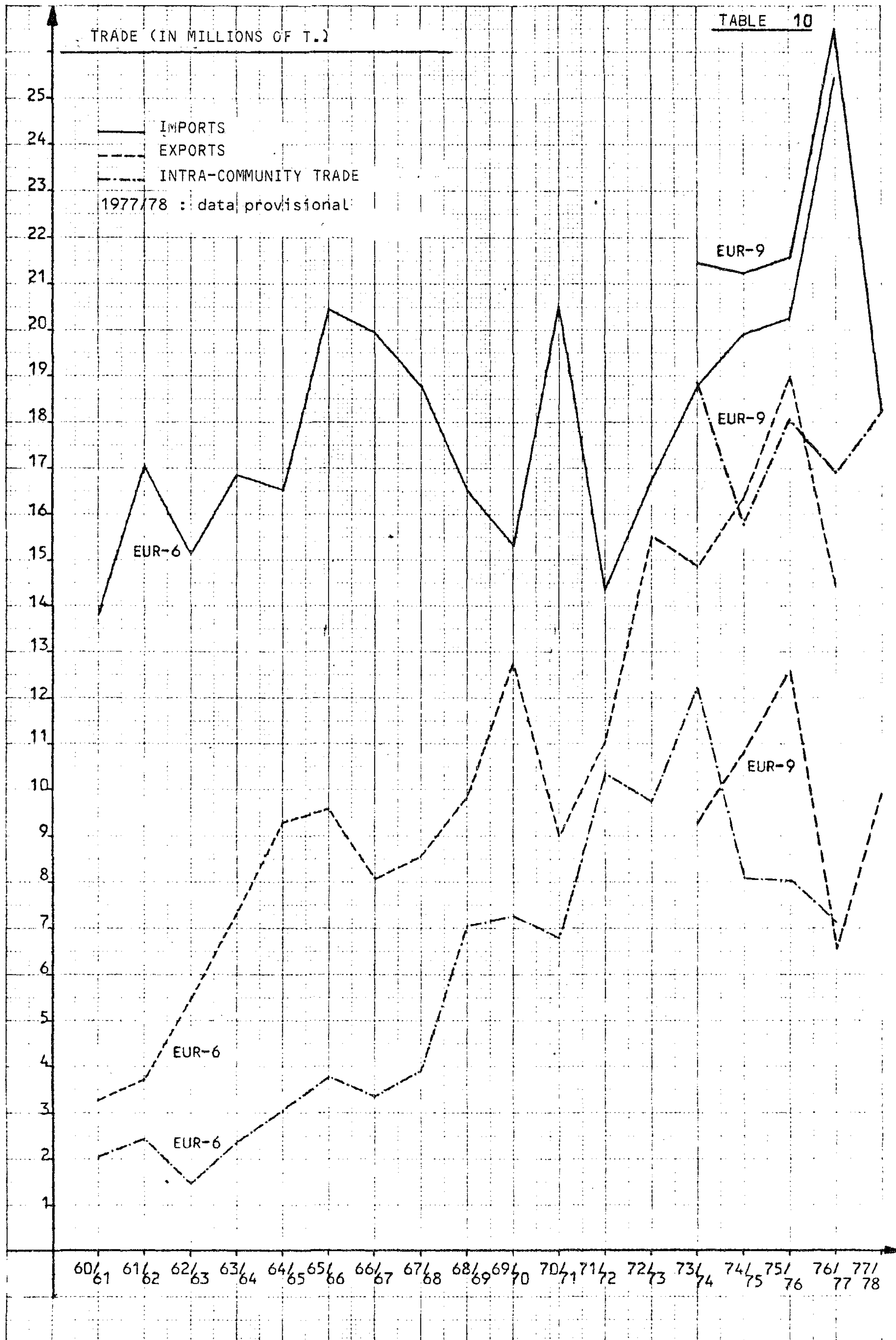


TABLE 10
TRADE (IN MILLIONS OF T.)
IMPORTS
EXPORTS
INTRA-COMMUNITY TRADE
1977/78 : data provisional
EUR-9
EUR-9
EUR-9
EUR-6
EUR-6
EUR-6
25
24
23
22
21
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
60/61
61/62
62/63
63/64
64/65
65/66
66/67
67/68
68/69
69/70
70/71
71/72
72/73
73/74
74/75
75/76
76/77
77/78

ANNEX II

IRREGULARITIES AND SPECULATIVE MOVEMENTS

I. IRREGULARITIES IN INTERVENTION OPERATIONS

Case 1 : Special intervention measures(private storage)

Under the Community rules any holder of cereals may avail himself of temporary intervention measures consisting in keeping cereals in private storage; the object of this is to prevent the goods being offered for sale for a certain period. However, the contracts may provide for the goods to be used if the intervention agency so authorizes. If the storer disregards these conditions he commits an irregularity which is detected as follows : before aid is paid to the holders of stocks, the intervention agency compares the latest report as to the quantity and quality of the goods in storage with the initial report to ensure that all the conditions laid down are fulfilled. Where, as sometimes happens, those conditions are not fulfilled, the intervention agencies cancel or reduce the aid.

Case 2 : Production refund

The procedure for paying production refunds authorizes payment of the refund - the rate of which may fluctuate - before the goods are processed, providing that the raw materials are under official surveillance and that security has been lodged.

A producer applied for a production refund for processing maize into groats. As he claimed that the quantity of raw materials used - and hence of goods produced - was greatest during the months when the rate of refund was highest and least when the refund rate was lowest, he obtained a higher refund than that to which he was entitled.

In the Member State concerned, a producer must use the T5 form to state his intention of processing maize and the refund is made on the basis of this form. The producer receives visits from the customs inspectors who must approve his premises; the documents define the standard registration requirements and the procedure for obtaining the refund. The producer must keep up-to-date accounts of stocks and production and a monthly summary of activity. The customs authority may inspect the premises during manufacture. In the case in point, the paying agency noted that declared monthly production varied from one month to the next and it asked the customs authority to carry out a posteriori checks. Customs inspection revealed that the quantities of raw materials declared as having been processed during the various months wereinaccurate but that the total quantities declared for the period as a whole were correct.

Case 3 : Aid in respect of durum wheat

Aid in respect of durum wheat is now a subsidy granted on the basis of area sown, but it used to be granted on the basis of quantity produced.

Three cases involving aid based on quantity are cited here as examples :

1. A cereals dealer who was also a producer of durum wheat

applied for aid for a claimed quantity of 877 tonnes of durum wheat.

In order to make his claim realistic, the dealer faked the sale of this durum wheat stock by drawing up false invoices with the complicity of another party.

The irregularity was discovered in the course of an inquiry ordered into the fraudulent bankruptcy declared against the company in question; the inquiry brought to light the false invoices.

2. Aid for durum wheat was wrongly obtained by an applicant who presented forged land-register certificates.

The producer had put in an application for aid for 1970/71, declaring an output of 610 quintals from a total area of 32 ha 17 a 64 ca including 28 ha 38 a 60 ca under wheat. After correction of the figures quoted in the application, aid was paid for a net output of 468.37 quintals from a sown area of 28 ha 38 a 60 ca. The figures were corrected on the basis of a machine comparison of all the applications.

The agency responsible for paying the aid - unfortunately with some delay because of the large number of applications received - checked at the local landregister office the authenticity of the extracts from the cadastral survey which must accompany applications for aid. In the case in question, this check showed that the total area was in fact only 12 ha 17 a 64 ca and not 32 ha 17 a 64 ca declared, and that the forgery consisted in writing in another three areas of 10 ha, 8 ha and 2 ha respectively on the certificate submitted.

3. Aid for durum wheat was wrongly received by an applicant who submitted a land-register certificate for land not belonging to him.

   The producer had applied for aid for 1970/71, declaring 686.40 quintals produced from an area of 47 ha 38 a 80 ca including 24 ha under wheat. After correction of the figures in the application, aid was paid for a net quantity of 650 quintals.

   But the area actually owned by the applicant was only 16 ha 53 a 45 ca and was moreover rented to someone else. Consequently, it was not the owner who, according to the rules, was entitled to the aid but the producer who farmed the land. The owner was therefore not eligible for any of the aid paid, and the farmer himself had applied for and obtained aid on his own behalf.

   On the death of the previous owner, when his land was shared out one of the heirs exploited the fact that his name was the same as the deceased and submitted an application for aid for durum wheat accompanied by a land-register certificate issued - as revealed by the investigations carried out by the paying agency - to the deceased owner at a time when he owned all the land which was subsequently split up. The date of the certificate, which had, of course, been issued in the previous owner's lifetime, was virtually illegible, thus facilitating the fraud.

II. IRREGULARITIES IN TRADE

Case 4 : Rule of equity

Trade between Member States and between the Community and non-member countries is subject to the application of MCAs. But operators who signed contracts before the

introduction of the MCA system (or before a change of rate) may on application benefit from the monetary conditions in force at the time of the transaction.

For instance, a commercial transaction had taken place before the introduction of MCAs on a particular product. The exporter had signed with his usual customers contracts in a non-member country currency and contracts in the currency of a Member State, and he was paid on the basis of these contracts.

He replaced these contracts by others drawn up in the currency of the Member State of which he is a national in order to benefit from the equity rule, and he submitted false invoices in the same currency bearing the names of persons who in fact served merely as intermediaries.

He replaced these contracts by others drawn up in the currency of the Member State of which he is a national in order to benefit from the equity rule, and he submitted false invoices in the same currency bearing the names of persons who in fact served merely as intermediaries.

When the documents were submitted to the intervention agency, the exporter obtained the full refund, whereas he should have received the refund less the compensatory amount applicable to exports to non-member countries, and he escaped paying the MCAs on intra-Community trade.

In the course of checks, the customs inspectors found that the applicant had changed his invoicing method. Investigations to discover the reasons for this sudden change and for the unwonted practice of using middlemen revealed that for the transactions in question the exporter had concluded completely fictitious sales contracts.

It was also established that the contracts had been backdated.

The rule of equity, which exempts contracts signed before the monetary event in question from the effect of the new MCA rate, carries real and serious risks of irregularity . The case described shows that the irregularities can be perpetrated by means of forged old contracts or backdated contracts.

Case 5 : Deflection of trade

Customs formalities were completed in Member State A for the export of 3,000 t of common wheat flour, under Tariff sub-heading ex 11.01 A. With regard to the criteria for granting the refund, the declaration was worded as follows :

"Common wheat flour having an ash content of 0 to 520, for export to zone VI".

After the merchandise had been loaded, the exporter went to the shipper to have the bill of lading signed. He learned that the person representing the purchaser of the flour had already obtained a bill of lading giving a port in Member State B as the destination, and had then disappeared. The exporter, suspecting fraud, lodged a complaint and legal proceedings were opened.

The customs in Member State A, also warned by the exporter, notified the corresponding authorities in Member State B, which induced the perpetrators of the fraud to reroute the vessel to a non-member country in Zone I c, where the merchandise was eventually unloaded and released for consumption.

It was therefore the fact that the victim of the attempted fraud took up the matter with customs as well as lodging a complaint with the judicial authorities that was responsible for the developments at customs level.

The resulting close collaboration between the judicial authorities and customs and the mutual administrative assistance between the customs departments of the two Member States ensured that the intended fraud was thwarted.

This case shows the importance of quick and effective administrative assistance between the competent departments of Member States, and of cooperation between the

judicial and customs authorities in disputes concerning foreign trade transactions. Article 4 of Regulation (EEC) N° 283/72 provides that, in such cases, information is to be communicated without delay to the other Member States concerned and to the Commission.

Case 6 : Procedures for charging/paying MCAs

A. The background

1. In September 1974, a company in Member State A exported 2 419 t of wheat, described as wheat for milling, to Member State B.

   On leaving Member State A and entering Member State B the consignment was subject to neither monetary compensatory amount (MCA) nor accession compensatory amount (ACA) because at that time the levelling-off rule applied to MCAs and ACAs. The rule stipulates that the compensatory amounts charged or granted by a Member State cannot be greater than the import charge levied by that Member State in its trade with non-member countries. In September 1974 the import levy was nil. Consequently, compensatory amounts were also nil. There was therefore no reason to use a T5 form, which is needed only if MCAs are to be applied.

2. Nonetheless, a T5 form from Member State A accompanied the goods. It was stamped by the customs of Member State B on 4 September, but was not received by the customs of Member State A until 19 December 1974. The T5 stated that all the wheat had been cleared for consumption in Member State B.

3. A dispute arose between the seller and the buyer over the quality of the wheat. The arbitrators ruled that the wheat had been denatured by an unidentified red colouring matter, that it did not correspond to the description in the contract and that the buyer was justified in refusing it. Out of the 2 419 t, 1 669 t were refused.

4. When the forwarding agent of the exporter in Member State A applied for instruction on how to return the 1 669 t, the intervention office State B replied by telex that he should state on the T3L transit document that the wheat was unfit for human consumption and that Article 11 (2) of Regulation (EEC) N°1463/73 applied : "No monetary compensatory amount shall be granted on products which are not of sound, fair and marketable quality or for products which are intended for human consumption whose characteristics or state render them wholly or practically unsuitable for that purpose".

5. One month after these instructions had been sent to the exporter's forwarding agent, a T3L document for a quantity of 1 200 t of wheat was presented by <u>the agent of the importer in Member State B</u>. It carried no reference to Article 11 (2) of Regulation (EEC) N°1463/73. The customs authority in Member State B had no reason to connect the consignment of 1 200 t with the goods refused by the purchaser.

   On entry of the goods into Member State A, the company declared the goods as wheat of milling quality originating in Member State and presented the T3L document and a <u>false sales invoice</u> from a company in Member State B.

A sample of the goods was taken for analysis by the customs authorities in Member State A. The wheat was acknowledged as complying with the definition of milling wheat. The MCA was therefore granted on entry of the goods into Member State A because the levelling-off rule had been abolished in respect of MCAs but still applied in respect of ACAs.

6. On 21 May 1975 the rest of the wheat which was the subject of the dispute - 469 t - was returned to Member State A. On that date ACAs had been reintroduced. The goods were again covered by a T3L stamped by the customs authorities of Member State B.

   On entry into Member State A the goods were declared by the company to be wheat of milling quality, originating in Member State A, and a supporting letter from the customs authorities of Member State B was presented dated 7 May 1975, stating that this wheat had been imported, stocked and then re-exported without going onto the market of Member State B. It was not stated, however, whether the wheat formed part of the rejected 1 669 t. The customs authorities of Member State A understood from the wording that the goods had not been cleared through customs for consumption.

   The analysis performed by Member State A on the reimported wheat revealed traces of denaturing.

   Since, according to the customs authority of Member State A, no compensatory amounts were applicable because of the return procedure, this discovery had no practical effect.

B. Comments

1. The T5 was used incorrectly because no compensatory amount was applicable. This is a common procedure because it enables all eventualities to be "covered".

2. The system of monetary compensatory amounts is a system of economic compensation whereby, during the transit procedure, the price of the goods is brought into line with the common price in ECU : when goods leave a Member State, the application of an MCA (positive or negative) puts the price of the product level with the common price expressed in ECUs; when goods enter a Member State, the application of an MCA puts the price of the goods level with the price in the Member State concerned. For these MCAs to be applied the product must meet the conditions laid down in respect of :

   - exit from one Member State (for the MCA on exit);
   - entry into the other Member State, an operation commonly referred to as "release for consumption" (MCA on entry).

   Under this dual system the return procedure, or any other customs procedure, has no effect on the application of the MCAs. Compensatory amounts are in all cases charged or granted at the frontier.

3. Since 1977, a return procedure has been accepted. However, at the time of the irregularity, this was not the case .

   The two customs authorities outht therefore to have applied the MCAs in all cases ,unless they were not applicable for some other reason (levelling-off rule, denatured wheat).

The customs service of Member State 1 correctly granted the MCA on the first re-exported consignment because the wheat was analysed and acknowledged as being of milling quality. However, the problem of the value of the different methods of analysis arises here, seeing that one method showed the wheat to have been denatured while the other showed it as being of milling quality.

When the second consignment was shipped back, the customs service of Member State A did not grant the MCA because of the return procedure. This decision was wrong as explained in sections 2 and 3; the reason for not granting the MCA should have been that the wheat had been denatured.

However, an ACA should have been charged and was not, on grounds that the goods were being returned. As in the case of the MCAs, no customs procedure takes precedence over the system of compensatory amounts for obvious reasons of financial protection.

4. The customs authority in Member State B was not in a position to connect the quantity of 1 669 t with the two return consignments, they could not discover that they had been denatured. The instructions given by the intervention agency to the first forwarding agent were not mandatory and there was no reason - barring an analysis - why a particular consignment should be regarded as denatured.

As regards the second return consignment, however, the Committee is surprised that the customs service of Member State B should have stated on a separate sheet, and not on a transit document, that the wheat had never reached the market in Member State B.

Furthermore, the wording misled the customs service of Member State A : the term "imported" refers to geographical territory while "released for consumption" refers to customs territory.

5. This case further illustrates the difficulties in connection with analyses. Such analyses are too infrequent, especially in respect of exported goods. The customs service of Member State A did not discover the denaturing in the first consignment for export because no analysis took place, whereas part of the wheat was declared as denatured when it was reimported, both returned consignments having been analysed at that time. No analysis was made by the customs servie of Member State B.

6. The fraud, which consisted in making false statements in respect of the re-imported goods, was facilitated by the fact that the forwarding agents were not the same; theoretically, this can happen with every operation. In the second case, the fraud was facilitated by the misinterpretation of a document from the customs service of Member State B.

7. In conclusion, the Committee finds that the procedures relating to MCAs are often not familiar to certain customs posts, that the results of analyses may be contradictory, and that fraud is possible wherever complications arise, - a common enough occurence.

<u>Case 7 : Circular trade in barely</u>

A lorry containing sacks of barley crossed the frontier of one Member State to deliver its goods in another Member State. Instead of continuing his journey, the drive drove back secretly into the first Member State. This operation was facilitated by the winding course of the frontier between the two Member States and the lack of natural obstacles.

The same lorry presented its goods a second time and repeated the operation.

The object of the undertaking was to obtain MCAs twice for the same goods and to evade payment of MCAs when the goods were re-imported. Granting of MCAs a second time was avoided because the irregularity was discovered in time, thanks to surveillance by the customs service.

Inspection of the operator's books failed to bring to light other irregularities of the same kind, although trade in barley between the two Member States had been increasing for some months. Following this discovery an investigation was made and it was also found that about 20% of the sacks contained noting but sand.

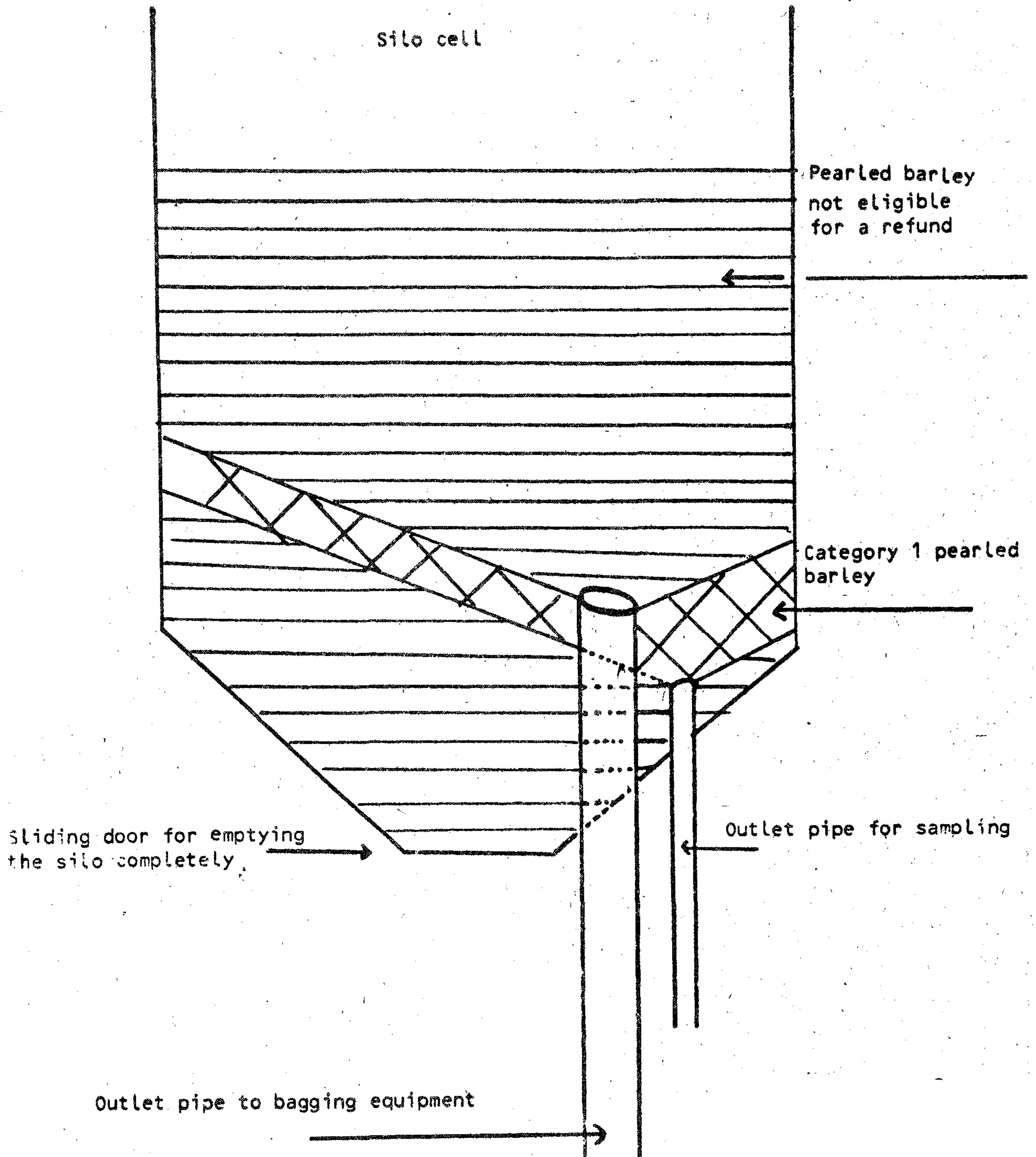
This case shows that two irregularities can be committed at the same time and that the discovery of one irregularity must not deter customs officials from considering the possibility of a second irregularity in connection with the same goods.

Case 8 : Equipment designed to defeat inspection

A manufacturer barley-based and exporter of products noticed that in tendering for the export of 6,000 t of pearled barley falling within subheading 11.02 C III a) of the tariff nomenclature used for refund purposes he had been considerably underbid by a competitor. He obtained a sample of the successful competitor's product and submitted it to the customs office. Analysis of the sample showed that it was not category one pearled barley but barley not eligible for a refund. The manufacturer had built machines for removing samples into the silo cells of his mills and these were supplied by a special intake with category one pearled barley, the product

with the highest rate of refund. The bagging equipment, however, was supplied, from the same silo, with barley not eligible for a refund. This was achieved by having the two outlet pipes at different heights and filling the area between the ends of the two pipes in the silo cell with category one pearled barley.

Scheme



Case 9 : Tampering with samples

Pursuant to the Commission's recommendation of 26 October 1967 on measures to be taken by Member States to prevent and eliminate fraud in agriculture, customs officials of a Member State took samples from two consignments of flaked barley, in addition to those taken by the officially authorized and sworn sampler. Analyses carried out by the competent department revealed the following : the official samples were top quality flaked barley whereas the customs office's samples were quality 2 flaked barley. It was eventually proved that the samples taken by the official sampler had been tampered with. The sampler had left the samples at the mill, unsupervised and unguarded, prior to their transfer to the customs office. The opportunity had been used to substitue one sample for another. The original sample, i.e. quality 2 flaked barley, was replaced by a specially prepared sample of quality 1 flaked barley.

Case 10 : False declaration of type of goods

In the production of high processed barley products, in particular of 1st category pearled barley and 1st quality flaked barley, a by-product is produced consisting of the bracts, husks and some of the floury part of the barley grain which have been removed. For years large amounts of this product have been pressed into pellets and exported as feedingstuffs under CCT tariff subheading 23.02 A II against a low export refund. However, the producers and exporters found a way of obtaining a considerably higher export refund for this by-product. They separated the bracts and husks from the floury part and called the latter barley grindings. These were mixed with ground high

quality barley in the ratio 80:20 and this "premix" was used under the description "barley flour, other" (CCT subheading 11.01 C) as a component in the production of compound feedingstuffs.

The amount of the export refund for cereal-based feedingstuffs depends on the percentage of cereal products in the final compound. However, products from the milling of cereals are regarded as cereal products only where the starch content is over 45% and the ash content is 3% or less in the dry product.

The grindings alone did not fulfil the relevant conditions (more than 45% starch and 3% or less of ash) and therefore did not constitue a cereal-based product eligible for a refund in the compound feedingstuff.

The irregularity occured because the producers and exporters, who should have declared the full composition of the cereal-based compound feedingstuff giving the percentages of each product entering therein broken down by tariff heading, declared only the premix of 80% grindings and 20% ground barley as "barley flour, other".

Case 11 : Production of a new compound feedingstuff to obtain MCAs

In spring 1976 exports of compound feedingstuffs were discovered with the hitherto unusual composition of about 90% tapioca chips and 10% molasses. These compound feedingstuffs had to be considered as falling within subheading 23.07 B I c) 1.

The Refund Office of one Member State thought the export refunds to be paid for compound feedingstuffs composed as above were too high, especially since tapioca chips are not products covered by the common agricultural policy and high export refunds for such feedingstuffs were difficult to reconcile with the objectives of the policy, in particular as they merely benefited the trade and not farmers.

On 26 June 1976, Regulation (EEC) N° 1497/76 of 23 June 1976 was published, under which, from 9 July 1976, the same accession compensatory amounts and monetary compensatory amounts were to be applied to compound feedingstuffs with a proportion of 50% or more tapioca as to tapioca products falling within CCT subheading 07.06 A, that is no monetary compensatory amount and only a small accession compensatory amount.

These exports diminished immediately.

In its Judgment of 8 June 1977 in Case 97/76 [1] the European Court of Justice turned down an appeal for damages made directly to it. It did not accept the plaintiff's argument that the complete fulfilment of contracts for the supply of feedingstuffs with more than 50% tapioca content, concluded before Regulation (EEC) N° 1497/76 came into effect, had been rendered impossible.

Case 12 : Addition of a product with a view to obtaining MCAs

The monetary compensatory amount for whey powder was discontinued under Regulation (EEC) N° 1824/77. It was, however, not taken into account that whey powder is also used in the production of compound feedingstuffs falling within subheading 23.07 B I c) 2. From April 1977, the firm, referred to in Case 11, exported large quantities of compound feedingstuffs

(1) European Court of Justice Reports 1977 p. 1063.

containing 46-49% tapioca chips and 11% whey powder and therefore falling within CCT subheading 23.07 B I c) 2.

The mere addition of 11% whey powder meant that the exporter was entitled to more than double the compensatory amount. Whey powder is a by-product of cheese and casein production, and it is very cheap.

In Regulation (EEC) N° 3005/77 of 22 December 1977, applying from 30 January 1978, the method of calculating the compensatory amount was changed so that whey powder was no longer taken into account and therefore the balance was restored.

Case 13 : False declaration of type of goods

A firm in a Member State completed customs formalities for exporting a consignment of 160 t of prepared animal feed, with a view to obtaining a refund. The export licence (without advance fixing of the refund rate) declared a content of 20% cereal flour (10% barley, 5% wheat, 5% maize).

The exporter declared his goods as follows :

Subheading N° 23.07 B I : "Preparations to be used in animal feeding containing more than 15% but not more than 30% by weight of cereal products".

This declaration was accepted by the customs office of exit of one Member State. However, subsequent checks established that the product in question did not contain 20% cereal flour but 20% maize starch, which is not accepted as a cereal product under the nomenclature for refunds. Consequently, the goods were not eligible for a refund.

This irregularity was discovered in the course of a posteriori checks at the exporter's premises in connection with other export transactions. Complaints had been lodged against the operator in connection with export formalities relating to consignments of milk powder (false declaration of fat content). It had therefore been decided to conduct inquiries at the operator's premises. When the investigations were carried out, the inspectors discovered several documents relating to the irregular transaction described above.

By comparing the export licence with the quality certificate issued for the transaction in question, the inspectors noted the different nature of the cereal products mentioned on each of the documents.

After the manufacturer of the product had been consulted, the exporter admitted making a false declaration, claiming as an excuse that he had been unable in that particular case to check the exact composition of the product supplied.

Case 14 : False declaration of type of goods on export in order to avoid payment of MCAs

Wheat flour, cereal germ and cereal residues, falling within tariff headings 11.01, 11.02 and subheading 23.01 A I b) respectively and subject to the payment of MCAs, were declared for export as oil-cake falling within heading N° 23.04, which is exempt from MCAs. Similarly, bagged cereal waste, falling within heading N° 23.02, was declared as "cereal straw and husks, unprepared" falling within heading N° 12.09, which is exempt from MCAs.

III. SPECULATIVE MOVEMENTS

Case 15 : Speculative trade flows

Under the system of advance fixing of accession compensatory amounts (ACAs) an undertaking in one of the original Community countries asked for licences with advance-fixed MCA

rates for transactions between two new Member States (from A to B). The advance-fixed ACA rate to be granted was high.

On a separate occasion, the same undertaking asked for an obtained import licences with advance-fixed rates for imports from the new Member State B to one of the six original Member States. The advance-fixed ACA rate to be charged was low.

At the time of the speculation the "levelling-off" rule stipulated that the compensatory amounts charged or granted by a Member State could not be greater than the import charge levied by that Member State in its trade with non-member countries. As a result of this rule, MCAs varied substantially from one Member State to another when world market fluctuations occurred, as in 1975. The undertaking sold a quantity of cereals, not yet shipped, to another firm registered in one of the six original Member States. At the same time it sold an equivalent quantity, which was still on the territory of new Member State A to an operator in the new Member State B and bought it back immediately.

The physical operation consisted in shipping the cereals from the new Member State A to the new Member State B where the vessels were unloaded then immediately reloaded for return to the original Community accompanied by the licences referred to in the second paragraph.

This transaction enabled the licences with advance-fixed rates to be used for trade between the new Member States A and B and similar licences for trade between the new Member State B (serving as go-between) and one of the original Member States, for which the cereals had always been intended from the start. By this triangular operation, a high ACA was obtained on import into the new Member State B and a low ACA was paid when the goods were imported finally into the Member State of the original Community.

Case 16 : Inconsistency between MCA on products to be processed and MCA on products resulting from processing

An undertaking in Member State A exported hulled maize (tariff subheading 11.02 B II c) to a subsidiary in Member State B. When the goods crossed the frontier, the MCAs were charged on exit from Member State A and on entry into Member State B.

1 t of hulled maize gives 0.980 t of meal
0.020 t of flour.

The two processed products, meal and flour, were shipped back by the subsidiary to the parent company in Member State A.

When the goods were returned, the MCAs granted on the two products processed from one tonne of maize greatly exceeded those charged on the exported maize. The quantities involved in this transaction were high. During the marketing year 1977/78 almost 10 000 t of maize were thus exported and re-imported after processing.

This is not a case of distorted competition because the operation took place between the parent company and the subsidiary. However, the undertaking maintains that it is obliged to have its maize processed by the subsidiary in the other Member State in order to meet competition from meal producers in that Member State.

This case is a particularly striking illustration of the inconsistency of MCAs on products intended for processing and the processed products obtained afterwards.

Case 17 : Delayed introduction of MCAs

Speculative movements developed through the reestablishment of the MCA on durum wheat being delayed.

MCAs applicable to trade in durum wheat were abolished in August 1974 because of the market situation. The situation then developed in such a way that at the beginning of 1977 several traders had begun to make regular profits by importing durum wheat through one Member State and re-exporting it to another. During the first 11 months of 1977, triangular traffic of this kind involved an estimated 52,000 tonnes.

To appreciate the financial benefit to be drawn from these operations, it must be realized that the levy, fixed in units of account, does not reflect the true parities after conversion into the Member States' currencies. The parity is restored by application of an MCA and a monetary coefficient it pays to import goods into the Community through a Member State with a depreciated currency and then to re-export them to another Member State.

Remedial provisions were adopted by the Commission at the end of 1977 : on 25 November 1977 Regulation 2604/77 reintroduced MCAs on the market in durum wheat and derived products, with effect from 2 January 1978. Shortly afterwards, Regulation 2792/77 of 15 December 1977 and Regulation 2917/77 of 28 December 1977 introduced certain temporary measures. In the first few weeks of 1978, durum wheat traffic ceased to afford any financial advantage for operators.

ANNEX III

DETERMINATION OF THE IMPORT LEVY AND EXPORT REFUND

I. DETERMINATION OF THE IMPORT LEVY

A. Purpose of the levy

Article 39 of the Treaty lists market stability, reliability of supplies, fair prices for producers and reasonable prices for consumers as the basic principles of the common agricultural policy.

Agricultural prices (target, intervention and threshold) take these conditions into account and the prices in the Community receive a guarantee as a result of protection at the frontiers, at the threshold price level, which is the lowest level at which a good from non-member countries may enter the Community to reach the Duisburg wholesale market at least at the target price.

Community prices being generally higher than world prices, the difference must be compensated by means of an import levy. This levy represents the difference between the threshold price and the c.i.f. price at Rotterdam, which is the largest Community port and is therefore taken as reference.

The calculation of c.i.f. prices, which determine the levies, thus has a direct effect on the prices within the Community.

The purpose of calculating the c.i.f. price is really to protect the market price level. The staff in the department calculating these prices therefore have a very great responsibility. They have considerable scope for manoeuvre because computer methods obviously do not provide a very detailled picture of the world market.

B) Calculation on the levy (see Table 1, p. 12)

The only function of the levy is to protect the domestic market at the threshold price level of the cereal in question. For the calculation of the levy for each cereal, therefore, only the most favourable and most representative offer, on a given day, on the Rotterdam market, is taken into account.

This is a standard approach which does not exclude real transactions being made at other price levels.

1. Correction of prices by coefficients

The level of the most favourable offer is not, however, taken as it stands; prices are adjusted on the basic of the standard quality.

In order to make the qualities, grades, categories or varieties of imported cereals comparable with the Community standard quality, coefficients of equivalence have been created, which are added to or deducted from the c.i.f. price of a given cereal.

The standard quality is basically the average quality of the cereals harvested in the Community.

Where a cereal is not produced in the Community, the price is determined on the quality usually handled on the world market.

For more than two years there have been no coefficient modifications. The last change for wheat was in 1967, but such a change may occur at any time.

2. Correction on the basis of c.i.f. Rotterdam

Many European ports import cereals and the transport costs vary according to origin and destination. Consequently these costs must be converted to c.i.f. Rotterdam in order to have a single reference.

Example : Transport of durum wheat imported at Genoa from the Gulf of Mexico costs 10 dollars, whereas that imported at Rotterdam costs 7 dollars. Three dollars must therefore be subtracted from the c.i.f. Genoa price.

3. Conversion of the dollar into ECU (see Table 2, p. 13)

After the c.i.f. price has been corrected in accordance with the above criteria, the dollar must be converted into ECU for the comparison with the threshold price.

The method generally used is as follows :

- The Community currencies complying with the rule of a maximum margin of 2.25 % have a central rate which is applied;

- each currency (Community or non-Community) not complying with the 2.25 % rule is evaluated daily in relation to each tied currency (DM, BFR, FF, IRL, HFL, DKR). A weekly average is calculated from the five quotations against each currency complying with the rule of 2.25 %

  The tied currencies each have a central rate, so that, by means of those currencies, a weekly average in ECU of each non-tied currency can be calculated. For each non-tied currency there will therefore be six different values. An arithmetic mean is derived from these six values.

  This value is compared with the green rate of the appropriate non-tied currency. For those currencies not having a green rate (US dollar for example) the comparison is made on the latest rate declared to the IMF.

  If the difference between the rate is x % one week and was more than (x ± 1) % the previous week, the previously calculated rate in ECU (arithmetic average) enters into force. If the difference is less than 1 % the original rate remains in force.

4. <u>Calculation of the levy</u>

After the c.i.f. price has been corrected and converted into ECU, it is compared with the threshold price in ECU and the difference represents the level of the levy.

The margin of error on the c.i.f. price for the major cereals is very small (0.5 ECU/t); the problem in the case of the minor cereals is much more intractable.

5. Effective date

The levy is valid the day following its calculation and the day of its publication, which can be a distorting factor.

It is possible, however, to fix the levy in advance for a period of 45 days in general, but a speculative element exists in such a case. In actual fact, 80 % of the quotations are calculated in advance. Whenever the advance price quotation is lower than that of the current month, a premium is calculated like the levy, the premium is calculated daily (if necessary).

6. Procedure

A number of c.i.f. prices arrive at the Commission each day between 14.30 hrs and 15.00 hrs, either by way of the Member States or directly.

The number of quotations received is in the region of 80 for common wheat, 22 for oats, 4 for buckwheat, 9 for rye, 17 for barley, 60 for maize, 20 for millet, 21 for sorghum and 7 for canary seed (quotations for 20 February 1979). Only one quotation is adopted for each cereal; this is a matter of judjment.

It is also possible to reconstruct the c.i.f. prices if they are thought not to reflect the trend of the market price. The prices in Chicago and Kansas City are taken into accound and the cost of freight to the Gulf of Mexico is then added to obtain a f.o.b. Gulf price. This price is then raised by the cost of freight Gulf to Rotterdam, which shows an example of the reconstructed c.i.f. price.

The decision on the levy must be made between 15.00 hrs and 16.00 hrs.

7. Unity of the levy

Because of the principle of single prices for each type of cereal (target, intervention, threshold) throughout the Community, it would be difficult to vary the levy for a given type of cereal in terms of intended use, quality, origin or destination.

Thus there is only one flat-rate levy per cereal to cope with the complex structure of world prices for that cereal.

However, if a cereal of a particular quality, high-gluten wheat or brewers' barley for example, was to receive a differentiated levy, it would not only be nearly impossible to make checks (similarity of external characteristics, mixture, etc...) but the risk of these better quality cereals driving Community cereals into intervention, exportation or re-exportation would be almost unavoidable.

In fact, none of the derogations at present permitted under the levy system interfere with the principle of unity; what they do is to allow reductions of the levy under specified economic conditions. The 0.50 ECU/t reduction for durum wheat from Morocco and rye from Turkey is an example.

C) Problems raised by determination of the levy

1. Objective information

There are two factors which ensure that the information reaching the Commission is objective.

First, the Commission staff can check the information by comparing it with rates on the American exchanges and quotations on the world market.

Second, competition between operators plays a role.

2. A narrow market

90 % of the market is controlled by a small number of multinational companies which virtually determine world prices. This tendency has become more marked of late and could become a source of concern.

II. DETERMINATION OF THE EXPORT REFUND

A) Purpose of the refund

Cereals prices are generally higher in the Community than on the world market. Export refunds were introduced in order to bring Community prices down to the going rate on the world market and thus to establish conditions of normal competition and enable Community operators to take part in world trade.

Refunds are determined on the basis of the following factors :

- situation and outlook of
  - . cereals prices and supplies on the Community market
  - . cereals prices and cereal product prices on the world market
- the aims of the common market organization in the cereals sector, namely, to maintain a balanced market and to foster the natural development of prices and trade

- the need to prevent disturbances on the Community market
- economic aspect of the exports in question.

Whether or not a refund is called for thus depends on the market situation, which is reviewed periodically in the light of regularly updated forward estimates. The refund performs a buffer function because exports relieve pressure on the market which would otherwise necessitate large-scale intervention.

At the same time, alongside the general, ordinary scheme, the Community authorities seek to protect supplies of common wheat and barley through a refund tendering scheme, which ensures some control over the quantities placed on the world market. More than 70 % of exports of these basic products are covered by this scheme.

B) <u>Determination of the refund</u> (see Table 3 and 3A, pp. 16 and 17).

1. <u>The ordinary refund</u>

The refund rates for various products are specified each week in a Commission Regulation, adopted after consultation with the Management Committee. The refund is the same throughout the Community. It may be varied, however, according to the intended use

or destination of the exported goods.

The rate is not fixed until the export prices most favourable to the Community and an average of the f.o.b.(1) prices on non-member markets, with due regard to quality, have been worked out.

a) Calculation of most favourable export prices

The Commission staff refer to the prices in national currencies of the most favourable export points : Rouen, for common wheat; for early barley, United Kingdom, later France.

Where the price does not seem representative, the Commission staff may work out an f.o.b. price by adding commercial costs and dock, loading charges, etc, for the usual port of the area to the market prices of certain major market centres (Paris, Antwerp, Hamburg, for example).

b) Adjustment by MCA

An MCA is either added to or subtracted from the prices obtained as described in order to make them comparable at all the Community's exit points. For a price expressed in a depreciated currency, the MCA applicable to the product is added; for a price expressed in an appreciated currency, it is deducted.

c) Conversion into dollars (USD)

The prices obtained -which are always in national currency- are converted into USD at the going rate of

(1) Free on board

the exchange market in order to permit comparison with world market prices.

d) Comparison with prices in non-member countries

The USD prices are therefore compared with the f.o.b. prices in USD offered by non-member operators in certain major trading centres (United States, Argentina). The average difference represents the potential refund but is only a guide. At this stage it serves only as a yardstick.

e) Conversion of USD into ECU

Prices in USD must be converted into ECU to be comparable with Community prices. The conversion rate is the same as that determined by the method described p. 3.

f) Determination of the refund

Once the various prices in USD and ECU are known, the refund rate must be determined. It will be somewhere around the average of the differences between the prices calculated, having due regard to quality factors and to the market appraisal by the Management Committee. Determination of the refund is approved by voting, the result of which is not binding for the Community authorities, which take the final decision as to the rate to be applied. A decision may be taken to maintain the rate applied the previous week, but a vote must be taken at least once a month.

g) Differentiation by destination of goods

To restore conditions of normal competition with certain major exporting non-member countries, different refunds may be fixed for different geographical zones, depending on the freight costs involved in reaching them.

h) Effective date

The refund rate is effective on the day after it is fixed and on the day of publication of the regulation in the Official Journal of the European Communities.

The refund can be fixed in advance for the current month plus two months (for basic cereals). Whenever the difference between spot rates and forward rates is too great, the refund is adjusted upward or downward by a correction factor which is worked out for each period.

i) Procedure

The prices obtaining at selected market centres are notified by the Member States (intervention agencies or Ministries of Agriculture). The calculation are carried out by the Commission staff who also draw on their market experience, the trade journals, Reuter messages, and contact with dealers in the Advisory Committee on Cereals.

Objective information is ensured by the fact that only the prices obtaining on major Community and world marketing centres are used. Furthermore, the weekly review system means that decisions can be taken after market trends have been monitored for a few days.

2. Determination of the refund by a tendering system

Where refunds are tendered for, the amount of the refund worked out by the relevant authority (Management Committee or Commission) is confirmed by the tenders made by the operators. The authorities accept only the most favourable tenders up to the maximum rate and/or quantities that they wish to apply. They may disregard all tenders if, ont the basic of the calculations carried out to determine the refunds, the tenders seem not to reflect the real market situation.

The refund may be fixed in advance for the current month plus four months; this period is longer than for the ordinary refund because the Community authorities retain control over the total quantity exported.

Procedures are more complex.

a) Tendering is open for several months and may be extended. Throughout the duration, individual tenders are also submitted.

b) The tenders must reach the Commission, through the authorities in the Member States, not later than an hour and a half after the deadline for the weekly submission of tenders specified in the call for tender.

c) A tender is valid only if :

- before expiry of the period laid down for submission of tenders, proof has been supplied that the tenderer has lodged the tendering security;
- the tender is accompagnied by a written undertaking that, for the quantities approved, an application for an export licence together with an application for the advance fixing of an export refund equal to the amount stated in the tender is lodged within two days of receipt of the notification of acceptance.

d) The tendering security

- is 10 u.a./t.
- is released only if the tender is not accepted or if the tenderer provides proof that the relevant quantity has reached its destination.

All tenders complying with the rules are submitted by the relevant departments of the Member States. It is also these departments that notify in writing all the tenderers of the outcome of their tender as soon as the Commission's decision is reached.

The successful tenderer receives the rate he quoted and may export only the quantities proposed in his tender.

TABLE I

Calculation of the levy for Common wheat

Quality	1.Soft Red Winter 2	2. Hard Winter 2 Ordin.	3. Dark Hard Winter 2/13.5%	4. Northern Spring 2/14%
1. CIF price in dollar/t (ex Rotterdam)	157.00	152.00	153.00	159.00
2. Coefficient of equivalence in ECU/t	(-4.54)	(- 10.89)	(- 13.61)	(- 15.12)
= dollar/t	-6.06	- 14.54	- 18.18	- 20.20
3. Corrected CIF price in dollar/t (1 - 2)	150.94	137.46	134.82	138.80
Average rate 1 USD = 0,748741 ECU				
4. CIF price in ECU/t	113.00	102.93	100.96	103.94
5. Threshold price ECU/t	199.94	199.94	199.94	199.94
6. Levy in ECU/t (5 - 4)			98.98	

TABLE 2

Establishment of world prices

180479 - 240479

1 USD =

Date	BFR/LFR	DKR	DM	FF	HFL	IRL
18.04.79	30.100000	5.286500	1.897000	4.361500	2.056500	0.495540
19.04.79	29.950000	5.265000	1.383400	4.337500	2.043000	0.493340
20.04.79	30.120000	5.294500	1.900000	4.362500	2.056000	0.496030
23.04.79	30.157500	5.300000	1.901600	4.371500	2.060000	0.496770
24.04.79	30.082500	5.284500	1.395400	4.356500	2.054500	0.495590
Average	30.082000	5.236100	1.895480	4.357900	2.054000	0.495454
2. Reference rate 1 national currency =	0.0253433 (central rate)	0.1411250 (central rate)	0.3983050 (central rate)	0.1724640 (central rate)	0.3675430 (central rate)	1.5091200 (central rate)
3. Conversion rate	0.762377	0.746001	0.754979	0.751581	0.754933	0.747700

3 A. Average : 1 USD = 0.752929 ECU (A)

4. in force : 1 USD = 0.748741 ECU (B)

5. Reference rate : 1 USD = 1.002160 ECU (C)

Difference (%) between (B) and (C) : - 33.8 (D)

(A) and (C) : - 33.1 (E)

Difference (D - E) : - 0.7

To be applied from 25.04.79 : 1 USD = 0.748741 ECU

No change

TABLE 3

Marketing year 1978/79 ECU/t CALCULATION OF REFUNDS

Product	Common wheat (°)					Barley			Maize	Oats
Member State	France		U.K.		Netherl.	France	U.K.	Netherl.	France	Netherlands
1. Market price										
2. Centre										
3. Corrective factor -relative density -moisture -broken grains -germinated grains -various impurities TOTAL TO BE DEDUCTED										
4. Corrected price - calculated - notified	186.96	185.99	207.69	202.92	181.73	185.02	193.96	180.84	185.02	151.53
5. Export points										
6. Costs up to fob -commercial costs	3.41	3.41				3.41				
-freight costs a) rail										
b) water										
-dock,loading,etc	1.55	1.55				1.55				
TOTAL FOB COSTS	4.96	4.96	3.81	3.81		4.96	3.81			
7. FOB PRICE (3 + 5)	191.92	190.95	211.50	206.73		189.98	197.77			

(°) -Non-breadmaking wheat

1 ECU = USD 1.33558

TABLE 3 (cont'd)

Marketing year 1978/79 — ECU/t — CALCULATION OF REFUNDS — Type 520 wheat flour — FOB

Member State	France	Belgium	Netherl.	Italy	Germany	U.K.	Denmark
1. Place of quotation	Paris	Antwerp	Rotterd. Antwerp	Padua	Hamburg	London	Copenh.
2. Wheat price corrected free processor	187.93	182.50	182.98	208.70	180.57	202.06	189.24
3. Wheat price converted to flour (1.510 x wheat price)	283.78	275.58	276.30	315.14	272.66	305.11	285.75
4. Milling margin (30.22 ECU x 0.70 x 1.51)	31.95	31.95	31.95	31.95	31.95	31.95	31.95
5. Total (3 + 4)	315.73	307.53	308.25	347.09	304.61	337.06	317.70
6. Bran price x 480 kg	62.73	66.95	60.12	70.90	60.43	82.58	71.58
7. Flour price ex mill (5-6)	253.00	240.58	248.13	276.19	244.18	254.48	246.12
8. Export point	Rouen	Antwerp	Rotterd.	Venice	Hamburg	London	Copenhag.
9. Bagging costs	9.67	9.67	9.67	9.67	9.67	9.67	9.67
10. Costs up to fob							
- freight		4.87	1.67		2.32	9.53	4.84
-commercial costs		7.30	3.86		11.36		
-dock, loading, etc..		12.17	10.03		5.95	19.44	12.09
TOTAL fob costs	27.77	24.34	15.56	21.16	19.63	28.97	16.93
11. Fob price (7+9+10)	290.44	274.59	273.36	307.02	273.48	293.12	272.72
12. FOB price recorded							
13. refund if any (11 - 12)							
14. Difference week of							

ANNEX IV

TECHNICAL SPECIFICATION OF THE STUDY OF COMPUTER DATE PROCESSING SYSTEMS ON IMPORTS/EXPORTS AND ON THE MANAGEMENT AND FINANCIAL CONTROL OF AGRICULTURAL MARKET ORGANISATIONS (CADDIA PROJECT)

I. BACKGROUND

The background of the study is recapitulated in the announcement of the related decision of the Council of Ministers as published in the Journal of the European Communities dated 6.10.1977 on pages L 255/32/35. The decision of the Council is enclosed to this Annex.

The study is one of a number of projects which together are intended to encourage and promote the growth of the data processing industry within the European Community.

The major organisational entities of the Community with which the study will be concerned in their role of system users are :

In the Commission :

Customs Union Service (CUS)
Directorate General for Agriculture (DG VI)
Directorate General for Financial Control (DG XX)
Statistical Office of the European Communities (SOEC)

In Member States :

Ministries of Finance

Customs Administrations

Ministries of Agriculture etc and/or authorized departments or agencies

Statistical Services concerned with external trade.

It should be noted that the way in which the customs, agricultural market and statistical functions are organised, managed and interlinked varies as between one Member State and another. There is no common or preferred pattern.

The study has been given the acronym CADDIA (Cooperation in Automation of Data and Documentation for Imports/Exports and Agriculture) and is referred to as the CADDIA Project.

II. SUMMARY OF OBJECTIVES AND TASKS OF THE STUDY

The main objectives of the study are to explore, report and recommend on the extent to which computer-based systems, including those which exist and are planned in Member States and the Commission, can be developed and interlinked with beneficial effects on the operational efficiency and costs of the administration of the Customs Union and the Common Agricultural Policy, and of the relevant departments in the Member States. The main tasks of the study are outlined below :

a) A survey and analysis of import/export information for the purposes of the Customs Union, and of information for the purposes of managing the agricultural market organis -

ations, including their financial control, required to be exchanged now and in future between :

- Member States and the Commission;
- the Commission and Member States, and third countries;
- the Commission and Member States, and commercial organisations;
- Member States mutually;
- Government departments within Member States.

b) Compilation of an inventory of relevant computer-based systems in use and planned by Member States and the Commission, taking into account functional differences between systems applied to intra- and extra-Community trade.

c) Collation and synthesis of information about work in hand or in prospect, both within and outside the Community, on the development of standards for the interchange of data between computer-based systems, including the definition of data elements, data coding.

d) Collation and synthesis of information about existing and planned data transmission networks of the Community, including the technical protocols and interfacing techniques.

e) Survey of users' requirements in relation to the reliability, security, availability, and performance characteristics of data transmission links.

f) Formulation of guidelines for the development, where such systems do not exist and are not planned, of cost-effective computer-based systems for the processing of the information referred to in task a).

g) Formulation of recommendations for the adoption of standards for use in the interchange of data.

h) Formulation of a development programme for the systematic introduction of data interchanges between the computer-based systems covered by tasks b) and f) above, taking into account the results of task d).

i) Analysis of the systems and computer-based functions covered by tasks b) and f) with a view to the identification of common functional requirements and the formulation of guidelines for the production of general-purpose computer-based solutions.

j) During the formulation of the development programme for data interchange (task h)) and of guidelines for new systems (task f)), the feasibility will be explored of the use of computer-based methods for detecting and preventing irregularities and the fraudulent manipulation of Community procedures for import/export and for the management of the agricultural market organizations.

k) The feasibility will be explored of constructing or extending data bases for agricultural market information.

l) Each proposal and recommendation arising from the tasks will be accomplished by a cost/benefit analysis including an estimate of its resources requirements, covering

human skills, hardware, software, financial costs, and development time, taking into account the availability of the required resources in the environment associated with the implementation of the proposal or recommendation.

III. ORGANIZATION

A) Organization at Community level

A project leader has been appointed who will be responsible to the Commission for the conduct of the complete study. He will make periodic reports to an internal steering body of the Commission.

A Users' Technical Committee drawn from Member States and the relevant services of the Community Institutions will advise and assist the project leader.

The Advisory Committee on Joint DP Projects, drawn from Member States, will advise and assist the Commission in execution of the project.

B) Organization at project level

The contractor will be responsible directly to the Commission's project leader for the timely and successful completion of the work which is the subject of the contract.

Before the contracted work begins it is expected that certain documents relating to previous work on the study, relevant papers covering work on standards for data interchange, and information about public data transmission networks, will have been collected by the Project Leader into a library, which will be placed at the disposal of the study team. The library will be kept up to date by the Commission.

The main elements of the study, showing the boundaries of the contracted part of the work, are set out in schematic form on page 7. The diagram shows the blocks of work with an approximate indication of manpower requirements spread over the 18 month period authorised by Article 2 of the Council Decision (see page 8). In practice the tasks and activities may be overlapped and differently sequenced, bearing in mind the dynamic nature of the areas under study.

SCHEMATIC OF ACTIVITIES AND TASKS

OTHER WORK Not subject to tender Commission's Project Leader and Staff	WORK SUBJECT TO TENDER	Man-months (approx.)	Month No.
Form library of documentation and conduct further research on :	Survey Activities		1
	SA 1 Customs Systems and the associated data flows		2
PL 1 Standards PL 2 Data transmission networks	SA 2 Agricultural Market Systems and their financial control, and the associated data flows		3
	SA 3 Relevant Statistics Systems and the associated data flows	42	4
PL 3 Previous relevant studies	SA 4 Requirements for reliability, security, availability, and performance characteristics in data transmission links		5 6
PL 4 Transnational data regulation	SA 5 Data transmission networks		7
(This work will provide inputs			8
to the work subject to tender)	CA 1 Comparative analysis of results of survey activities	5	9
	Technical Tasks		10
	TT 1 Produce interim feasibility report including systems options	10	11 12
	TT 2 Discuss interim report with users	10	13 14
	Formulate development programme TT 3 | Formulate guidelines for new systems TT 4 | Formulate recommendations on standards TT 5 | Formulate common package proposals TT 6	15	15 16
	DRAFT REPORTS	6	17
	FINAL REPORTS	6	18

COUNCIL DECISION

of 27 September 1977

instituting a study of informatic systems for the processing of data on imports/exports and on the management and financial control of agricultural market organizations

(77/619/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Economic and Social Committee [2],

Whereas, with a view to giving a Community orientation to policies for encouraging and promoting data processing the Council agreed in its resolution of 15 July 1974 on a Community policy on data processing [3] to adopt, on a proposal from the Commission, common projects of European interest in the field of data processing applications;

Whereas, as regards the administration of the customs union and the common agricultural policy, it is essential that import/export data and data on the agricultural market and its financial control are rapidly communicated and processed;

Whereas such a project seems necessary in order to attain certain objectives of the Community within the functioning of the common market;

Whereas the Treaty establishing the European Economic Community has not provided the necessary powers,

HAS DECIDED AS FOLLOWS:

Article 1

A study of informatic systems for the processing of data on imports/exports and on the management and financial control of agricultural market organizations is hereby instituted.

This study is defined in section II of the Annex.

Article 2

The duration of the study shall be 18 months. The appropriations necessary for carrying it out, which shall amount to 722 000 units of account, shall be entered in the budget of the European Communities.

Article 3

The Commission shall be responsible for putting the study into effect. It shall be assisted by the Advisory Committee on Joint Data Processing Projects, hereinafter referred to as the 'Committee'. The Commission shall submit a report to the Council at the end of the study.

Article 4

The award of contracts to organizations which are to perform the work shall be subject to the conditions set out below.

If, following examination of a dossier, the Commission proposes to award a contract, it shall send the Committee a draft decision accompanied by a report.

The Committee shall give its opinion within one month. Opinions shall be delivered by a majority of 41 votes, the votes of the Member States being weighted as provided in Article 148 (2) of the Treaty. The chairman shall not vote.

The Commission shall take a decision which shall be immediately applicable. However, if the decision is not in accordance with the Committee's opinion, it shall be immediately communicated by the Commission to the Council. In this event the Commission shall defer application of its decision by no more than two months from the date of this communication. The Council, acting by a qualified majority, may take a different decision within two months.

Done at Brussels, 27 September 1977.

For the Council

The President

A. HUMBLET

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[1] OJ No C 28, 9. 2. 1976, p. 6.
[2] OJ No C 131, 12. 6. 1976, p. 8.
[3] OJ No C 86, 20. 7. 1974, p. 1.

6. 10. 77 Official Journal of the European Communities No L 255/33

ANNEX

STUDY OF INFORMATIC SYSTEMS FOR THE PROCESSING OF DATA ON IMPORTS/EXPORTS, AND ON THE MANAGEMENT AND FINANCIAL CONTROL OF AGRICULTURAL MARKET ORGANIZATIONS

I. INTRODUCTION

The project covers an in-depth study aimed at determining long-term detailed requirements for a Community framework enabling the Member States and the Commission to develop, and link up to their mutual advantage, informatic systems for the processing of data on imports/exports and on the management and financial control of agricultural market organizations.

The study is scheduled to last 18 months.

1. Background

The Member States and the Commission exchange large volumes of data relating to imports and exports and to certain agricultural transactions. Some of these data, such as agricultural prices, levy rates, imports under quotas etc., are urgently required for the purposes of applying the Community's agricultural and commercial policies. Other data, such as the Common Customs Tariff Nomenclature and foreign trade statistics, are of a more routine nature. Large quantities of information necessary for the administration of the customs union and the common agricultural policy are currently exchanged by letters or telexes which, on receipt in the Member States, in most cases require conversion into yet another form suitable for input into local computers. The Community as a whole could make useful savings if advanced data processing and transmission methods could be used in a coordinated manner in the Commission and the Member States.

Moreover, essential information on agricultural imports and exports and on agriculture is never available in time or in the right form to allow urgent and important Community policy decisions to be taken.

Fraud control is another important area that requires timely information for effective detection.

The majority of the Member States are making rapid progress in the development of informatic systems, some of which are very advanced, to meet the processing requirements of their customs and statistical administrations. Some Member States are also looking into the possibility of using computers more widely in the agricultural sector.

Most Member States have expressed an interest in exploring the possibility of using more advanced data processing and transmission techniques for exchanging information with the Commission. Some Member States are also interested in the direct exchange of certain standard types of import/export data by informatic methods.

The Commission is under an obligation to organize its own informatic methods in such a way as to provide an efficient service suited not only to its own purposes but also to those of the Member States and, as far as possible, compatible with the various systems used by Member States.

Administrative, business and political circles are very interested in the simplification of import/export procedures.

Member States and the Commission will continue to want to develop their own, independent informatic systems in the foreseeable future. These developments cannot reasonably be delayed but an overall Community framework is urgently required so that Community requirements can be fitted into the new systems as they are designed.

2. Work done by the Commission

In the light of the situation outlined above the Commission asked independent consultants to conduct two interrelated preliminary surveys. The first was designed to outline strategies for the development of Community import/export information systems and the second, more specifically, to explore how computers might be used more efficiently in the application, management and financial control of the common agricultural policy.

These surveys confirmed the urgent need for a Community framework for the development of informatic systems for imports/exports and agriculture and indicate in some detail the steps required to develop this framework, as well as a number of short- and medium-term improvements which should be made.

3. Further action required

The need to develop systems to meet short- and medium-term needs is so great that development work by the Member States and the Commission on data and information concerning imports/exports, and on the management and financial control of the agricultural market organizations, needs to be pushed ahead as rapidly as possible. It is envisaged therefore that short- and medium-term measures will be taken where appropriate.

To meet longer-term needs, and in order to establish a Community framework for the development of coordinated and compatible systems, it will also be necessary to carry out a detailed study of the major requirements of the Member States and the Commission. The scale and technical character of this work are such that the normal Community committee machinery needs to be supplemented by a study along the lines outlined above.

The results of the preliminary surveys will help to orientate the in-depth study.

II. CONTENT OF THE PROJECT

Using the information gathered during the preliminary surveys as a basis, and taking account of the fact that the Commission is currently looking into the possibility of applying informatic systems to the management and financial control of agricultural market organizations, the long-term in-depth study will have the following objectives:

— to explore the extent to which import-export systems and informatic systems for the management of the agricultural market organizations which are under development by the Member States and the Commission can appropriately be interlinked to their mutual advantage,

— to assess the scope for, and advantages or disadvantages of defining at Community level standards and codes for the exchange of data between the departments concerned of the Member States on the one hand and importers, exporters and others concerned on the other hand,

— to examine the utility of other cooperative projects.

The project would involve the study by each Member State and the Commission of the following fields in each Member State and the Commission in the order of priority set out below, taking account of the means available. Detailed technical specifications for the study will be worked out later in consultation with the Technical Committee of Users and the project leader. Precise requirements in respect of the management of the agricultural market organizations will be specified in the light of progress made in the work now in hand.

Priority 1:

Exchange of information between the Member States and the Commission.

Priority 2:

Inventory of the basic functions or subsystems of the informatic systems utilized or planned by the Member States and the Commission (such functions will include, for example, currency conversion, control of tariff quotas, etc.). The study must take account of differences between systems for trade between the Member States and trade with third countries.

Priority 3:

Data suitable for exchange with third countries and other parties (airlines, importers etc.) and interface techniques involved.

Priority 4:

Information exchanges between the relevant departments of the Member States.

Priority 5:

Possibilities of utilizing informatic systems in the management and financial control of agricultural market organizations (in so far as they are not covered by the above fields of study).

In the light of the above work, possibilities of other cooperative projects to improve the efficiency of systems and to reduce utilization and development costs would be examined.

Where appropriate, the report to be drawn up should include the following:

— content, timing and volumes of input and output,

— type and content of files,

— processing,

— communications,

— interfaces/links,

— requirements regarding reliability, security, availability and flexibility,

— audit,

— codes and standards,

— recommended action, including alternative strategies and priorities,

— costs, benefits and other implications,

— any other consideration within the framework and along the lines of the study which the Technical Committee of Users may propose be added on the basis of the preliminary studies and progress made in the work, of its experience (in particular of any short- and medium-term action to be taken as a result of these studies), and of Community requirements.

COUNCIL DECISION

of 27 September 1977

amending Council Decision 76/633/EEC setting up an Advisory Committee on Joint Data Processing Projects

(77/620/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the draft Decision submitted by the Commission,

Whereas, by Decision 76/633/EEC (1), the Council set up an Advisory Committee on the Joint Data Processing Projects adopted in its Decision 76/632/EEC; whereas it should be possible for the terms of reference of that Committee to be extended,

HAS DECIDED AS FOLLOWS:

Article 1

In the title of Decision 76/633/EEC, the words 'adopted in Council Decision 76/632/EEC' are deleted.

Article 2

The following Article is added to Decision 76/633/EEC:

'*Article 4*

The Committee shall also carry out the functions delegated to it by the provisions adopted by the Council in the field of the Community policy on data processing in the cases and under the conditions provided for in those provisions.'

Done at Brussels, 27 September 1977.

For the Council

The President

A. HUMBLET

(1) OJ No L 223, 16. 8. 1976, p. 16.

ANNEX V

PROSECUTION OF INFRINGEMENTS OF COMMUNITY RULES IN GENERAL AND RULES ON CEREALS IN PARTICULAR

I. GENERAL

The general aspects of the problem of penalties applicable or applied in the case of infringements of Community rules have been raised many times by the Special Committee of Inquiry, on the last occasion in its report of 1 February 1978 on the FEOGA, Guarantee Section, wine sector (1).

Annex V of this report contains a summary of the recommendations made by the Committee in its various reports, including the report on milk products.

A) The protection under criminal law of the financial interests of the Communities

In the meantime, the draft Treaty amending the Treaties establishing the European Communities so as to permit the adoption of common rules on the protection under criminal law of the financial interests of the Communities and the prosecution of infringements of the provisions of those Treaties, presented by the Commission to the Council on 10 August 1976 (2) has been endorsed by Parliament. In its Opinion, given on 17 January 1979 (3) on the basis of a report by Mr Krieg (4), Parliament stated that it was aware of the need for effective protection of the Community's interests. It therefore approved the system whereby, for the purposes of protection, Community public funds are treated as if they

(1) Doc. XX/6/78, Parts I and II
(2) OJ C 222 - 22.9.1976, p. 2
(3) OJ C 39 - 12.2.1979, p. 30
(4) Working document 498/78

national funds and Community documents as if they were national documents and the system of mutual assistance proposed by the Commission to ensure that infringements of Community law are properly dealt with. The procedure for amendment of the Treaties in accordance with Articles 96 of the ECSC Treaty, 236 of the EEC Treaty and 204 of the EAEC Treaty will now continue at Council level.

B) Measures to be taken in the event of irregularities affecting the Community's own resources

On 19 March 1979 the Commission also presented a proposal to the Council for a Regulation on the measures to be taken in the event of irregularities affecting the own resources referred to in the Decision of 21 April 1970 and the organization of an information system for the Commission in this field (1). The aim of this proposal is to set up a system to combat irregularities affecting the Community's own resources which is similar to the procedure for irregularities in the field covered by common agricultural policy schemes financed by the FEOGA (Regulation No 283/72 - OJ L 36, 10.2.1972).

The proposal for a Regulation of 19 March 1979 provides that the Commission should be informed automatically in quarterly or half-yearly reports of the nature of irregular practices affecting own resources and their financial effect. Each Member State will also be required, pursuant to Article 10 of the proposal for a Regulation, to inform the other Member States concerned and the Commission of irregularities established or presumed where there is a reason to fear that they will have repercussions outside its own territory and of irregularities re-

(1) OJ C 88, 4.4.1979, p. 4

vealing the use of a new practice.

II. PENALTIES APPLIED IN MEMBER STATES IN CONNECTION WITH CEREALS

A) General aspects

In all Member States certain infringements of the provisions on cereals may be prosecuted under criminal law, customs law or tax law. This applies in particular to false customs declarations enabling importers or exporters of cereals to claim benefits to which they are not entitled. These infringements can also give rise to damages under the civil law of the Member States.

Moreover, some Member States (Federal Republic of Germany, Luxembourg) have also passed general laws dealing with all infringements of Community rules. The Belgian Government has recently introduced a draft law on control measures and measures to prevent infringements of obligations to the European Communities, with penalties of imprisonment from eight days to six months or fines up to BFR 1 million.

The Italian Government has submitted a draft law to the Italian Parliament enabling certain Community directives to be transformed into national legislation by Decrees having the force of law, including Directive 77/435 on the scruting by Member States of transactions forming part of the system of financing by the Guarantee Section of the (1). This draft law provides that the Government may include in these Decrees administrative and criminal-law sanctions for infringement of their

(1) Council Directive 77/435/EEC, OJ L 172, 12.7.1977, p. 17

provisions which may consist of a fine of up to Lit 2 million and a prison sentence of up to a year.

Other Member States, such as France, prefer to pass specific legislation tailored to each case as a result of which each Community infringement ranks as a corresponding infringement of domestic law.

The Special Committee of Inquiry has already analysed the various systems for dealing with infringements while examining other agricultural sectors; a summary of this analysis can be found in Annex V of the report on the wine sector.

These analyses showed that the use of the machinery provided for by criminal law in the Member States is not always enough to ensure that infringements of Community regulations are properly dealt with; Community public funds are not accorded the same status as national funds in all Member States in all respects and this is one of the reasons why the Treaty mentioned in point I.A. of this Annex has been drafted.

It may also be difficult to establish proof of intention that is usually required before penalties for fraud can be imposed under ordinary law.

Thus the Federal Republic of Germany has introduced into its criminal code a special offence known as the "Subventionsbetrug" to deal more easily with fraudulent statements relating to matters connected with the granting of subsidies.

In certain Member States (Federal Republic of Germany, Italy) unlawful behaviour not constituting criminal acts (e.g. irregularities in accounts) can be dealt with by the imposition of administrative penalties and, in other Member States (e.g. Ireland and United Kingdom), through the civil courts.

B) Specific aspects

As regards the specific aspects of infringements of the Community's rules on cereals, three areas - that of trade in cereals, that of intervention measures and that of production aids - can be distinguished.

1. Infringements in connection with trade

Infringements in connection with trade are based often on a false customs declaration and when the purpose of these false declarations is to enable the exporter to obtain undue export refunds or the importer to evade levies or other duties on entry, the penalty laws apply in all Member States, and the offender may still face prosecution for forgery, uttering forged documents or making false statements.

In most Member States the monetary compensatory amounts rank as customs duties, so that law on the evasion of customs duties applies in the normal way. In Italy, however, there is no specific text stating that for these purposes MCAs are customs duties and to treat them as such would infringe the principle that sanctions imposed under criminal law must be strictly in accordance with the law. Offences relating to monetary compensatory amounts can, however, in Italy too, entail administrative penalties, but of a pecuniary nature only.

2. Intervention

As regards intervention, failure to meet obligations contracted on buying into intervention or storage of cereals can entail an action for damages in all Mem-

ber States, the recovery of storage aid paid and the application of the Criminal Code in respect of any ordinary-law offences such as fraud which may have been committed.

In some Member States infringements of Community rules may also result in the application of the criminal law or administrative penalties provided for in special legislation designed to ensure that Community law is complied with :

In Denmark, Article 16 of Law No 595 of 22 December 1972 implementing EEC rules on the common organizations of agricultural markets applies as amended by Law No 150 of 24 April 1975. It includes penalties under criminal law for inaccurate or misleading reporting and for infringement of quality standards.

In Germany, Article 31 of the 1972 law on market organization provides for the application by analogy of criminal law sanctions and administrative fines under the fiscal code (Abgabenordnung). Article 32 defines as administrative infringements subject to fines, infringements of Community rules on the obligation to provide complete and accurate information and to keep special accounts (1).

In the other Member States only the penalties for breach of contract can be used to deal with irregilarities connected with intervention which do not constitute offences coming under ordinary law.

Thus in France, contractual penalties of FF 20 per tonne are demanded if goods which have been the subject of an application for intervention are not actually presented, unless proper reasons can be given.

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(1) See also Annex V, pp. 3 and 4, of the Committee's Report on the wine sector

In the Netherlands, the contract for sale into intervention stipulates the payment of a flat-rate compensation of HFL 10 per tonne if the goods delivered for intervention are incomplete or arrive late.

3. Production aid

The question of production aid covers production aid for durum wheat and the production refunds for cereals, for use by certain industries (see Chapter V).

As regards production refunds, failure by the persons concerned to meet the obligations imposed by Community law with regard to the quality and quantity of the basic products or the processed products, to the placing of basic products under official supervision and to their proper processing and use are dealt with under Community legislation by forfeiture of the security lodged by the person concerned.

In all Member States criminal-law sanctions are applicable for fraud and uttering forged documents.

In the Federal Republic of Germany, the relevant departments, pursuant to general rules concerning business offences, require each party concerned to sign a declaration to the effect that the statements made by him are accurate and that he is aware that if they are inaccurate he may be prosecuted for fraud (Subventionsbetrug).

However, certain Member States (Denmark, United Kingdom) have provided for specific sanctions.

In Denmark, infringements relating to the placing of basic cereals under supervision and the quality of maize groats and meal are liable to prosecution under

Law No 595 of 22.12.1972 and in accordance with Article 7 of the Order by the Minister of Agriculture No 385 of 3.8.1978 on production refunds for cereals, maize and broken rice for use in special products.

In the United Kingdom, operators claiming production refunds have to register with the Intervention Board for Agricultural Produce. The names of operators attempting to deceive the Board or committing other serious offences may be removed from the register.

The system of placing basic cereals in storage under customs surveillance enables customs law to be applied in some Member States, for example in Italy, where the provisions on production refunds for cereals (Article 17 of the Decree of 20 February 1968 amended by Law No 224 of 18 March 1968) refer to the rules applicable under customs law.

As regards aid for durum wheat no special sanction is applied in the countries concerned (France and Italy) except the recovery of the aid unduly paid and prosecution for any possible acts of fraud.