

Official Journal

of the European Communities

Volume 18 No L 228

29 August 1975

English Edition

Legislation

Contents

I *Acts whose publication is obligatory*

.....

II *Acts whose publication is not obligatory*

Commission

75/495/EEC :

- ★ Commission Decision of 15 May 1975 authorizing the French Republic not to apply Community treatment to natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in Czechoslovakia and in free circulation in the other Member States 1

75/496/EEC :

- ★ Commission Decision of 19 June 1975 authorizing the Italian Republic not to apply Community treatment to footwear with outer soles of leather or composition leather ; footwear (other than footwear falling within heading No 64.01) with outer soles of rubber or artificial plastic material falling within heading No 64.02 of the Common Customs Tariff, originating in the Chinese People's Republic and in free circulation in the other Member States 2

75/497/EEC :

- ★ Commission Decision of 15 July 1975 relating to a proceeding under Article 85 of the EEC Treaty (IV/27.000 — IFTRA rules for producers of virgin aluminium) 3

75/498/EEC :

- ★ Commission Decision of 17 July 1975 relating to a proceeding under Article 85 of the Treaty establishing the EEC (IV/28.775 — UNIDI) 14

75/499/EEC :

- Commission Decision of 23 July 1975 fixing the maximum price of white sugar to be supplied to UNRWA for the second partial invitation to tender referred to in Regulation (EEC) No 1071/75 20

Contents (continued)

75/500/EEC :	
★ Commission Decision of 24 July 1975 on the reimbursement by the Guidance Section of the EAGGF to the French Republic of aids granted during 1973 to organizations of fruit and vegetable producers	21
75/501/EEC :	
Commission Decision of 25 July 1975 fixing the minimum selling prices for butter for the 10th individual invitation to tender under the standing invitation to tender provided for by Regulation (EEC) No 232/75	22
75/502/EEC :	
★ Commission Directive of 25 July 1975 limiting the marketing of seed of smooth-stalk meadowgrass (<i>Poa pratensis</i> L.) to seed which has been officially certified 'basic seed' or 'certified seed'	23
75/503/EEC :	
Commission Decision of 28 July 1975 concerning an emergency supply of butter-oil to the International Committee of the Red Cross as food aid to Vietnam	24
75/504/EEC :	
Commission Decision of 30 July 1975 fixing the maximum price of white sugar to be supplied to UNRWA for the third partial invitation to tender referred to in Regulation (EEC) No 1071/75	26
75/505/EEC :	
Commission Decision of 31 July 1975 to take no action on tenders submitted for 31 July 1975 in response to the invitation to tender issued in Regulation (EEC) No 1840/75	27
75/506/EEC :	
Commission Decision of 31 July 1975 to take no action on tenders submitted for 31 July 1975 in response to the invitation to tender issued in Regulation (EEC) No 1841/75	28
75/507/EEC :	
★ Commission Decision of 1 August 1975 amending the Decision of 18 June 1975 and derogating from Regulations (EEC) No 2637/70 and (EEC) No 1223/74 in the cereals sector	29
75/508/EEC :	
Commission Decision of 4 August 1975 amending the Commission Decisions of 8 December 1972 and 22 December 1972 authorizing certain Member States to sell butter at a reduced price in the form of concentrated butter	30
75/509/EEC :	
Commission Decision of 4 August 1975 fixing, pursuant to the invitation to tender opened by Regulation (EEC) No 1854/75, the maximum amounts for the costs of delivery of skimmed-milk powder	31

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 May 1975

authorizing the French Republic not to apply Community treatment to natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in Czechoslovakia and in free circulation in the other Member States

(Only the French text is authentic)

(75/495/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the application under the first paragraph of Article 115 of the Treaty made on 7 May 1975 by the French Government to the Commission by telex from the office of its Permanent Representative to the European Communities for authorization not to apply Community treatment to natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in Czechoslovakia and in free circulation in the other Member States;

Whereas, for the product in question, France has, in accordance with the Council Decision of 2 December 1974⁽¹⁾, modified by the Decision of 27 March 1975⁽²⁾, opened in respect of Czechoslovakia an annual quota of FF 200 000, whereas in the Federal Republic of Germany imports of these products originating in the same country are free;

Whereas, according to information supplied by the French Government, there are serious economic difficulties in the sector in question;

Whereas indirect importation of the products in question is likely to aggravate these economic difficulties;

Whereas the machinery for bringing about the necessary cooperation from the Federal Republic of Germany cannot be set in motion with sufficient speed;

Whereas authorization should be given, for a limited period, for the application of protective measures,

under the first paragraph of Article 115, subject to the conditions laid down by the Commission Decision of 12 May 1971⁽³⁾, and in particular Article 1 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The French Government is authorized not to apply Community treatment to imports of natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in Czechoslovakia and in free circulation in the other Member States, in respect of which applications for import licences were lodged after 24 April 1975.

Article 2

This Decision shall apply until the French Republic opens new possibilities for importation from Czechoslovakia of the product in question or until the date of entry into force of an eventual common import regulation for the same product and, in any case, not later than 31 December 1975.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 15 May 1975.

For the Commission

The President

François-Xavier ORTOLI

⁽¹⁾ OJ No L 358, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 99, 21. 4. 1975, p. 1.

⁽³⁾ OJ No L 121, 3. 6. 1971, p. 26.

COMMISSION DECISION

of 19 June 1975

authorizing the Italian Republic not to apply Community treatment to footwear with outer soles of leather or composition leather ; footwear (other than footwear falling within heading No 64.01) with outer soles of rubber or artificial plastic material falling within heading No 64.02 of the Common Customs Tariff, originating in the Chinese People's Republic and in free circulation in the other Member States

(Only the Italian text is authentic)

(75/496/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the application under the first paragraph of Article 115 of the Treaty made on 11 June 1975 by the Government of the Italian Republic to the Commission by telex from the office of its Permanent Representative to the European Communities, for authorization not to apply Community treatment to footwear with outer soles of leather or composition leather ; footwear (other than footwear falling within heading No 64.01) with outer soles of rubber or artificial plastic material falling within heading No 64.02 of the Common Customs Tariff, originating in the Chinese People's Republic and in free circulation in the other Member States ;

Whereas for the products in question Italy has, in accordance with the Council Decision of 2 December 1974⁽¹⁾ modified by the Decision of 27 March 1975⁽²⁾ opened in respect of the Chinese People's Republic an annual quota of Lit 120 000 000, while in France imports of these products originating in the same country are free ;

Whereas, according to information supplied by the Italian Government, there are serious economic difficulties in the sector in question ;

Whereas indirect importation of the products in question is likely to aggravate these economic difficulties ;

Whereas the machinery for bringing about the necessary cooperation from the French Republic cannot be set in motion with sufficient speed ;

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

HAS ADOPTED THIS DECISION :

Article 1

The Italian Republic is authorized not to apply Community treatment to imports of the following products, where they originate in the Chinese People's Republic and are in free circulation in the other Member States, and in respect of which applications for import licences were lodged after 2 June 1975 :

CCT heading No	Description of goods
64.02	Footwear with outer soles of leather or composition leather ; footwear (other than footwear falling within heading No 64.01) with outer soles of rubber or artificial plastic material : A. Footwear with uppers of leather B. Other

Article 2

This Decision shall apply until the Italian Republic opens new possibilities for importation from the Chinese People's Republic of the product in question and in any case not later than 31 December 1975.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 19 June 1975.

For the Commission

The President

François-Xavier ORTOLI

⁽¹⁾ OJ No L 358, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 99, 21. 4. 1975, p. 1.

⁽³⁾ OJ No L 121, 3. 6. 1971, p. 26.

COMMISSION DECISION**of 15 July 1975****relating to a proceeding under Article 85 of the EEC Treaty
(IV/27.000 — IFTRA rules for producers of virgin aluminium)****(Only the English, French, German and Dutch texts are authentic)****(75/497/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 17/62 of 6 February 1962⁽¹⁾, and in particular Articles 1, 3 and 4 thereof;

Having regard to the notification submitted on 28 April 1972 in conformity with Article 4 (1) of Regulation No 17/62 for the International Fair Trade Practice Rules Administration (IFTRA) at Vaduz (Liechtenstein) and the undertakings signatory to the agreement dated 27 April 1972, and known as the 'IFTRA rules for producers of virgin aluminium';

Having heard the undertakings concerned pursuant to Article 19 (1) of Regulation No 17/62 and in accordance with Commission Regulation No 99/63 of 25 July 1963⁽²⁾;

Having regard to the Opinion of the Advisory Committee on Restrictive Practices and Dominant Positions obtained pursuant to Article 10 of Regulation No 17/62 on 23 April 1975,

Whereas :

I**THE FACTS****A. The IFTRA rules**

The 'IFTRA rules for producers of virgin aluminium' (hereinafter referred to as the IFTRA rules) are applicable to the marketing of primary aluminium and have been adopted by almost all the producers of primary aluminium within the EEC, and by a majority of producers situated in western Europe but outside the EEC.

The IFTRA rules are divided into three parts, namely the 'Anti-Dumping Agreement' (Document 1), 'Fair Trade Practice Rules' (Document 2) and the 'Contract of Commitment and Legal Protection' (Document 3). The 'Anti-Dumping Agreement' provides for the obligation to refrain from dumping in the same terms as those used in clause 2, Group A of the 'Fair Trade Practice Rules', but the parties have indicated that the document relating to the 'Anti-Dumping Agreement' has not been signed.

The following is the text of the material parts of the 'Fair Trade Practice Rules' followed by extracts and a summary of the provisions of the 'Contract of Commitment and Legal Protection'.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

Document 2

IFTRA

Fair trade practice rules for producers of virgin aluminium for the European markets

Introduction

Protection and promotion of true competition make it imperative to refrain from and fight unfair trade practices and all other falsifications of competition.

The undersigned expresses therefore by group A of these rules his opinion of what constitutes unfair trade practices which he intends to refrain from according to the contract of commitment, and by help of advice how to conform to the rules foreseen in B I 1 of the contract of legal protection, and which he can fight by requesting IFTRA procedures of fact finding and judgement, as foreseen in B I 2 of the contract of legal protection for practical cases of violation of the rules.

Group B contains, in form of non-committing advice for individual and autonomous decisions, principles of pricing and distribution of mass-produced goods which promote true competition and help to avoid falsification of competition. Non-observance is not illicit as such, but may result in unfair trade practices in the cases indicated under B, and in particular through supplementary facts as described under A. This can then be examined by procedures according to the contract of legal protection.

The fair trade practice rules do not aim at agreement on prices. On the contrary they are based on free individual and autonomous decision on prices by every signatory.

Group A

The rules of group A embrace mainly unfair trade practices which are considered to violate already existing laws, and principles as established by supreme court decisions.

1. Destructive sales below cost

- a) Sales below cost are not unfair as such. Unintentional sales below cost can be influenced, therefore, only by non-committing advice under B.
- b) Intentional sales below cost are unfair trade practices, if made illicit by motive, method and intent in the individual case. If for instance it is exercised, with the designed intention to take undue advantage of differing financial strength or multilevel-tax-favoured activities or possibilities to compensate losses with profits in other fields, in order to jeopardize unduly or destroy a competitor's existence. This even more so if it is the intention to obtain or abuse a dominating position in the market and restrain competition.
- c) It is considered an unfair trade practice, therefore, when integrated producers (producing virgin aluminium as well as wrought aluminium) sell wrought aluminium below cost price,

and this is done with the designed intention to jeopardize unduly or destroy the existence of non-integrated producers of wrought aluminium.

2. Dumping

Dumping as condemned under Article VI of the GATT is an unfair trade practice.

This is valid for direct sales and must not be circumvented by sales through third persons of every legal construction or deliveries of scrap or wrought aluminium or compensation and later advantages or other extras.

3. Misrepresentation of non-discrimination

The producer who declares it to be his price policy to treat equally comparable cases of business on the basis of his price list or prices rebates and conditions, and to deviate from them only when and in so far as it is necessary in his own defence against provable competitive offers, in order to simplify and rationalize the customers' buying and his own selling, and to give his customers equal chances in their competitive sales (declaration of normal, non-discriminating price policy),

and then treats them nevertheless differently without being forced to do so by provable competitive offers, and without revoking his declaration openly in time,

is discriminating against his customers and is also acting unfairly with regard to his competitors, because his practices are capable of being misleading.

The same applies if a producer creates the same impression by the methods and means of his announcement of price lists, prices, rebates and conditions, or when during talks about them with customers interested in equal treatment for reasons of their sales competition. For example, when during these talks he asks for confidence in his equal treatment of customers.

4. Misleading omission of promised enlightenment

A producer who commits himself explicitly through unilateral declaration or conclusively according to A 3 to enlightenment and verification of price information given by customers or agents pretending more favourable competitive quotations,

is acting unfairly if he omits or prevents the enlightenment and verification and is misleading in competition,

when pretending for instance that he is forced to deviate from his normal prices by competitive quotations which in reality he did not check and verify,

or preventing competitors' enlightenment by not giving the promised information about his own prices.

5. Misleading collusion

It is an unfair trade practice to agree with a customer to keep secret any deviations from the normal prices of the producer to prevent his enlightenment,

if this is contrary to a commitment of enlightenment of the producer or customer.

.....

Group B

Group B contains, in form of non-committing advice for individual and autonomous decisions, principles of pricing and distribution of mass-produced goods which promote true competition and help to avoid falsification of competition. Non-observance is not illicit as such but may result in unfair trade practices in the cases indicated under B and in particular through supplementary facts as described under A. This can then be examined by procedures according to the contract of legal protection.

1. Basis of pricing

- a) Reasonable pricing depends on a calculation adequate to determine the costs in order to guarantee fulfilment of obligations existing in respect of country, personnel, creditors and contracting partners.
- b) Cost comparisons between enterprises help to find faults in expenditure and cost calculation and promote true competition.
- c) In case of progressing supranational market integration it is advisable to make comparisons of national calculation schemes to work out a harmonized calculation scheme, without fixing the amounts, and offer it for individual and autonomous decision of application in order to avoid falsification of competition due to differing national systems in determining costs and allocating them to different types of goods.
- d) Market statistics help to analyse how the market has influenced prices in the past and enables use of such market analyses for future pricing.

2. Pricing

- a) Reasonable pricing should follow the principles of veracity and clarity of prices.
- b) Establishment of price lists helps to realize these principles and to promote true competition by market transparency. Price lists correspond to the cost conditions of industrial mass production, which can ill-afford daily changing prices; they simplify and rationalize the producer distribution and the customer buying.
- c) Price lists, by clear descriptions of goods and their technical nature, help avoid misleading prices of producers and misleading price infor-

mation about competitive offers by customers.

Clear descriptions are even more important for international commerce in cases of differing national types and standards.

- d) A producer who is using price lists should change them if he wants to deviate from the old prices in general for a limited or unlimited period of time. This results from the principles of veracity and clarity of prices, and avoids misleading practices of his own selling organization and misleading price information of customers to competitors.
- e) A producer who has not made a declaration of normal price policy or created such an impression (compare A 3) is, however, well advised to change in general his price list, prices, rebates and conditions, instead of deviating from them secretly and in favour of a few customers only, because it would be self-deception to believe that this would remain secret. The customer would only regard this as a sign of price instability and use it for his price information to competing producers in order to get more advantages. Furthermore it could result in misleading practices by his own selling organization.
- f) For the purpose of international commerce every individual producer should express his prices in the currency of the country of destination in order to avoid misleading conversion by his own sales organization or by customers in their price information to competitors.

He is furthermore free to follow the prices practised in the country of destination in his own interest to obtain the best returns and to avoid falsification of competition, which would otherwise be the consequence of the different currency exchange rates, as fixed by governments to foster or deter exportation.

3. Quantity rebates

- a) Rebates and discounts are part of the pricing and should follow the principles of veracity and clarity of prices.
- b) Fixed rebate schedules match the cost conditions of mass production far better than daily changing rebates. They help to avoid misleading price information by customers about competitive quotations and promote true competition. They simplify and rationalize the producer selling and the customer buying. Market statistics and analyses as foreseen under B I d make it easier to make up the right schedule.
- c) If the producer practises a system of consumer prices, the rebates which are to be deducted from the consumer price should correspond to the advantages the different quantities entail for this production. Exaggerated consumer prices and rebates tend to replace true competition by misleading rebate competition, which decreases the transparency of the market and fosters misleading price information by customers.

d) Apart from clear quantity rebates, extra charges for lesser quantities also help to promote true competition, if they in turn correspond to the additional production costs. Extra charges deter customers from placing small orders and contribute towards more rational production lots.

e) Granting of quantity rebates, turnover bonuses or other advantages in advance before the corresponding turnover has been reached or secured or allowing such deductions without claiming the difference as soon as it becomes obvious that the quantity will not be reached leads to deception of customers and competitors relying on the conditions generally applied by the producer.

4. Functional rebates

a) A producer should examine the true qualification of a customer before granting rebates, deductions or other advantages connected with a certain function.

b) A mere designation of function such as wholesale dealer proves often to be no more than the

admission to the trade. The producer is entitled, therefore, to stipulate his conditions for granting functional rebates such as qualifications required and their usefulness to the producer.

5. Competitive rebates

Rebates which are granted openly for competitive reasons without any connections to quantities or functions are not unfair as such, but could easily lead to a chain of reactions boomeranging on the instigator. They could bring about misleading price information by customers if the true competitive character of these rebates is concealed.

In international commerce these competitive rebates are customary in so far as they are necessary to equalize competitive advantages of the home market producer, caused for instance by the complications and difficulties of importation. Competitive rebates exceeding equalization lead to counteractions and to chain reactions which normally end up at the originator and foster misleading price information by customers.

.....'

'Document 3

IFTRA

Contract of commitment and legal protection for producers of virgin aluminium

A. *Commitment*

The undersigned producer agrees by his signature to the opinion expressed by the attached fair trade practice rules or anti-dumping agreement and undertakes the commitment to abstain from trade practices which are declared unfair by these rules.

This commitment shall be valid for direct sales of virgin aluminium of 99 % and higher purity of CCT heading No 76.01 A and its alloys in the shape of ingots, sows, billets and slabs, and must not be circumvented by sales through third persons of every legal construction, or deliveries of scrap or wrought aluminium or compensation and later advantages or other extras.

B. *Legal protection*

I. IFTRA tasks for legal protection

1. Advice

Advise the use of the fair trade practice rules or anti-dumping agreement in order to respect the limits imposed by national and supranational anti-cartel legislation. The advice takes place at quarterly or half-yearly meetings.

2. Procedures

Fact finding and establishment of contraventions against the fair trade practice rules or anti-dumping agreement and assessment of the obligation to stop contraventions and of contractual penalties.

The possibility to apply for decision by ordinary courts, or for protection by governmental measures, are not excluded'.

Clause B II provides for contractual penalties for contraventions of the IFTRA rules, B III for 'procedures' whereby such contraventions are established, and clause B IV provides for appeal to a 'court of arbitration'. Clause B VI (1) provides that 'the fair practice rules or anti-dumping agreement may be used under the condition that the rules or agreement form a unit together with the contract of commitment and legal protection. Any other use requires previous written approval from IFTRA'.

Clause B VI (2) and (3) respectively provide for the payment of fees and the duration of the IFTRA agreement.

The procedure and constitution of the court of arbitration referred to above are contained in an appendix to the contract of commitment and legal protection, which being a part of the latter is said at paragraph 10 not to require separate signature.

B. Structure of the market

At the primary level of production the market in aluminium is characterized by a marked concentration of supply. Among the EEC Member States, four (Belgium, Luxembourg, Denmark and Ireland) have no production, and of the remaining members France has one producer, Italy has two major producers and one minor, the Netherlands has two and the United Kingdom has three. Germany is an exception to this pattern, having five producers. Of the remaining countries of western Europe (defined for these purposes as including the EEC, Austria, Greece, Iceland, Norway, Portugal, Spain, Sweden and Switzerland) no country, except Norway, which has five, can number more than two producers. It should also be emphasized that of the above 29 producers at least 19 are associated with one another through majority or minority shareholdings and that 10 are undertakings in which five major producers in Canada and the USA have an interest.

The four most important groups operating in western Europe (Pechiney-Ugine Kuhlmann, Alusuisse, Vereinigte Aluminium Werke and Alcan), the first three of which are signatory to the IFTRA rules, represent around 65 % of the productive capacity of western Europe (as defined above) i.e. 3 424 000 metric tons⁽¹⁾.

Within the EEC, approximately 85 % of the productive capacity of primary aluminium (2 051 000 metric tons) is held by undertakings which have become party of the IFTRA rules or by undertakings in which the parties to the IFTRA rules have a controlling interest. In France and Germany, practically the entire productive capacity is so held, whereas in the Nether-

lands more than 50 % and in the United Kingdom 38 % of the productive capacity is held by undertakings which have adopted the IFTRA rules. In so far as the remaining countries of western Europe are concerned, undertakings which have become party to the IFTRA rules, or undertakings in which the former have a controlling interest, account for more than 70 % of Norway's productive capacity (711 000 metric tons), almost the entire productive capacities of Austria, Greece, Iceland, Spain and Sweden (572 000 metric tons), and almost 90 % of the productive capacity of Switzerland (90 000 metric tons). All the signatories to the rules are members of vertically integrated groups producing primary aluminium and semi-manufactured and finished products.

Within western Europe primary aluminium is consumed in the following proportions. The motor vehicle and construction industries take up approximately 37 % and 22 % respectively. Packaging takes up between 15 % and 20 % whilst the aircraft and shipbuilding industries account for approximately 13 % of consumption.

II

ORIGIN AND APPLICATION OF THE IFTRA RULES

The parties maintained that during the years 1970, 1971 and the beginning of 1972 the production of primary aluminium far exceeded consumption. This fact caused serious difficulties in this sector and was said to have led, or to have risked leading, certain undertakings, impelled by the need to dispose of their production, to engage in practices violating alleged principles or rules of law concerning the fairness of competition, and dumping in particular. It was argued that in consequence a need was felt by some of the parties to agree, and to induce the other parties to agree, upon a certain number of rules, or to collectively reaffirm rules already considered to exist, and jointly to issue a certain number of principles and recommendations so as to ensure that, despite the unfavourable circumstances prevailing in the trade, the market behaviour of the parties would remain within the bounds of reasonable and fair competition. The parties maintained that this was the reason for the preparation of the IFTRA rules which are the subject of the decision and their adoption in 1972 by most European producers of primary aluminium. Shortly after the rules had been notified to the Commission, the economic situation was said to have been reversed by an appreciable growth in the demand for primary aluminium ending the pressures

⁽¹⁾ Figures quoted are for 1973/74.

and strains on the industry. It was maintained that, as a result, the IFTRA rules have in practice had no role to play, nor have they had any application, that the rules, however, offered, should the economic climate again become adverse, a mutual guarantee against a recourse to unfair or pernicious competitive actions. The IFTRA rules were therefore kept by the parties as a 'safety net' in spite of their alleged lack of practical use.

The Commission has not, however, been informed of any matter which could be construed as being an act of unfair competition by any of the parties or their competitors during the time which preceded the adoption and notification of the IFTRA rules. In particular, in respect of the alleged dumping from third countries in 1970 and 1971, which the parties insisted had occurred, not only was the information sent to the Commission insufficient to establish that any act of dumping had taken place, but was also inadequate to justify the opening of proceedings under Council Regulation (EEC) No 459/68⁽¹⁾ on dumping from third countries.

Whatever the above considerations may be, the action of the Commission is not to be determined by the notion that, because the rules are said not to have been applied, there is no need to take any steps with regard to them. The very existence of such rules is likely to influence the parties by discouraging them from certain actions contrary to the letter or spirit of those rules.

It should be borne in mind above all that Article 85(1) prohibits any agreement having a restriction of competition as its object, even if it is not proven that it has been applied. It is therefore necessary to examine the object of the IFTRA rules. Should such an object prove to be restrictive of competition, by reference to Article 85 it would be necessary to prohibit the rules since, apart from the restrictive effect arising from their very existence, the rules are readily available for immediate and general application, as the parties attending the hearing have themselves admitted.

III

EXAMINATION OF THE CLAUSES OF THE IFTRA RULES TO WHICH OBJECTION HAS BEEN TAKEN

A. The restrictions of competition

The IFTRA rules constitute an agreement within the meaning of Article 85 between all the undertakings which are signatory to the rules, since on signing the IFTRA rules each undertaking accepts obligations

toward the other signatories and creates in the latter an expectation that it will conduct its commercial policy in a certain way.

The mere labelling of an agreement between undertakings as rules against unfair competition does not suffice to remove the agreement from the ambit of Article 85 (1) of the EEC Treaty. In the present case the agreement in question contains several clauses which in fact either discourage competition directly or give the parties the opportunity and means to take joint action to prevent normal methods of competition.

In establishing the object of the clauses of this agreement, regard must be taken both of the reasonable construction of its terms and of the fact that the agreement must be considered to have a restriction of competition as its real object if such restriction would be the natural and probable consequence of its application.

Document 2, group A, clause 1

Clause A 1, supported by clauses 1 and 2 of group B and the contract of commitment and legal protection, establishes a system for the enforcement by the parties of rules which they allege to represent existing law. Since the law of Member States on the matters concerned by clause A 1 is not uniform, it follows that the adoption of a uniform private code by undertakings in several Member States may lead such undertakings to apply in their own country, or in the countries to which they export, rules more stringent than those they are obliged by law to observe. In assessing the object and effect of clause A 1 it is to be emphasized that its provisions are designed to be enforced by IFTRA, a private agency created by the parties, and whose activities are not subject to the permanent control of a public authority. It may therefore be supposed that it will tend to protect the collective interests of its members even to the detriment of third parties, by interpreting and applying the IFTRA rules in a manner likely to ensure the maximum restraint of competitive action among its members.

The clause concerned with 'destructive sales below cost' is alleged to have as its object 'the protection and promotion of true competition'. In the present case the principal object of clause 1 cannot reasonably be said to be the 'protection and promotion of true competition'. The clause exceeds the scope of legislation by Member States on unfair competition by creating a framework which facilitates and encourages the suppression of commercial initiatives which, whilst being inconvenient to the other parties to the agreement, are not 'destructive' in the reasonable sense of that term; i.e. such as to imperil the existence of a competitor.

⁽¹⁾ OJ No L 93, 17. 4. 1968, p. 1.

The vagueness of the text of A 1 (b) in particular supplies a means to the parties to protect themselves from measures of price competition which they consider to be excessive. By declaring sales below cost to be unfair where 'undue advantage' is taken of 'differing financial strength' with the intention to 'jeopardize unduly' a 'competitor's existence' or to 'obtain ... a dominating position', the opportunity is given to the parties to interpret and eventually condemn, by means of the contract of commitment and legal protection, any measure of price competition as being unfair and therefore prohibited. Owing to the difficulty of accurately assessing real costs, especially those of competitors, the apprehension that even sales at or near cost may be made the subject of proceedings under the contract of legal protection will in itself discourage price competition between the signatories.

It is, however, the nature of price competition that offers may be made which are inconvenient to competitors in that the latter are constrained to match such offers. A contractual limit on price competition agreed between competitors such as that set out in clause A 1 tends to prevent such offers and is therefore restrictive in its object.

Document 2, group A, clause 2: dumping

The clause should not be examined in isolation, but by reference to the introduction to document 2, which forms an integral part of the IFTRA rules. It is clearly apparent in the light of the introduction that the signatories to the rules have undertaken the obligation to refrain from dumping, at least in each other's respective territory, in terms that imply furthermore the simultaneous acceptance of the contract of commitment and legal protection (document 3).

Despite the fact that clause A 2 contains no territorial limitation as to its application, the parties maintained, by relying on the reference made to Article VI of the GATT which was said to be no longer applicable between Member States of the EEC, that the clause was not concerned with sales from the territory of one Member State of the EEC to that of another. The argument is, however, without real substance since it is obvious that reference is made to the concept of dumping as contained in, and the principle formulated by, Article VI of the GATT, and no reference is made in the rules to the territories to which this provision of the GATT is or is not applicable. Consequently the clause in its natural sense requires the parties to refrain from dumping in each other's territory, and applies to trade within the Community.

The obligation undertaken to refrain from 'dumping' has as its object or effect the prevention of acts which in fact are quite compatible with the rules of competition of the EEC.

Within the EEC, subject to the transitional provisions applicable to the three new Member States, the rules on dumping contained in Article 91 of the EEC Treaty have ceased to be applicable. A low-price sale from one Member State to another is no more subject to such rules than such a sale from one zone to another within the same Member State. It is clear that the sole object and effect of the IFTRA rules relating to dumping, as far as sales from one Member State to another are concerned, is to prevent the type of inconvenient competitive offer which is no longer prevented by any Community legal provision.

It is, moreover, necessary, as far as sales between the common market and third countries and sales during the transitional period between the six original members of the EEC and the three new members are concerned, to stress that the appraisal of whether acts can be considered as dumping and the imposition of defensive measures under the existing rules relating to dumping are matters which may be undertaken only by a competent authority, namely a national authority or the Commission of the European Communities. Any other method is open to the risk of abuse. Such an authority is the only entity entitled to assess, after an examination which is necessarily complicated and lengthy, whether the imposition of anti-dumping measures which interfere with the free movement of goods is justified.

It is therefore often difficult to predict whether a proposed sale will constitute unlawful dumping, and in consequence a reciprocal undertaking to refrain from dumping will necessarily discourage the parties from sales which may indeed inconvenience other parties in their national markets, but which would not ultimately be found contrary to the rules concerning dumping. Moreover the threat of the institution of 'procedures' by a competitor and the imposition of contractual penalties provided for in the contract of commitment and legal protection, should IFTRA establish what it considers to be dumping, are further inducements not to disturb the markets of competitors by any measures of price competition.

This agreement to refrain from dumping and the adoption of private rules to this end are therefore to be regarded as having the object and the effect of restricting competition within the meaning of Article 85 (1).

This conclusion is not rebutted by the efforts of the parties to present dumping as the subject of various treaties, legislation and regulations which entitle any undertaking to require any other to abstain from acts of dumping which are causing it damage, so that it is alleged that no objection could be taken to undertakings agreeing to abide by such treaties, legislation and regulations. The provisions of public international law relied upon (Article VI of the GATT and Article 10 of the Paris Convention for the Protection of Industrial Property) do not, in fact, constitute a source of positive law directly applicable to undertakings. In so far as the provisions of existing law in this subject are concerned, both national legislation and regulations and, for the Community, Council Regulation (EEC) No 459/68 entitle undertakings suffering or alleged to be suffering damage only to seek the intervention of a competent authority. In any event the appraisal of whether or not to condemn an act of dumping is not, as has been emphasized above, to be assigned or left to undertakings or private organizations or to arbitration.

Document 2, group A, clauses 3, 4 and 5

The above clauses discourage the signatories from selling at prices below those they have published and imply over and above the obligation to disclose price information to customers that of exchanging such information with competitors. In consequence the above clauses, under colour of protecting customers against discrimination, provide the parties with means of shelter from competition to the extent that price stability is increased and that the parties are enabled to predict each other's price policy with a reasonable degree of certainty.

Undertakings must not agree to limit the freedom which is theirs for activities not subject to the ECSC Treaty to apply whatever variations they think fit on their published prices and discounts, even where they have informed competitors or customers that they intend to adhere to those prices and discounts. Subject to Article 86 (c) of the EEC Treaty selling below published prices is not in itself unfair. It is, moreover, often necessary in order to gain a foothold in a market, which latter operation should be encouraged to promote the economic integration of the Community. Price competition must not be obstructed by a necessity to publish revised price lists before any change in price is made.

Apart from the possibility provided for by clause 3, that producers may make an express 'declaration of

normal, non-discriminating price policy', and the likelihood that in times of economic difficulty for the industry pressures may be brought to ensure that such declarations be made, the clause further provides that such a declaration will be assumed to have been given, where the producer 'creates the ... impression' (clause 3, last paragraph) that he will 'treat equally comparable cases of business on the basis of the price list or prices rebates and conditions' (clause 3, first paragraph). All the consequences of non-observance of declarations ensue whenever this 'impression' is created, even unwittingly.

Given the evident variety of circumstances where, by operation of the last paragraph of clause 3, the signatories will be deemed bound by implication not to depart from their price lists, and the fact that the signatories do indeed publish price lists, the clause discourages the signatories from selling at prices below these appearing in their price lists, except in response to a competitive offer the existence of which they must be able to prove.

In addition it is clear that with reference to the last paragraph of clause 3, the producer may not be aware of what impression he has created upon customers or competitors. Since the latter may bring proceedings or cause proceedings to be brought under the contract of legal protection based on an impression they alone have received, it would appear that this eventuality cannot be predicted with any certainty by the signatories. The apprehension that proceedings may be brought and the allegation made that 'unfair' practices have been committed is likely to deter them from applying prices or rebates differing from those they have made known and to persuade them to behave as if a 'declaration of normal, non-discriminating price policy' had been made.

Clauses 3, 4 and 5 taken together form a group of obligations the implementation of which requires the exchange of price information between competitors, for the following reasons.

The requirement under clause 4 that a producer 'check and verify' allegedly competitive quotations cannot be met unless that producer is in possession of price information disclosed by the competitor from whom the competitive quotation originates.

Moreover, clause 4 deems it to be an unfair practice for a producer to fail to provide price information to a competitor, where he has undertaken the obligation so to do, or where, by reference to clause 3, the producer 'declares' that his price policy will not be discrimina-

tory, or even where the producer 'creates the...impression' that he will treat customers equally. Clause 5 is applicable in the same circumstances and constitutes a further measure tending to ensure full exchange of price information between competitors.

These clauses are therefore restrictive of competition both in their object and effect.

Document 2, group B

These provisions are set out in the form of a legal and economic commentary on certain types of apparently free and autonomous cooperation and desirable individual behaviour. Although the provisions of Group B purport to contain 'non-committing advice', they form an integral part of the fair trade practice rules, and it would be unreasonable to suppose that the provisions of group B have no effect or that they have been adopted with no intention that they be implemented.

In clause B VI (1) of the contract of commitment and legal protection it is stated that 'the rules...form a unit together with the contract of commitment and legal protection. Any other use requires the previous written approval from IFTRA'. No such written approval has been given to any signatory.

It follows that the provisions of group B may form the basis of 'procedures' instituted by a party to IFTRA under the contract of commitment and legal protection to compel observance of the collective recommendation contained in group B. In this regard, it is to be emphasized that the contract of commitment and legal protection provides for the selfsame 'procedures' in respect of matters arising under both group A, as to which there cannot be any doubt of its obligatory nature for the parties, and group B of the IFTRA rules. The allegedly 'non-committing' nature of the provisions of group B is thus belied by the measures provided to ensure their implementation.

The provisions of group B amount to a recommendation to producers to align their sales policies with those of their competitors, and the contractual organization of sanctions in the contract of commitment and legal protection enables competitors to ensure that the recommendation to align policies is acted upon.

Document 2, group B, clause 1

Clause 1 should be construed by reference to the object of the IFTRA rules taken as a whole, namely

the promotion of concerted behaviour on the market, and in the light of document 3 (expressly referred to in the preamble to document 2), which provides for both 'advice' and 'procedures' to be administered by persons representing all the signatories to the rules.

In its communication of 29 July 1968⁽¹⁾ concerning cooperation between enterprises, the Commission indicated at II (1) d that agreements having as their sole object the joint preparation of calculation models are not considered to restrict competition provided they do not contain specified rates of calculation.

The communication, however, cannot apply to the present case, since the clause is contained within a series of provisions which are restrictive of price competition. Furthermore the provisions of group B in general and clause B 1 (1) of the contract of commitment and legal protection provide a framework for the giving of concrete recommendations which may induce at least some of the parties to the agreement to behave in an identical manner on the market.

The object of the clause is to establish close cooperation in cost studies, the calculation of cost prices and market analyses, within the framework of an approximation of behaviour in the market and, more particularly, as to prices. The clause gives the parties the means to know each other's costs, and, particularly in view of the structure of the relevant market, enables them to predict each other's price policy with greater certainty, whereby price competition is likely to be diminished or eliminated. The exchange between competitors of information on costs can in no way be considered as a means of combating unfair competition but rather enables the parties to minimize price competition. The clause must therefore be regarded as restrictive of competition within the meaning of Article 85 (1).

Document 2, group B, clause 2

Under the pretext of ensuring optimum knowledge of market conditions, this clause, seen in its entirety, constitutes an encouragement to compile price lists, to adhere to them strictly and to fix prices in the currency of the countries of destination. This encouragement cannot but become pressure when the provisions of the contract of commitment and legal protection, especially under B I, are applied. But mutual encouragement is itself a restriction of competition, for every producer should have complete discretion to establish his own policy in these matters without risking the accusation that he is violating the spirit of

⁽¹⁾ OJ No C 75, 29. 7. 1968, p. 3, amended by OJ No C 84, 28. 8. 1968, p. 14.

an agreement. The contractual organization of a system requiring adherence to various existing prices and whereby price stability is encouraged by the recommendations which are made to the parties to use and adhere to price lists, a system which is aggravated by the recommendations to adopt a harmonized 'calculation scheme' provided for in clause B 1 c constitutes a major restriction of competition, both in its object and its effect.

The mutual recognition at clause 2 (f) of a right 'to follow the prices practised in the country of destination' and the unjustifiable assertion made by the signatories that this is necessary 'to avoid falsification of competition' implies the obligation not to undercut such prices. This clause is an especially serious restriction of competition since its result is to prevent the economic integration of the common market and to deny the consumer all of its benefits in respect of the product in question and also for the numerous processed aluminium products. Furthermore a clause implying the obligation not to undercut national market prices cannot be described as a means of combating unfair competition in any way whatsoever.

The provisions of clauses 1 and 2 of group B establish a framework within which undertakings are induced not to undercut prices prevailing in various Member States and to use the device of price and cost comparisons to restrict competition between themselves.

Document 2, group B, clauses 3, 4 and 5

Any producer may at his own discretion independently conduct business according to principles more or less comparable with those set out in the above clauses. However, the establishing of a code of conduct on the question of rebates, enforced by 'procedures' under the contract of legal protection has the overriding object of restricting competition, since it discourages competition in the granting of rebates and leads to identical or similar behaviour by the parties in areas where each should be free to decide his own policy.

Clause 5, paragraph 2 in particular acknowledges that competitive rebates may be granted on export so that aluminium may be sold at the price prevailing on the home market of the country of destination. This process is termed 'equalization' in the rules. However, the subsequent sentence amounts to a collective recommendation not to grant competitive rebates exceeding 'equalization' i.e. not to undercut the prices prevailing in the home market. The clause is comple-

mentary to clause 2 (f) and is restrictive in the same degree.

B. Effects on trade between Member States

The above provisions combine to circumscribe the commercial freedom of producers as regards their export sales to other Member States and consequently to prevent or to restrict such sales. These provisions may therefore affect trade between Member States inasmuch as they concern sales from a producer in the common market to a purchaser in another Member State and even where they relate to sales in the common market from a third country. Since the product in question is used in the manufacture of a large number of semi-finished and finished products and is imported into Member States for processing and resale in other Member States the restrictions discussed above must also have a serious effect on trade between Member States in those products.

C. Inapplicability of Article 85 (3)

None of the restrictive provisions referred to above contributes to technical or economic progress or improves production or distribution; in particular the IFTRA rules reduce the opportunity for competition within the common market and tend to insulate national markets and therefore impede rather than improve distribution.

Furthermore both because of the structure of the market, and because of the number and importance of the parties, the agreement affords the latter the possibility of eliminating competition in respect of a substantial part of the products in question. There can therefore be no question in this case of applying Article 85 (3).

IV

By letter received on 24 February 1975 the signatories informed the Commission, through their legal representative, that they had terminated their agreement on 18 February 1975 and asked that the proceedings be closed with no further steps being taken.

There is, however, the consideration discussed above, that it is not possible to accept the argument that an agreement, signed and clearly in force, has never been applied. The very existence of the agreement must have had a restrictive effect, if only by dissuading the parties from certain competitive actions.

Furthermore the object of the agreement was clearly and seriously restrictive, and the undertakings involved are large and the economic sector concerned important. The restrictions of competition forming the object of the IFTRA rules agreed between most producers of primary aluminium in western Europe could not fail seriously to aggravate the rigidity present in a market having the features described above. These circumstances are sufficient to justify the bringing of a decision by the Commission that the agreement in question was in breach of Article 85,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of clauses 1, 2, 3, 4 and 5 of group A and of clauses 1, 2, 3, 4 and 5 of group B of the fair trade practice rules (document 2 of the agreement known as the 'IFTRA rules for producers of virgin aluminium') constituted infringements of Article 85 (1) of the EEC Treaty from 27 April 1972 to 18 February 1975.

Article 2

This decision is addressed to the International Fair Trade Practice Rules Administration (IFTRA) Vaduz, Liechtenstein and the following undertakings:

Alusuisse Deutschland GmbH, Konstanz, Federal Republic of Germany,
Gebrüder Giuliani GmbH, Ludwigshafen (Rhein), Federal Republic of Germany,
Kaiser-Preussag Aluminium GmbH & Co, Voerde (Niederrhein), Federal Republic of Germany,
Metallgesellschaft AG, Frankfurt (Main), Federal Republic of Germany,
VAW, Vereinigte Aluminium-Werke AG, Berlin,
Péchiney-Ugine Kuhlmann S.A., Paris, France,
Holland-Aluminium N.V., Den Haag, the Netherlands,
The British Aluminium Company Limited, London, England,
Empresa Nacional del Aluminio S.A., Madrid, Spain,
Årdal og Sunndal Verk (ÅSV), Oslo, Norway,
Elkem — Spigerverket A/S, Oslo, Norway,
Norsk Hydro A/S, Karmøy, Oslo, Norway,
Vereinigte Metallwerke Ranshofen-Berndorf A.G., Braunau am Inn/Ranshofen, Austria,
Schweizerische Aluminium AG., Zürich, Switzerland,
Gränges Essem AB, Västerås, Sweden.

Done at Brussels, 15 July 1975.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 17 July 1975

relating to a proceeding under Article 85 of the Treaty establishing the EEC

(IV/28.775 — UNIDI)

(Only the Italian text is authentic)

(75/498/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 2, 4, 6 and 8 thereof;

Having regard to the application for negative clearance and the notification submitted on 21 December 1973 pursuant to Articles 2 and 4 of Regulation No 17 by the Unione Nazionale Industrie Dentarie Italiane (UNIDI) of Milan in respect of its decision in which the rules and regulations were laid down for the national and international dental equipment exhibitions (Expo Dental), organized by UNIDI at intervals of 18 months and held in various cities in Italy;

Having regard to the application submitted on 16 April 1974, pursuant to Article 3 of Regulation No 17, on behalf of Dentauro HP of Pforzheim Ispringen, Federal Republic of Germany, and its Italian representative Compagnia Internazionale Prodotti Dentali (CIPD) of Bologna, to which Risen of Turin, the Italian representative of Rocky Mountain, USA, and Unital of Milan, the representative of Unitek Corporation, Federal Republic of Germany, were both joined on 30 April 1974;

Having regard to the summary of the above Decision published, as required by Article 19 (3) of Regulation No 17, in *Official Journal of the European Communities* No C 103 of 7 May 1975;

Having regard to the Opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered pursuant to Article 10 of Regulation No 17 on 25 June 1975,

I

Whereas :

1. UNIDI is a private association formed in Milan on 27 May 1969 under Italian law. The current membership consists of 77 dental equipment manufacturers established in Italy. Membership of the association is open to all those industrial undertakings manu-

facturing products for use by dentists which are enrolled in Italy with a Chamber of Commerce for Industry, Craft Trades and Agriculture. Decisions with regard to the acceptance or rejection of applications for new membership are taken by a board of management. There are only two or three dental equipment manufacturers established in Italy which are not members of UNIDI.

The main objects of the association are to advertise, both in Italy and elsewhere, the products of member firms and to promote their sales through approaches made to public or other official bodies, and by means of fairs and national and international exhibitions. It can engage in any activity which the board of management considers necessary in order to achieve these objects.

In accordance with these objects, the board of management formed a committee on 8 January 1971 to organize national and international dental equipment exhibitions in Italy under the name of Expo Dental. It was this committee which had taken the decision later notified to the Commission in respect of the conditions for taking part in the exhibitions, and which had also decided that these conditions should be incorporated in the Expo Dental rules drawn up before each exhibition.

UNIDI is also associated with ANCIDES (Associazione Nazionale Commercianti Internazionali Dentali e Sanitari), an association of dental equipment importers and wholesalers, and ANCAD (Associazione Nazionale Commercianti Articoli Dentali), an association of dental equipment dealers, in the organization of Expo Dental. However, UNIDI alone is responsible for this organization, and it is UNIDI which lays down the general policy to be followed.

2. The main points of the latest Expo Dental rules are as follows :

— The following may be exhibited at Expo Dental : tools for dental technicians, expendable products required by dental technicians, expendable products and equipment required for dental surgery, pharmaceutical products, dental laboratories, precious metal alloys for dental surgery, and specialist technical and scientific publications (Article 5);

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

- Italian and foreign manufacturers, representatives of foreign firms and dental equipment dealers may present exhibits. Publishers of technical, scientific and periodical publications, and organizations, associations, institutes, etc., which promote, support, or themselves engage in the main activities connected with or relating to the types of goods exhibited and the particular features of the exhibition may also take part (Article 6);
 - The price per square metre for a stand at an Expo Dental exhibition varies by some 20 %, depending whether the exhibitor is or is not a member of one of the associations involved in organization (Article 9);
 - Exhibitors may not conclude on-the-spot sales with the public or require immediate payment. Sales may be made only on orders for future delivery (Article 10);
 - The organizing committee of Expo Dental is responsible for considering applications from potential exhibitors and for allocating stands (Article 10);
 - Any firm wishing to take part in an Expo Dental exhibition is warned that it will not be allowed to exhibit, and the advance payment of admission fees will not be reimbursed, if, during that period next before the opening of the Expo Dental which corresponds to half the interval between the preceding and the present Expo Dental (in other words within the previous nine months), it takes part in any other exhibitions of dental equipment. An exhibition is defined as the presentation, either physical or through advertising, of competing dental products in Italy or San Marino where more than one firm take part. Participation in an exhibition is defined as the presentation of dental products by the manufacturer, by the importer or by an Italian or foreign representative, whether on his own behalf or through a third party (Article 22);
 - There is complete freedom to exhibit, however, either at any 'open house' exhibition organized by a single firm (manufacturer, importer or dealer), provided it is not ancillary to a professional or trade congress, or at exhibitions connected with conferences or congresses of associations of specialists on, for example, orthodontics or implantology (Article 22);
 - Where an exhibitor is liable to be excluded by virtue of this provision after his application has already been accepted, the organizer is required to decide whether to exclude the applicant within 30 days of the date he discovered the facts warranting such exclusion. Where the Expo Dental has already begun, the organizer may either order the exhibitor concerned to leave immediately or order his exclusion from the next exhibition (Article 22).
3. Between 1971 and 1974, Expo Dental was held every year: in Genoa in 1971, in Milan in 1972, in Rome in 1973 and again in Genoa in 1974. On 25 July 1974 the Expo Dental organizing committee decided that future exhibitions would be held only every 18 months and that the next Expo Dental would be at Bologna in the spring of 1976.
4. In considering this case, account must be taken of the following matters which have the most influence on the Italian dental industry and exhibitions of dental equipment in particular:
- This sector consists of dental equipment producers, representatives and dealers, whose customers are primarily practitioners and dental technicians. It does not include manufacturers of or dealers in toothpaste, toothbrushes and such other dental products which are sold to the public at large;
 - At the present time there are new developments both in general dentistry as in more specialized fields, such as implantology and orthodontics. It is of interest to note that there are at present some 150 dentists in Italy practising orthodontics, using the products of four manufacturers which are directly or indirectly in business on the Italian market;
 - Apart from normal sales methods, such as the use of brochures and representatives, there are three forms of specialized activity in promoting dental equipment:
 - (a) general exhibitions and fairs, such as the Milan Fair;
 - (b) local events known as 'open houses' held at the premises of a manufacturer, or a representative or dealer, or even at an hotel, where potential customers are invited to inspect the range of products manufactured by a particular firm;

- (c) specialized congresses and exhibitions, which either cover the whole range of dental equipment or are limited to those products used by particular specialists.

The present trend is against the use of events of type (a) above, in favour of those of types (b) and (c);

- The increase in the number of events of type (c) during the 1960's, organized on behalf of dentists' associations, involved manufacturers in considerable expense, while the number of visitors dropped steadily. This is the reason which caused the manufacturers to set up UNIDI to organize an exhibition of interest to the profession as a whole.
- Dental associations from other Member States frequently organize congresses in Italy which include exhibitions.

At present Expo Dental is the only exhibition in Italy covering the whole dental industry, attracting attendance from all branches of the profession. Each Expo Dental is visited by approximately 60 % of all practitioners and dental technicians, who are the potential customers.

5. The original version of the UNIDI decision on the Expo Dental rules restricted the freedom of exhibitors to take part in other similar exhibitions in Italy to a much greater extent. The prohibition in fact applied to the 12 months preceding each Expo Dental which was, moreover, an annual event. Furthermore, there was no exception for those exhibitions connected with specialized congresses.

As a result of that provision, some of the firms wishing to exhibit at the Expo Dental which was to take place at Genoa in October 1974 were prevented from taking part in the exhibition attached to the congress organized by the European Begg Society of Orthodontics and held at Santa Margherita Ligure, Italy, in May 1974.

In a circular to its members dated February 1974, UNIDI explicitly reminded them that the rules notified to the Commission were still in force for the time being and that any member who wished to take a different line would be excluded from the Expo Dental at Genoa.

In April 1974 one German firm and three Italian firms, who had all wanted to take part in both exhibi-

tions, made application under Article 3 of Regulation No 17 in respect of the Expo Dental rules, and in particular Article 22 thereof.

In response to the representations of the Commission, UNIDI decided to permit the firms in question to take part in both exhibitions and on 25 July 1974 amended the rules governing future Expo Dentals, particularly Article 22, to the form set out in paragraphs 1 and 2 above.

No observations were received from any interested third parties following the publication of a summary of the UNIDI decision in the *Official Journal of the European Communities*.

II

1. The UNIDI decision in which the Expo Dental rules are drawn up is a decision by an association of undertakings.

2. The present Expo Dental rules contain provisions which have as their object or effect a restriction of competition within the common market. These provisions which are to be found in Article 22, are as follows:

- The prohibition on participation by Expo Dental exhibitors, during the nine months preceding the Expo Dental, in other similar dental exhibitions in Italy. The prohibition covers both the actual exhibition of products and any other form of publicity whether directly by the manufacturers or indirectly by a manufacturer's Italian or foreign representative;
- The refusal to admit those exhibitors in breach of the provision referred to in the preceding paragraph to the current Expo Dental, or their expulsion therefrom, or exclusion from the next Expo Dental.

3. These provisions substantially restrict competition both on the market for the services provided by those organizing dental equipment exhibitions as well as on the actual market for such equipment.

- With regard to the organization of dental exhibitions, the fact that most manufacturers of the relevant products on the Italian market, or their distributors, usually participate in Expo Dental exhibitions means that other organizers of such

exhibitions, and particularly Italian and foreign dental associations wishing to organize exhibitions in Italy, whether or not attached to a Congress, cannot invite these exhibitors to take part in their own exhibitions.

- Although dental equipment manufacturers have the choice whether to present their products either at Expo Dental or at other exhibitions, competition is restricted between them, since it has become necessary for all manufacturers doing business on the Italian market or wishing to enter that market to take part in Expo Dental, since it is the most popular dental exhibition and is attended by all the professional groups concerned. However, if they do present their products at Expo Dental, they will be unable to take part in other exhibitions in Italy, such as regional exhibitions.
- Competition is furthermore restricted between these dental equipment producers' commercial agents, since distributors of competing products are placed on a different competitive footing depending on whether the dental equipment manufacturer prefers to exhibit at Expo Dental or at other exhibitions.

4. Competition could further be restricted by Article 10 (1) of the rules, which requires applications for admission to Expo Dental to be submitted to the organizing committee for decision, since refusal to admit products of a manufacturer to the only exhibition of this scale organized every 18 months in Italy would place the manufacturer or his distributor in a disadvantageous position compared with his competitors. In the past, however, this rule has never been applied arbitrarily. It is nevertheless necessary to ensure that for the future also the exercise of this prerogative by the Expo Dental organizing committee, which they do not have to justify and against which there is no appeal, will not lead to restrictive conduct.

5. On the other hand, competition is not restricted by Article 9, which provides for a scale of fees for exhibitors varying by approximately 20 % depending on whether or not they are members of the associations involved in organizing Expo Dental. Such disparity appears to be justified in view of the cost involved in preparing and organizing the exhibition, which is met from contributions from members of the

organizing associations. As long as the scale is confined within such limits it will not constitute discrimination against exhibitors who are not members of these associations.

6. The restrictions on competition referred to above may affect trade between the Member States in respect of both the provision of services by the organizers of exhibitions in the various Member States and the conditions for marketing dental products within the Community.

With regard to the provision of services, organizers of dental exhibitions in other Member States wishing to organize exhibitions in Italy other than of a specialist nature would be unable to invite a manufacturer who wanted to exhibit at Expo Dental during the period in which such manufacturer was prevented from taking part in other exhibitions. In this context, participation in any exhibition other than Expo Dental means the presentation of the dental products concerned not only by a manufacturer or distributor but also by any other Italian or foreign commercial agent. Therefore, a manufacturer wishing to exhibit at Expo Dental would have to ensure that his products were not exhibited by any person at any other exhibition in Italy, irrespective of the organizer.

It is also the case that all manufacturers in other Member States wishing to sell their products in Italy are obliged to comply with the Expo Dental rules because the exhibition is an important venue for marketing their products. In addition, Italian manufacturers cannot, during the period of prohibition, exhibit their products at exhibitions in Italy held by associations in the sector of dental products from other Member States, which deprives the Italian manufacturers of the opportunity of bringing these products to the attention of potential customers in other common market countries.

These restrictions therefore could prejudice the freedom of trade between Member States to such an extent that the attainment of a single market between the Member States might be jeopardized.

7. Accordingly, Article 85 (1) is applicable to the UNIDI decision and the application for negative clearance cannot, therefore, be granted.

III

1. The UNIDI decision must therefore be considered with regard to the provisions of Article 85 (3).

2. The fact that it has become necessary to rationalize the organization of and participation in fairs and exhibitions, as already noted by the Commission in a number of other industries⁽¹⁾, has caused exhibitions of dental equipment, in particular, to become concentrated, if not at Community level⁽²⁾, at least at national level, as in this case in Italy. This has the following advantages:

- a) by displaying together most of the products available on the Italian market at one time, competition between manufacturers is stimulated and incentives for technical progress arise. It also means that not only can consumers, in this case the dental profession, have a more complete range of information and guidance, but also more business can be done;
- b) it promotes the marketing of the products in that, nine months out of 18, the costs borne by exhibitors are reduced and consequently the cost price of their products, while for the other nine months they are free to exhibit their products as they wish.

Accordingly the decision contributes to improving the distribution of goods and to promoting economic progress.

3. Consumers are allowed a fair share of the resulting benefit. The periodic concentration of supplies in a single Italian city, which is not always the same, gives consumers a complete indication of the market situation and enables them to make direct contact with all producers or distributors on this market, without having to travel frequently from place to place.

The consumer is therefore allowed a fair share of the benefit resulting from the rationalization brought about by Expo Dental.

4. The decision as notified imposes no restriction which is not indispensable to the attaining of its objectives. Manufacturers and distributors of dental products have a reasonable period when they are not required to bear the cost of taking part in other exhibi-

tions and when they are able to concentrate on Expo Dental. Having regard to the fact that Expo Dental is held every 18 months and to the rate at which technical progress is made in the relevant products together with the exceptions allowed for open-house type exhibitions and exhibitions connected with specialized congresses, the period of nine months prohibition out of every 18 can reasonably be regarded as indispensable.

5. The UNIDI decision does not eliminate competition between organizers of exhibitions of dental equipment nor between manufacturers and distributors of such equipment.

Organizers of exhibitions other than Expo Dental can, during nine months out of every 18, organize exhibitions at which any interested party can exhibit, and during the other months they are free to hold exhibitions with the participation of firms who do not take part in Expo Dental. Furthermore, as far as the Commission is aware, it is only associations of specialists which have hitherto organized such exhibitions. Such associations remain free to organize exhibitions in connection with specialized congresses or symposia at which all manufacturers and their representatives are free to exhibit.

With regard to competition between manufacturers and distributors of dental products, participation in specialized exhibitions is, as can be seen from Part I above, only one of the various methods of marketing. The fact that during nine months out of every 18 they are obliged to adopt other methods does not result in the elimination of competition between them.

6. Accordingly, all the tests for exemption under Article 85 (3) are satisfied.

IV

1. The original version of the UNIDI decision did not qualify for exemption under Article 85 (3). The prohibition on participation in other similar exhibitions was in effect valid for 12 months out of every 12, which gave UNIDI a virtual monopoly of dental exhibitions in Italy. Furthermore, since it made no exceptions for exhibitions connected with specialized congresses or symposia, the result was that firms

⁽¹⁾ Commission Decision of 13 March 1969 in Case IV/93 — Exposition européenne de la Machine-outil (EEMO); OJ No L 69, 20. 3. 1969, p. 13; Commission Decision of 24 September 1971 in case IV/181 — CEMATEX: OJ No L 227, 8. 10. 1971, p. 26.

⁽²⁾ The Commission reserves the right to consider whether similar rules in other Member States are compatible with the rules on competition in the Treaty.

manufacturing either general or specialized dental equipment could not present their product ranges on these two distinct markets. Competition, therefore, between the organizers of exhibitions and the manufacturers and distributors of dental equipment was restricted to an extent which the benefits of the Expo Dental scheme could not justify.

As stated in Part I above, UNIDI adopted a decision on 25 July 1974 in response to representations by the Commission by which the rules governing future Expo Dental exhibitions, in particular Article 22, were amended to comply with Article 85 (3). It is, therefore, only from that date that the tests for exemption under Article 85 (3) have been satisfied.

2. In determining the period of validity of this decision, as required by Article 8 (1) of Regulation No 17, account must be taken of the nature of the case and, in particular, of the fact that Expo Dental is held every 18 months. A period of nine years is accordingly considered to be appropriate.

3. In view of the comment made in paragraph 2 of Part II above, it would also seem appropriate to attach an obligation to this decision, pursuant to Article 8 (1) of Regulation No 17, to enable the Commission to be kept informed of any case in which the Expo Dental organizing committee, in agreement with UNIDI, refuses to admit an exhibitor. For this purpose UNIDI should be required to furnish copies of the correspondence in which either UNIDI itself or the Expo Dental organizing committee has informed a firm that its application for admission cannot or can no longer be accepted,

HAS ADOPTED THIS DECISION :

Article 1

Pursuant to Article 85 (3) of the Treaty establishing the European Economic Community, the provisions of Article 85 (1) of the Treaty are hereby declared inapplicable to the UNIDI decision setting out the rules governing Expo Dental exhibitions.

Article 2

UNIDI shall immediately inform the Commission of any refusal to admit an exhibitor to any Expo Dental exhibition.

Article 3

This Decision shall take effect from 25 July 1974 and shall remain valid until 31 December 1983.

Article 4

This Decision is addressed to Unione Nazionale Industrie Dentarie Italiane (UNIDI), via Fratelli Ruffini 9, Milan, Italy.

Done at Brussels, 17 July 1975.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 23 July 1975

fixing the maximum price of white sugar to be supplied to UNRWA for the second partial invitation to tender referred to in Regulation (EEC) No 1071/75

(Only the Danish text is authentic)

(75/499/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 1052/73⁽¹⁾ of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, as amended by Regulation (EEC) No 611/75⁽²⁾, and in particular Article 1 (3) thereof;

Whereas Commission Regulation (EEC) No 1071/75⁽³⁾ of 24 April 1975 on an invitation to tender for the mobilization of white sugar as food aid for UNRWA, amended by Regulation (EEC) No 1332/75⁽⁴⁾, requires Denmark to issue a standing invitation to tender relating to the respective price of five lots of white sugar bought on the world market and for a total of 6 094 metric tons to be supplied to UNRWA cif on quay to the ports of unloading Beirut (Lebanon) or Ashdod (Israel), packed in new jute sacks with a content of 50 or 100 kilogrammes net; whereas, pursuant to Article 11 of this Regulation, the maximum price for supplying the sugar is fixed, after examination of the tenders, in accordance with the procedure laid down in Article 40 of Regulation No 1009/67/EEC⁽⁵⁾; whereas the examination of the tenders leads for the second partial invitation to tender, to fix the maximum price of each lot as specified in Article 1;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Sugar,

HAS ADOPTED THIS DECISION:

Article 1

For the second partial invitation to tender issued under Regulation (EEC) No 1071/75, for which the period for submission of tenders expired on 23 July 1975, the maximum price is hereby fixed:

- for the lot C at 600 000 units of account,
- for the lot E at 837 600 units of account.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 23 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 105, 20. 4. 1973, p. 1.

⁽²⁾ OJ No L 64, 11. 3. 1975, p. 1.

⁽³⁾ OJ No L 105, 25. 4. 1975, p. 21.

⁽⁴⁾ OJ No L 135, 27. 5. 1975, p. 11.

⁽⁵⁾ OJ No 308, 18. 12. 1967, p. 1.

COMMISSION DECISION

of 24 July 1975

on the reimbursement by the Guidance Section of the EAGGF to the French Republic of aids granted during 1973 to organizations of fruit and vegetable producers

(Only the French text is authentic)

(75/500/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 1035/72⁽¹⁾ of 18 May 1972 on the common organization of the market in fruit and vegetables, as last amended by Council Regulation (EEC) No 2745/72⁽²⁾, and in particular Article 36 thereof;

Having regard to Council Regulation (EEC) No 449/69⁽³⁾ of 11 March 1969 on the reimbursement of aid granted by Member States to organizations of fruit and vegetable producers, and in particular Article 7 (2) thereof;

Whereas the French Republic has made an application for the reimbursement of aid granted during 1973 to organizations of fruit and vegetable producers;

Whereas this application is in accordance with the provisions of Commission Regulation (EEC) No 2264/69⁽⁴⁾ of 13 November 1969 on applications for reimbursement of aid granted by Member States to organizations of fruit and vegetable producers;

Whereas an examination of the information communicated shows that eligible aid of FF 379 247 (68 281.24 u.a.) was granted under the conditions laid down in

Articles 2 to 6 of Regulation (EEC) No 449/69; whereas the Guidance Section of the Fund should therefore reimburse 50 % of that amount, i.e. FF 189 623.50 (34 140.62 u.a.);

Whereas the Fund Committee has been consulted on the financial aspects, and in particular as to the funds available,

HAS ADOPTED THIS DECISION:

Article 1

The contribution by the Guidance Section of the European Agricultural Guidance and Guarantee Fund towards the aid granted by the French Republic to organizations of fruit and vegetable producers during 1973 shall be FF 189 623.50 (34 140.62 u.a.).

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 24 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 291, 28. 12. 1972, p. 147.

⁽³⁾ OJ No L 61, 12. 3. 1969, p. 2.

⁽⁴⁾ OJ No L 287, 15. 11. 1969, p. 3.

COMMISSION DECISION

of 25 July 1975

fixing the minimum selling prices for butter for the 10th individual invitation to tender under the standing invitation to tender provided for by Regulation (EEC)

No 232/75

(75/501/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68⁽¹⁾ of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 740/75⁽²⁾, and in particular Article 6 (7) thereof;

Having regard to Council Regulation (EEC) No 985/68⁽³⁾ of 15 July 1968 laying down general rules for intervention on the market in butter and cream, as last amended by Regulation (EEC) No 2714/72⁽⁴⁾, and in particular Article 7a thereof;

Whereas, pursuant to Commission Regulation (EEC) No 232/75⁽⁵⁾ of 30 January 1975 on the sale of butter at reduced prices for use in the manufacture of pastry products and ice-cream, as last amended by Regulation (EEC) No 1263/75⁽⁶⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them;

Whereas Article 9 of that Regulation provides that, in the light of the tenders received, a minimum selling price must be fixed which may vary according to the use to which the butter is to be put and according to

the fat content of the butter; whereas alternatively a decision may be taken not to proceed with the invitation to tender; whereas the amounts of the processing security must be fixed in the light of the difference between the minimum selling prices and the market prices of the butter;

Whereas, in the light of the tenders received in response to the 10th individual invitation to tender, the minimum selling prices should be fixed at the level specified below and the processing securities determined accordingly;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS DECISION:

Article 1

For the 10th individual invitation to tender under Regulation (EEC) No 232/75, in respect of which the time limit for the submission of tenders expires on 22 July 1975, the minimum selling prices and, without prejudice to the provisions of the second subparagraph of Article 12 (1) of the said Regulation, the processing securities shall be as follows:

Fat content of the butter	Use to which the butter is to be put (Article 6 (1) (c) of Regulation (EEC) No 232/75)	Minimum selling price in u.a./100 kg butter	Processing security in u.a./100 kg butter
82 % or more	Formula A	95	125
	Formula B	120	100

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 25 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

(1) OJ No L 148, 28. 6. 1968, p. 13.

(2) OJ No L 74, 22. 3. 1975, p. 1.

(3) OJ No L 169, 18. 7. 1968, p. 1.

(4) OJ No L 291, 28. 12. 1972, p. 15.

(5) OJ No L 24, 31. 1. 1975, p. 45.

(6) OJ No L 126, 17. 5. 1975, p. 21.

COMMISSION DIRECTIVE

of 25 July 1975

limiting the marketing of seed of smooth-stalk meadowgrass (*Poa pratensis* L.) to seed which has been officially certified 'basic seed' or 'certified seed'

(75/502/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to the Council Directive of 14 June 1966⁽¹⁾ on the marketing of fodder plant seed, as last amended by the Council Directive of 11 December 1973⁽²⁾, in particular Article 3 (3) thereof;

Whereas the abovementioned Directive permits the marketing of basic, certified and commercial seed of smooth-stalk meadowgrass (*Poa pratensis* L.);

Whereas Article 3 (3) of the Directive authorizes the Commission to prohibit the marketing of fodder plant seed unless it has been officially certified as 'basic seed' or 'certified seed';

Whereas the Member States now produce sufficient amounts of basic and certified seed to satisfy the demand for seed of smooth-stalk meadowgrass inside the Community;

Whereas it is consequently appropriate to admit no longer the marketing of smooth-stalk meadowgrass after the stocks resulting from current production conditions have been used up;

Whereas the measures provided for in this Directive are in accordance with the Opinion of the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Member States provide that from 1 July 1976 it is no longer permitted to market seed of smooth-stalk meadowgrass (*Poa pratensis* L.) unless it has been officially certified as 'basic seed' or 'certified seed'.

Article 2

The Member States shall, not later than 1 July 1976, bring into force the laws, regulations or administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No 125, 11. 7. 1966, p. 2298/66.

⁽²⁾ OJ No L 356, 27. 12. 1973, p. 79.

COMMISSION DECISION

of 28 July 1975

concerning an emergency supply of butteroil to the International Committee of the Red Cross as food aid to Vietnam

(Only the French and Dutch texts are authentic)

(75/503/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Economic Community;

Article 1

Having regard to Council Regulation (EEC) No 804/68⁽¹⁾ of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 740/75⁽²⁾, and in particular Article 6 (7) thereof;

Whereas Council Regulation (EEC) No 530/74⁽³⁾ of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations, provides, *inter alia*, that 1 000 metric tons of butteroil should be made available to the International Committee of the Red Cross; whereas the ICRC has requested the emergency supply of 500 metric tons of butteroil for Vietnam;

Whereas in pursuance of Article 2 of Regulation (EEC) No 530/74 a private contract could be issued for the delivery in case of emergency supplies;

Whereas, in view of the deterioration of the situation in Vietnam and of the need for immediate aid, the abovementioned quantity of butteroil should be shipped as soon as possible; whereas it is apparent that mutual agreement must be sought in respect of the delivery in question;

Whereas, as regards quality and packing of the butteroil, it is useful to apply the requirements laid down in Commission Regulation (EEC) No 750/75⁽⁴⁾ of 21 March 1975 concerning invitations to tender for the costs of manufacture and delivery of butteroil as food aid to the countries of the Sahel and Ethiopia, as last amended by Regulation (EEC) No 1154/75⁽⁵⁾;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products,

1. In accordance with Regulation (EEC) No 530/74, 500 metric tons of butteroil shall be delivered to the ICRC, bound for Vietnam.

2. The butter to be used in manufacturing the butteroil shall be collected from the Belgian intervention agency.

3. The butteroil shall meet as to quality and packing the requirements laid down in the Annex to Regulation (EEC) No 750/75.

The butteroil shall be put up in containers of 5 kg.

The markings on the packing are the same as mentioned in Chapter II (2) of Regulation (EEC) No 750/75, completed with a red cross 10 × 10 cm and the following inscription in letters at least 1 cm high: 'Action du CICR'.

Article 2

1. The delivery is to be effected cif Da-Nang.

2. Delivery cif shall be effected at the moment at which the goods are actually deposited on the quay-side or on board a lighter in the port of disembarkment.

3. The embarkation shall be effected as soon as possible and on 1 September 1975 at the latest.

Article 3

1. The costs of the processing of the butter into butteroil and the packaging and shipment of the butteroil shall be determined by mutual agreement on

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 74, 22. 3. 1975, p. 1.

⁽³⁾ OJ No L 65, 7. 3. 1974, p. 1.

⁽⁴⁾ OJ No L 74, 22. 3. 1975, p. 30.

⁽⁵⁾ OJ No L 114, 3. 5. 1975, p. 1.

the least onerous terms possible, having regard to the existing transport possibilities.

2. The Belgian intervention agency shall forward to the Commission without delay a copy of such mutual agreement.

Article 4

No refund or compensatory amount (whether monetary or accession) shall be payable in respect of the butteroil delivered pursuant to this Decision.

Article 5

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 28 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

COMMISSION DECISION

of 30 July 1975

fixing the maximum price of white sugar to be supplied to UNRWA for the third partial invitation to tender referred to in Regulation (EEC) No 1071/75

(Only the Danish text is authentic)

(75/504/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 1052/73⁽¹⁾ of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, as amended by Regulation (EEC) No 611/75⁽²⁾, and in particular Article 1 (3) thereof;

Whereas Commission Regulation (EEC) No 1071/75⁽³⁾ of 24 April 1975 on an invitation to tender for the mobilization of white sugar as food aid for UNRWA, amended by Regulation (EEC) No 1332/75⁽⁴⁾, requires Denmark to issue a standing invitation to tender relating to the respective price of five lots of white sugar bought on the world market and for a total of 6 094 metric tons to be supplied to UNRWA cif on quay to the ports of unloading Beirut (Lebanon) or Ashdod (Israel), packed in new jute sacks with a content of 50 or 100 kilogrammes net; whereas, pursuant to Article 11 of this Regulation, the maximum price for supplying the sugar is fixed, after examination of the tenders, in accordance with the procedure laid down in Article 40 of Regulation No 1009/67/EEC⁽⁵⁾; whereas the examination of the tenders leads, for the third partial invitation to tender, to fix the maximum price of each lot as specified in Article 1;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Sugar,

HAS ADOPTED THIS DECISION:

Article 1

For the third partial invitation to tender issued under Regulation (EEC) No 1071/75, for which the period for submission of tenders expired on 30 July 1975, the maximum price is hereby fixed:

- for the lot C at 600 000 units of account;
- for the lot E at 837 600 units of account.

Article 2

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 30 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 105, 20. 4. 1973, p. 1.

⁽²⁾ OJ No L 64, 11. 3. 1975, p. 1.

⁽³⁾ OJ No L 105, 25. 4. 1975, p. 21.

⁽⁴⁾ OJ No L 135, 27. 5. 1975, p. 11.

⁽⁵⁾ OJ No 308, 18. 12. 1967, p. 1.

COMMISSION DECISION

of 31 July 1975

to take no action on tenders submitted for 31 July 1975 in response to the invitation to tender issued in Regulation (EEC) No 1840/75

(75/505/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 120/67/EEC⁽¹⁾ of 13 June 1967 on the common organization of the market in cereals, as last amended by Regulation (EEC) No 665/75⁽²⁾;

Having regard to Council Regulation (EEC) No 1968/73⁽³⁾ of 19 July 1973 laying down general rules to be applied in the event of the cereals market being disturbed, as last amended by Regulation (EEC) No 86/75⁽⁴⁾, and in particular Article 4(2) thereof;

Having regard to Council Regulation No 139/67/EEC⁽⁵⁾ of 21 June 1967 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds, as last amended by Regulation (EEC) No 87/75⁽⁶⁾, and in particular Article 4a thereof;

Having regard to Commission Regulation (EEC) No 1840/75⁽⁷⁾ of 17 July 1975 on an invitation to tender for the levy and/or the refund for the export of common wheat to the countries of Zone VII (a), and in particular Article 10(1) thereof;

Whereas an invitation to tender for the export levy and/or refund on common wheat was issued under Regulation (EEC) No 1840/75;

Whereas Article 10(1) of Regulation (EEC) No 1840/75 allows the Commission to decide, in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC, and on the basis of tenders submitted, either to fix a maximum export refund, taking account in particular of the criteria laid down in Articles 2 and 3 of Regulation No 139/

67/EEC, or to fix a minimum export levy, taking account in particular of the criteria laid down in Article 3(1)(b) and (d) of Regulation (EEC) No 1968/73, or to discontinue the invitation to tender;

Whereas none of the tenders submitted make it possible, given the present market situation for the cereal in question, to fix a maximum refund in accordance with the criteria laid down in Articles 2 and 3 of Regulation No 139/67/EEC or a minimum levy in accordance with the criteria laid down in Article 3(1)(b) and (d) of Regulation (EEC) No 1968/73; whereas the invitation to tender should therefore be discontinued;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Cereals,

HAS ADOPTED THIS DECISION:

Article 1

No action shall be taken on the tenders submitted for 31 July 1975 in response to the invitation to tender for the export levy and/or refund on common wheat referred to in Regulation (EEC) No 1840/75.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No 117, 19. 6. 1967, p. 2269/67.

⁽²⁾ OJ No L 72, 20. 3. 1975, p. 14.

⁽³⁾ OJ No L 201, 21. 7. 1973, p. 10.

⁽⁴⁾ OJ No L 11, 16. 1. 1975, p. 2.

⁽⁵⁾ OJ No 125, 26. 6. 1967, p. 2453/67.

⁽⁶⁾ OJ No L 11, 16. 1. 1975, p. 3.

⁽⁷⁾ OJ No L 187, 18. 7. 1975, p. 16.

COMMISSION DECISION

of 31 July 1975

to take no action on tenders submitted for 31 July 1975 in response to the invitation to tender issued in Regulation (EEC) No 1841/75

(75/506/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation No 120/67/EEC⁽¹⁾ of 13 June 1967 on the common organization of the market in cereals, as last amended by Regulation (EEC) No 665/75⁽²⁾;

Having regard to Council Regulation (EEC) No 1968/73⁽³⁾ of 19 July 1973 laying down general rules to be applied in the event of the cereals market being disturbed, as last amended by Regulation (EEC) No 86/75⁽⁴⁾, and in particular Article 4(2) thereof;

Having regard to Council Regulation No 139/67/EEC⁽⁵⁾ of 21 June 1967 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds, as last amended by Regulation (EEC) No 87/75⁽⁶⁾, and in particular Article 4a thereof;

Having regard to Commission Regulation (EEC) No 1841/75⁽⁷⁾ of 17 July 1975 on an invitation to tender for the levy and/or the refund for the export of common wheat to the countries of Zone I and Portugal, and in particular Article 10(1) thereof;

Whereas an invitation to tender for the export levy and/or refund on common wheat was issued under Regulation (EEC) No 1841/75;

Whereas Article 10(1) of Regulation (EEC) No 1841/75 allows the Commission to decide, in accordance with the procedure laid down in Article 26 of Regulation No 120/67/EEC, and on the basis of tenders submitted, either to fix a maximum export refund, taking account in particular of the criteria laid down in Articles 2 and 3 of Regulation No 139/

67/EEC, or to fix a minimum export levy, taking account in particular of the criteria laid down in Article 3(1)(b) and (d) of Regulation (EEC) No 1968/73, or to discontinue the invitation to tender;

Whereas none of the tenders submitted make it possible, given the present market situation for the cereal in question, to fix a maximum refund in accordance with the criteria laid down in Articles 2 and 3 of Regulation No 139/67/EEC or a minimum levy in accordance with the criteria laid down in Article 3(1)(b) and (d) of Regulation (EEC) No 1968/73; whereas the invitation to tender should therefore be discontinued;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted for 31 July 1975 in response to the invitation to tender for the export levy and/or refund on common wheat referred to in Regulation (EEC) No 1841/75.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 31 July 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No 117, 19. 6. 1967, p. 2269/67.

⁽²⁾ OJ No L 72, 20. 3. 1975, p. 14.

⁽³⁾ OJ No L 201, 21. 7. 1973, p. 10.

⁽⁴⁾ OJ No L 11, 16. 1. 1975, p. 2.

⁽⁵⁾ OJ No 125, 26. 6. 1967, p. 2453/67.

⁽⁶⁾ OJ No L 11, 16. 1. 1975, p. 3.

⁽⁷⁾ OJ No L 187, 18. 7. 1975, p. 20.

COMMISSION DECISION

of 1 August 1975

**amending the Decision of 18 June 1975 and derogating from Regulations (EEC)
No 2637/70 and (EEC) No 1223/74 in the cereals sector**

(Only the French and Dutch texts are authentic)

(75/507/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community;

Having regard to Council Regulation No 120/
67/EEC⁽¹⁾ of 13 June 1967 on the common organiza-
tion of the market in cereals, as last amended by Regu-
lation (EEC) No 665/75⁽²⁾, and in particular Articles
7(5) and 12(2) thereof;

Having regard to Commission Regulation (EEC) No
376/70⁽³⁾ of 27 February 1970 laying down the proce-
dure and conditions for the disposal of cereals held by
the intervention agencies, as last amended by Regula-
tion (EEC) No 129/73⁽⁴⁾, and in particular Article
5(1) and (7) thereof;

Whereas the period of validity of export licences for
common wheat, barley and maize has been limited to
30 days by Commission Regulation (EEC) No
2005/75⁽⁵⁾ of 31 July 1975, amending Regulation
(EEC) No 1223/74 as regards the period of validity of
export licences for certain categories of cereals;
whereas the reasons for that reduction do not apply to
licences issued in connection with the invitation to
tender pursuant to this Decision;

Whereas the period of validity of export licences
issued in connection with the invitations to tender for
stocks of common wheat and barley held by the
German intervention agency has been fixed as the
month of issue plus four months;

Whereas for the aforementioned reasons there should
be a derogation from the period of validity of licences
as regards those issued in connection with this invita-
tion to tender, for which the validity should also be
fixed as the month of issue plus four months;

Whereas the measures provided for in this Decision
are in accordance with the Opinion of the Manage-
ment Committee for Cereals,

HAS ADOPTED THIS DECISION:

Article 1

The following Article 4a is added to the Decision of
18 June 1975⁽⁶⁾:

Article 4a

By way of derogation from Regulations (EEC) No
2637/70 and (EEC) No 1223/74, the licences
issued in connection with the invitation to tender
pursuant to this Decision shall be valid from their
date of issue, within the meaning of Article 9(1) of
Regulation (EEC) No 193/75, until the end of the
fourth month following that of issue.

The preceding subparagraph shall not apply to
licences for which the application was lodged before 6
August 1975.

Article 2

This Decision is addressed to the Kingdom of
Belgium.

Done at Brussels, 1 August 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

(1) OJ No 117, 19. 6. 1967, p. 2269/67.

(2) OJ No L 72, 20. 3. 1975, p. 14.

(3) OJ No L 47, 28. 2. 1970, p. 49.

(4) OJ No L 17, 20. 1. 1973, p. 17.

(5) OJ No L 202, 1. 8. 1975, p. 86.

(6) OJ No L 182, 12. 7. 1975, p. 32.

COMMISSION DECISION

of 4 August 1975

amending the Commission Decisions of 8 December 1972 and 22 December 1972 authorizing certain Member States to sell butter at a reduced price in the form of concentrated butter

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

(75/508/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 804/68⁽¹⁾ of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 740/75⁽²⁾, and in particular Article 6 (7) thereof;

Having regard to Council Regulation (EEC) No 985/68⁽³⁾ of 15 July 1968 laying down general rules for intervention on the market in butter and cream, as last amended by Regulation (EEC) No 2714/72⁽⁴⁾, and in particular Article 7a thereof;

Whereas, pursuant to Commission Regulation (EEC) No 349/73⁽⁵⁾ of 31 January 1973 on the sale at reduced prices of intervention butter for direct consumption as concentrated butter, as last amended by Regulation (EEC) No 529/75⁽⁶⁾, which replaced Regulation (EEC) No 2561/72⁽⁷⁾, the Commission Decision of 22 December 1972⁽⁸⁾ authorizing the Federal Republic of Germany to sell butter at a reduced price in the form of concentrated butter, as last amended by the Decision of 18 March 1975⁽⁹⁾, fixed the quantity of butter to be processed by that Member State, having regard to available outlets as determined on the basis of previous action, at 11 500 metric tons; whereas this quantity has proved to be insufficient to cover present requirements; whereas it is accordingly appropriate to increase it to 12 500 metric tons;

Whereas having regard to the storage position in the Community, provision should be made to amend the date by which butter must have been placed in store in order to qualify for supply under the aforesaid Deci-

sion of 22 December 1972 and under the Commission Decision of 8 December 1972⁽¹⁰⁾ authorizing the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands to sell butter at a reduced price in the form of concentrated butter, as last amended by the Decision of 2 September 1974⁽¹¹⁾;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS DECISION:

Article 1

1. In Article 1 of the Decision of 22 December 1972, the expression '11 500 metric tons' is replaced by '12 500 metric tons'.
2. In Article 2 of the Decisions of 8 December 1972 and 22 December 1972, the appearing dates therein specified are in each case replaced by '1 April 1975'.

Article 2

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

Done at Brussels, 4 August 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 74, 22. 3. 1975, p. 1.

⁽³⁾ OJ No L 169, 18. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 291, 28. 12. 1972, p. 15.

⁽⁵⁾ OJ No L 40, 13. 2. 1973, p. 1.

⁽⁶⁾ OJ No L 56, 3. 3. 1975, p. 1.

⁽⁷⁾ OJ No L 274, 7. 12. 1972, p. 12.

⁽⁸⁾ OJ No L 303, 31. 12. 1972, p. 41.

⁽⁹⁾ OJ No L 107, 26. 4. 1975, p. 31.

⁽¹⁰⁾ OJ No L 303, 31. 12. 1972, p. 4.

⁽¹¹⁾ OJ No L 250, 13. 9. 1974, p. 35.

COMMISSION DECISION

of 4 August 1975

fixing, pursuant to the invitation to tender opened by Regulation (EEC) No 1854/75, the maximum amounts for the costs of delivery of skimmed-milk powder

(Only the French text is authentic)

(75/509/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community ;

Having regard to Council Regulation (EEC) No 804/68 ⁽¹⁾ of 27 June 1968 on the common organization of the market in milk and milk products, as last amended by Regulation (EEC) No 740/75 ⁽²⁾, and in particular Article 7 (5) thereof ;

Whereas, pursuant to Commission Regulation (EEC) No 1854/75 ⁽³⁾ of 16 July 1975 concerning the invitation to tender for the costs of delivery, as food aid, of skimmed-milk powder to UNRWA, the Luxembourg intervention agency invites tenders for the delivery of to UNRWA of one lot of 300 metric tons of skimmed-milk powder ;

Whereas Article 6 of the said Regulation provides that, in the light of the tenders received, the maximum amount is to be fixed for each lot for which tenders are invited or the tendering procedure is to be cancelled ;

Whereas, on the basis of the tenders received, the maximum amount should be that specified below ;

Whereas the measures provided for in this Decision are in accordance with the Opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS DECISION :

Article 1

The maximum amount to be set for the purposes of awarding a contract pursuant to Regulation (EEC) No 1854/75 shall be 16 800 units of account.

Article 2

This Decision is addressed to the Grand Duchy of Luxembourg.

Done at Brussels, 4 August 1975.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 74, 22. 3. 1975, p. 1.

⁽³⁾ OJ No L 188, 19. 7. 1975, p. 16.