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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 December 1975

authorizing the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands not to apply Community treatment to imports of socks of synthetic fibres falling within heading No ex 60.03 of the Common Customs Tariff, originating in the Republic of Korea and in free circulation in Italy and the Federal Republic of Germany

(Only the French and Dutch texts are authentic)

(76/245/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first paragraph of Article 115 thereof,

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 1 December 1975 by the Governments of the Benelux countries to the Commission by telex from the Office of the Permanent Representative of the Kingdom of the Netherlands to the European Communities, for authorization not to apply Community treatment to imports of socks of synthetic fibres falling within heading No ex 60.03 of the Common Customs Tariff, originating in the Republic of Korea and in free circulation in Italy and the Federal Republic of Germany,

Whereas in certain areas of the Community, particularly the Benelux countries and Germany, imports of the product in question originating in the Republic of Korea may not exceed 6 500 000 and 22 000 000 pairs respectively for the period from 24 May 1975 to 31 December 1975, as laid down by Commission Regulations (EEC) No 1295/75⁽¹⁾, (EEC) No 1466/75⁽²⁾ and (EEC) No 3045/75⁽³⁾, while no restrictive measures have been adopted for the rest of the Community;

Whereas these disparities in import opportunities have caused in the Benelux countries a flow of indirect trade in socks of synthetic fibres originating in the Republic of Korea and in free circulation in Italy and the Federal Republic of Germany;

Whereas this flow of indirect trade threatens to grow as a consequence of the expiry of the existing import arrangements and the implementation from 1 January 1976 of the agreement between the Community and the third country in question, laying down all necessary provisions for avoiding distortions of the market;

Whereas according to information supplied by the Governments of the Benelux countries there are serious economic difficulties in the branch of the textile industry concerned, resulting in a progressive decline of production and a constant reduction of the number of workers employed in that sector;

Whereas these economic difficulties are caused largely by unequal conditions of competition with certain countries (including the Republic of Korea), whereby such countries are enabled to export at prices lower than those of producers in the Benelux countries;

Whereas the indirect imports in question, which would be in addition to those already effected, would be likely to aggravate these economic difficulties;

⁽¹⁾ OJ No L 132, 23. 5. 1975, p. 32.

⁽²⁾ OJ No L 146, 7. 6. 1975, p. 14.

⁽³⁾ OJ No L 302, 22. 11. 1975, p. 26.

Whereas it is not possible at the present time to set in motion the machinery for bringing about the necessary cooperation from the Federal Republic of Germany;

Whereas authorization should be given, for a limited period, for the application of protective measures, under the first paragraph of Article 115,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands are authorized not to apply Community treatment to imports of the following product:

CCT heading No	Description of goods
ex 60.03	Socks of synthetic textile fibres

where they originate in the Republic of Korea and are in free circulation in Italy and the Federal Republic of

Germany, and in respect of which applications for import licences were lodged after 18 November 1975.

Article 2

This Decision shall apply until 31 December 1975.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

Done at Brussels, 5 December 1975.

For the Commission

Finn GUNDELACH

Member of the Commission

COMMISSION DECISION

of 8 December 1975

authorizing the Italian Republic not to apply Community treatment to woven fabrics of cotton other than gauze or terry towelling and similar terry fabrics, unbleached, falling within heading No ex 55.09 of the Common Customs Tariff, originating in the Republic of Korea and Taiwan and in free circulation in the Benelux countries and the Federal Republic of Germany

(Only the Italian text is authentic)

(76/246/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first paragraph of Article 115 thereof,

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 28 November 1975 by the Italian Government to the Commission by telex from the Office of its Permanent Representative to the European Communities, for authorization to apply protective measures to imports of certain cotton products falling within heading No ex 55.09 of the Common Customs Tariff, originating in the Republic of Korea and Taiwan and in free circulation in the Benelux countries (in particular the Netherlands) and the Federal Republic of Germany,

Whereas the products in question originating in the Republic of Korea continue to be imported into the Community under the voluntary restraint arrangements defined in the Agreement concluded with that third country on 29 March 1971 ⁽¹⁾, which expired in 1973, within the limits of the ceilings specified in the Agreement, increased in accordance with the provisions of the new arrangement concerning international trade in textiles;

Whereas imports into the Community of such products originating in Taiwan are subject to a Community quota established by Council Regulation (EEC) No 1783/75 of 10 July 1975 ⁽²⁾ and allocated among the Member States by Commission Regulation (EEC) No 1849/75 of 18 July 1975 ⁽³⁾;

Whereas, since it was not possible to achieve full alignment of the import arrangements previously applied in the Member States, there are disparities in the conditions governing the importation of the products in question, originating in the abovementioned third countries, into the various markets within the Community;

Whereas these disparities have caused in Italy a flow of imports of the products in question, originating in the Republic of Korea and Taiwan and in free circula-

tion in the Benelux countries and the Federal Republic of Germany, which threatens to continue and to grow;

Whereas according to information supplied by the Italian Government there are serious economic difficulties in the branch of the textile industry in question resulting in a progressive decline of production leading to unemployment in a number of factories;

Whereas the indirect imports in question, which would be in addition to those already effected in the current year, would be likely to aggravate these economic difficulties;

Whereas it is not possible at the present time to set in motion the machinery for bringing about the necessary cooperation from the Netherlands and the other Benelux countries and the Federal Republic of Germany;

Whereas authorization should accordingly be given, for a limited period, for the application of protective measures, under the first paragraph of Article 115,

HAS ADOPTED THIS DECISION:

Article 1

The Italian Republic is authorized not to apply Community treatment to imports of the following product:

CCT heading No	Description of goods
ex 55.09	Woven fabrics of cotton other than gauze or terry towelling and similar terry fabrics, unbleached

where they originate in the Republic of Korea or Taiwan and are in free circulation in the Benelux countries and the Federal Republic of Germany, and in respect of which applications for import licences were lodged after 19 November 1975.

⁽¹⁾ OJ No L 55, 8. 3. 1971, p. 12.

⁽²⁾ OJ No L 182, 12. 7. 1975, p. 2.

⁽³⁾ OJ No L 189, 21. 7. 1975, p. 24.

Article 2

Done at Brussels, 8 December 1975.

This Decision shall apply until 31 December 1975.

For the Commission

Article 3

Finn GUNDELACH

This Decision is addressed to the Italian Republic.

Member of the Commission

COMMISSION DECISION**of 23 December 1975**

authorizing the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands not to apply Community treatment to certain under garments, knitted or crocheted, not elastic or rubberized, other than shirts, falling within heading No ex 60.04 originating in Taiwan and in free circulation in the French Republic

(Only the French and Dutch texts are authentic)

(76/247/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first paragraph of Article 115 thereof,

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 19 December 1975 by the Governments of the Benelux countries to the Commission by telex from the Office of the Permanent Representative of the Kingdom of the Netherlands to the European Communities, for authorization not to apply Community treatment to certain under garments, knitted or crocheted, not elastic or rubberized, other than shirts, falling within heading No ex 60.04 of the Common Customs Tariff, originating in Taiwan and in free circulation in France,

Whereas imports into the Community of the products in question originating in Taiwan are subject to a Community quantitative quota established by Council Regulation (EEC) No 1783/75 of 10 July 1975 on rules for imports of certain textile products originating in Taiwan ⁽¹⁾;

Whereas this quota is administered by allocation among the Member States, as determined by Commission Regulation (EEC) No 1849/75 of 18 July 1975 allocating quantitative quotas in respect of imports into the Community of certain textile products originating in Taiwan ⁽²⁾; whereas the quota shares allocated for 1975 to the Benelux countries and the French Republic are 252 metric tons and 18 metric tons respectively;

Whereas, since it was not possible when the Community quota was opened to achieve full alignment of the import arrangements previously applied in the Member States, the above Regulation (EEC) No 1783/75 provides, as a temporary measure, for a derogation from the principle of equal and continuous access for all Community importers to Community

quotas by stipulating that the quota in question be allocated initially on the basis of the volumes of imports previously admitted into the various Member States and that it need be adjusted only progressively to the supply requirements of the markets;

Whereas for this reason the allocation of the quota in question still involves certain disparities in the quota shares fixed for the various Member States by reference to the supply requirements of the markets concerned;

Whereas these disparities have caused in the Benelux countries a flow of imports of the products in question, originating in Taiwan and in free circulation in the French Republic, which threatens to continue and to grow;

Whereas according to information supplied by the Governments of the Benelux countries there are serious economic difficulties in the branch of the textile industry concerned, resulting in a progressive decline of production and a constant reduction of the number of workers employed in that sector;

Whereas these economic difficulties are caused largely by unequal conditions of competition with certain countries (including Taiwan), whereby such countries are enabled to export at prices lower than those of producers in the Benelux countries;

Whereas the indirect imports in question, which would be in addition to those already effected, would be likely to aggravate these economic difficulties;

Whereas it is not possible at the present time to set in motion the machinery for bringing about the necessary cooperation from the French Republic;

Whereas authorization should be given, for a limited period, for the application of protective measures, under the first paragraph of Article 115, subject to the conditions laid down by the Commission Decision of 12 May 1971 ⁽³⁾, and in particular Article 1 thereof,

⁽¹⁾ OJ No L 182, 12. 7. 1975, p. 2.

⁽²⁾ OJ No L 189, 21. 7. 1975, p. 24.

⁽³⁾ OJ No L 121, 3. 6. 1971, p. 26.

HAS ADOPTED THIS DECISION :

Article 1

The Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands are authorized not to apply Community treatment to imports of the following products :

CCT heading No	Description of goods
ex 60.04	Under garments, knitted or crocheted, not elastic or rubberized, other than shirts, excluding slips, knickers and panty-hose, commonly known as tights

where they originate in Taiwan and are in free circulation in the French Republic and in respect of which applications for import licences were lodged after 14 December 1975.

Article 2

This Decision shall apply until new opportunities arise in the Benelux countries for the importation of the products in question from Taiwan and in any case not later than 31 December 1975.

Article 3

This Decision is addressed to the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands.

Done at Brussels, 23 December 1975.

For the Commission

Finn GUNDELACH

Member of the Commission

COMMISSION DECISION

of 23 December 1975

relating to a proceeding under Article 85 of the EEC Treaty (IV/26.940/a — United Reprocessors GmbH)

(Only the English, French and German texts are authentic)

(76/248/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962⁽¹⁾, and in particular Articles 6 and 8 thereof,

Having regard to the notification made on 11 October 1971 and supplemented on 28 September 1973, pursuant to Article 4 (1) of Regulation No 17, by Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH (KEWA) Frankfurt-am-Main, Germany, concerning an agreement concluded on 12 October 1971 and amended on 31 July 1973 between British Nuclear Fuels Limited (BNFL), Warrington, United Kingdom, the French Commissariat à l'Énergie Atomique and KEWA relating to the establishment of United Reprocessors GmbH (URG),

Having regard to the summary of the notification published, as required by Article 19 (3) of Regulation No 17, in the *Official Journal of the European Communities* No C 83 of 16 July 1974,

Having regard to the opinion of 27 February 1975 delivered by the Advisory Committee on Restrictive Practices and Dominant Positions pursuant to Article 10 of Regulation No 17,

Whereas :

I

1. The agreement can be summarized as follows :

The parties shall establish a joint company, called United Reprocessors GmbH, with equal capital participation and having as its principal purposes the marketing of oxide fuels reprocessing services and the arrangement of associated transport services (the purpose of reprocessing irradiated nuclear fuels is to recover the fissile materials, uranium 235 and plutonium, which still contain after irradiation in nuclear reactors and which can be reused in manufacturing

nuclear fuels). It may also offer ancillary services such as the processing of recovered materials (e.g., the conversion of uranium into uranium hexafluoride). Subject to the unanimous consent of its board, it may undertake the purchase of uranium and plutonium recovered. From 1975 onwards its field of activity will be worldwide. About the year 1980, the joint company will consider, together with those groups contemplating investment in new reprocessing plants in Europe, whether it would be advisable to extend its functions into the field of operation and ownership of reprocessing plants. The parties undertake not to operate in the field of oxide fuels reprocessing otherwise than through the joint company. The shareholders of KEWA shall endeavour, after completion of the existing contractual obligations, not to use any longer for oxide fuels their reprocessing plant at Karlsruhe.

KEWA shall refrain from investment in an oxide fuel reprocessing plant which is due to come on stream before the fill-up year of the British and French plants (Windscale and La Hague). In return it shall receive the option of building a plant with an annual output capacity of some 1 500 metric tons to become operational at that date. BNFL and the CEA each agrees not to raise its annual capacity for reprocessing oxide fuels above 800 metric tons, unless by the other partners. The parties shall determine a common position when the need for further investments becomes apparent.

Until the fill-up date of the British and French plants, these plants will share equally between themselves unless otherwise agreed the fuel to be reprocessed after the fuel from certain power stations specified by name has been allocated to La Hague. The English and French plants are guaranteed work to at least 80 % of their capacity in the first year after the start up of the German plant, and to 90 % thereafter.

A Board composed of representatives of the parties will determine the principles of the joint company's marketing policy and the allocation of the reprocessing work between the plants of the parties. The joint company will be remunerated by a fee, decided by the Board, sufficient to cover its expenses.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

The partners shall conclude arrangements for the exchange of know-how and the granting of licences in the field of oxide fuels reprocessing.

The agreement is open to participation by other European parties with significant interests in reprocessing, in principle up to a quarter of the capital of the joint company. The company will moreover attempt to negotiate with any organization committing investment in a reprocessing plant in Europe before commissioning of the KEWA plant with a view to their joining the company.

Any party may withdraw from the joint company, but not before 31 December 1986, provided that it shall have given not less than one year's notice. The joint company is formed for an unlimited duration.

2. The situation and trends on the oxide fuels reprocessing market can be summed up as follows :

- (a) The relevant market extends to all the European countries with free market economies, taking into account the present state of technology on the reprocessing, transport and storage of irradiated fuels and wastes ; the future supply and demand situation for reprocessing in other European countries is not known ; moreover, political barriers (plutonium being usable for military purposes) will in all probability prevent irradiated fuels from being traded freely between East and West ; the United States, for instance, currently prohibits the reprocessing of United States' fuels outside the country.
- (b) Oxide fuels reprocessing services in Europe are offered by plants financed entirely or extensively by public authorities, which have also defrayed all research and development costs ; States generally regard reprocessing as a critical link in the nuclear fuel chain and therefore wish to have access to adequate reprocessing capacity, whether alone, or in conjunction with other States.

The following plants are already in existence or are being planned :

- a capacity of some 800 metric tons/a at Wind-scale, England, due to go on stream in 1982 ;
- a capacity of 800 metric tons/a at La Hague, France, to be brought into operation by stages between 1976 and 1978 ;
- a 40 metric tons/a plant at Karlsruhe, operated by GWK (Gesellschaft zur Wiederaufarbeitung von Kernbrennstoffen), whose shareholders are

the same as KEWA's. Under the agreement, oxide fuels for light-water reactors will no longer be reprocessed here once the La Hague plant is in operation ;

- a plant of a capacity of some 70 metric tons/a at Mol, Belgium, belonging to Eurochemic (European Company for the Chemical Processing of Irradiated Fuels) — a company formed by 13 European countries ; however, the Board of Directors decided to shut this plant down at the end of June 1974. There is currently a plan to replace this plant by one of 300 metric tons/a, a first unit of 150 metric tons/a coming on stream in 1981 ;
- a pilot plant for some 25 metric tons/a (Eurex I) in Italy ; however, until at least 1977 this plant will be working on the development of new processes. Another unit (Eurex II) on an industrial scale is being planned, but no dates have yet been fixed.
- (c) Demand for the reprocessing of uranium oxide fuels in Europe depends on the installed capacity of light-water (boiling or pressurized) nuclear reactors and, in certain cases, the first fast breeders, which use a mixture of uranium and plutonium oxides. The first fuels come up for reprocessing between three and four years after a reactor goes on stream.
- (d) In preparing the following table, which sets out forecasts of supply and demand for oxide fuels reprocessing services in all European countries, the degree of uncertainty, surrounding the estimates meant that no single figure could be given ; in each case a 'high' and a 'low' variant appear. The low variant for supply takes account of the shut-down of the Eurochemic plant and an average two-year delay in bringing currently planned reprocessing units on stream ; such delays are quite likely in view of the number of technical unknown factors still to be dealt with in this area. The high variant for demand is based on the nuclear power plant construction programmes known of at the end of 1974, while the low variant assumes an average one-year delay in such programmes, to allow for economic factors and siting and ecological problems.

The table shows that demand for reprocessing will be growing rapidly, so making desirable the commissioning in 1984 of the large-scale German plant envisaged by the URG agreement.

Approximate forecasts of capacity and requirements for reprocessing oxide fuels in Europe

(metric tons/a)

Capacity (1)	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Germany	40	—	—	—	—	—	—	—	—	500	1 000	1 500
France	—	150	400	800	800	800	800	800	800	800	800	800
United Kingdom	—	—	—	—	—	—	—	400	800	800	800	800
Italy	—	—	—	25	25	25	25	25	25	25	25	25
Eurochemic	—	—	—	—	—	—	150	300	300	300	300	300
<i>Total H</i>	40	150	400	825	825	825	975	1 525	1 925	2 425	2 925	3 425
<i>L</i>	40	40	40	150	400	825	825	825	825	1 225	1 625	2 125
DEMAND												
<i>Total Europe H</i>	135	175	260	420	615	885	1 235	1 730	2 345	2 965	3 605	4 400
<i>L</i>	135	135	175	260	420	615	885	1 235	1 730	2 345	2 965	3 600
Belgium	5					30					130	
Denmark	—					—					20	
Germany	55					230					890	
France	5					100					780	
Ireland	—					—					15	
Italy	10					30					310	
Luxembourg	—					—					30	
Netherlands	—					10					35	
United Kingdom	—					170					240	
<i>Community</i>	75	90	135	275	440	570	775	1 100	1 520	1 970	2 450	2 955
Spain	19					93					370	
Sweden	12					140					336	
Switzerland	28					52					197	
Other countries (2)	—					33					250	

(1) Assuming the URG agreement is applied.

(2) Finland, Greece, Norway, Austria, Portugal, Turkey.

(e) In addition to the description of the present situation and future outlook on the market given above, some particulars as to the specific nature of this industry are called for:

— The oxide fuels reprocessing industry is just getting under way: demand, which can be forecast up to 1985 as accurately as can plans for building nuclear power stations working on uranium oxide fuels, will rise in Europe from some 135 metric tons in 1975 to some 800 metric tons in 1980 and 3 300 metric tons towards 1985, any margin of uncertainty depending directly on progress in nuclear power station building programmes; as regards supply, the experimental stage (low-capacity plant, conversion of existing plant) is giving way to the industrial stage (construction of high-capacity units designed for the reprocessing of oxide fuels).

— Other economic factors characterizing the reprocessing industry are, firstly, the scale of the capital tied up (at 1975 prices it is estimated that it would cost some 400 million units of account to build a plant with a capacity of 1 500 metric tons/a); secondly, the fact that costs decrease sharply as plants increase in size (this is the scale effect: the cost per kilogramme of reprocessed fuel in a 1 500 metric tons/a unit working at full capacity is substantially lower than half that in a 300 metric tons/a unit; a fivefold increase in capacity leads to less than a twofold increase in tied-up capital); and thirdly, the preponderance of fixed costs in total costs (it is estimated that two-thirds of the cost of reprocessing fuel is accounted for by depreciation and loan servicing costs, the other third consisting in roughly equal proportions of operating costs and variable costs; thus fixed costs account for some 80 % of total cost at full capacity working). As a result of the second and third

factors, future reprocessors are likely to consider building only plants with a capacity of the order of 1 500 metric tons/a (possibly divided into two separate production units for operational safety reasons) which, from the time of coming on stream, are assured of a load factor of at least 50 %.

The reprocessing market, which can be expected to grow over the next few years along the lines indicated above, will not be able, before 1984, to absorb more than a single 1 500 metric tons/a unit in addition to the two 800 metric tons/a units already working or planned. Only then will the market, which will continue to expand at an increasing rate, have room for the installation of a 1 500 metric tons/a plant every two years.

- The governments of most European countries have taken the view that, although reprocessing accounts for not more than 7 % of the total cost of the nuclear fuel cycle (and therefore less than 3 % of the cost of a kWh), it was necessary to master this field of technology both on ecological grounds — irradiated fuels and waste being highly radioactive products which must be processed and stored in conditions of absolute safety — and from considerations of energy policy — recycling recovered products helps to bring about an appreciable drop in demand for natural uranium (10 % in 1985 and even more later). Accordingly, individually or in concert, they have committed major research and development expenditure in this field.
- In most countries, the electricity-producing companies, which are the only customers of reprocessing plants, are controlled by central or local authorities. This could considerably reinforce the trend towards building plants designed to meet national requirements, and thus towards the segregation of markets.

Hitherto, however, the economic importance of electricity generating companies — which supply all or most of the territory of a given country — has enabled them to preserve or even enhance their degree of management independence in relation to the public authorities. In any event there is no doubt that with their extensive research and marketing departments they will be negotiating with reprocessors from a position of substantial strength.

II

Article 85(1) of the Treaty prohibits as incompatible with the common market all agreements between

undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

The agreement between BNFL, CEA and KEWA is such an agreement, in that :

1. The primary object of the agreement is to coordinate investments relating to the reprocessing of oxide fuels by the parties, and each party undertakes to refrain from making any investment outside the programme, which as regards the first few years is laid down in the agreement and for subsequent years is to be decided jointly. The agreement provides that, initially, KEWA will not commission any new plant before the fill-up year of Windscale and La Hague (1981 or 1982) and that BNFL and CEA will not increase their reprocessing capacity beyond 800 metric tons/a without the agreement of the other parties. Afterwards, once the KEWA plant is on stream, KEWA will submit any new investment to the unanimous agreement of the parties.
2. Another object of the agreement is to fix prices for oxide nuclear fuels reprocessing services, for it provides for centralizing within a joint subsidiary, URG, the supply of the services and the joint adoption by the parties of the marketing policy to be followed by URG.
3. Finally, the agreement has as its object the allocation of reprocessing work between the parties' plants, initially in equal shares — subject to certain conditions — between the French and British parties until the fill-up date of their plants, after which they are assured that even following start-up of the German plant they will not be working at less than 80 % and later 90 % of capacity.
4. The provisions of the agreement to the effect that the parties shall make arrangements for exchanging know-how and granting licences are likely to restrict competition in that binding commitments resulting from these arrangements might restrict the freedom of action of the parties in research and development in an industry where the technologically most advanced firm has a decisive advantage on the market and where competition in research is therefore of ultimate importance.
5. In more general terms, the agreement affects competition between the parties, since each of them undertakes not to operate in the field of reprocessing oxide fuels otherwise than through the joint subsidiary.

6. The provision in the agreement that the joint subsidiary will attempt to bring into the agreement any organization committing investment in a reprocessing plant in Europe before KEWA begins building its 1 500 metric tons/a unit means that all potential reprocessors in the common market are likely to be involved in coordinating investments, the joint marketing of services and the distribution of reprocessing work.

7. The agreement, which is concluded between three parties which have or are to have plants established in three different Member States, also provides for sharing the reprocessing of fuels between their plants; it therefore directly affects the supply of reprocessing services between Member States.

III

Under Article 85(3), the provisions of Article 85(1) may be declared inapplicable to any agreement which contributes to improving the production or distribution of goods or to promoting technical and 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.

The agreement between BNFL, CEA and KEWA is such an agreement, for:

1. The agreement contributes to improving the production and distribution of reprocessing services and to promoting technical and economic progress:

- (a) By coordinating investments, the agreement ensures that uneconomic plants will not be set up and enables the parties to wait until market conditions are most favourable before setting up high-capacity plants; this reduces costs considerably because of the substantial scale effect in this industry, and the projects also benefit from the very latest technical progress.

The coordination of investment also has a decisive impact on cost by improving the load factor of existing and future plants and by reducing in the same proportion the burden of fixed costs, which account for a major proportion of the total cost of reprocessing.

- (b) Furthermore, the fact that supplies of reprocessing services by the three parties are centralized on their joint subsidiary and the flexibility permitted by centralizing the operation of the three plants helps to improve the service offered to consumers by raising safety standards and by stabilizing irradiated fuels reprocessing services. This last point is important in that the steady arising of irradiated fuels is inevitable. They are highly radioactive and the time required for reprocessing is governed by technological factors; among other things, storage pools at nuclear power stations are only of limited capacity, so that if reprocessing services were not available it would be necessary either to shut the power station down or to construct very expensive additional pools. Moreover, the range of services offered by URG will be broader, and each customer will be able to benefit from the experience acquired by the three parties in reprocessing the various types of oxide fuels.

- (c) By combining research efforts, the agreement will help progress to be made as quickly as possible in a new branch of technology where further developments are still awaited on a number of points (reprocessing of new fuels, transport, storage of waste), while helping to reduce operating costs and to improve the general standard of service.

- (d) The fact that plants of optimum size can be built and can work with optimum load factors through the coordination of investments and centralization of supplies and work planning means that, at least in the medium term, the reprocessing industry can be made profitable in Europe. The circumstances will thus be created in which the parties will be able to develop their activities in this field on a sound economic footing.

2. The agreement allows consumers a fair share of the resulting benefit:

By exerting beneficial pressure on costs and by guaranteeing the stability of the provision of reprocessing services, the agreement will open the way to an eventual drop in prices charged to users, in this case electricity producers. By means of the conditions and obligations which it will impose on the parties and through its subsequent supervision, the Commission will ensure that no behaviour of the parties can prevent users from receiving their share of the resulting benefit. Moreover the electricity producers will use their economic strength to exert pressure in the same direction.

3. The agreement imposes no restrictions of competition which are not indispensable to the attainment of these objectives :

- (a) In view of the specific characteristics of the reprocessing industry and of the way the market is likely to develop, it is indispensable to coordinate investments if capacity levels are to be set having regard only to economic and commercial requirements.

In the absence of an agreement to coordinate investment it is to be feared that certain States would rapidly take an incoherent series of decisions to finance from their national budgets plants which would be either too small or in advance of market requirements, thus preventing any plant in the common market from quickly reaching its optimum load factor. This would certainly harm the Community's interests, for the reprocessing industry would then get structured on the basis of national rather than Community requirements.

The three governments concerned supported the conclusion of the agreement in order to avoid becoming engaged in wasteful competition against the public interest. This was particularly so in respect of the German Government, which wishes to promote the industrial exploitation of the research it has been carrying out and would otherwise encourage the building of a national industrial-scale plant. The agreement, without entailing new expenditure, meets its wish to ensure that German private enterprise shall have access to the technology and subsequently be able to enter the reprocessing market under optimum economic and industrial conditions.

The coordination of investments is therefore to be regarded as indispensable for a period assuring, for each of the plants covered by the agreement, an economically satisfactory load factor before any other plant is commissioned.

The Commission will monitor developments in the load factors of the plants covered by the agreement following start-up of the German plant to ensure that the agreement is not maintained after its object is actually achieved, having regard to conditions on the reprocessing market at that time.

- (b) The fact that the joint subsidiary will set the prices to be charged for reprocessing and will allocate the actual reprocessing work is a necessary adjunct of coordinating investments between the three parties, each of which is operating its plant and

must be sure that it will be able to work to a rate which the other parties undertake to allow. Supplies must therefore be centralized if URG is to be able to plan the work in the light of available capacities. This necessarily means that the price to the user will be the same whichever plant actually does the reprocessing.

- (c) Exchange of scientific and technical information must also necessarily accompany the coordination of investment and the allocation of tonnages, since each plant must be in a position to reprocess irradiated fuels of whatever source, and KEWA must be sure that when the time comes it will have at its disposal the technology required to build its plant.
- (d) The clause requiring each party to refrain from oxide fuels reprocessing otherwise than through the joint subsidiary is, in the particular circumstances of the agreement, a necessary corollary to the formation of the subsidiary and is indispensable to its operation.

- (e) The clause requiring URG to attempt to bring into the agreement any organization committing investment in a reprocessing plant in Europe before the commissioning of KEWA is also in line with the aim of the agreement, which is to permit the fixing of an optimum time schedule for the construction and commissioning of plants, in the light of market requirements.

4. The agreement does not afford the parties the possibility of eliminating competition in respect of a substantial part of the relevant market, having regard to the circumstances of the case, and in particular to the special characteristics of this market, forecast trends on the market and the limited duration of the authorization accorded.

Admittedly, during a transitional period (which does have a fixed date of expiry) URG's only competitors in the common market will be three small-scale reprocessing units (Karlsruhe, Mol, Eurex I), two of which are either shut down or are being used for reprocessing non-oxide nuclear fuels; from 1978 it might possibly have to compete with the new Eurochemic plant — a relatively small one — and later still with Eurex II.

Moreover, having regard to the description of the market already given above, the competition from European plants other than those involved in URG and from non-European plants must be considered as only slightly effective for the next few years.

However, the eventual creation of effective competition is both one of the aims of the agreement and one of the conditions imposed by the Commission once the objective requirements, i.e., adequate load factors, are met, a time limit also being fixed. Accordingly, the undertakings concerned are faced with the certainty of becoming competitors at that time, which obliges them to behave from now on bearing this in view, especially as user firms, i.e., producers of electricity, are economically strong enough to exert pressure in the same direction, which is in line with their own interests.

Hence, the agreement does not afford the parties the possibility of eliminating competition within the meaning of Article 85 (3).

IV

1. Pursuant to Article 6 (1) of Regulation No 17, the Decision can have effect from 12 October 1971, which is the date of signature of the agreement notified on 11 October 1971.

2. Pursuant to Article 8 of Regulation No 17, the Decision is issued for a specified period and the Commission may revoke or amend its Decision if there is a change in any of the facts which were basic to the making thereof.

The agreement can be authorized only for such transitional period as is strictly necessary for the reprocessing industry to change over to conditions of effective competition. That transitional period will end when the three plants covered by the agreement are assured of achieving economically satisfactory load factors. The Commission believes that if the three plants are working at an average rate of 75 % of their total capacity, irrespective of the proportions in which the three parties feel that the work should be allocated at that time, this condition will be met. Accordingly, the authorization should be limited so as to terminate automatically as soon as that 75 % load factor has been reached for two successive years. Furthermore, however the market develops, an ultimate date should be fixed on the agreement which will in any event expire. A period of 15 years from the entry into force of the agreement is long enough to enable the parties to pursue their joint efforts towards attaining the favourable results sought by them.

3. Under Article 8 of Regulation No 17, conditions and obligations may be attached to the Decision, and the Commission may revoke or amend its Decision or prohibit specified acts by the parties where the parties abuse the exemption from the provisions of Article 85 (1) of the EEC Treaty granted by the Decision.

The Commission's Decision relates solely to the agreement as it is actually operating at the present time. The authorization does not cover any direct or indirect extension of the current scope of URG's activities, namely the marketing of reprocessing services for oxide nuclear fuels, to other activities, whether such activities be envisaged by the agreement (transport, other operations in the fuel cycle, trade in recovered products, operating or ownership of plants) or not (e.g., reprocessing of fuels other than oxide fuels); nor does it cover the determination of a common position on investment extending beyond the three plants as described in the agreement, nor the extension of the agreement to other parties.

Furthermore, in view of the position URG will hold on the European reprocessing market during the currency of the authorization, the Commission feels that it must supervise the prices and conditions applied by URG. The parties must therefore be required to communicate to the Commission its prices and conditions, the contracts it concludes which relate to reprocessing or which might extend the current scope of its activities, the principles of the marketing policy decided on by its Board and its annual balance sheets, and profit and loss accounts.

This will enable the Commission to follow developments in the load factors of the plants and to ensure that URG allows consumers a fair share of the benefits resulting from the agreement and generally complies with the competition rules of the EEC Treaty. In this connection it should be recalled that URG will remain subject to the provisions of Chapter VI of Title 2 of the Euratom Treaty, in particular Article 75 as regards reprocessing and Article 52 as regards dealings in source materials and special fissile materials.

The Commission must be informed by the parties of the arrangements made by them for the exchange of know-how and the grant of licences, since competition may be restricted thereby.

4. The observations received by the Commission in response to the Notice published in pursuance of Article 19 (3) of Regulation No 17 drew its attention principally to the need to establish clearly that all the restraints of competition in the agreement were indispensable and to attach conditions and obligations to the Decision so as to make URG's marketing policy subject to effective supervision and to ensure that a fair share of the benefits resulting from the agreement accrued to users. The Commission has paid due attention to these observations,

HAS ADOPTED THIS DECISION :

Article 1

Pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, the provisions of Article 85 (1) are declared inapplicable to the agreement, concluded on 12 October 1971 and amended on 31 July 1973, between British Nuclear Fuels Ltd, the Commissariat à l'Énergie Atomique and Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH, relating to the establishment of United Reprocessors GmbH.

Article 2

The following conditions and obligations are attached to this Decision :

- the Decision relates solely to the agreement as it is actually operating at the present time ; the parties shall communicate to the Commission, as the case arises, their intention to extend, directly or indirectly, the present scope of the agreement — namely the marketing of reprocessing services for oxide nuclear fuels — to other activities, whether or not provided for by the agreement, or to determine a common position on investments going beyond the three plants as described in the agreement, or to increase the number of parties to the agreement ;
- the parties shall communicate to the Commission the following items in respect of URG : its standard contract conditions and any substantial amendment thereto ; particulars to its pricing policy (including any quantity or other discounts) and any substantial revisions thereof, and as to the principles of its marketing policy as determined by the Board of URG ; the annual balance sheet and profit and loss account ;
- the parties shall further notify the Commission forthwith on each occasion when a contract is

concluded which relates to reprocessing or associated services, or which might extend the current field of URG's activities (giving at least the name of the other contracting party, the scope or the contract and the quantities involved), and shall, if and when the Commission so requests, send copies of such contracts or extracts therefrom to the Commission ; the parties shall discuss with the Commission, at intervals to be proposed by the Commission, the terms and conditions of the contracts entered into by URG ;

- the parties shall communicate to the Commission particulars of the arrangements concluded between them for the exchange of research results, information and know-how and for the granting of licences, and shall report to the Commission every two years on the operation of these arrangements.

Article 3

This Decision shall have effect from 12 October 1971 ; it shall remain in force until the three reprocessing plants as described in the agreement have been operating for two successive years at an average rate of at least 75 % of their total capacity, or until 31 December 1986, whichever is the earlier.

The Decision is addressed to British Nuclear Fuels Ltd, Warrington, United Kingdom, the Commissariat à l'Énergie Atomique, Paris, France, and Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH, Frankfurt-am-Main, Germany.

Done at Brussels, 23 December 1975.

For the Commission

A. BORSCHETTE

Member of the Commission

COMMISSION DECISION

of 23 December 1975

relating to a proceeding under Article 85 of the EEC Treaty (IV/26.940/b — KEWA)

(Only the German text is authentic)

(76/249/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 85 thereof,

Having regard to Council Regulation No 17 of 6 February 1962⁽¹⁾, and in particular Articles 6 and 8 thereof,

Having regard to the notification made on 11 October 1971, pursuant to Article 4 (1) of Regulation No 17, by Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH (KEWA), Frankfurt-am-Main, Germany, concerning an agreement concluded on 23 August 1971 between Farbenfabriken Bayer AG, Leverkusen, Farbwerke Hoechst AG, Frankfurt-am-Main, Gelsenberg AG, Essen, and Nukem GmbH, Wolfgang-bei-Hanau, for the formation of KEWA,

Having regard to the summary of the notification published, as required by Article 19 (3) of Regulation No 17, in the *Official Journal of the European Communities* No C 83 of 16 July 1974,

Having regard to the opinion dated 27 February 1975 delivered by the Advisory Committee on Restrictive Practices and Monopolies pursuant to Article 10 of Regulation No 17,

Whereas

I

1. The agreement can be summarized as follows:

The parties plan, when they are satisfied that it will be profitable, to build and operate jointly a high-capacity plant (approximately 1 500 metric tons/a) for the commercial reprocessing of nuclear fuels and to

market the products recovered. To this end they are forming, with equal shareholdings, a joint subsidiary to be known as Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH (KEWA); they undertake not to operate in these fields otherwise than through their joint subsidiary.

The joint subsidiary will construct and/or operate such a plant or will acquire a shareholding in a company having the same object; accordingly it has been decided that the joint subsidiary will subscribe one third of the capital in United Reprocessors Gesellschaft mbH (the other two thirds being subscribed by British Nuclear Fuels Ltd and the French Commissariat à l'Energie Atomique).

Any party may withdraw from the joint subsidiary, but not before 31 December 1977, provided that he gives at least two years' notice. The subsidiary is formed for an unlimited period.

2. The situation and trends on the relevant market can be summed up as follows:

(a) The market comprises only the reprocessing of oxide fuels, for the only plant which KEWA is considering setting up will be for the reprocessing of fuels of this type. It covers all the European countries having free market economies, taking into account the present state of technology on the reprocessing, transport and storage of irradiated fuels and wastes; the future supply and demand situation for reprocessing in other European countries is not known; moreover, political barriers (plutonium being usable for military purposes) will in all probability prevent irradiated fuels from being traded freely between East and West; the United States, for instance, currently prohibits the reprocessing of United States' fuels outside the country.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

- (b) Oxide fuels reprocessing services in Europe are offered by plants financed entirely or extensively by public authorities, which have also defrayed all research and development costs; States generally regard reprocessing as a critical link in the nuclear fuel chain and therefore wish to have access to adequate reprocessing capacity, whether alone or in conjunction with other States.

The following plants already exist or are being planned:

- a capacity of some 800 metric tons/a at Windscale, England, due to go on stream in 1982;
- a capacity of 800 metric tons/a at La Hague, France, to be brought into operation by stages between 1976 and 1978;
- a 40 metric tons/a plant at Karlsruhe, operated by GWK (Gesellschaft zur Wiederaufarbeitung von Kernbrennstoffen), whose shareholders are the same as KEWA's. Under the agreement, oxide fuels for light-water reactors will no longer be reprocessed here once the La Hague plant is in operation;
- a plant of a capacity of some 70 metric tons/a at Mol, Belgium, belonging to Eurochemic (European Company for the Chemical Processing of Irradiated Fuels) — a company formed by thirteen European countries; however, the Board of Directors decided to shut this plant down at the end of June 1974. There is currently a plan to replace this plant by one of 300 metric tons/a, a first unit of 150 metric tons/a coming on stream in 1981;
- a pilot plant for some 25 metric tons/a (Eurex I) in Italy; however, until at least 1977 this

plant will be working on the development of new processes. Another unit (Eurex II) on an industrial scale is being planned, but no dates have yet been fixed.

- (c) Demand for the reprocessing of uranium oxide fuels in Europe depends on the installed capacity of light-water (boiling or pressurized) nuclear reactors and, in certain cases, the first fast breeders, which use a mixture of uranium and plutonium oxides. The first fuels come up for reprocessing between three and four years after a reactor goes on stream.
- (d) In preparing the following table, which sets out forecasts of supply and demand for oxide fuels reprocessing services in all European countries, the degree of uncertainty, surrounding the estimates meant that no single figure could be given; in each case a 'high' and a 'low' variant appear. The low variant for supply takes account of the shut-down of the Eurochemic plant and an average two-year delay in bringing currently planned reprocessing units on stream; such delays are quite likely in view of the number of technical unknown factors still to be dealt with in this area. The high variant for demand is based on the nuclear power plant construction programmes known of at the end of 1974, while the low variant assumes an average one-year delay in such programmes, to allow for economic factors and siting and ecological problems.

The table shows that demand for reprocessing will be growing rapidly, so making desirable the commissioning in 1984 of the large-scale German plant envisaged by the URG agreement.

Approximate forecasts of capacity and requirements for reprocessing oxide fuels in Europe

(metric tons/a)												
Capacity (1)	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986
Germany	40	—	—	—	—	—	—	—	—	500	1 000	1 500
France	—	150	400	800	800	800	800	800	800	800	800	800
United Kingdom	—	—	—	—	—	—	—	400	800	800	800	800
Italy	—	—	—	25	25	25	25	25	25	25	25	25
Eurochemic	—	—	—	—	—	—	150	300	300	300	300	300
<i>Total H</i>	40	150	400	825	825	825	975	1 525	1 925	2 425	2 925	3 425
<i>L</i>	40	40	40	150	400	825	825	825	825	1 225	1 625	2 125
DEMAND												
<i>Total Europe H</i>	135	175	260	420	615	885	1 235	1 730	2 345	2 965	3 605	4 400
<i>L</i>	135	135	175	260	420	615	885	1 235	1 730	2 345	2 965	3 600
Belgium	5					30					130	
Denmark	—					—					20	
Germany	55					230					890	
France	5					100					780	
Ireland	—					—					15	
Italy	10					30					310	
Luxembourg	—					—					30	
Netherlands	—					10					35	
United Kingdom	—					170					240	
<i>Community</i>	75	90	135	275	440	570	775	1 100	1 520	1 970	2 450	2 955
Spain	19					93					370	
Sweden	12					140					336	
Switzerland	28					52					197	
Other countries (2)	—					33					250	

(1) Assuming the URG agreement is applied.

(2) Finland, Greece, Norway, Austria, Portugal, Turkey.

(e) In addition to the description of the present situation and future outlook on the market given above, some particulars as to the specific nature of this industry are called for:

— The oxide fuels reprocessing industry is just getting under way: demand, which can be forecast up to 1985 as accurately as can plans for building nuclear power stations working on uranium oxide fuels, will rise in Europe from some 135 metric tons in 1975 to some 800 metric tons in 1980 and 3 300 metric tons towards 1985, any margin of uncertainty depending directly on progress in nuclear power station building programmes; as regards supply, the experimental stage (low-capacity plant, conversion of existing plant) is giving way to the industrial stage (construction of high-capacity units designed for the reprocessing of oxide fuels).

— Other economic factors characterizing the reprocessing industry are, firstly, the scale of the capital tied up (at 1975 prices it is estimated that it would cost some 400 million units of account to build a plant with a capacity of 1 500 metric tons/a); secondly, the fact that costs decrease sharply as plants increase in size (this is the scale effect: the cost per kilogramme of reprocessed fuel in a 1 500 metric tons/a unit working at full capacity is substantially lower than half that in a 300 metric tons/a unit; a fivefold increase in capacity leads to less than a twofold increase in tied-up capital); and thirdly, the preponderance of fixed costs in total costs (it is estimated that two thirds of the cost of reprocessing fuel is accounted for by depreciation and loan servicing costs, the other third consisting in roughly equal proportions of operating costs and variable costs; thus fixed costs account for some 80 % of total cost at full capacity working). As a result of the second and third

factors, future reprocessors are likely to consider building only plants with a capacity of the order of 1 500 metric tons/a (possibly divided into two separate production units for operational safety reasons) which, from the time of coming on stream, are assured of a load factor of at least 50 %.

The reprocessing market, which can be expected to grow over the next few years along the lines indicated above, will not be able, before 1984, to absorb more than a single 1 500 metric tons/a unit in addition to the two 800 metric tons/a units already working or planned. Only then will the market, which will continue to expand at an increasing rate, have room for the installation of a 1 500 metric tons/a plant every two years.

- The governments of most European countries have taken the view that, although reprocessing accounts for not more than 7 % of the total cost of the nuclear fuel cycle (and therefore less than 3 % of the cost of a kWh), it was necessary to master this field of technology both on ecological grounds—irradiated fuels and waste being highly radioactive products which must be processed and stored in conditions of absolute safety — and from considerations of energy policy — recycling recovered products helps to bring about an appreciable drop in demand for natural uranium (10 % in 1985 and even more later). Accordingly, individually or in concert, they have committed major research and development expenditure in this field.
- In most countries, the electricity-producing companies, which are the only customers of reprocessing plants, are controlled by central or local authorities. This could considerably reinforce the trend towards building plants designed to meet national requirements, and thus towards the segregation of markets.

Hitherto, however, the economic importance of electricity generating companies — which supply all or most of the territory of a given country — has enabled them to preserve or even enhance their degree of management independence in relation to the public authorities. In any event there is no doubt that with their extensive research and marketing departments they will be negotiating with reprocessors from a position of substantial strength.

II

Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, or distortion of competition within the common market.

The agreement between Bayer, Hoechst, Gelsenberg and Nukem is such an agreement, for :

1. The object and effect of the agreement is to affect competition between the parties in the supply of reprocessing services in that the parties undertake not to operate in this field except through their joint subsidiary. It is true that the parties have not hitherto been effective competitors on this market, since none of them individually supplies reprocessing services; their only connections with this field are their equal shareholdings in GWK (Gesellschaft zur Wiederaufarbeitung von Kernbrennstoffen), which operates a pilot plant with a 40 metric tons/a capacity at Karlsruhe; however, the fact that they all possess reprocessing technology makes them from now on potential competitors.

2. The agreement may affect trade between Member States in view of the status of the parties to the agreement (they comprise all the German firms possessing reprocessing technology) and of the scale of the investments involved (the capacity of the proposed plant will, by the time it goes on stream, exceed Germany's domestic demand and this collective tendering by the German firms will affect other countries) as well as because of the intention expressed in the agreement of linking with further parties (KEWA is a party to the URG agreement, which organizes reprocessing services at international level).

III

Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement 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.

The agreement between Bayer, Hoechst, Gelsenberg and Nukem, is such an agreement for :

1. The agreement contributes to improving the production and distribution of reprocessing services and to promoting technical and economic progress.

The agreement enables the parties rapidly to reach a position where they can reprocess on an industrial scale, while at the same time allowing them to retain their interest in a new industry where conditions do not favour isolated efforts by individual firms; the parties are to continue joint research and development into the application on an industrial scale and in profitable conditions of the technical experience they have acquired in building and operating a pilot plant.

2. The agreement allows consumers a fair share of the resulting benefit.

By enabling the parties to continue their research activities and transfer of technology, it will help to reduce costs and to guarantee the stability of reprocessing services; it thus opens the way to an eventual drop in prices charged to users, in this case electricity producers. By virtue of the conditions and obligations which it will impose on the parties and through its subsequent supervision, the Commission will ensure that no conduct of the parties can prevent users from receiving their share of the resulting benefit. Moreover the electricity producers will use their economic strength to exert pressure in the same direction.

3. The agreement imposes no restrictions of competition which are not indispensable to the attainment of these objectives.

It is essential to form a joint subsidiary, for this makes it possible to cut down the investment needed and reduce the attendant risks and without it none of the parties would persist in trying to move rapidly into large-scale production.

The clause requiring each party to operate in this field only through the joint subsidiary is, on account of the circumstances of the agreement, a necessary consequence of the formation of the subsidiary and is indispensable as a means of ensuring that it can work effectively.

4. The agreement, having regard to the very special nature of the market and to the still unresolved technological problems, does not afford the undertakings the possibility of eliminating competition within the meaning of Article 85(3) in respect of a substantial part of the relevant market since the exemption will cease in 1986, which means that the firms are faced with the certainty of becoming competitors at that time and are obliged to behave from now on with this in view. Moreover, once the URG agreement expires (in 1986 at the latest), there will be effective competition between British Nuclear Fuels Ltd, the Commissariat à l'Énergie Atomique and the partners of KEWA.

IV

1. Under Article 6(1) of Regulation No 17, the Decision can have effect from 11 October 1971, the date on which the agreement was notified.

2. The period of validity of the Decision to be fixed under Article 8(1) of Regulation No 17, must be long enough to enable the parties to pursue their joint efforts towards attaining the favourable result sought. The period of validity should therefore be fixed at 15 years.

3. Under Article 8 of Regulation No 17, conditions and obligations may be attached to the Decision and the Commission may revoke or amend its Decision or

prohibit specified acts by the parties where the parties abuse the exemption from the provisions of Article 85(1) of the Treaty granted by the Decision.

This Commission Decision covers exclusively the agreement as it is actually operating at the present time. The authorization does not cover any direct or indirect extension of the current scope of KEWA's activities, which is the reprocessing of oxide nuclear fuels, or the extension of the agreement to other parties.

Furthermore, KEWA has and will probably retain for several years a very strong position in a substantial part of the common market. It should therefore be required to send the Commission each year copies of its balance sheets and profit and loss accounts; this will enable the Commission to ensure that KEWA is allowing users a fair share of the benefits resulting from the agreement.

4. The observations received by the Commission from interested third parties in response to the notice published in pursuance of Article 19(3) of Regulation No 17 drew its attention principally to the need to show clearly that all the restraints of competition in the agreement were indispensable and to attach prior conditions and obligations to the Decision so as to ensure that a fair share of the benefits resulting from the agreement accrued to users; the Commission has paid due attention to these observations,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85(3) of the Treaty establishing the European Economic Community, the provisions of Article 85(1) are declared inapplicable to the agreement concluded on 23 August 1971 between Farbenfabriken Bayer AG, Leverkusen, Farbwerke Hoechst AG, Frankfurt-am-Main, Gelsenberg AG, Essen, and Nukem GmbH, Wolfgang-bei-Hanau relating to the establishment of Kernbrennstoff-Wiederaufarbeitungsgesellschaft mbH.

Article 2

The following conditions and obligations are attached to this Decision:

- the Decision covers exclusively the agreement as it is actually operating at the present time; the parties shall communicate to the Commission, as the case arises, their intention to extend, directly or indirectly, the present field of application of the agreement, which is the reprocessing of oxide nuclear fuels, or to increase the number of parties to the agreement;
- each year the parties shall send the Commission copies of the balance sheets and profit and loss accounts of KEWA.

Article 3

Done at Brussels, 23 December 1975.

This Decision shall have effect from 11 October 1971 and shall apply until 31 December 1986.

It is addressed to Farbenfabriken Bayer AG, Leverkusen, Germany; Farbwerke Hoechst AG, Frankfurt-am-Main, Germany; Gelsenberg AG, Essen, Germany, and Nukem GmbH, Wolfgang-bei-Hanau Germany.

For the Commission

A. BORSCHETTE

Member of the Commission
