

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	)	
	)	
	)	
PLAINTIFF,	)	
	)	Civil Action No.
v.	)	
	)	
AIG TRADING CORPORATION;	)	
BP EXPLORATION & OIL INC.; and	)	
CARGILL INTERNATIONAL, S.A.	)	
	)	
DEFENDANTS.	)	

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**COMPETITIVE IMPACT STATEMENT**

The United States of America, pursuant to Section 2 of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16(b), submits this Competitive Impact Statement in connection with the proposed Stipulation and Order submitted for entry with the consent of defendants in this civil antitrust proceeding.

**I.**

**NATURE AND PURPOSE OF THE PROCEEDINGS**

On July , 1997, the United States filed a civil antitrust complaint under Section 4 of the Sherman Act, as amended, 15 U.S.C. §4, alleging that the defendants engaged in a combination and conspiracy, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, to exchange current and prospective brokerage commission information with the purpose and effect of lowering commissions paid to

brokers located in the United States for arranging certain types of transactions, namely the purchase and sale of Brent spread contracts and contracts for differences (CFDs), involving Brent blend crude oil, a crude oil produced in the North Sea. Specifically, the complaint alleges that, in furtherance of this conspiracy, the defendants and others:

- (a) communicated with each other regarding current and prospective brokerage commissions; and
- (b) reduced brokerage commissions.

On July 1, 1997, the United States and the defendants also filed a proposed Stipulation and Order ("proposed Order") to resolve the allegations in the complaint. The proposed Order will prevent each of the defendants from agreeing with other traders to (1) fix, lower, raise, stabilize or maintain any commission to be paid to a broker for arranging the purchase and sale of Brent time spreads or CFDs or (2) exchange any information for that purpose, and from requesting or urging any other trader to lower, raise or change any such commission to be paid by it.

The United States and the defendants have agreed that the Court may enter the proposed Order after compliance with the APPA, unless the United States withdraws its consent (Section IX of the proposed Order). The proposed Order provides (as is standard in the Department's settlements) that it shall not constitute evidence against or an admission by any party with respect to any issue of fact or law.

Entry of the proposed Order will terminate this civil action as to the defendants, except that the Court will retain jurisdiction for further proceedings that may be required to enforce or modify the order entered, or to punish violations of any of its provisions by contempt.

## II.

### **DESCRIPTION OF PRACTICES GIVING RISE TO THE ALLEGED VIOLATION OF THE ANTITRUST LAWS**

Each of the defendants acted as a trader of Brent spread contracts and CFDs. Traders, including the defendants, regularly employed the services of brokers in connection with the purchase and sale of Brent spread contracts and CFDs. The brokerage commission paid by traders to brokers in connection with such purchases and sales is usually expressed in terms of an amount per barrel purchased and sold. In connection with Brent spread contracts and CFDs, a broker was usually paid a full brokerage commission by each party to the transaction.

Beginning at least as early as July 1992, representatives of the defendants agreed with one another and other traders during various telephone conversations and in person in Europe and the United States to exchange current and prospective brokerage commission information on commissions paid to brokers, including brokers located in the United States, for arranging the purchase and sale of Brent spreads and CFDs. The purpose of these exchanges was to facilitate a reduction in the amount of commissions paid, and as a direct result of this agreement, defendants and other traders were able to reduce such commissions in July and August 1992.

### III.

#### EXPLANATION OF THE PROPOSED STIPULATION AND ORDER

Format. The settlement of this civil action is in the form of a Stipulation and Order rather than a Final Judgment to ameliorate the likelihood that the settlement of this action will trigger (1) the institution of regulatory proceedings involving or (2) the imposition of regulatory sanctions against defendant AIG Trading Corporation (AIG Trading), its corporate parent and subsidiaries of the corporate parent in connection with various regulated businesses unrelated to the subject matter of this action.

Defendant AIG Trading is a subsidiary of AIG Trading Group Inc. (Trading Group) which is a subsidiary of American International Group, Inc. (AIG). AIG and its subsidiaries comprise a large, diversified financial service organization operating in 130 countries and jurisdictions. They are engaged in the businesses of insurance, money management, financial risk management, mutual fund advisory services and operation, and trading in the foreign exchange, interest rate, precious and base metals and crude oil and natural gas markets. In 1994, AIG and its consolidated subsidiaries generated revenues of over \$22 billion.

Because of their involvement in the highly regulated insurance and investment businesses, AIG and its subsidiaries are subject to supervision and review by the state departments of insurance in all fifty states, more than one hundred foreign insurance and bank regulatory agencies, the Security and Exchange Commission (SEC) and securities regulators in the United States and various foreign

countries as well as by various self regulatory organizations, which typically regulate both membership and the conduct of its members and their affiliates.

During the period covered by the Complaint in this action, energy trading represented about seven percent of Trading Group's profit and the purchase and sale of Brent spread contracts and CFDs, the subject matter of the Complaint, represented only a very small part of all energy-related revenues and profits. In the case of the parent corporation, AIG, the purchase and sale of Brent spread contracts and CFDs by defendant AIG Trading generated only a minuscule portion of total AIG revenues.

The entry of a Final Judgment against defendant AIG Trading in this case could, and in some instances would, trigger further inquiry and investigation by a host of regulatory entities, both in the United States and abroad, to determine whether AIG and its subsidiaries will be permitted to continue to engage in various regulated businesses as they have done in the past, or whether sanctions are appropriate.

The triggering of such regulatory inquiries and investigations and the imposition of any such sanctions in connection with their businesses unrelated to the purchase and sale of Brent spread contracts and CFDs, would be burdensome to AIG and its subsidiaries. In light of the limited scope of the violation, this result is unwarranted.

In view of the practices of various regulatory authorities and the provisions of certain applicable regulatory laws and rules, it is believed that settlement of this

action in the form of a stipulation and order will likely expose AIG and its subsidiaries to fewer regulatory inquiries, investigations and possible sanctions in connection with businesses unrelated to the subject matter of this action than would entry of a Final Judgment containing identical relief. Accordingly, the proposed Order in settlement of this action is in the form of a stipulation and order.

Section X of the proposed Order provides that its violation may be punished by contempt.

Prohibited Conduct. The proposed Order will deter the recurrence of conduct that violates Section 1 of the Sherman Act. Specifically, Section IV of the proposed Order bars each of the defendants, unless otherwise specifically permitted, in connection with the purchase and sale of Brent spread contracts or CFDs, from:

- (A) agreeing with any other trader to (1) fix, lower, raise, stabilize or maintain any brokerage commission or (2) exchange any information for that purpose; and
- (B) requesting or urging any other trader to lower, raise or change any brokerage commission to be paid by it.

Section V of the proposed Order contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V identifies specific activities that are not barred by the proposed Order. Specifically, Section V (A) provides that each of the defendants may (1) engage in contacts with any trader to (a) propose, negotiate or cancel a purchase or sale of a Brent spread contract or CFD with such trader as a counter party or co-venturer or (b) to allocate between

themselves the responsibility for payment or negotiation of brokerage commissions relating to such a purchase or sale; (2) engage in contacts with a broker in connection with the purchase or sale of a Brent spread contract or CFD; (3) engage in brokerage commission activity required or authorized by any markets subject to the jurisdiction of either the Commodity Futures Trading Commission or any governmental or self regulatory organization whose responsibilities under United States law includes authority over the purchase and sale of Brent contracts, Brent spread contracts or CFDs; or (4) engage in activity concerning the payment of brokerage commissions to any broker located in a foreign country that is required or authorized by any market subject to the jurisdiction of either the International Petroleum Exchange or any governmental or self regulatory organization whose responsibilities under foreign law include authority over the purchase or sale of Brent contracts, Brent spread contracts or CFDs ; and (5) engage in activity concerning the payment of brokerage commissions to any broker located in the United States that is required or authorized by either the International Petroleum Exchange or any governmental or self regulatory organization whose responsibilities under foreign law include authority over the purchase or sale of Brent contracts, Brent spread contracts or CFDs, provided that, if the activity is otherwise prohibited by Section IV of the Stipulation and Order, the United States has not objected within sixty (60) days written notice by a defendant of an intention to engage in such activity.

Section V (B) provides that nothing in the Stipulation and Order shall prohibit the defendants from engaging in activity lawful under the Foreign Trade Antitrust Improvements Act, 15 U.S.C. §6a.

Section V (C) provides that no finding of any violation of the proposed Order may be made based solely on parallel conduct.

Sections VI and VII require each defendant to maintain an antitrust compliance program to assure compliance with the proposed Order and with the federal antitrust laws. Under the compliance program, an antitrust compliance officer, to be appointed by each defendant is required to distribute copies of the proposed Order to each of its officers and employees with duties or responsibilities that include determining, changing, proposing, approving disapproving or implementing any brokerage commission paid to a broker for arranging the purchase or sale of Brent spread contracts or CFDs; to brief such personnel annually on the meaning and requirements of both the antitrust laws and the proposed Order; and to obtain from such personnel certifications that they have read and agree to abide by the terms of the proposed Order, and that they have been advised and understand that a violation of the proposed Order by them may result in their being found in civil or criminal contempt of court.

In addition, the proposed Order provides a method for determining and securing the defendants' compliance with its terms. Section VIII provides that, upon the request of the Department of Justice, a defendant shall submit written reports, under oath, relating to the defendant's compliance with the proposed Order. The

Department of Justice also is permitted to inspect and copy all books and records, and to interview officers, employees and agents of the defendants.

Section XI makes the proposed Order effective for ten years from the date of its entry.

The proposed order contains a proposed finding that entry of the proposed Order is in the public interest. Under the provisions of the APPA, entry of the proposed Order is conditional upon a determination by the Court that the proposed Order is in the public interest.

The United States believes that the proposed Order is fully adequate to prevent the recurrence of the violation of Section 1 of the Sherman Act alleged in the Complaint, and that the disposition of this proceeding without further litigation is appropriate and in the public interest.

#### IV.

#### **REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS**

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Order will neither impair nor assist the bringing of such actions. Under the provisions of Section 5 (a) of the Clayton Act, 15 U.S.C. § 16 (a), the proposed Order has no *prima facie* effect in any subsequent lawsuits that may be brought against the defendants in this case.

V.

**PROCEDURES AVAILABLE FOR  
MODIFICATION OF THE PROPOSED ORDER**

As provided by the APPA, any person believing that the proposed Order should be modified may submit written comments to Ralph T. Giordano, Chief, New York Office, U.S. Department of Justice, Antitrust Division, 26 Federal Plaza, Room 3630, New York, New York 10278, within the sixty (60) day period provided in the Act. These comments, and the Department's responses will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department, which remains free to rescind its agreement to entry of the proposed Order at any time prior to actual entry by the Court. The proposed Order provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for modification, interpretation, or enforcement of the Order, or for punishment of any violation thereof by contempt.

VI.

**ALTERNATIVE FORMS OF RELIEF CONSIDERED**

The only alternative to the proposed Order considered by the United States was a full trial on the merits and on relief. Such litigation would involve substantial cost to the United States and is not warranted because the proposed Order provides appropriate relief against the violations alleged in the Complaint.

VII.

DETERMINATIVE MATERIALS AND DOCUMENTS

No materials or documents of the type described in Section 2 (b) of the APPA, 15 U.S.C. § 16 (b), were considered by the United States in formulating the proposed Order. However, a letter, dated June 20, 1997, from plaintiff's counsel to counsel for defendant Cargill International, S.A. acknowledging Cargill International's right under current law to seek relief from the compliance provisions of Section VIII. in the event it believes a conflict has arisen between any request for information or documents under those provisions and foreign law, was considered determinative by Cargill International in agreeing to the proposed Order and is attached hereto as Exhibit A.

Dated:

Respectfully submitted,

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PHILIP F. CODY

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JOHN J. GREENE

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EDWARD FRIEDMAN

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JOHN W. McREYNOLDS

Attorneys, Antitrust Division  
United States Department of Justice  
26 Federal Plaza, Room 3630  
New York, New York 10278  
(212) 264-0395

## Exhibit A

**U. S. Department of Justice**

Antitrust Division

*New York Office*

*26 Federal Plaza*

*Room 3630*

*New York, New York 10278-0140*

*212/264-0390*

*FAX 212/264-7453*

July 14, 1997

Margaret H. Fitzsimmons, Esq.  
Howrey & Simon  
1299 Pennsylvania Ave. N.W.  
Washington, D.C. 20004-2402

Re: Cargill International, S.A.

Dear Ms. Fitzsimmons:

During our negotiations of a civil settlement in this case, you suggested the possibility that a conflict could arise between the plaintiff access provisions in Section VIII of the proposed stipulation and order, which authorizes the Assistant Attorney General to inspect documents or conduct interviews and to request written reports, and the law or orders of foreign governments, which may appear to prohibit compliance with such provisions. Of course, we would attempt to work with Cargill International, S.A. to avoid any such conflict in exercising our rights under Section VIII. In the event we could not reach agreement, Cargill International would be free to seek relief from the U.S. order court from its obligations to comply with any Section VIII request.

Sincerely yours,

PHILIP F. CODY  
Assistant Chief