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Legislation

Contents

I *Acts whose publication is obligatory*

.....

II *Acts whose publication is not obligatory*

Council

75/92/EEC :

- ★ Council Decision of 17 December 1974 on the conclusion of the Agreement between the European Economic Community and the Republic of the Philippines on the supply of skimmed-milk powder as food aid 1

Agreement between the European Economic Community and the Republic of the Philippines on the supply of skimmed-milk powder as food aid 2

Information on the signing of the Agreement between the European Economic Community and the Republic of the Philippines on the supply of food aid 6

75/93/EEC :

- ★ Council Decision of 17 December 1974 on the conclusion of the Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid 7

Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid 8

Information on the signing of the Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia 9

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.
The titles of all other Acts are printed in bold type and preceded by an asterisk.

Contents (continued)

Commission

75/94/EEC :

- ★ Commission Decision of 19 December 1974 relating to proceedings under Article 85 of the EEC Treaty (IV/23.013 — Goodyear Italiana-Euram) 10

75/95/EEC :

- ★ Commission Decision of 20 December 1974 relating to proceedings under Article 85 of the EEC Treaty (IV 26.872 — SHV/Chevron) 14

75/96/ECSC :

- ★ Commission Decision of 20 December 1974 concerning the application of special tariff No 214 of the 'Deutsche Bundesbahn' for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region) 16

75/97/ECSC :

- ★ Commission recommendation of 23 December 1974 to the Governments of the Member States on the movement of scrap iron and similar products within the Community 19

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 December 1974

on the conclusion of the Agreement between the European Economic Community and the Republic of the Philippines on the supply of skimmed-milk powder as food aid

(75/92/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113, 114 and 228 thereof;

Having regard to the recommendation from the Commission;

Whereas by Regulation (EEC) No 1827/74 ⁽¹⁾ the Council has decided to place 100 metric tons of skimmed-milk powder at the disposition of the Republic of the Philippines,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Economic Community and the Republic of the Philippines on the supply of skimmed-milk powder as food aid is hereby concluded on behalf of the Community.

The text of the Agreement is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement and to confer on them the necessary powers to bind the Community.

Done at Brussels, 17 December 1974.

For the Council

The President

M. DURAFOUR

⁽¹⁾ OJ No L 190, 13. 7. 1974, p. 22.

AGREEMENT

between the European Economic Community and the Republic of the Philippines on the supply of skimmed-milk powder as food aid

THE COUNCIL OF THE EUROPEAN COMMUNITIES,
of the one part,

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES,
of the other part,

HAVE DECIDED to conclude this Agreement, and to this end have designated as their Plenipotentiaries :

THE COUNCIL OF THE EUROPEAN COMMUNITIES :

THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES :

WHO HAVE AGREED AS FOLLOWS :

Article I

The European Economic Community, hereinafter referred to as the 'Community', shall supply the Republic of the Philippines, hereinafter referred to as the 'country of destination', by way of gift, with 100 metric tons of skimmed-milk powder of which the quality and packaging conditions are set out in Annex I which forms an integral part of this Agreement.

Article II

Deliveries will be made in accordance with the detailed rules set out in Annex II which forms an integral part of this Agreement.

Article III

The country of destination undertakes to make all necessary arrangements for the transport and insurance of the product from point of delivery to places of destination.

It undertakes to exercise the greatest possible care to ensure that the tendering arrangements for the transport by sea shall not be prejudicial to the free play of fair competition. Any problems arising in this connection shall be the subject of consultations under Article VIII.

Article IV

The country of destination undertakes to use the product received as aid for purposes of consumption

and to apply, for the sale of the product on its market, the prices normally charged on that market for products of comparable quality.

The proceeds from this sale shall be paid into a special account at the central bank of that country and allocated to the financing of one or more development schemes in accordance with the procedure to be agreed between the recipient country and the Community.

Article V

The Contracting Parties undertake to implement this Agreement in such a way as to avoid any prejudice to the normal structure of domestic production and international trade. To this end they shall take any measures required to ensure that aid supplies are in addition to, and do not replace, commercial transactions which might reasonably be expected in the absence of such supplies.

Article VI

The country of destination shall take all appropriate measures to prevent :

— the re-export of the product received as aid and of products resulting from such supplies ;

- the export, commercially or otherwise, within six months of the last delivery, either of local produce of the same nature as that received as aid or of any products resulting from it.

Article VII

The country of destination undertakes to inform the Community of the mode of implementation of this Agreement. To this end it shall provide the Commission of the European Communities with the following information :

1. immediately after the discharge of each cargo : port and date of arrival of vessel ; nature and quantity of the product discharged and any observations as to the quality ; date on which discharge was completed ; costs of sea transport and of insurance relating thereto ;
2. every three months until the quantities received as aid have been fully used : quantities sold, how they have been sold, selling prices ; normal selling costs on the market of the country of destination ; insur-

ance costs and, where appropriate, transport costs from the port of discharge to the places of destination ;

3. on 15 January every year until the special account has been fully used :
 - (a) state of this account (deposits and withdrawals) on 31 December of the preceding year ;
 - (b) progress achieved in the project or projects, with an indication of the total amount of financing carried out at that stage.

Article VIII

At the request of either of them, the Contracting Parties shall consult each other on any questions concerning the implementation of this Agreement.

Article IX

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, French, German and Italian languages, each of these texts being authentic.

ANNEX I

SKIMMED-MILK POWDER

QUALITY AND CONDITIONS OF PACKAGING

I. Quality requirements

(a) fat content :	not exceeding 1.5 % ;
(b) water content :	not exceeding 4.0 % ;
(c) total acidity (lactic acid) :	not exceeding 0.15 % (18° Dornic) ;
(d) test for neutralizing agents :	negative ;
(e) permitted additives :	none ;
(f) test for phosphatase :	negative ;
(g) solubility :	not exceeding 0.5 ml (not less than 99 %) ;
(h) degree of purity :	not less than disc B (15.0 mg) ;
(i) germ content :	not exceeding 50 000/g ;
(k) strength of colon bacillus :	negative in 0.1 g ;
(l) flavour and smell :	fresh ;
(m) appearance :	white or slightly yellowish, absence of impurities and coloured particles.

II. Packing

- (a) containing 25 kg net weight ;
- (b) composition :
 - (aa) four 'Kraft' paper bags of a strength representing at least 70 g/m² ;
one intercalated bag of tar-lined paper of a strength representing at least 140 g/m² ;
one polyethylene inner bag at least 0.06 mm thick, welded or double-bound ;
or
 - (bb) one bag of clubpack-poly-duplo-paper of a strength representing at least 50/20/50 g/m² ;
two 'Kraft' paper bags of a strength representing at least 70/75 g/m² ;
one polyethylene inner bag at least 0.10 mm thick, welded or double-bound ;
or
 - (cc) one 'Kraft' paper bag of a strength representing at least 70 g/m² ;
one 'Kraft' paper bag with a polyethylene layer of a strength representing at least 80 g + 15 g/m² ;
three 'Kraft' paper bags of a strength representing at least 70 g/m² ;
one polyethylene inner bag at least 0.06 mm thick, welded or double-bound ;
- (c) marking on the packing (in English) :

SKIMMED-MILK POWDER — GIFT OF THE EUROPEAN ECONOMIC COMMUNITY
TO THE REPUBLIC OF THE PHILIPPINES.

ANNEX II

DELIVERY AND ACCEPTANCE PROCEDURES

CHAPTER I

General provisions

Article 1

Delivery shall be effected and all risk shall pass from the Community to the country of destination at the moment at which the goods are put down at the point of exportation named by the Commission of the European Communities at the berth specified by the country of destination or its agent referred to in Article 2 and under the terms specified in this Annex. Without prejudice to Articles 7 and 8 the Community shall bear all costs prior to delivery and the country of destination all costs after delivery.

Article 2

For the purpose of implementing the provisions of this Annex the Community shall appoint — if necessary for each consignment — an agent whose name and address it shall make known to the country of destination immediately following his appointment. For each port of shipment the country of destination shall appoint an agent whose name and address it shall make known to the Community with all dispatch and if possible before the appointment of the agent of the Community.

Article 3

Before implementing the procedure for appointing the agent of the Community referred to in Article 2, the Commission of the European Communities and the country of destination shall establish by joint agreement the period during which delivery must begin.

CHAPTER II

Obligations of the Community

Article 4

Where the Community is not in a position to carry out delivery on the date, and if applicable, according to the schedule laid down in Article 6, all costs arising for the country of destination — for example, demurrage, void freight and dead freight — shall be borne by the Community.

The charges and the arrangements relating to demurrage laid down in the contract concluded between the country of destination and the carrier must have previously been agreed by the country of destination and the agent of the Community.

The other costs referred to in the first paragraph shall be refunded by the Community only if they have been paid by the country of destination with the approval of the Community.

Article 5

Where it is impossible for the Community to supply all or part of the goods on the date and within the time limits

provided for in Article 6, the agents of the Community and of the country of destination may, without prejudice to Article 4, agree on a new date and a new time limit for the delivery of all the goods or of the undelivered part thereof.

CHAPTER III

Obligations of the country of destination

Article 6

After contacting the Community, the country of destination shall procure, to transport all the quantities provided for in Article I of the Agreement, one or more vessels of dimensions corresponding to the normal capacity of the port of shipment; these vessels must be ready for loading on a date falling within the period referred to in Article 3.

The agent of the country of destination shall inform the Community of this date and of the date for commencement of delivery as soon as he knows them, if possible 20 clear days in advance and in any case 10 clear days before the date for commencement of delivery.

He shall establish with the agent of the Community the schedule according to which delivery shall take place.

Article 7

Where the country of destination is unable to begin loading on the date provided for in the first paragraph of Article 6, the agent of the country of destination shall inform the agent of the Community without delay.

In this event the agents of the Community and of the country of destination may agree on a new date for the commencement of delivery and, if applicable, a new schedule. Save in cases of *force majeure*, the costs arising from the delay in loading shall be borne by the country of destination.

Should the new date provided for in the second paragraph be more than 30 clear days after the date for loading provided for in the first paragraph of Article 6, the Community may dispose of the goods without prejudice to its commitment under Article I of this Agreement.

Article 8

Where the quantity intended for loading on a vessel cannot be loaded on board in its entirety, the country of destination shall inform the Community as soon as possible, and no later than 15 clear days after loading has been completed, whether it intends to accept or to renounce the balance.

In the former case the second and third paragraphs of Article 7 shall apply to the balance, if delivery has not yet taken place.

In the latter case the Community may consider that it has discharged its commitment to the country of destination under Article I of this Agreement and shall bear the costs resulting from renunciation.

In any event, after an interval of 15 clear days and in the absence of any notice on the part of the country of destination, renunciation shall be deemed to have taken place.

Article 9

Upon delivery of the goods, the country of destination shall hand over to the authorized agent of the Community a certificate of acceptance which shall set out the port of shipment, date of acceptance and the nature and quantity of the goods accepted, together with any comments on the quality of the goods. A copy of the certificate shall be sent to the Commission of the European Communities.

Information on the signing of the Agreement between the European Economic Community and the Republic of the Philippines on the supply of food aid

The Agreement between the European Economic Community and the Philippines on the supply of skimmed-milk powder as food aid, which the Council decided to conclude on 17 December 1974, was signed in Brussels on 18 December 1974, on behalf of the Council of the European Communities by:

Mr Étienne Burin des Rozières, Ambassador Extraordinary and Plenipotentiary, Chairman of the Permanent Representatives Committee, and

Mr Hans-Broder Krohn, Director-General for Development and Cooperation at the Commission of the European Communities,

on behalf of the Government of the Republic of the Philippines by:

Mr Carlos A. Faustino, Ambassador Extraordinary and Plenipotentiary, Head of the Philippines Mission to the European Economic Community.

COUNCIL DECISION**of 17 December 1974**

on the conclusion of the Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid

(75/93/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 113, 114 and 228 thereof;

Having regard to the recommendation from the Commission;

Whereas the European Economic Community has concluded the 1971 Food Aid Convention ⁽¹⁾;

Whereas an Agreement ⁽²⁾ between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid, was signed on 25 March 1974;

Whereas, since the products supplied as food aid under that Agreement are intended for sale on the local market, the Democratic Republic of Somalia has requested that, in view of the deterioration in the food supply situation in Somalia the effect of which is to threaten the survival of certain sections of the population, the European Economic Community authorize the free distribution of these products to the people in need;

Whereas in order to grant this request certain Articles of the abovementioned Agreement must be amended,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid is hereby concluded on behalf of the Community.

The text of the exchange of letters is annexed to this Decision.

Article 2

The President of the Council is hereby authorized to designate the persons empowered to sign the Agreement and to confer on them the powers required to bind the Community.

Done at Brussels, 17 December 1974.

*For the Council**The President*

M. DURAFOUR

⁽¹⁾ OJ No L 219, 9. 8. 1974, p. 24.

⁽²⁾ OJ No L 123, 6. 5. 1974, p. 6.

AGREEMENT

in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid

A. Letter from the European Economic Community

Sir,

With reference to the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid, which provides that the products supplied as food aid are to be sold on the local market, and the request by the Democratic Republic of Somalia that in view of the deterioration in the food supply situation in Somalia, the effect of which is to threaten the survival of certain sections of the population, the European Economic Community authorize the free distribution of these products to the people in need, I have the honour to propose to you the following amendments to the abovementioned Agreement :

1. The following shall be substituted for Article V :

‘The country of destination undertakes to use the products received as aid for purposes of consumption and to distribute them free to people in need.’

2. The last sentence of Article VI shall be deleted.

3. The following shall be substituted for points 2 and 3 of Article VIII :

‘2. every three months until the quantities received as aid have been fully used : a situation report giving the number and description of recipients, the quantities distributed, and where and how they were distributed.’

I shall be obliged if you will inform me whether your Government can agree to the above.

Please accept, Sir, the assurance of my highest consideration.

*For the Council
of the European Communities*

B. Letter from the Democratic Republic of Somalia

Sir,

I have the honour to acknowledge receipt of your letter of today's date, reading as follows :

‘With reference to the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid, which provides that the products supplied as food aid are to be sold on the local market, and the request by the Democratic Republic of Somalia that in view of the deterioration in the food supply situation in Somalia, the effect of which is to threaten the survival of certain sections

of the population, the European Economic Community authorize the free distribution of these products to the people in need, I have the honour to propose to you the following amendments to the abovementioned Agreement :

1. The following shall be substituted for Article V :

“The country of destination undertakes to use the products received as aid for purposes of consumption and to distribute them free to people in need.”

2. The last sentence of Article VI shall be deleted.

3. The following shall be substituted for points 2 and 3 of Article VIII :

“2. every three months until the quantities received as aid have been fully used : a situation report giving the number and description of recipients, the quantities distributed, and where and how they were distributed.”

I shall be obliged if you will inform me whether your Government can agree to the above.’

I have the honour to inform you that the Government of the Democratic Republic of Somalia agrees to the amendments proposed in your letter.

Please accept, Sir, the assurance of my highest consideration.

*For the Government
of the Democratic Republic of Somalia*

Information on the signing of the Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia

The Agreement in the form of an exchange of letters amending the Agreement of 25 March 1974 between the European Economic Community and the Democratic Republic of Somalia on the supply of flour of soft wheat and husked rice as food aid, which the Council decided to conclude on 17 December 1974, was signed in Brussels on 18 December 1974, on behalf of the Council of the European Communities by :

Mr Étienne Burin des Rozières, Ambassador Extraordinary and Plenipotentiary, Chairman of the Permanent Representatives Committee and

Mr Hans-Broder Krohn, Director-General for Development and Cooperation at the Commission of the European Communities,

on behalf of the Government of the Democratic Republic of Somalia by :

Mr Mohamed Omar Giama, Ambassador Extraordinary and Plenipotentiary, Somalia's Representative to the European Economic Community.

COMMISSION

COMMISSION DECISION

of 19 December 1974

relating to proceedings under Article 85 of the EEC Treaty

(IV/23.013 — Goodyear Italiana-Euram)

(Only the Italian text is authentic)

(75/94/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the notification made pursuant to Article 4 of Regulation No 17 on 7 November 1963 by Goodyear Italiana SpA, Rome, Italy (hereinafter called 'Goodyear Italiana') of the exclusive sales agreement concluded on 1 May 1963 with Euram Italia SpA, Milan, Italy (hereinafter called 'Euram');

Having regard to the publication of the summary of the notification in *Official Journal of the European Communities*, No C 91 of 3 August 1974 pursuant to Article 19 (3) of Regulation No 17;

Having regard to the Opinion of the Advisory Committee on restrictive practices and dominant positions dated 16 October 1974, delivered in accordance with Article 10 of Regulation No 17;

Whereas :

I

1. The main provisions of the present version of the agreement as notified are as follows :

Goodyear Italiana appoints Euram as its exclusive distributor in Italy for plastic film bearing the trade

mark 'Vitafilm', a product for wrapping foodstuffs which is manufactured or supplied by Goodyear Italiana; Goodyear Italiana undertakes not to sell Vitafilm directly to any person or undertaking in Italy other than to United States Government agencies or offices established there.

Euram (which buys and sells on its own account) is free to set its resale prices. It undertakes not to sell products similar to those to which the contract relates and which could compete with them and also undertakes to purchase agreed minimum quantities each year, the breach of which conditions gives Goodyear Italiana the right to terminate the contract. Goodyear Italiana reserves the right to supervise Euram's advertising and to promote the sale of the product in question, all related costs being borne by Euram.

2. On 7 August 1973, at the request of the Commission, the parties amended the clause prohibiting Euram from exporting the product supplied by Goodyear Italiana out of the territory covered by the contract. Euram is still prevented from selling outside the Community but may sell anywhere within the common market while undertaking not to engage in active sales promotion outside Italy by setting up branches, for example, or operating depots or advertising.

From the same date, the parties deleted by agreement the following clauses :

(a) the obligation on Goodyear Italiana not to sell any product in Italy similar to those to which the contract relates and which could compete with them, without the consent of Euram;

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

- (b) the obligation on Euram not to challenge the validity of the trade mark 'Vitafilm' used in respect of the product covered by the agreement in question.

3. The product concerned, polyvinyl chloride film, is usually supplied on reels 30 cm wide in lengths of 120 m and is one of the most widely used intermediate products of the plastics industry. Properties such as impermeability, shrinking and sealing under heat, transparency and ease of handling are helping the product to gain a constantly increasing share of the general packaging market and in particular of the foodstuffs packaging market, where it is most widely used.

The manufacture of the product in question accounts for only a small part of the operations of Goodyear Italiana, which are centred mainly on tyres. In the common market three other subsidiaries of the American company Goodyear International Corporation manufacture the product in question, but in the fulfilment of this agreement Goodyear Italiana has in fact only ever supplied Euram with film exclusively of its own manufacture and has always acted independently.

Euram is a company which, in addition to Goodyear Vitafilm, distributes a range of other items used in the packaging of foodstuffs, such as containers made of woodpulp and polystyrene, cans, aluminium foil, polythene bags, automatic labelling machines and felt pens. Approximately half its customers are large supermarkets and the other half small- or medium-sized self-service shops ('superettes'). It markets this range of additional products through salesmen directly responsible to it. It also helps its customers, especially the smaller ones, to set up their foodstuffs packaging systems by means of plastic film.

The film distributed by Euram competes on the Italian market with similar products manufactured by a number of undertakings, one at least of which produces more than Goodyear Italiana. Even Euram's own customers, particularly large supermarkets do not obtain all their requirements for packaging film from Euram, but also buy from other manufacturers.

4. No objections have been made by third parties following publication of the notice in the *Official Journal of the European Communities* pursuant to Article 19 (3) of Regulation No 17.

II

Whereas :

5. Article 85 (1) of the Treaty provides that all agreements between undertakings which may affect trade between Member States and have as their object or effect the prevention, restriction or distortion of competition within the common market shall be prohibited as incompatible with the common market.

6. Euram, by virtue of the exclusive dealing agreement is prevented from selling any product which could compete with those to which the agreement relates; this has the effect not only of restricting the freedom of Euram to do business but also affects the positions of existing or potential suppliers of packaging film who might wish to market their products in Italy through Euram. This restriction must have an appreciable effect because Euram is at the present time the only Italian undertaking dealing with the complete range of products for wrapping foods in plastic film and whose products meet about 30 % of the demand from consumers in the Italian market. For the same reason this restriction is capable of affecting trade between Member States to the extent that the flow of trade between other parties of the common market and Italy might develop in a different way in the absence of the agreement and there might otherwise be the possibility of establishing a single market among the Member States.

7. Euram has agreed not to undertake an active sales policy for the product in question in other countries of the common market which has the effect not only of restricting the freedom of the exclusive distributor to sell the goods but also affects the position of others, particularly dealers and consumers in other common market countries who have to face a limited availability of the goods in their own countries. This restriction has an appreciable effect because Euram holds a leading position in the distribution of packaging films for foodstuffs on the Italian market and also because the market for this product is expanding throughout the whole Community. For the same reasons, this restriction is capable of affecting trade between Member States to the extent that the flow of trade between Italy and other parts of the common market might develop in a different way in the absence of the agreement and there might otherwise be the possibility of establishing a single market among Member States.

8. Euram has moreover agreed not to export the products in question outside the EEC; this not only prevents Euram from carrying on this business outside the EEC but, in particular, it also prevents every under-

taking outside the EEC from buying the product in question from Euram for resale within the common market which results in the distortion of competition within the common market. This clause does not, however, have the effect of restraining competition to an appreciable degree within the common market. Any purchaser whose business is situated within the common market is able to obtain supplies of Vitafilm not only directly from Euram itself, but also either directly or indirectly, from other main suppliers of this product whether their place of business is within the Community or not. However, with regard to these other sources of supply, there is little likelihood that anyone would wish to sell Vitafilm in the common market after it had passed from Goodyear Italiana to Euram and had then been exported from the EEC. Such sales would be subject to such additional economic factors as the accumulation of consecutive profit margins, and transport costs as well as customs duties which would result from the goods passing and re-passing through the border controls of the European Community. Such sales are even less likely because as far as the Commission is aware there are not, nor having regard to the competitive situation in this field, are there likely to be in the foreseeable future, such differences in price for this product between the EEC and other countries as to allow such additional charges to be absorbed.

9. Because of the obligations imposed on Euram not to sell competitive products and not to undertake an active sales policy outside Italy, the agreement comes within the provisions of Article 85 (1).

III

Whereas :

10. Under Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable to the agreement if it contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and does not :

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives ; or
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

11. By virtue of Article 1 (2), Commission Regulation No 67/67/EEC⁽¹⁾ of 22 March 1967 on the application of Article 85 (3) of the Treaty to certain categories of exclusive dealing agreements, is not applicable to the agreement in question because it is an agreement to which only undertakings of the same Member State are party and it is concerned with the resale of goods within that Member State.

⁽¹⁾ OJ No 57, 25. 3. 1967, p. 849/67.

12. However, on the one hand, Goodyear Italiana, which operates mainly in the tyres market may thus devolve its sale of Vitafilm and is not obliged to maintain business relations with a large number of intermediaries and buyers. On the other hand Euram, which markets a whole range of complementary articles to be used for wrapping foods in plastic film, is able to meet the increasing demand for this product, by selling direct to users ; in fact the agreement ensures that the latter, both food supermarkets and 'superettes', are supplied more easily and more regularly and enables them to make better use of the product with the assistance provided by Euram.

13. The agreement notified allows consumers a fair share of the resulting benefit. Euram has to take account in its sales policy not only of similar competing products available on the market but also of Vitafilm coming from other suppliers, so it is in its interest to offer consumers the products in question on the most favourable terms.

14. The obligation on Euram to refrain from engaging in an active sales policy in other common market countries may also be regarded as a restriction indispensable to the attainment of the advantages described above ; it encourages Euram to concentrate its trading in the territory where it has exclusive dealing rights and in this manner to make a greater contribution to improving distribution in Italy.

15. The provision forbidding Euram to sell products competing with the product to which the contract relates may also be regarded as indispensable to the improvement of distribution since it encourages Euram to concentrate on the sale of the Goodyear Italiana product.

16. The product to which the exclusive dealing agreement at issue relates is in direct competition with similar products marketed in Italy by other undertakings and also with Vitafilm manufactured elsewhere which may be imported into Italy, so that the agreement does not afford undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

17. All the requirements of Article 85 (3) are therefore satisfied.

18. The agreement in question has only complied with the conditions for the application of Article 85 (3) since 7 August 1973; the Decision must, therefore, take effect from that date.

19. In determining the duration for which this Decision shall be applicable it will be assumed that the principal grounds for making the Decision will not alter substantially before 31 December 1982,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 85 (1) of the Treaty establishing the European Economic Community are hereby declared inapplicable, pursuant to Article 85 (3), in the case of the exclusive sales agreement

between Goodyear Italiana SpA, Rome, and Euram Italia SpA, Milan, concluded on 1 May 1963, as amended on 7 August 1973.

Article 2

This Decision shall have effect from 7 August 1973; it shall apply until 31 December 1982.

This Decision is addressed to Goodyear Italiana SpA, Rome, Italy and Euram Italia SpA, Milan, Italy.

Done at Brussels, 19 December 1974.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 20 December 1974

relating to proceedings under Article 85 of the EEC Treaty (IV 26.872 — SHV/
Chevron)

(Only the Dutch and French texts are authentic)

(75/95/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 85 and 86 thereof;

Having regard to Council Regulation No 17⁽¹⁾ of 6 February 1962, and in particular Article 2 thereof;

Having regard to the application for negative clearance and, failing that the notification made on 21 December 1970 by Steenkolen-Handelsvereniging NV (SHV), Utrecht, and by Chevron Oil Europe Inc. (Chevron), incorporated under the laws of the State of Delaware, USA, with its head office in New York, USA, and an office in Brussels;

Having regard to the purpose of the application, which is to have the Commission declare that it has no grounds for taking action, under Article 85 (1) of the Treaty of Rome, in respect of the general cooperation agreement concluded between these two companies on 22 October 1969, as amended and supplemented on 24 December 1969 and further amended by letter of 21 May 1973, or in respect of the specific national agreements submitted to the Commission which derive from the general agreement;

Having regard to the notice published pursuant to Article 19 (3) of Council Regulation No 17 in *Official Journal of the European Communities*, No C 111 of 18 December 1973, page 11;

Having regard to the Opinion of 25 April 1974 obtained from the Advisory Committee on Restrictive Practices and Monopolies pursuant to Article 10 of Regulation No 17;

Whereas :

I

The main points of the agreement as they appear from the present text of the cooperation agreements deriving therefrom are as follows :

— under the cooperation agreement, Chevron and SHV have set up through a joint holding company

incorporated under Dutch law called Calpam NV, jointly and equally owned subsidiaries also called Calpam, to sell the products covered by the agreement in Belgium, the Netherlands, Luxembourg, Germany and Denmark, where Chevron and SHV hitherto had independent distribution networks;

— they have vested in the Calpam subsidiaries for at least 50 years their distribution networks and all assets relating thereto (plant, equipment etc.).

The general cooperation agreement and the specific agreements forming a Calpam subsidiary for each country involve the following products (except in Germany): paraffin oil (kerosene), household fuel, industrial fuel, asphalt and marine fuels and lubricating oils.

In Germany the agreements for the time being only cover marine fuels and lubricating oils.

The Calpam joint subsidiaries are supplied by the various subsidiaries of Chevron under non-exclusive supply contracts.

For the petroleum products listed above which are distributed by the joint subsidiaries, the signatory companies each agree not to compete against the other without the prior consent of the other.

The price of asphalt sold by the Calpam subsidiaries is fixed by Chevron.

Following the publication pursuant to Article 19 (3) of Regulation No 17, the Commission has received no observations from third parties which might lead it to change its views.

II

The agreements described above involve a lasting change in the structures of the companies involved and above all in that of SHV.

SHV ceases to do business as an independent wholesale buyer of petroleum products.

SHV and Chevron cease to retail the relevant products separately.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

Most of the other aspects of the agreement suggest that what is really happening is that the distribution side of Chevron's and SHV's business is being integrated into the new trading structure of the Calpam subsidiaries.

The Calpam subsidiaries are formed for a period lasting until 31 December 2019.

This suggests that the assets in question are to be transferred permanently to the Calpam subsidiaries.

For both Chevron and SHV this brings about a real concentration between each of them and their joint subsidiaries, confined to the distribution of the products specified by the agreement.

Chevron, with its subsidiaries other than the Calpam subsidiaries, remains a member of an integrated international petroleum group (Standard Oil of California — Socal) whose activities include crude oil production, oil refining and distribution, petrochemicals and manufacture of fertilizers.

SHV, although associated with other companies in exploration, possesses no refineries and does not constitute a petroleum group. SHV does have interests in coal distribution, chain stores and transport.

The cooperation agreement contains no clause restricting competition between Chevron and SHV in areas other than those covered by the Calpam joint subsidiaries.

As regards distribution of the products covered by the agreement, Chevron and SHV have each agreed not to compete with the other without the prior consent of the other. This clause provides SHV with the assurance that the assets transferred by it to the joint subsidiaries will not lose value as a result of competition by Chevron with those subsidiaries. In view of the fact that Chevron has no industrial or commercial interest which could imaginably lead it to compete with its own 50 % - owned subsidiaries, and given also that SHV will disappear as an independent wholesaler on the petroleum product market, with no likelihood of ever returning, the clause in question cannot be said to involve an appreciable restriction of competition.

The foregoing analysis is not affected by the fact that SHV, which jointly with other companies holds exploration licences for the North Sea, might come into possession of crude oil, since SHV's freedom to sell its crude oil to any buyer is unlimited.

The parent companies had included a clause whereby they agreed not to compete in respect of petroleum

products not distributed by the Calpam subsidiaries, i.e. lubricating oil, diesel fuel and petrol in the Benelux area and Denmark, this clause was considered by the Commission to be caught by Article 85 (1); the parent companies informed the Commission by letter of 21 May 1973 that the clause had been deleted from their cooperation agreement.

The fact that Chevron fixes the prices of asphalt sold by the Calpam subsidiaries does not constitute a restriction of competition in violation of Article 85 (1) since in fact asphalt was previously sold only by Chevron.

Hence, the operation does not constitute an infringement of Article 85 (1), so that negative clearance may be granted pursuant to Article 2 of Regulation No 17.

Finally, Chevron's and SHV's shares of the relevant market in the products in question (a substantial part of the common market) do not give either of the undertakings a dominant position, so the agreement does not require investigation under Article 86,

HAS ADOPTED THIS DECISION :

Article 1

The Commission declares that, on the basis of the facts in its possession, it has no grounds for action under Article 85 (1) of the Treaty establishing the EEC in respect of the agreement concluded between Sttenkolen-Handelsvereniging NV and Chevron Oil Europe Inc. on 22 October 1969, as amended and supplemented on 24 December 1969 and further amended by letter of 21 May 1973, or of the specific national agreements submitted to the Commission which derive from the general agreement.

Article 2

This Decision is addressed to Steenkolen-Handelsvereniging NV, Rijnkade 1, Utrecht, and to Chevron Oil Europe Inc., Boulevard du Jardin Botanique 44, Brussels.

Done at Brussels, 20 December 1974.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 20 December 1974

concerning the application of special tariff No 214 of the 'Deutsche Bundesbahn' for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region)

(Only the German text is authentic)

(75/96/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community (ECSC), and in particular Articles 2 to 5 and 70 thereof;

Having regard to Commission Decision No 72/93/ECSC⁽¹⁾ of 21 January 1972 authorizing the application until 31 December 1974 of a special 'Deutsche Bundesbahn' tariff for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region);

Having regard to the letter of 24 April 1974 from the German permanent representation to the European Communities, in which the German Government asked the Commission to extend the validity of the authorization to apply that tariff (now No 214), in the first instance, until 31 December 1978;

I

Whereas in its Decision of 21 January 1972 the Commission limited the validity of its authorization to 31 December 1974, considering it necessary to re-examine the special tariff in question and its authorization within three years at the most, even if there were no change in the situation on which that authorization was based;

Whereas, in its request of 24 April 1974 for an extension of the validity of the authorization, the German government stated that the reasons for applying special tariff No 214 remained unchanged and stressed that its application was still necessary in the interests of the 'Deutsche Bundesbahn' to enable it to continue to operate such services;

Whereas in that request, as well as at the meeting held on 18 November 1974 between representatives of the Commission of the European Communities and of the German Government, the latter stated that the following changes had occurred in the situation described in the Decision adopted in 1972:

- supplies of coal from Ahlen to Alsdorf, which in 1971 amounted to 269 000 metric tons and in 1972 to 208 000 metric tons, rose to 401 000 metric tons in 1973 and 518 000 metric tons in 1974 as a result of geological faults in certain mines of the Eschweiler Bergwerks-Verein in the Aachen coalfield,

- the quantities of coal exchanged between Eschweiler Bergwerks-Verein and Kempense Steenkolenmijnen NV of Zolder have been fixed at 220 000 metric tons per annum on the basis of a new contract valid until 31 December 1976,
- the freight rate under special tariff No 214 is currently DM 14.60 per metric ton, following rate increases which have occurred in the meantime, which represents a reduction of 13 to 16 % compared with the normally applicable rates, depending on the metric tonnage carried by complete trains and the frequency with which such carriage is effected,
- the freight rate under international tariff No 1235 for the carriage of coal exchanged between Kempense Steenkolenmijnen NV of Zolder and Eschweiler Bergwerks-Verein of Alsdorf is currently Bfrs 100 per metric ton, with DM 2.40 per metric ton being paid by the DB,
- the stoppage of the carriage of coal from Ahlen to Alsdorf and therefore also from Alsdorf to Zolder would mean a loss of revenue of some DM 8 million per annum in view of the quantities of coal which are currently transported over that route.

Whereas in reply to the Commission's written question of 18 July 1974, the German Government confirmed in a letter of 4 October 1974 from its permanent representation that the revenue from the application of special tariff No 214 covered the costs of the carriage concerned and helped to improve the financial position of the 'Deutsche Bundesbahn'; whereas the tariff is applied solely in the interests of the 'Deutsche Bundesbahn'; whereas the German Government has not supplied the necessary supporting documents on the ground that, pursuant to Section 14 of the Federal Railways Law, the Federal Minister for Transport had examined the tariff in question; whereas it was therefore not the Commission's responsibility to check the statements made by the German Government;

II

Whereas pursuant to Article 70 (4) of the ECSC Treaty, the application of special internal rates and conditions in the interest of one or more coal-or-steel-producing undertakings requires the prior agree-

(¹) OJ No L 33, 7. 2. 1972.

ment of the Commission; whereas this provision relates not only to special rates adopted in the interest of coal and steel undertakings but to all special rates which, whatever the reasons for their introduction, benefit one or more of such undertakings; whereas the Commission must agree to the introduction of such rates if they are in accordance with the principles of the ECSC Treaty; whereas in principle the Commission can be expected to agree wherever its application can be justified by reference to the particular conditions on the transport market; whereas a transport undertaking's wish to apply a special tariff in order to keep a particular service in operation cannot be considered if it is not compatible with the proper functioning of the common market in coal and steel pursuant to the provisions of the ECSC Treaty;

Whereas special tariff No 214 is governed by Article 70(4) of the ECSC Treaty since, on account of its limited field of application, it is solely in the interests of Eschweiler Bergwerks-Verein, a subsidiary of ARBED, i.e. one particular undertaking in the coal and steel industry, in that that undertaking benefits from a rate which is lower than the normally applicable rate;

III

Whereas the only coal transported from Ahlen to Alsdorf under special tariff No 214 is coking coal from the Westfalen mine (Ruhr) which is intended to meet part of the requirements of the Anna coking plant belonging to Eschweiler Bergwerks-Verein in the Aachen coalfield;

Whereas the Anna coking plant and the mines in the Ruhr and in the Aachen coalfield belonging to Eschweiler Bergwerks-Verein are not independent, but are merely production departments of that undertaking;

Whereas, when the Commission adopted its Decision of 21 January 1972, it had no reason to fear that the introduction of the special tariff would have negative effects on the proper functioning of the common market in coal and steel;

Whereas in the course of the period of application of that Decision (January 1972 to December 1974) the situation on the coal market, and in particular on the market in coking coal has changed in such a way that it would seem necessary to examine carefully the possible implications for the functioning of the common market of maintaining special tariff No 214;

Whereas the changes in the situation on the market in coking coal can be attributed mainly to the fact that since 1972 the demand for coal in the coke-pro-

ducing undertakings in the Community has risen, while the production of Community coal has declined noticeably; whereas the proportion of Community coal used for coking has therefore increased; whereas the relatively large demand has, since the end of 1973, led to a sharp reduction — and in some cases the complete disappearance — of the coal and coke stocks which existed until then in the Community, and particularly in Germany; whereas several undertakings are now unable to comply fully with the terms of the long-term contracts which they have concluded with consumers in the Community for the supply of coking coal and coke to the iron and steel industry;

Whereas, in order to facilitate the production of coking coal and the marketing thereof in areas situated at a distance from the coalfields and also intra-Community trade, the Commission on 25 July 1973 adopted Decision No 73/287/ECSC⁽¹⁾ concerning coal and coke for the iron and steel industry in the Community; whereas in that Decision, which is valid until 31 December 1978, the Member States are authorized to grant coal undertakings under their jurisdiction aids to facilitate production up to the amount of the difference between the average costs of production in each coalfield and the national delivered price of coking coal from non-member countries in the principal sales area of the coalfield concerned; whereas, in view of the movement of these delivered prices, which reflects the situation on the international coking-coal market, the German Government refrained from exercising the powers granted to it in Decision No 73/287/ECSC of 25 July 1973, i.e. to grant production aids to its coal undertakings in respect of coking coal for 1974; whereas the available coking coal in the Community is generally sold on terms which enable the producers to obtain sufficient return to cover the costs of an increasing part of their production;

Whereas, in order to cover any alignment discounts which might prove necessary at points of coking coal consumption in areas which are situated at a distance from coalfields or are in another Community country, the Decision mentioned above authorizes governments to grant aids to their coal undertakings which may amount to three or 1.6 units of account per metric ton of coal, depending on whether or not the undertaking concerned is situated on the coast; whereas this provision is still being applied;

Whereas the development of supply and demand on the coking coal market as a whole is leading several undertakings in the Community to purchase normal or occasional amounts at prices which sometimes exceed — occasionally considerably — the costs of producing Community coal;

⁽¹⁾ OJ No L 259, 15. 9. 1973.

Whereas the maintenance of the special tariff by the 'Deutsche Bundesbahn' places one single undertaking in the Community at an advantage over other undertakings, and whereas this advantage is in addition to the state aids which may be granted under the system of aids for coking coal and coke for the iron and steel industry ;

Whereas for 1972 the financial effects of the reduction in freight rates were estimated at less than DM 700 000 per annum ; whereas, in view of the increase in the amount transported under the said freight tariff and the reduced rates applied thereunder, the financial effects can be estimated at DM 1.1 to 1.4 million for 1974 ;

Whereas the representatives of Eschweiler Bergwerks-Verein present in the German delegation at the meeting held on 18 November 1974 stated that the expected reduction in the transport rate under special tariff No 214 was the 'condition *sine qua non*' for the allocation of some 400 000 metric tons of good coking coal from the Westfalen mine for use in the Anna coking plant.

Whereas the application of the special tariff would create a captive market, while the application of the normal 'Deutsche Bundesbahn' rate would enable the coal in question to be offered for sale on the open market, on which there would be various potential buyers and the normal terms of competition would apply ; whereas the maintenance of the special rate would therefore alter the situation as regards the risks run by individual undertakings and also affect the normal play of economic forces ;

Whereas the maintenance of special tariff No 214 would thus result, directly or indirectly, in the elimination of equal access to a source of production for all consumers in the common market who are in a comparable situation ; whereas this is not compatible with the objectives of the ECSC Treaty ;

Whereas the representatives of Eschweiler Bergwerks-Verein have stated that even if the coal from the Westfalen mine ceased to be used in the Anna coking plant, the exchange of certain quantities of coking coal between Eschweiler Bergwerks-Verein and the Belgian undertaking Kempense Steenkolenmijnen, which helps to supply the Anna coking plant, would be continued under conditions which were satisfactory to both sides ; whereas consequently the abolition of the special tariff would in itself not have any harmful consequences for the mining undertakings referred to above ;

Whereas the conclusions drawn by the Commission as indicated above are compatible with the 'Medium-term guidelines for 1975 to 1985 in respect of coal', which the Commission has recently adopted and transmitted to the Council ;

IV

Whereas, in view of the distorting effects which the maintenance of special tariff No 214 would have on the proper functioning of the common market in coal and steel, the fact that the application of the rate is in the interests of the 'Deutsche Bundesbahn' can no longer be used as a valid argument ;

Whereas, moreover, in view of the current situation on the coal market, it is no longer clear that Eschweiler Bergwerks-Verein would have to cease to supply the Anna coking plant in Alsdorf with coal from the Westfalen mine, and whereas in consequence the argument that the maintenance of the tariff would be in the interests of the 'Deutsche Bundesbahn' no longer seems incontestable ; whereas, furthermore, the German Government has not produced evidence required of it by the Commission establishing that the application of this tariff actually improves the 'Deutsche Bundesbahn's' financial position ; whereas the reasons given for failing to provide such evidence cannot be considered valid arguments for not complying with the provisions of the Treaty ;

V

Whereas it follows from the foregoing that special tariff No 214 of the 'Deutsche Bundesbahn' can accordingly no longer be considered compatible with the principles of the ECSC Treaty ; whereas the Commission cannot therefore authorize the continued application of that tariff,

HAS ADOPTED THIS DECISION :

Article 1

The application of special tariff No 214 of the 'Deutsche Bundesbahn' for the carriage of solid fuels from Ahlen (Westphalia) to Alsdorf (Aachen region) shall cease to be authorized after 31 December 1974.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 1974.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION RECOMMENDATION

of 23 December 1974

to the Governments of the Member States on the movement of scrap iron and similar products within the Community

(75/97/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, in particular the second paragraph of Article 73 thereof;

Having consulted the Council;

Whereas the exportation to third countries of scrap iron and similar products as listed in the Annex is prohibited or subject to restriction;

Whereas compliance with such measures implies controls to ensure that only products which have an export licence properly issued by the competent authorities of the exporting Member State are exported to third countries;

Whereas, however, such controls must accord with the requirements of free circulation of goods within the Community;

Whereas it is essential that the controls should not be more restrictive than the situation demands;

Whereas Council Regulation (EEC) No 542/69⁽¹⁾ of 18 March 1969 introduced a procedure for Community transit; whereas, based on this Regulation, Commission Regulation (EEC) No 1279/71⁽²⁾ of 17 June 1971, as amended by Regulation (EEC) No 2766/71⁽³⁾ of 23 December 1971, provided for the use of Community transit documents for the purpose of applying certain measures on the exportation of certain goods;

Whereas the application of the provisions of these Regulations to the intra-Community movement of scrap iron and similar products guarantees compliance with the prohibition of, or restrictions on, the exportation of such products to third countries and at the same time is a considerable simplification of formalities compared with the control of final destination procedure with which the products in question have until now had to comply as a result of the Decision of 19 November 1957 by the representatives of the Governments of the Member States meeting in the Council; whereas the formalities and procedures laid

down by the latter Decision should be replaced by the provisions of Regulation (EEC) No 1279/71, as amended by Regulation (EEC) No 2766/71;

Whereas the effectiveness of an export prohibition or restriction to third countries pre-supposes that each Member State, whichever Member State the goods come from, can impose appropriate penalties,

RECOMMENDS:

Article 1

1. Member States shall take appropriate measures, to ensure that the intra-Community movement of scrap iron and similar products as listed in the Annex to this recommendation, which are subject to prohibition or restrictions on exportation to third countries, is governed by the conditions of Commission Regulation (EEC) No 1279/71 of 17 June 1971 on the use of Community transit documents for the purpose of applying certain measures to the exportation of certain goods, as amended by Regulation (EEC) No 2766/71 of 23 December 1971.

2. Member States shall revoke the measures taken to implement the earlier Decisions taken by the representatives of the Governments of Member States meeting in the Council relating to formalities and procedures to be followed for the intra-Community of scrap iron and similar products.

Article 2

Member States shall take any general or specific measure necessary to penalize offences against provisions relating to the prohibition of, or restrictions on, the exportation of scrap iron and similar products to third countries from whichever Member State the goods come.

Article 3

Member States shall inform the Commission of any difficulties they may encounter in the implementation of the measures laid down in Articles 1 and 2.

⁽¹⁾ OJ No L 71, 29. 3. 1969, p. 1.

⁽²⁾ OJ No L 133, 19. 6. 1971, p. 32.

⁽³⁾ OJ No L 283, 24. 12. 1971, p. 33.

The Commission shall communicate the information to the other Member States with a view to considering the steps to be taken.

Article 4

Member States, shall, not later than 1 January 1975, adopt the measures laid down in Articles 1 and 2 and inform the Commission thereof without delay.

Article 5

This recommendation is addressed to Member States.

Done at Brussels, 23 December 1974.

For the Commission

F. O. GUNDELACH

Member of the Commission

ANNEX

List of goods referred to in Article 1

1. Waste and scrap metal of iron or steel (ECSC) (including used railway rails less than 1.50 m in length) (CCT heading No 73.03).
 2. Used railway rails less than 2.50 m but 1.50 m or more in length (CCT subheading ex 73.16 A II b)).
 3. Waste or scrap alloy steel in ingot form (CCT subheading 73.15 B I b) 1 aa)).
 4. Products for re-use regarded as scrap by virtue of the Decision of 8 October 1957 by the representatives of the Governments of the Member States meeting in the Council.
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