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**Technical Annex**

**European Union Grain Export Practices: Do They  
Constitute a State Trading Enterprise?**

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This document is the technical annex to the full paper “European Union Grain Export Practices: Do They Constitute a State Trading Enterprise” which is available separately.

***Overview of Operations of EU Cereals Trade***

European cereal<sup>1</sup> prices are typically higher than world prices. Without some form of a subsidy, European cereal exports would not be competitive on the world market. Within the Common Agricultural Policy a trade regulation system was established that uses export refunds and import levies as its major tools. The calculation, management and payment of these export refunds are carried out by the Management Committee for Cereals of the European Commission.

For each commodity, the European Union sets an “intervention price” that is a target price for intra-EU trade. When market prices are above the intervention price, traders may sell into the domestic market or tender the good for export. Should the

domestic price be less than the intervention price, traders may sell their products to the intervention authorities at the intervention price. The intervention authorities then become responsible for the disposal of the grain through either the domestic market or export.<sup>2</sup>

Figure 1 provides an overview of the operation of the intervention and export system in the European Union that applies to cereals, beef, dairy products, sugar, and fruits and vegetables. Although the workings of the intervention and export refund systems are similar for all these commodities, this article will focus on the workings of the cereals market. The flow diagram illustrates the movement of the product into intervention or directly into domestic or international markets. The diagram also describes the major agents and their principal functions.

At the top of figure 1, producers decide to sell the product either directly on the market or into intervention. The decision to sell on the market depends on the market price being greater than the intervention price. Intervention prices are set annually by the EU Council of National Agriculture Ministers and are generally based on recommendations by the EU Commission. Intervention prices are subject to monthly increases to compensate for the cost of storage and other carrying costs. They may also be changed in light of developments in production and the market.<sup>3</sup>

Intervention purchases are made only when market prices fall below the intervention price, net of deductions for handling and transportation in certain representative markets in France, the UK and Italy. These deductions imply that intervention purchasing actually occurs at 94 percent of the intervention price.<sup>4</sup> It is at this price that farmers may sell their products to the national intervention authorities. The grain held in intervention stores is then disposed of either on the domestic market, via exports, or through food aid.

The Cereals Management Committee (CMC) of the European Commission regulates the operations of the intervention system at the community level. The member state intervention agencies are instruments that help implement the commercial export policy of the EU Commission. They deal with the purchasing, storage, product quality and export of intervention stocks.<sup>5</sup> Intervention purchases are mandatory and take place from November 1 to May 31 for most member states. For Italy, Spain, Greece and Portugal intervention purchases take place from August 1 to April 30. In Sweden the purchase period is from December 1 to June 30. The intervention agency must buy grain that fulfills the quality and minimum quantity standards (generally 80 tonnes in most member states).<sup>6</sup>

An offer for sale must be made in writing to an intervention agency. The date of delivery is mutually agreed upon between the seller and the intervention agency. The seller specifies the nearest intervention centre to which he is prepared to deliver. The intervention agency, however, may specify delivery at a different intervention centre but must pay for any difference in transport costs between the two centres. Payment is usually within 30 to 35 days of delivery.<sup>7</sup>

The treasuries of the member countries deal with financing of intervention purchases and export sales. The EU Commission bears the market risk for the product while it is in intervention. Once a private trader purchases the product out of intervention, he becomes responsible for bearing market risk.<sup>8</sup>

Grain held in intervention stores is mainly disposed of through sale, by tender, onto the domestic market or exported. A small proportion is released as food aid. The process of releasing stocks onto the domestic market is described in the next section.

### **Domestic Disposal of Stocks**

The member states initiate invitations for tender and communicate to the Commission the quantity and description of the cereal to be offered for tender. The Commission, in consultation with the Cereals Management Committee, approves the sale and publishes a call for tender in the Official Journal of the European Communities, no later than five working days after receipt of the communication by the member state. The call for tender specifies the quantities to be put up for tender and the closing date for the submission of tenders. A minimum of 2000 tonnes of grain is required for a tender. Tenders may also be restricted to certain uses and/or regions.<sup>9</sup>

Grain is sold out of intervention onto the domestic market only when the prices offered by private traders do not undercut market prices (at the place of storage). Furthermore, the offered price has to be higher than or equal to the applicable intervention price on the closing date for the submission of tenders.<sup>10</sup>

### **Export Market for Grain**

Grain destined for export can be sourced in three different ways. First, the grain can be procured on the open market. Grain that goes for export from the open market generally requires an export subsidy to be competitive on international markets. The export subsidy is acquired through an open market tendering process. Second, the grain can be procured from intervention stocks with the aid of an export subsidy that is also acquired through a tendering process. The tendering process (open market tenders and intervention tenders) accounts for some 90 percent of all cereal exports

from the EU.<sup>11</sup> The third method of exporting grain is through a standing refund process known as the “droit commun”.

#### *Open Market Tenders*

Bourgeon and Le Roux describe the open market tendering process as one where the Commission buys “the export service from traders” who then have to procure the grain in internal markets.<sup>12</sup> There is normally only one open market tendering operation per year for each cereal unless the first operation fails to achieve the desired level of sales. The Commission usually places emphasis on this activity early in the marketing year and gives it priority over exports from intervention stocks.

Under the open market tendering process, bids are anonymously submitted in writing to the member state intervention agency and are then passed on to the Cereal Management Committee of the EU Commission. The tender must specify the type and quantity of the product the private trader intends to export and the desired export refund per tonne in euro. The trader must also lodge a tendering security, which is currently 12 euro/tonne.<sup>13</sup>

The Cereals Management Committee lists the traders’ proposals in increasing order of desired refunds, and adds up the quantities associated with them. It then fixes a maximum export refund according to the export price of the corresponding total quantity to be exported. Then,

[a]s a cross-check on the results of free market tenders, the Commission calculates a “guideline refund” based on the theoretical refunds required to export wheat and barley from French and British ports. The calculation is based on the latest FOB price adjusted to arrive at a final port price. This price is compared with the current world price and the difference, having been adjusted by the monetary coefficient, is the guideline refund.<sup>14</sup>

The refund likely to be chosen as the maximum refund will be that which equates most closely the EU net export price with the world price. The contract is awarded to the tenderer or tenderers whose bids are equal to or lower than the maximum refund. The refund awarded is the actual bid by each agent and not necessarily the maximum refund. Traders only receive the proposed refund if the export obligation is fulfilled, i.e., proof that the shipment has left the specified port is demonstrated.

The procedure for setting the maximum refund in the open market tender is unclear. Despite the existing “cross-check,” there is no definitive method by which the refunds are determined. There appears to be significant leeway for the Commission to manipulate where the maximum refund should be set according to the tenders

received, without any required justification. For example, “the Commission can and frequently has chosen to set higher maximum refund rates, usually to match the subsidies offered by the USA under the terms of the EEP [Export Enhancement Program].”<sup>15</sup>

Successful tenderers are required, within two days of notification of the award of a contract, to lodge an application to their national intervention agency for an export licence for the quantity awarded along with a security of 20 euro/tonne. “It is the [export] licence ... which is the legal expression of the contract struck between the Community and the trader.”<sup>16</sup> The application and the security must also be accompanied by an application for “prefixing”<sup>17</sup> of the proposed refund at which point the tendering security of 12 euro/tonne is released.

Although the level of the export refunds is determined by competition among traders, the provision of the refund allows the Commission to simultaneously determine the export price (through the unit refund) and the quantity to be exported. Thus the Commission not only determines all the important policy decisions, but has a decisive voice over such key parameters as the timing, quantity and destination of subsidised exports.<sup>18</sup>

There is active trading in refunds and export licences such that the winning bidder is not necessarily the final exporter.<sup>19</sup> Due to the time lags between the date of getting the refunds and the date of export, traders must protect themselves from fluctuations in export prices, exchange rates and transportation costs by hedging in futures markets. The final amount paid to the exporter is determined on the day of export by enhancement measures known as correctives.

Correctives are additions to or deductions from the published tendered refund rates for specific destinations and are a unique feature of cereals market management. Correctives are normally published weekly but may be changed more frequently as they are used to offset fluctuations in the world market.<sup>20</sup> The European Court of Auditors has stated that positive correctives are provided to encourage exports to a specific destination and negative correctives are provided to ensure that exports take place sooner rather than later.<sup>21</sup>

The tendering process allows the Commission to control the volume of trade. While the private trader (tenderer for the restitution) decides where the product is to be exported, the Commission can stipulate that certain third countries are ineligible for restitution. The system of correctives can also be used to influence the direction of trade.

*Tenders for Intervention Stocks:*

The second source of exports comes from the release of intervention stocks. The export subsidy on intervention tenders usually comprises a sufficiently low price from intervention storage to allow competitive exports, but it can also consist of an export refund, or a combination of both.

Intervention stocks are tendered for sale by lots each week. Tenders may be invited on the initiative of the Commission or at the request of a member state. For each lot, calls for tender are published in the *Official Journal of the European Communities*, which indicates the location of the lot, the quantity and possibly a destination. The minimum amount for tender is set at 500 tonnes. Traders are required to bid for these lots in terms of the price delivered but not unloaded at the nominated port (euro per tonne). The transportation cost from the place of storage to the port of exit is paid by the member state intervention agency. Tenders will only be considered if they are accompanied by an application for an export licence together with an application for advance fixing of the export refund or levy and a security of six euro per tonne.<sup>22</sup>

Once the period for the submission of tenders has expired, the member states concerned forward the list of anonymous tenders to the Commission. The Commission, in consultation with the Cereals Management Committee, fixes a minimum selling price or decides to take no action with respect to the tenders received. (The principles of this process are similar to the open market export refund system except that in this case the tenders are for the purchase price.) The published refund rate is paid to all traders who have been successful, i.e., who have submitted bids at or above the minimum price determined by the Cereals Management Committee.<sup>23</sup>

The Commission informs the member state intervention agencies, which in turn must immediately inform all tenderers of the outcomes of their bids. Within three working days of being informed, the successful tenderers must receive a statement of the awarded contract. Successful tenderers pay for the cereals before they are removed, which may not be later than one month from the date on which the statement was forwarded. In the case of sales for export, the price to be paid is equal to the quoted price plus a monthly increase. Again, removal of grain takes place in the month following the award of a contract. Successful tenderers bear all risks of cereals not removed within the first month following the awards.<sup>24</sup>

The initial security is released to a successful tenderer when he pays for the cereals. At that time, the tenderer lodges another security covering the difference between the export price and the minimum price for resale in the community. The second security is released only once the tenderer provides proof that the cereals have left the custom territory of the Community on a vessel of at least 2,500 gross tonnes and suitable for sea transport.<sup>25</sup>

The system of correctives also applies to refunds for exports procured from intervention stocks. The final amount paid to the exporter is determined on the day of export.

With export tenders for intervention stocks, the Commission is afforded even greater power in controlling the quantity and recipient of exported cereals by not being obligated to accept the minimum bid for the cereals in intervention.

#### *Standing Refunds ("Droit Commun")*

Although most exports of grain from the EU take place through the tender system, there is a provision for exports to take place at fixed or "standing refunds", otherwise known as the "droit commun", which do not have to be tendered for. The main purpose of these refunds is to facilitate traditional trade with particular countries, many of which are close to the EU or have special requirements. The volume of cereals exported under the system of standing refunds is small when compared to the quantities exported under the open tendering process.<sup>26</sup>

Until the 1970s, restitutions determined under the standing refund procedure were calculated in a mechanical and automatic manner. This procedure would calculate the support payment required for an unlimited number of export certificates. The formula ultimately proved inconvenient in that it favoured traders when there was a turnaround in the world market, such as in 1973 when world prices were higher than those in the EU. Moreover, under the standing refund procedure, it was difficult to control exported quantities.<sup>27</sup>

Since it was sensitive to the financial risks associated with the standing procedure for setting the restitution, the Community appealed to the Commission to return, for the two most important exported cereals, soft wheat and barley, to the tendering system for principal export destinations. The possibility for the Community to maintain control over the quantity and budgetary aspects of exports explains why the open market tendering process supplanted the standing refund for cereal exports.<sup>28</sup>

The standing refund continues to exist for specific destinations for which refunds are not tendered. "In order to be in a better position to control EU exports to certain

destinations, the Commission listed in reg. 2145/92, all possible destinations worldwide, with the exception of the United States”.<sup>29</sup> Standing refund destinations include those “close-to-home” countries where a high subsidy level is not needed, such as some African countries or Switzerland. The rate of restitution for these areas is differentiated among the destinations. Furthermore, since the import requirements of these areas are small and easily quantifiable, any restitution that is overestimated has limited financial repercussions.

The Commission may also use the standing refund procedure in the case of large contracts with countries like Russia, China, Egypt, or Algeria.<sup>30</sup> It is also increasingly common for other countries to be included in this system to facilitate export, for example, to countries where the U.S. export programs are being targeted.

The export refunds arrived at under the standing procedure vary from the ones determined by tender and may be several euro above or below the latter. The standing refunds are set each week by the Cereals Management Committee and will usually run from the following day. Generally, for wheat and barley the standing refunds reflect movements in the refunds granted under the open market tenders. Alternatively, a special one-day refund may be introduced, either on the day when tendering for the export of intervention grain takes place or when the Commission wishes to authorise a significant tonnage from the open market to a specific destination.<sup>31</sup>

The introduction of the “special one-day refund” in the standing refund procedure is questionable. Set criteria that would explain the circumstances allowing this type of procedure do not exist. Use of the refund is a unilateral decision taken by the Commission, thus demonstrating the Commission’s considerable control over both the quantity and the destination of the traded product.

Whereas the tendering process produces restitution equal to the amount applied for, the standing refund has set amounts depending on the export destination. The volume considered under the standing refund is unlimited, whereas tendered amounts are specified in the offer.<sup>32</sup> The beneficiaries of the standing offer are all applicants, whereas only the successful tenderer benefits from a restitution. Both methods are subject to correctives.

### *Role of Each of the Agents*

#### **The EU Commission and the Cereals Management Committee**

The EU commission has a responsibility to make the Common Agricultural Policy work on a daily basis. Much of this work is done in consultation with the Cereals

Management Committee. The Cereals Management Committee consists of representatives of EU member states (generally delegates from national intervention agencies) and is chaired by a representative of the Commission. The Commission submits draft measures for implementing the system of export refunds, under Regulation 1766/92, to the Committee for approval. However, if there is no agreement, the Commission may communicate with the Council of National Agriculture Ministers for a decision.

A series of quotations from a Special Report of the European Court of Auditors<sup>33</sup> describes the very central role that the EU Commission has over determining the marketing and allocation of grain in domestic and foreign markets:

Much of the day-to-day administration of the policy is delegated to Member States' paying agencies (i.e., intervention agencies). ... All the important policy decisions are taken by the Commission. It is the Commission, usually following consultation of the Management Committees for the relevant markets, which determines the level of subsidy in each case, principally by setting refund rates and determining minimum prices for low-price sales from intervention. The Commission also has a decisive voice over such key parameters as the timing, quantity and destination of subsidised exports. (paragraph 1.3)

... the system of rate-setting (i.e., refunds) and (export) licences can be said to provide a basis for central control over expenditure. It also gives the Commission a flexible means of managing the export market. For example, the Commission may apply "correctives" to previously agreed and published refund rates to discourage or encourage traders to export in particular situations or to a specific destination. (paragraph 1.5)

In its management of the subsidised export of agricultural products, the Commission is in effect responsible for a commercial operation on an international scale. (paragraph 2.88.)

### **Member State Intervention Agencies**

Intervention agencies participate in a number of activities, including implementing measures adopted for the European Union Common Agriculture Policy, in particular measures to intervene in the market, regulate it, and guarantee minimum prices to farmers. The intervention agencies also issue import and export licences.

This discussion is limited to two intervention boards: Office National Interprofessionnel des Céréales (ONIC), which is the French intervention agency, and the UK Intervention Board for Agricultural Produce (IBAP).<sup>34</sup> ONIC derives its

authority from the French Ministry of Agriculture and IBAP derives its authority from the Department for Environment, Food and Rural Affairs in the UK.

The institutions differ somewhat. For instance, in the UK farmers, merchants or traders may all offer product into intervention with IBAP. In France all producers must sell their cereals through organizations accredited by ONIC, so called “registered collectors” such as cooperatives, end-users and negotiators. ONIC is responsible for guaranteeing the collectors’ transactions.

ONIC and IBAP are obliged to buy and store all the commodities supplied to them under the conditions established by the EU regulations. As is standard throughout the EU, ONIC and IBAP make the payment in 30 to 35 days from acceptance of the grain. Payments are funded by the member state treasury and later refunded through the European Guarantee and Guidance Fund (EAGGF), subject to audit of a sample of claims. The EAGGF pays the intervention agency entrance and exit storage fees at fixed prices, assumes responsibility for the costs of transportation, and provides a financing forfeit. The storers are financially responsible for the quantity and quality of the grain. The EU Commission has legal title to the product in intervention.<sup>35</sup>

The intervention agencies accept the tenders for grain being sold out of intervention for domestic use or export. The tenders are then forwarded to the CMC. Once the CMC reaches its decision, it is up to the intervention agencies to inform the tenderer within three days. Under the general arrangements for the management of EAGGF-Guarantee expenditure, the primary responsibility for examining the goods exported and for vetting the refund claims lies with the member states. The restitution is later refunded through the EAGGF.<sup>36</sup>

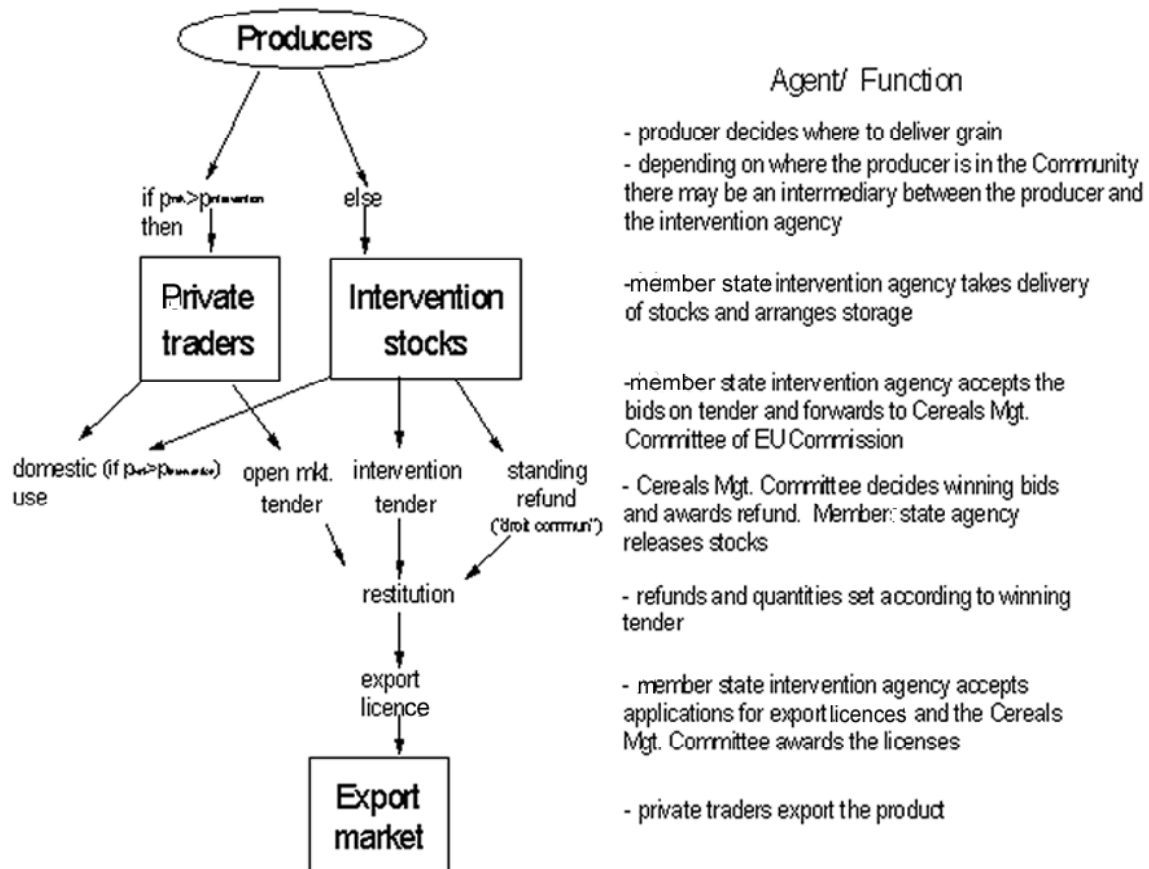


Figure 1

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## Endnotes

1. Cereals include soft wheat, durum wheat, rye, barley, maize, sorghum and rice.
2. See Agra Europe, CAP Monitor. (Tunbridge Wells: Agra Europe (London) Ltd., 2001).
3. See Council Regulation (EEC) No 1766/92, Official Journal of the European Communities No L 181, 30.06.92.
4. See Toepfer International, The E.U. Market Regulations for Grains and Oilseeds, 1995/96.
5. The member state cereals intervention agencies include: Bundesanstalt für Landwirtschaft und Ernährung (BLE), Germany; Office national interprofessionnel des céréales, France; Ministero per il commercio con l'estero, Direzione generale per la politica commerciale e per la gestione del regime degli scambi, Italy; Hoofdproductschap Akkerbouw, The Netherlands; Bureau d'intervention et de restitution belge (BIRB), Belgium; Intervention Board for Agricultural Produce (IBAP), United Kingdom; Department of Agriculture, Food and Forestry, Cereals Division, Ireland; EU-Direktoratet, Denmark; Ministério da Economia, Direcção-Geral das Relações Económicas Internacionais (DGREI), Portugal; Service d'économie rurale, office du blé, Luxembourg; DIDAGEP, Greece; Fondo Español de Garantía Agraria (FEGA), Spain; Statens Jordbruksverk, Sweden; Maa-ja metsätalousministeriö, interventioyksikkö, Finland; and Agrarmarkt Austria (AMA), Austria.
6. See Toepfer International for a more complete description of this process.
7. See Agra Europe, *op. cit.*
8. However, the risks of export price variability are mitigated by the EU system of correctives.
9. See Council Regulation (EEC) No Regulation 1836/82, Official Journal of the European Communities No L 202, 09.07.82.
10. *Ibid.*
11. See Toepfer International, *op. cit.*, 1996/97.
12. J.-M. Bourgeon and Y. Le Roux, *op. cit.* pp. 5-26.
13. See Special Report No. 2/90 of European Court of Auditors, "Special report No. 2/90 on the management and control of export refunds accompanied by the replies of the Commission", Official Journal of the European Communities 90/C 133/01. 31/05.90. para. 2.88.
14. See Court of Auditors of the European Communities (1990). *op. cit.*
15. *Ibid.* A similar ambiguity holds for the procedure for setting the minimum price for intervention tenders.
16. *Ibid.* para. 1.4.

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17. An exporter can choose to fix his export refund at the published rate prevailing when he applies for a licence. Prefixing protects traders against falls in the level of refund rates during the validity period of the licences and enables them to negotiate contracts in which the rate is a known parameter...
  18. See J.-M. Bourgeon and Y. Le Roux, *op. cit.*
  19. See M.L. Debatisse, "EEC Organization of Cereals Markets: Principles and Consequences", Center for European Agricultural Studies, Occasional Paper 10, Wye College, Ashford.
  20. See Council Regulation (EEC) 1766/92, Article 13, Official Journal of the European Communities Reg. 1766, 30.06.92.
  21. See Special Report No. 2/90 of European Court of Auditors, *op. cit.*
  22. See Council Regulation (EEC) No Regulation 2131/93, Official Journal of the European Communities Reg. 2131, 28.07.93.
  23. *Ibid.*
  24. *Ibid.*
  25. *Ibid.*
  26. See Toepfer International, *op. cit.*, various issues.
  27. See J.-M. Bourgeon and Y. Le Roux, (1996), *op. cit.*, p 7.
  28. *Ibid.*
  29. See Toepfer International, *op. cit.*, 1996/97.
  30. See Agra Europe, *op. cit.*
  31. See Toepfer International, *op. cit.*, 1996/97.
  32. See J.-M. Bourgeon and Y. Le Roux, (1996), *op. cit.*, p 7.
  33. Court of Auditors of the European Communities (1990), *op. cit.*
  34. Information on ONIC is derived from Office National Interprofessionnel des Céréales Rapport Annuel des marchés, Campagne 1995/1996, and information on IBAP was obtained from personal communication with Janet Farmer, Commercial Officer, Canadian High Commission, London.
  35. See Toepfer International, *op. cit.*, 1996/97 and M. Ferret, *Guide du Commerce Extérieur* (Paris: Office National Interprofessionnel des Céréales, 1991).
  36. *Ibid.*