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I

(Information)

COURT OF AUDITORS

SPECIAL REPORT

on the common organization of the market in fishery products
(Observations, paragraph 4 of Article 206a of the EEC Treaty)

(85/C 339/01)

This report was adopted by the Court of Auditors at its meeting of 28 November 1985. The draft report had been sent on 18 September 1985 to the Commission, whose replies are attached.

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1. INTRODUCTION

1.1. Title 4 of the Community budget is devoted to the common fisheries and marine policy. The appropriations for commitment in 1984 amounted to 154,1 Mio ECU. These appropriations may be broken down as follows:

- 17,9 Mio ECU for the common organization of the market in fishery products, as compulsory expenditure (Chapter 40),
- 118,5 Mio ECU for measures to improve fisheries structures (Chapters 45 and 46),
- 17,7 Mio ECU for various specific financial and social measures in the fisheries sector (Chapters 41 to 44).

1.2. In 1984 the Court undertook a review of the implementation of the common organization of the market in fishery products in the Member States concerned, in order to ensure that the systems set up were in fact able to provide for the satisfactory application of the intervention mechanisms, the main purpose of which is to guarantee the producer an adequate income. Those structural measures not covered by this report come within the scope of the common fisheries policy's 'guidance' operations.

1.3. Although market support expenditure for the year in question is only a relatively small amount when compared with total expenditure, it is important to note that any growth in such expenditure will depend primarily on the level of catches at which the threshold that brings the guarantee system mechanism into play is set, resulting in quantities of fish offered for sale by members of producers' organizations which cannot be sold at a price at least equal to a price fixed in advance for each species and known as the 'withdrawal price'.

2. DESCRIPTION OF THE MAIN FEATURES OF THE COMMON ORGANIZATION OF THE MARKET

Legal basis

2.1. Under Article 38 of the EEC Treaty, fishery products are regarded as 'agricultural products' and, as such, are subject to the principles and rules of the common agricultural policy.

2.2. Since 1971, these products have consequently been subject to a common form of market organization which was established and has been governed since 1 January 1983 by the basic Council Regulation (EEC) No 3796/81 of 29 December 1981⁽²⁾. All the products listed in Table 1 are currently covered by this Regulation.

Table 1 — Fishery products subject to the common organization of the market
(Regulation (EEC) No 3796/81)

CTT heading No	Description
(a) 03.01	Fish, fresh (live or dead), chilled or frozen
(b) 03.02	Fish, dried, salted or in brine; smoked fish, whether or not cooked before or during the smoking process
(c) 03.03	Crustaceans and molluscs, whether in shell or not, fresh (live or dead), chilled, frozen, salted, in brine or dried; crustaceans, in shell, simply boiled in water
(d) 05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption: A. Fish, crustaceans and molluscs
(e) 16.04	Prepared or preserved fish, including caviar and caviar substitutes
(f) 16.05	Crustaceans and molluscs, prepared or preserved
(g) 23.01	Flours and meals, of meat, offals, fish, crustaceans or molluscs, unfit for human consumption; greaves: B. Flours and meals of fish, crustaceans or molluscs

Market-regulation instruments

2.3. The basic Regulation provides for market-regulation instruments, accompanied in certain cases by financial measures funded by the EAGGF. These instruments are as follows:

- (a) common marketing standards;
- (b) a system of prices;

(c) a system of trade with third countries.

2.4. Common marketing standards⁽³⁾ may be laid down for certain fishery products and may cover classification by quality, size or weight, packing, presentation and labelling. At present they apply to fresh products covered by the price system, i.e. 14 species of fish and one species of crustacean; the grading of these species by size is set out in Table 2.

Table 2 — Grading of species of fish by size⁽¹⁾

Fish	Size	Kg/fish
Herring	1	0,125 and over
	2	From 0,085 up to but excluding 0,125
	3	(a) From 0,050 up to but excluding 0,085 (b) From 0,033 up to but excluding 0,085 in the case of Baltic herring
Sardines	1	0,100 and over
	2	From 0,055 up to but excluding 0,100
	3	From 0,031 up to but excluding 0,055
	4	(a) From 0,015 up to but excluding 0,031 (b) From 0,011 up to but excluding 0,031 in the case of Mediterranean sardines
Dogfish (<i>Scyliorhinus spp.</i>)	1	2 and over
	2	From 1 up to but excluding 2
	3	From 0,5 up to but excluding 1
Dogfish (<i>Squalus acanthius</i>)	1	2,2 and over
	2	From 1 up to but excluding 2,2
	3	From 0,7 up to but excluding 1
Redfish	1	2 and over
	2	From 0,6 up to but excluding 2
	3	From 0,35 up to but excluding 0,6
Cod	1	7 and over
	2	From 4 up to but excluding 7
	3	From 2 up to but excluding 4
	4	From 1 up to but excluding 2
	5	From 0,3 up to but excluding 1
Coalfish	1	5 and over
	2	From 3 up to but excluding 5
	3	From 1,5 up to but excluding 3
	4	From 0,3 up to but excluding 1,5
Haddock	1	1 and over
	2	From 0,57 up to but excluding 1
	3	From 0,3 up to but excluding 0,57
	4	From 0,17 up to but excluding 0,3
Whiting	1	0,5 and over
	2	From 0,35 up to but excluding 0,5
	3	From 0,25 up to but excluding 0,35
	4	From 0,11 up to but excluding 0,25

Fish	Size	Kg/fish
Ling	1	5 and over
	2	From 2,5 up to but excluding 5
	3	From 0,5 up to but excluding 2,5
Mackerel	1	0,5 and over
	2	From 0,2 up to but excluding 0,5
	3	(a) From 0,1 up to but excluding 0,2 (b) From 0,08 up to but excluding 0,2 in the case of Mediterranean mackerel
Anchovies	1	0,033 and over
	2	From 0,020 up to but excluding 0,033
	3	From 0,012 up to but excluding 0,020
	4	From 0,008 up to but excluding 0,012
Plaice	1	0,6 and over
	2	From 0,4 up to but excluding 0,6
	3	From 0,3 up to but excluding 0,4
	4	From 0,15 up to but excluding 0,3
Hake	1	1,2 and over
	2	From 0,6 up to but excluding 1,2
	3	(a) From 0,2 up to but excluding 0,6 (b) From 0,15 up to but excluding 0,6 in the case of Mediterranean hake
Crustaceans	Size	Width of carapace
Shrimps	1	6,8 mm and over
	2	From 6,5 mm up to but excluding 6,8 mm

(¹) Fish are classified by lot in Freshness Category 'Extra', A or B, on the basis of the provisions of Articles 5 of Council Regulation (EEC) No 103/76 of 19 Januar 1976 (OJ No L 20, 28. 1. 1976, p. 29).

2.5. In cases where common marketing standards apply, products which do not comply with them may not be marketed for human consumption within the Community. The Member States are responsible for checking the conformity of the products.

2.6. The two fundamental aspects of the price system are the guide price, fixed each year by the Council before the beginning of the fishing year, and the Community withdrawal price, which is fixed by the Commission and is derived from the guide price. The Community withdrawal price plays a vital role in the implementation of most of the financial measures provided for under the terms of the common organization of the market in fishery products.

2.7. The main aspects of the system of trade with third countries are, in the case of imports, the suspension of, or exemption from, customs duties in the case of products which are used primarily in the Community's processing industry and the control of imports by means of a reference price which is fixed each year, by product category, at a level corresponding to that of the Community withdrawal price. In the case of exports, refunds designed to make up the difference between world market prices and Community market prices may be granted if such a measure is found to be economically

necessary and desirable. Where necessary, these refunds are fixed by the Commission, under the general rules laid down by the Council.

Producers' organizations

2.8. Within the context of the Community regulations establishing the common organization of the market in fishery products, 'producers' organization' means any organization which is formally recognized by the Member State in which it has its registered office and which has been established at the producers' own initiative for the purpose of taking such measures as will ensure that fishing is carried out on rational lines and that conditions for the sale of their products are improved.

2.9. These measures may include:

- (a) the implementation of fishing plans to enable production and catching methods to be adapted during the fishing year to meet demand;
- (b) the requirement for members to sell their output through the common organization or according to common rules established in advance by the organization.

2.10. The main rules of the legal system applying to producers' organizations are stated under Title II (Articles 5 to 8) of the basic Regulation, which was the subject of implementing provisions (⁴).

Financial measures funded by the EAGGF-Guarantee

Financial compensation

Measures currently applied

2.11. The basic Regulation provides for a series of financial measures funded by the EAGGF-Guarantee and designed to facilitate the implementation of the common organization and the attainment of its objectives. The measures currently applied are as follows:

(a) intervention measures:

- (i) financial compensation,
- (ii) carry-over premium,
- (iii) special carry-over premium;

(b) export refunds.

Out of total expenditure in 1984 of 14,746 Mio ECU, financial compensation represented about 94% of the amount spent on interventions; the carry-over premium and special carry-over premium accounted respectively for 0,5% and 5,5% of this total. It should be noted that the amount of the refunds has been fixed at zero since 1 November 1983⁽⁵⁾, on account of the negligible price differences found to exist on the world market.

2.12. The expenditure for 1982 to 1984 funded by the EAGGF-Guarantee under the common organization of the market in fishery products is shown, for each Member State, in Table 3.

2.13. The system of financial compensation is described in Article 13 of the basic Regulation and in several implementing provisions⁽⁶⁾. It is paid to producers' organizations which withdraw from the market, at public auctions, products which cannot be sold at a price at least equal to the Community withdrawal price. The measure is limited as regards both the quantities eligible to qualify for it and its value, which is calculated on the basis of a sliding scale. It is in fact paid up to a maximum limit of 20% of the annual quantities of the product concerned which are put up for sale by the producers' organization. This 20% is subdivided into four tranches of 5% respectively. For the first, second, third and fourth tranches, the amount of the financial compensation is equal, respectively, to 85%, 70%, 55% and 40% of the withdrawal price. The financial compensation is paid by the Member State to the producers' organization at the request of the latter and after the end of the fishing year. However, monthly advances are paid to the producers' organizations which apply for them and which lodge a security equal to 105% of the amount of the advance.

2.14. For their part, the producers' organizations pay their members indemnities which may not exceed the withdrawal price but must be at least 2,5 points higher than the percentage of the withdrawal price that is taken into consideration for the calculation of financial compensation. In this way, their members are obliged

Table 3 — EAGGF-Guarantee: Expenditure entered by each Member State under the common organization of the market in fishery products

		(Million ECU)									
Type of expenditure		Belgium	Denmark	FR of Germany	Greece	France	Ireland	Italy	Netherlands	United Kingdom	Total EEC
1 9 8 2	Interventions	0,373	1,699	1,621	—	2,965	1,628	5,997	0,567	5,311	20,161
	Refunds	—	0,291	0,864	—	—	2,675	—	7,506	2,479	13,815
	Total	0,373	1,990	2,485	—	2,965	4,303	5,997	8,073	7,790	33,976
1 9 8 3	Interventions	0,153	2,605	1,921	0,018	2,205	1,766	2,927	0,819	5,103	17,517
	Refunds	—	0,218	0,460	—	0,010	1,656	—	5,300	0,589	8,233
	Total	0,153	2,823	2,381	0,018	2,215	3,422	2,927	6,119	5,692	25,750
1 9 8 4	Interventions	0,435	1,513	1,328	0,102	3,206	2,207	0,703	2,057	3,195	14,746
	Refunds	—	0,007	0,069	—	0,006	0,230	—	0,412	0,167	0,891
	Total	0,435	1,520	1,397	0,102	3,212	2,437	0,703	2,469	3,362	15,637

Source 1982: EAGGF-Guarantee financial report.
1983: Directorate-General for Agriculture.
1984: Directorate-General for Agriculture.

to accept a measure of financial solidarity, the main purpose of which is to supplement, within the organization, the measures intended to reduce and to limit surpluses which are to be submitted for intervention.

2.15. ... Payment of financial compensation is subject to a number of conditions, the most important of which are as follows:

- (a) the granting of financial compensation is subject to the condition that the producers' organization shall use the Community withdrawal price as its minimum price throughout the year⁽⁷⁾ failing which it will be refused all financial compensation;
- (b) the products withdrawn must:
- (i) have been caught by a member of the producers' organization,
 - (ii) have been graded in accordance with the common marketing standards prior to being offered for sale, and comply with this grading at the time of withdrawal,
 - (iii) have been offered for sale to all interested operators and must have remained unsaleable at a price at least equal to the withdrawal price,
 - (iv) have been rendered unfit for human consumption immediately after their withdrawal and disposed of for purposes other than human consumption; there also exists the possibility of distributing the products withdrawn free of charge to charitable institutions or, in the absence of any authorized outlet, of throwing them back into the sea.

2.16. The total quantities withdrawn from the market in 1982 to 1984 are shown, for each Member State, in Table 4.

Table 4 — Total quantities withdrawn from the market at the Community withdrawal price, by each Member State

(in tonnes)			
Member State [*]	1982	1983	1984
Belgium	1 532	1 485	2 308
Denmark	12 213	10 625	12 691
FR of Germany	4 481	4 950	3 425
Greece	—	14	30
France	15 077	8 431	10 233
Ireland	15 213	13 959	13 685
Italy	45 689	16 657	2 432
Netherlands	3 423	2 644	10 438
United Kingdom	41 247	28 452	20 696
EEC total	138 875	87 217	75 938

Source: Directorate-General for Fisheries.

Carry-over premium

2.17. The carry-over premium is a new measure, introduced in Regulation (EEC) No 3796/81 in order to avoid 'where possible ... the destruction of fish of a high commercial value which have been withdrawn from the market' (18th recital). It is aid paid to producers' organizations which decide to process certain products withdrawn from the market and to put them back on the market after a specified period of storage.

2.18. The rules governing the carry-over premium are set out in Article 14 of the basic Regulation and in two implementing regulations⁽⁸⁾ which lay down the

Table 5 — Species eligible for the carry-over premium

CCT heading No	Description	Freshness ⁽¹⁾	Presentation ⁽¹⁾	Size ⁽¹⁾
1. ex 03.01 B I f) 1	Redfish (<i>Sebastes spp.</i>)	E,A	whole	2,3
2. ex 03.01 B I h) 1	Cod (<i>Gadus morrhua</i>)	E,A	gutted and with head	3,4,5
3. ex 03.01 B I ij) 1	Saithe (<i>Pollachius virens</i>)	E,A	gutted and with head	3,4
4. ex 03.01 B I k) 1	Haddock (<i>Melanogrammus aeglefinus</i>)	E,A	gutted and with head	2,3,4
5. ex 03.01 B I l) 1	Whiting (<i>Merlangus merlangus</i>)	E,A	gutted and with head	2,3,4
6. ex 03.03 A IV b) 1	Shrimps (<i>Crangon crangon</i>)	A	simply boiled in water	1
*7. ex 03.01 B I d) 1	Mediterranean sardines (<i>Sardina pilchardus</i>)	E,A	whole	
*8. ex 03.01 B I p) 1	Mediterranean anchovies (<i>Engraulis spp.</i>)	E,A	whole	

⁽¹⁾ The freshness, presentation and size categories are those defined pursuant to Article 2 of the basic Regulation.

* From expiry of the special arrangement provided for in Article 14 (3) of the basic Regulation.

species and categories of products in respect of which a carry-over premium may be applied for (see Table 5). The amount of the premium, which may not exceed the cost of processing and storage nor exceed 50% of the Community withdrawal price for the fresh product, is fixed by the Commission, in accordance with the Management Committee procedure, before the beginning of each fishing year.

2.19. A quantitative limit is also fixed for the carry-over premium: the premium is in fact granted only for quantities not exceeding 15% of the annual quantity of the product in question put up for sale by the producers' organization. The only quantities that are eligible to receive this premium are those which, after having been withdrawn from the market, are kept in such a way as to preserve the quality of the products and are subjected by the following day, at the latest, to one or more of three processing methods — freezing, salting or drying — followed by storage for a period varying according to the type of processing. The processed products must finally be placed back on the market.

2.20. Producers' organizations in receipt of the carry-over premium must keep stock records in accordance with the procedure laid down in Regulation (EEC) No 3321/82, Article 5⁽⁸⁾. If the products are processed on behalf of a producers' organization by an external undertaking, the contract concluded between the two parties must stipulate that the undertaking is required to keep the stock records.

2.21. The premium is paid by the Member State after the end of each fishing year. Monthly advances may be granted, however, provided that a security equal to 105% of the amount applied for is lodged by the producers' organization.

Special carry-over premium

2.22. The special carry-over premium for Mediterranean sardines and anchovies is a new measure provided for in paragraph 3 of Article 14 of the basic Regulation⁽⁹⁾ and set out in two implementing regulations. The amount of the premium is laid down in Regulation (EEC) No 2204/82⁽⁹⁾ and may be reviewed by the Commission in accordance with the Management Committee procedure on the basis, in particular, of:

- (a) any variations in the difference between the supply costs of the industry in the Community and those of the non-member countries supplying the Community;
- (b) the trend of processing costs within the Community.

2.23. This premium is provided for a period of four years as from 1 January 1983, the date of entry into

force of the Council's implementing Regulation⁽⁹⁾. It was introduced 'because, on the one hand, of the particular difficulties faced by the Mediterranean anchovy and sardine sector, and on the other hand, of the slow development of producers' organizations in the Mediterranean area' (basic Regulation, 18th recital).

2.24. The special carry-over premium has some features in common with the carry-over premium; the objective of both is to encourage the processing of products which are difficult to dispose of in their fresh state. However, unlike the carry-over premium, the special carry-over premium does not relate to products withdrawn from the market, it is not subject to a maximum quantitative limit and it is not paid exclusively to producers' organizations.

2.25. The recipients of the special carry-over premium are either producers' organizations which subject the products in question to one or more of the forms of processing laid down in the Community regulations (freezing, salting, drying or tinning of sardines and anchovies falling under heading No 16.04 of the Common Customs Tariff), or processing undertakings which have concluded with the producers' organizations a purchase contract stipulating a purchase price at least equal to 105% of the Community withdrawal price. An exception is made, however, in the case of Greece, where, until the end of 1985, the premium may be paid to processors who conclude purchase contracts with producers who are not members of producers' organizations and to individual producers who process their products themselves.

2.26. Each purchase contract must be concluded for a period of at least two months and must specify the quantities and categories of the products to be delivered, together with the schedule of deliveries.

2.27. The processors must keep stock records in accordance with the special procedure laid down under Article 6 of Regulation (EEC) No 3138/82⁽⁹⁾.

2.28. Applications for payment of the special carry-over premium may be submitted by those concerned to the competent authorities of the Member State concerned on conclusion of the processing operations. If processing is carried out on the basis of a purchase contract, the application for the premium is submitted after all the quantities purchased have been processed and, at the latest, within three months from the end of the processing operations. Advances may be granted if a security equal to 105% of the advance applied for is provided.

Link with the policy on management of resources

2.29. The conservation of fish stocks is the main aspect of the common fisheries policy. The Community system for the conservation and management of fishery resources is established in Council Regulation (EEC)

No 170/83 of 25 January 1983⁽¹⁰⁾. It consists, in particular, of conservation measures, rules for the use and distribution of resources, special provisions for coastal fishing and supervisory measures.

2.30. The conservation measures, in particular, may include, for each species or group of species:

- (a) the establishment of zones where fishing is prohibited or restricted to certain periods, types of vessel, fishing gear or certain end-uses;
- (b) the setting of standards as regards fishing gear;
- (c) the setting of a minimum fish size or weight per species;
- (d) the restriction of fishing, in particular by limits on catches.

2.31. When it becomes necessary to limit catches, the following provisions are fixed each year:

- (a) the total allowable catch (TAC) for each stock or group of stocks;
- (b) the share available to the Community;
- (c) the total catch allocated to third countries;
- (d) the specific conditions for making these catches.

2.32. The total catch available to the Community is distributed between the Member States (quota system) in a manner which assures each Member State relative stability of fishing activities for each of the stocks concerned. Table 6 shows the allocation of quotas for 1984 and 1985, with reference to the main species of fish.

2.33. The basic Regulation establishes a formal link between the interventions financed by the EAGGF-Guarantee and the catch limits imposed under the policy on the management of resources. According to paragraph 2 of Article 26 of this Regulation, 'intervention measures shall be financed (...) in respect of products from a stock or group of stocks only up to the limit of any quantities allocated to the Member State in question from the total volume of allowable catches for the stock or groups of stocks in question'.

2.34. The obligation on producers' organizations to keep fishing plans may appear to be a significant factor contributing towards the monitoring of observance of the various quotas allocated to the Member States.

2.35. According to the Community regulations, observance of the quotas must be checked on a regular basis by Community inspectors. There has been a delay in recruiting and appointing these inspectors, so that it is not possible at present to assess the results of these measures.

Table 6 — Allocation for 1984⁽¹⁾ and 1985 of catch quotas for the main species in Community waters and in waters administered with third countries

Species		Belgium	Denmark	Germany	Greece	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom	Total
Cod	1985	9 330	183 380	69 310	—	39 820	11 520	—	—	26 820	128 240	468 420
	1984	8 230	236 350	84 380	—	36 950	11 520	—	—	23 230	117 910	518 570
Haddock	1985	1 960	21 450	8 430	—	21 130	4 050	—	—	1 340	159 070	217 430
	1984	1 670	18 615	7 110	—	19 340	4 370	—	—	1 120	140 840	193 065
Saithe	1985	90	8 390	23 230	—	74 840	3 060	—	—	210	22 480	132 300
	1984	80	7 550	21 110	—	69 850	3 060	—	—	190	20 860	122 700
Whiting	1985	4 090	35 980	4 370	—	40 190	17 800	—	—	9 670	86 600	198 700
	1984	3 680	34 190	3 900	—	37 510	17 800	—	—	8 630	79 480	185 190
European plaice, American plaice, witch flounder	1985	13 325	51 460	10 830	—	8 020	3 295	—	—	73 620	59 000	219 550
	1984	12 085	46 110	9 860	—	7 345	3 070	—	—	66 890	53 760	199 120
Sole	1985	4 035	1 360	1 500	—	5 730	555	—	—	16 980	3 025	33 185
	1984	3 825	1 280	1 360	—	5 365	555	—	—	15 475	2 870	30 730
Mackerel	1985	330	8 350	24 330	—	16 330	80 000	—	—	35 330	220 330	385 000
	1984	100	7 400	25 600	—	17 100	85 300	—	—	37 300	234 700	407 500
Sprat	1985	1 400	139 270	4 730	—	2 700	—	—	—	3 350	43 000	194 450
	1984	1 100	110 830	3 520	—	2 400	—	—	—	2 900	41 500	162 250 ⁽²⁾
Hake	1985	250	2 340	100	—	21 480	1 300	—	—	200	4 430	30 100
	1984	240	2 150	100	—	21 220	1 300	—	—	200	4 390	29 600
Anglerfish (Monkfish)	1985	3 060	—	630	—	28 930	3 060	—	—	630	7 810	44 120
	1984	2 750	—	560	—	25 930	2 750	—	—	560	7 000	39 550
Megrin	1985	390	—	—	—	8 110	2 960	—	—	—	3 450	14 910
	1984	380	—	—	—	7 610	2 790	—	—	—	3 170	13 950
Herring	1985	9 120	145 980	70 770	—	37 270	32 880	—	—	87 720	105 610	489 350
	1984	7 100	75 050	41 900	—	22 640	31 660	—	—	48 970	75 780	303 100
Salmon	1985	—	853	67	—	—	—	—	—	—	—	920
	1984	—	1 723	67	—	—	—	—	—	—	—	1 790

⁽¹⁾ The figures for 1984 include the quantities fished in Greenland waters.

⁽²⁾ Not including the quantities fished in the North Sea between 1 January 1984 and 21 September 1984.

3. INSPECTIONS CARRIED OUT BY THE COURT IN THE MEMBER STATES

Introduction

3.1. During 1984, the Court carried out on-the-spot inspections in several ports in all the Member States engaging in maritime activities. The main objective was to check the degree of reliability and effectiveness of the systems introduced in each Member State, in order to ensure that the rather complex Community regulations were being implemented correctly. These inspections were particularly imperative since, prior to the Court's inspection, the Commission had not made any visits of this type to the national administrations concerned. The observations below are based on the results of the investigations carried out and they refer to the most important points raised in the previous chapter.

Observance of the common marketing standards

3.2. Loopholes were found to exist with regard to the application of the common marketing standards to pelagic species (sardines, anchovies, herring and mackerel). The countries concerned are the following:

- (a) in Italy, it was noted during visits to four fish markets that the sardines and anchovies offered for sale were automatically considered to be of one and the same freshness and size category ('E3'), despite the fact that the Community regulations provide for four size categories, in addition to three freshness categories, for sardines and anchovies. The fish are graded on the vessel and unloaded in boxes which are all supposed to contain the same quality and quantity of fish. In addition, the lots displayed for sale are not labelled in accordance with the Community regulations;
- (b) in Greece, the common marketing standards are not generally applied at all to sardines and anchovies;
- (c) in France, on the Mediterranean coast, sardines and anchovies are generally sold in bulk on the basis of a sample assessment of the quality and quantity of the catches (a practice known as 'agréage'). A similar system of bulk sales was observed in Ireland and Denmark in the case of herring and mackerel: here the fish is sold prior to unloading, on the basis of samples taken in the holds of the vessels.

3.3. These methods of offering fish for sale, which sometimes represent traditional practices going back to before the introduction of the common organization of the market, are not in accord with the formal requirements of Community legislation. The lack of stringency in the grading has repercussions when the quantity and

quality of the product withdrawn from the market and the applicable withdrawal price are established, as the determination of these factors is subject to reservations that result directly from the inaccurate methods applied.

Producers' organizations

3.4. The actual role played by producers' organizations in the common organization of the market in fishery products varies considerably from one Member State to the other. The two principal tasks assigned to the producers' organizations are the preparation of fishing plans to enable supply to be adapted to demand during the fishing year and the concentration of supply and the regularization of prices. It was observed, however, that these two tasks were not carried out anywhere entirely in accordance with the objectives laid down in the regulations.

3.5. The random nature of catches and rapid changes in market conditions, influenced among other things by external factors such as the unloading of vessels from non-Member States, often lead producers' organizations to draw up fishing plans which confine themselves to defining estimates on the basis of the number of vessels in operation and the results of previous years. In the high-sea fishing sector, some organizations may to some extent 'guide' the fishing activities of their members, by means of daily instructions transmitted by radio to the vessels in operation. This system, which certainly contributes towards rationalizing fishing, nevertheless has more in common with flexible day-to-day management than with the implementation of a plan. In this connection, the Commission should make it clear to the producers' organizations what should be included under the concept of a fishing plan, which is an essential instrument for the upstream stabilization of the market.

3.6. In the case of concentration of supply and regularization of prices, the role of the producers' organizations is limited by the fact that, in most cases, the fish is sold at public auctions where the same rules of sale apply to all producers, irrespective of whether they belong to an organization or not. Within such a context, the role of the producers' organization is neutralized, as has been observed in certain cases, and is limited, in practice, to ensuring that the Community withdrawal price is applied. Conversely, producers who are not members of organizations may benefit from the economic advantages that flow from the general maintenance of prices.

3.7. Furthermore, the Community regulations governing producers' organizations in the fisheries sector do not place fishermen under any obligation to become members. Thus, according to information obtained in certain Member States, there still appears to be a large number of producers carrying out their activities independently of any producers' organization. This fact is confirmed by the data set out in Table 7.

Table 7 — Importance of producers' organizations
(situation in 1982)

Country	No of producers' organizations	Production for human consumption		Percentages (b)/(a)
		Total in tonnes (live weight) (a)	Total production by producers' organizations in tonnes (weight of product) (b)	
Belgium	1	48 000	43 000	90
Denmark	1	463 000	203 500	44
FR of Germany	20	248 000	149 900	60
Greece	3	120 000	7 000 ⁽¹⁾	6
France	28	716 000	464 000	65
Ireland	2	206 000	150 600	73
Italy	15	410 000	143 600	35
Luxembourg	—	—	—	—
Netherlands	2	505 000	125 500 ⁽²⁾	25
United Kingdom	16	775 000	469 000 ⁽³⁾	61
Total (Products listed in Annex I (A) and (D) of the basic Regulation, included in the total)	88 ⁽⁴⁾	3 491 000 (1 717 000)	1 756 100 (1 335 000)	50 (78)

Source: Eurostat, OECD and data forwarded by the Member States to the Directorate-General for Fisheries.

⁽¹⁾ Estimate.

⁽²⁾ Total production of products in respect of which withdrawal prices are applied.

⁽³⁾ Total of products listed in Annex I (A) and (D) of the basic Regulation.

⁽⁴⁾ Including two producers' associations in the FR of Germany and France.

These producers are therefore outside the scope of the common policy on market regulation, which, depending on the situation existing in the various countries, may jeopardize the effectiveness of the common market policy.

3.8. It was observed that producers sometimes regard the producers' organization not as a group established for concerted joint action but primarily as a means of gaining access to the intervention measures financed by the EAGGF. This situation was found to exist in Denmark, in some Scottish ports and in certain places on the Italian Adriatic coast, as described below:

(a) in Denmark, a Member State with a very large fishing industry, only one producers' organization existed in 1984, representing about 86% of Danish fishing vessels and 90% of the tonnage landed. However, the fact that only one, very large, recognized organization exists suggests less than total commitment by Danish fishermen to the organization model advocated in the Community legislation. An on-the-spot visit established that the Danish producers' organization does not play an active role in either the organization of fishing activities or marketing. It is essentially an accounting and administrative body, responsible for processing application files, with a view to obtaining financial compensation, and for calculating the amounts involved;

(b) in some ports in Scotland and on the Italian Adriatic coast, the producers were already organized into cooperatives or associations for administering their common interests. However, the existing bodies, instead of applying for recognition, preferred to be duplicated by a purely formal structure. The recognized producers' organization has virtually no staff and practically no resources of its own and is primarily concerned — as in the case of Denmark — with administering the intervention measures financed by the EAGGF.

Financial compensation

Denaturing of products withdrawn from the market

3.9. According to one of the rules applying to withdrawal operations, once the products have been unloaded, graded, offered for sale and withdrawn from the market, they must be rendered unfit for human consumption immediately after withdrawal (paragraph 2 of Article 2 of Regulation (EEC) No 1501/83⁽⁶⁾), to prevent them being reintroduced into the standard distribution network. The method generally used for rendering fish withdrawn from the market unfit for human consumption is that of denaturing by means of a dye.

3.10. The following findings were made:

- (a) in a French Mediterranean port (Port Vendres), the products withdrawn from the market, particularly sardines, were not even unloaded, did not undergo any denaturing process and were thrown back into the sea. This operation is therefore not monitored either by the competent producers' organization or by the local authorities and it was not possible to inspect any document relating to this operation;
- (b) there are still problems in Italy and Denmark, and no formal provision has been adopted to ensure systematic observance of the requirement that fish withdrawn from the market be rendered unfit for human consumption;
- (c) at a port visited in Ireland, the quantities withdrawn are either sent for processing at the fish meal factory without prior denaturing or kept, without denaturing, in the cold storage tanks of trawlers before being thrown back into the open sea;
- (d) in the Netherlands, the national regulations have introduced a derogation from the Community regulations⁽¹¹⁾ in the case of withdrawals of large quantities of fish. This is because denaturing does not take place immediately, at the place of sale, but is effected on the premises of cold storage companies.

3.11. The situation observed in the abovementioned Member States amounts to failure to comply with the obligation to render products withdrawn from the market unfit for human consumption immediately after withdrawal. In addition, it effectively negates substantial precautionary measures provided for in Community legislation in order to forestall the possibility of fraud. If these provisions are not observed more scrupulously, the Commission should consider introducing proper measures to supervise withdrawal operations.

Observance of the Community withdrawal price

3.12. An on-the-spot inspection of the documentation relating to sales made by producers' organizations in Italy at the fish markets visited showed that sardines and anchovies are sometimes sold below the Community withdrawal price, whereas they should have been withdrawn from the market according to the regulations.

3.13. Failure to observe the Community regulations is supposed to disqualify the offenders from any entitlement to financial compensation for the year in question. The Court considers that this practice, which does not

comply with one of the basic conditions for the granting of financial compensation, is in conflict with the stated objective of maintaining producers' incomes through market regulation.

Financial solidarity among members of producers' organizations

3.14. In Italy, the four producers' organizations visited restrict themselves to paying the sums obtained by way of financial compensation, to those of their members who withdraw products without making any contribution out of their own funds. The principle of the financial solidarity of the organization as a whole (see paragraph 2.14) is therefore not observed.

Carry-over premium

3.15. Applying for this premium brings with it the option, for producers' organizations, of using processing plants and storage facilities, either on their own or in sub-contracted operations, and being able to dispose of the processed product on a market which will often be different from that of the fresh product. The carry-over premium does not appear to constitute a strong enough incentive to encourage all the producers' organizations potentially involved to undertake processing and marketing operations, which are often new to them.

3.16. The premium has been used only by the Federal Republic of Germany, to a limited extent, on account of the small quantities of fish withdrawn from the market in that country. In the other Member States there was no occasion for use of the premium. The Court therefore notes that the objective set by the Community regulations in this respect — i.e. to avoid 'the destruction of fish of a high commercial value' — has been achieved only very incompletely.

Special carry-over premium

Keeping of stock records

3.17. The small-scale fishery undertakings to be found in Greece are not easily able to comply with the requirement of keeping records. In the case of some undertakings in France, these records showed that there is no accurate identification of the lots after the fish has been processed. The lots covered by each contract are not monitored from the arrival of the fresh or frozen sardines up to the moment when they are stored in tinned form. The Court considers that there should be closer observance of the stock records, so that products for which a premium is granted may be easily checked and distinguished from those products which have not received the special carry-over premium.

Control system to be introduced by the Member States

3.18. Article 4 of Regulation (EEC) No 2204/82 provides that the Member States concerned shall introduce a system to ensure that the products in respect of which application has been made for the special carry-over premium do in fact qualify for it.

3.19. During the Court's mission to Greece, it was found that the departmental divisions appointed to carry out such a control system were not in a position to supply the results of these controls for the financial year. This should, however, be regarded as a fundamental condition for the granting of the special carry-over premium.

The roles of intermediaries

3.20. During the on-the-spot inspection in France on the premises of processing firms, it was found that intermediaries between the processors and the producers' organizations both invoiced the fish delivered to the processors and paid for the fish purchased from fishermen's organizations. These middle-men effectively prevent contact between the two parties. It is therefore not possible to monitor the origin of the fish, observance of the contracts and the price paid to the fishermen's organizations, which must be at least 105 % of the withdrawal price. In addition, one intermediary company applied for and obtained special carry-over premiums on behalf of certain processors who had given no express authority for it to do so. This situation, besides ultimately running counter to the producers' interests, also obstructs the fundamental role which the producers' organizations are supposed to play within the context of the common fisheries policy.

Purchase price of sardines to producers' organizations

3.21. In 1983, the minimum purchase price in France was 1,97 FF/kg and in 1984 it was 2,10 FF/kg (105 % of the withdrawal price). An inspection of a number of contracts revealed that they rarely showed the net purchase price paid to the producers' organizations, since the prices given on the contracts include other cost factors (intermediaries, transport, etc.).

3.22. The Court considers that the Commission should specify the information which should be contained in the contracts (in accordance with Article 3 of Regulation (EEC) No 3138/82), in order to show the actual price obtained by the producers' organizations, as all the regulations are designed to ensure that this price remains at an adequate level.

Management of stocks

3.23. During the on-the-spot audits in the countries concerned, the following findings were made:

- (a) no efficient system for monitoring compliance with the catch quotas had been introduced in the Netherlands or in Ireland, whereas considerable efforts had been made along these lines in the other Member States;
- (b) in France, a schedule of allocating national quotas by region had not yet been applied at the time of the visit (July 1984), with the result that serious difficulties occurred with regard to the strict management of quotas at local level.

3.24. Because of the incomplete nature except in the United Kingdom of the system for monitoring observance of the quotas which has been introduced into the various Member States, it is not possible to ensure that, in accordance with the Community provisions, quantities caught outside the quota do not benefit from the EAGGF-Guarantee intervention measures.

4. CONCLUSIONS

4.1. The main conclusion to emerge from the above observations is that the common organization of the market in fishery products, as set up by the Community regulations, has not in actual fact led to a sufficient measure of 'common practices', with the result that the regulations have not to date been able to take full effect. The practices traditionally followed by producers, which sometimes vary greatly from one Member State to another, should in fact have been adapted to the basic rules of the common organization of the market: this applies in particular to the common marketing standards and the detailed rules governing the special carry-over premium, in respect of which the Court noted the greatest disparities. The Court considers that the Commission should not allow producers a discretionary margin in their observance of the regulations.

4.2. As provided for in the Community regulations, the entire common organization of the market is based on a voluntary organization of the trade and, consequently, the optimum operation of producers' organizations. It was noted in this respect, however, that very few organizations — particularly those which have recently been set up — seem to make full use of the range of measures proposed by the Community. Furthermore, the existence in certain cases of large-scale independent producers undermines the effects which the rules of the system imposed on markets by Community measures are supposed to produce. They benefit indirectly from price maintenance because of the exist-

ence of the withdrawal price, which is the minimum price below which their competitors who are members of producers' organizations undertake not to sell. This fact alone is enough to show that, under such con-

ditions, the market is no longer fully organized. There is indeed cause to question the sense of a minimum selling price which is not applied to all operators and which therefore only concerns part of the market.

(¹) Council Regulation (EEC) No 2142/70 of 20 October 1970 (OJ No L 236, 27. 10. 1970, p. 5), subsequently replaced by Council Regulation (EEC) No 100/76 of 19 January 1976 (OJ No L 20, 28. 1. 1976, p.1).

(²) OJ No L 379, 31. 12. 1981, p. 1.

(³) Council Regulation (EEC) No 103/76 of 19 January 1976 (OJ No L 20, 28. 1. 1976, p. 29), amended by Council Regulation (EEC) No 3166/82 of 22 November 1982 (OJ No L 332, 27. 11. 1982, p. 4). For one species of crustacean, Council Regulation (EEC) No 104/76 of 19 January 1976 (OJ No L 20, 28. 1. 1976, p. 35), last amended by Regulation (EEC) No 3118/85 of 4 November 1985 (OJ No L 297, 9. 11. 1985, p. 3).

(⁴) See:

(a) Council Regulation (EEC) No 105/76 of 19 January 1976 (OJ No L 20, 28. 1. 1976, p. 39) on the recognition of producers' organizations in the fishing industry;

(b) Commission Regulation (EEC) No 2062/80 of 31 July 1980 (OJ No L 200, 1. 8. 1980, p. 82) on the conditions and procedure for granting and withdrawing recognition of producers' organizations and associations thereof in the fishing industry. This Regulation was recently amended by Commission Regulation No 1995/84 of 12 July 1984 (OJ No L 186, 13. 7. 1984, p. 23).

(⁵) Commission Regulation (EEC) No 3090/83 of 31 October 1983 (OJ No L 301, 1. 11. 1983, p. 65).

(⁶) See also:

(a) Council Regulation (EEC) No 2202/82 of 28 July 1982 (OJ No L 235, 10. 8. 1982, p. 1), laying down general rules for the granting of financial compensation in respect of certain fishery products;

(b) Commission Regulation (EEC) No 3137/82 of 19 November 1982 (OJ No L 335, 29. 11. 1982, p. 1), laying down detailed rules for the granting of financial compensation in respect of certain fishery products;

(c) Commission Regulation (EEC) No 1501/83 of 9 June 1983 (OJ No L 152, 10. 6. 1983, p. 22), on the disposal of certain fishery products which have been the subject of measures to stabilize the market.

(⁷) As provided for in paragraph 1 of Article 2 of Council Regulation (EEC) No 2202/82 of 28 July 1982 (OJ No L 235, 10. 8. 1982, p. 2).

(⁸) See also Council Regulation (EEC) No 2203/82 of 28 July 1982 (OJ No L 235, 10. 8. 1982, p. 4), laying down general rules for the granting of a carry-over premium for certain fishery products, and Commission Regulation (EEC) No 3321/82 of 9 December 1982 (OJ No L 351, 11. 12. 1982, p. 20), laying down detailed rules for the granting of a carry-over premium for certain fishery products.

(⁹) See also:

(a) Council Regulation (EEC) No 2204/82 of 28 July 1982 (OJ No L 235, 10. 8. 1982, p. 7), laying down general rules for the granting of a special carry-over premium for Mediterranean sardines and anchovies;

(b) Commission Regulation (EEC) No 3138/82 of 19 November 1982 (OJ No L 335, 29. 11. 1982, p. 9), laying down detailed rules for the granting of a special carry-over premium for Mediterranean sardines and anchovies, amended by Commission Regulation No 3646/84 of 21 December 1984 (OJ No L 335, 21. 12. 1984, p. 57).

(¹⁰) OJ No L 24, 27. 1. 1983, p. 1.

(¹¹) See paragraph 2 of Article 8 of the 1973 Dutch Regulation on the denaturing of fish varieties affected by the Community regulations. See also the correspondence of the 'Produktschap voor vis en visproducten' (Marketing board for fish and fish products) with the Ministry of Agriculture, of 15 February 1984.

This report was adopted by the Court at its meeting of 28 November 1985.

For the Court of Auditors

Marcel MART

President

THE COMMISSION'S REPLIES

2. DESCRIPTION OF THE MAIN FEATURES OF THE MARKET ORGANIZATION

Link with the policy on management of resources

2.35. Community inspectors have been performing their duties since November 1983: monthly catch figures have been sent to Brussels since 1980.

The elimination of the 'grey market' in the Netherlands, the improvements in the recording of landings in transit, the identification of the 'paper quotas' problem etc. show that it is possible to assess, on a provisional basis at least, the effectiveness of some Community measures.

3. AUDITS CARRIED OUT BY THE COURT IN THE MEMBER STATES

Introduction

3.1. The Commission also carried out a number of inspections in preparing the decisions on the clearance of accounts. The EAGGF inspectors made checks on both paying agencies and producers' organizations in respect of 1982 and 1983.

These checks revealed a number of shortcomings which were also remarked on by the Court. The observations were set forth in the EAGGF's internal reports and in several cases the Commission was recommended to make financial corrections.

Similarly, the Commission made visits to ports (and more particularly the headquarters of the national administrations) in the course of 1984, to monitor implementation of those provisions of the common fisheries policy which relate to fish stocks.

Observance of the common marketing standards

3.2 and 3.3. The Commission shares the view expressed by the Court as regards the consequences of the loopholes in the application of the common marketing standards for certain species, bearing the following in mind:

- Firstly, monitoring compliance with the common marketing standards is entirely the responsibility of the Member States. For this reason the Commission has reminded several Member States of their obligations and intends to take any necessary measures should the situation continue;
- Secondly, as regards sample assessment, the Commission would point out that it recently presented to the Council a proposal for a Regulation⁽¹⁾ whereby

certain pelagic species would be graded by sample assessment, subject to certain conditions. This proposal would make for stricter application of the common marketing standards.

Producers' organizations

3.4. Under the Community rules Member States are obliged to keep a constant watch on the operation of producers' organizations. The authorities of the Member State on whose territory the producers' organization is established have more resources at their disposal than the Commission for checking that the organization in question is complying with the Community rules (Regulation (EEC) No 105/76).

3.5. The concept in question is already dealt with by Regulation (EEC) No 1995/84, Article 5(1) of which states that a catch plan is to be drawn up on the basis of forecasts of the potential output per species, respecting any quantities allocated to the Member State and on the basis of an analysis of market requirements. The plan is to include appropriate measures for bringing the means of production and catches into line with demand during the fishing year. Within this framework producers' organizations are free to define the technical means which they intend to employ.

The catch plan is thus an economic instrument the purpose of which is to adjust supply to the actual situation on the market. One specific objective of the market organization is the short-term regulation of catches within the framework of the catch plan, in the light of day-to-day fluctuations in prices.

3.6. The whole question of the position and role of producers' organization is dealt with in the answer to point 4.2.

3.7. The Commission would point out that, since the beginning, producers' organizations have been set up on a non-compulsory basis, for reasons of public law in some Member States and to take account of production conditions specific to this sector.

However, to lessen the negative effects which the existence of non-affiliated producers could have on the stability of the market, Article 7 of the basic Regulation⁽²⁾ enables Member States to oblige such producers, under certain conditions, to comply with the marketing rules of a producers' organization (extension of rules).

3.8. The Commission has taken note of the Court's observations concerning certain specific cases. It will request the Member States responsible to ensure that

the producers' organization comply with the Community rules or to withdraw recognition in the event of non-compliance.

The Commission would also point out that a second producers' organization has now been set up in Denmark.

Financial compensation

3.9 to 3.14 The Commission shares the Court's opinion concerning the loopholes in the application of Community rules on the denaturing of products withdrawn from the market, on the observance of the Community withdrawal price and on financial solidarity.

- As regards the denaturing of products, the Commission has already requested the Member States concerned to take all necessary steps to ensure that the relevant Community rules are strictly applied.
- As regards non-compliance with the Community rules on withdrawal prices by producers' organizations in Italy, the Commission has already requested, following an on-the-spot investigation, that recognition should be withdrawn from one of the producers' organizations.

The Commission has also requested the Italian authorities to provide it with full information concerning the judicial inquiry which is now being conducted into a producers' organization. All EAGGF payments to these two producers' organizations have been suspended.

Carry-over premium

3.15. The Commission would point out that recourse to the carry-over premium is merely an option available to producers' organizations. They can decide for or against applying for the premium, within the framework of their specific marketing policy. Use of the premium depends on several factors, such as whether the market will be able to absorb the processed products at a later date.

The incentive provided is determined by the level of the premium. In the fixing of this level, account must be taken of two basic factors which are difficult to reconcile: on the one hand, producers' organizations must be given sufficient incentive to process and store their products; on the other hand, the balance of the markets for fresh and processed products must not be adversely affected.

To encourage producers' organizations to make wider use of the carry-over premium, the Commission recently sent to the Member States an explanatory memo so that the possibilities offered by the scheme in question would be more fully understood.

Special carry-over premium

Control system to be introduced by the Member States

3.19 It is from the Greek administrative authorities and not from the departments inspected by the Court of Auditors that the Commission regularly receives the communications required under the Community rules, as specified in Article 13(2) of Regulation (EEC) No 3138/82.

The role of intermediaries

3.20. The Commission has noted the observations made by the Court of Auditors and will contact the national authorities concerned.

Purchase price of sardines to producers' organizations

3.21. The Commission would point out that the price to be paid to the vendor must be stated in the contract. This is a condition for the validity of the contract and is explicitly stipulated by the Community rules (Article 3(1) and Article 4(1) of Regulation No 3138/82).

Other cost factors may be included in the contract if the net purchase price paid to the vendor is clearly stated and if this price is equal to the withdrawal price plus 5%. Checks on the information shown in the contracts are a matter for the agency designated for this purpose by the Member State.

On several occasions the Commission staff have also discussed with the Member States, within the appropriate bodies, the various ways in which compliance with the withdrawal price could be defined. Depending on the outcome of these discussions, the Commission may adopt appropriate measures.

Management of stocks

3.23. The Commission has ascertained that all Member States have now introduced systems of recording and monitoring catches to ensure that quotas are observed. The degree to which these systems have been developed varies from one Member State to another; their effectiveness is gradually improving in the Community as a whole. It should be pointed out that the Netherlands have recently made a considerable effort to ensure that their fishermen respect the quotas, despite the problems arising from the fact that the Netherlands fleet is large in comparison to the fish stocks at its disposal.

In the case of France it should be pointed out that there is a scheme for allocating the most important stocks (eg., saithe, herring) to producers' organizations. The national authorities have sole responsibility for implementing any scheme for allocating quotas by region.

3.24. The problem raised by the Court of Auditors must be resolved within the general context of better monitoring of the activities of Community vessels.

4. CONCLUSIONS

4.1. The Commission, which will continue its efforts in this sector bearing in mind the concern expressed by the Court of Auditors, would point out that, as regards the shortcomings found by the Court, it has requested the Member States to take all necessary measures to ensure stricter application of the Community rules: Steps have recently been taken in this direction, such as the withdrawal of recognition from some producers' organizations and the tightening of national implementing provisions.

On 24 September 1985, moreover, the Commission placed before the Council a proposal for a Regulation which would ensure, amongst other things, stricter application of marketing standards⁽³⁾.

4.2. Voluntary and autonomous management of the market by producers' organizations is an essential basis for the market organization and goes hand in hand with the right to choose whether or not to set up a producers' organization and whether or not to join such an organization. The same applies to intervention on the market: a producers' organization can opt for the Community price system or for autonomous price arrangements.

These fundamental principles were laid down by the Council in the light of the practical needs of this sector, a feature of which is the great diversity from one region to another, and bearing in mind the constitutional law in force in certain Member States.

It is interesting to note that over 70% of Community output of the products listed in Annex I to the basic Regulation is marketed by producers' organizations, which apply the Community withdrawal prices to almost all the quantities concerned. This indicates the relative importance of producers' organizations on the market as a whole.

⁽¹⁾ COM(85) 513 final of 24. 9. 1985.

⁽²⁾ Regulation (EEC) No 3796/81.

⁽³⁾ COM(85) 513 final.

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