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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2250/76**of 16 September 1976****fixing the import levies on cereals and on wheat or rye flour groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1143/76⁽²⁾, and in particular Article 13 (5) thereof,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Regulation (EEC) No 1882/76⁽³⁾ and subsequent amending Regulations;

Whereas it follows from applying the provisions contained in Regulation (EEC) No 1882/76, to the

offer prices and today's quotations known to the Commission that the levies at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 are hereby fixed as shown in the table annexed to this Regulation.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 130, 19. 5. 1976, p. 1.

⁽³⁾ OJ No L 206, 31. 7. 1976, p. 62.

ANNEX

to the Commission Regulation of 16 September 1976 fixing the import levies on cereals
and on wheat or rye flour groats and meal

(u.a./metric ton)		
CCT heading No	Description of goods	Levies
10.01 A	Common wheat and meslin	54.48
10.01 B	Durum wheat	105.63 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	44.21 ⁽⁶⁾
10.03	Barley	16.18
10.04	Oats	19.06
10.05 B	Maize other than hybrid maize for sowing	30.78 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	38.68 ⁽⁴⁾
10.07 C	Grain sorghum	38.68 ⁽⁴⁾
10.07 D	Canary seed ; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	87.16
11.01 B	Rye flour	71.94
11.02 A I a	Durum wheat groats and meal	174.46
11.02 A I b	Common wheat groats and meal	93.97

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0.50 u.a./metric ton.

⁽²⁾ Where maize originated in the ACP or OCT is imported into the French overseas departments, the levy is reduced by 6 u.a./metric tons as provided for in Regulation (EEC) No 706/76.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1.50 u.a./metric ton.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is reduced by 50 %.

⁽⁵⁾ Where wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0.50 u.a./metric ton.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 2754/75 and Commission Regulation (EEC) No 2622/71.

COMMISSION REGULATION (EEC) No 2251/76**of 16 September 1976****fixing the premiums to be added to the import levies on cereals, flour and malt**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2727/75 of 29 October 1975 on the common organ-
ization of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 1143/76⁽²⁾, and in particular
Article 15(6) thereof,

Whereas the premiums to be added to the levies on
cereals and malt were fixed by Regulation (EEC) No
1883/76⁽³⁾ and subsequent amending Regulations;

Whereas, on the basis of today's cif prices and cif
forward delivery prices, the premiums at present in
force, which are to be added to the levies, should be

altered as shown in the tables annexed to this Regula-
tion,

HAS ADOPTED THIS REGULATION:

Article 1

The scale of the premiums to be added, pursuant to
Article 15 of Regulation (EEC) No 2727/75, to the
import levies fixed in advance in respect of cereals
and malt is hereby fixed as shown in the tables
annexed to this Regulation.

Article 2

This Regulation shall enter into force on 17
September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 130, 19. 5. 1976, p. 1.

⁽³⁾ OJ No L 206, 31. 7. 1976, p. 64.

ANNEX

to the Commission Regulation of 16 September 1976 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(u.a. / metric ton)

CCT heading No	Description of goods	Current 9	1st period 10	2nd period 11	3rd period 12
10.01 A	Common wheat and meslin	0	0	0	0
10.01 B	Durum wheat	0	0	0	0
10.02	Rye	0	1.38	1.38	1.38
10.03	Barley	0	1.58	1.58	0
10.04	Oats	0	0.40	0.40	0
10.05 B	Maize other than hybrid maize for sowing	0	3.56	3.56	3.56
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0.40	0.40	0
10.07 D	Other	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

(u.a. / metric ton)

CCT heading No	Description of goods	Current 9	1st period 10	2nd period 11	3rd period 12	4th period 1
11.07 A I (a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A I (b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 A II (a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	2.81	2.81	0	0
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	2.10	2.10	0	0
11.07 B	Roasted malt	0	2.45	2.45	0	0

COMMISSION REGULATION (EEC) No 2252/76**of 16 September 1976****fixing the import levies on calves and adult bovine animals and on beef and veal
other than frozen**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
805/68 of 27 June 1968 on the common organization
of the market in beef and veal⁽¹⁾, as last amended by
Regulation (EEC) No 568/76⁽²⁾, and in particular the
second line of Article 10 (7), and Article 12 (7) thereof,

Whereas the import levies on calves and adult bovine
animals and on beef and veal other than frozen were
fixed by Regulation (EEC) No 1597/76⁽³⁾, as last
amended by Regulation (EEC) No 2208/76⁽⁴⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 1597/76
to the quotations and other information known to the
Commission that the levies at present in force should
be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The levies referred to in Articles 10 and 12 of Regula-
tion (EEC) No 805/68 are hereby fixed as shown in
the Annex to this Regulation.

Article 2

To be classified as products falling within subheadings
02.01 A II a) 1 aa) and 02.01 A II a) 1 bb), products
must correspond to the definition contained in Article
2 of Regulation (EEC) No 2249/73⁽⁵⁾.

Article 3

This Regulation shall enter into force on 20
September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 67, 15. 3. 1976, p. 28.

⁽³⁾ OJ No L 177, 2. 7. 1976, p. 11.

⁽⁴⁾ OJ No L 248, 10. 9. 1976, p. 5.

⁽⁵⁾ OJ No L 230, 18. 8. 1973, p. 15.

[illegible]

(b) Entry under this subheading is subject to the production of the certificate referred to in paragraph 2 (c) of Annex I to the trade agreement between the EEC and the Socialist Federal Republic of Yugoslavia.

COMMISSION REGULATION (EEC) No 2253/76

of 16 September 1976

fixing the refunds on milk and milk products exported in the natural state

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 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 559/76⁽²⁾, and in particular Article 17 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund ;

Whereas Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds⁽³⁾, as amended by Regulation (EEC) No 2429/72⁽⁴⁾, provides that when the refunds on the products listed in Article 1 of Regulation (EEC) No 804/68, exported in the natural state, are being fixed account must be taken of :

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade ;
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination ;
- the aims of the common organization of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market ;

— the need to avoid disturbances on the Community market ; and

— the economic aspect of the proposed exports ;

Whereas Article 3 (1) of Regulation (EEC) No 876/68 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of :

- (a) prices ruling on third country markets ;
- (b) the most favourable prices in third countries of destination for third country imports ;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries ; and
- (d) free-at-Community-frontier offer prices ;

Whereas Article 4 of Regulation (EEC) No 876/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 804/68 according to destination ;

Whereas Article 5 (1) of Regulation (EEC) No 876/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks ; whereas the amount of the refund may, however, remain at the same level for more than four weeks ;

Whereas Article 2 of Commission Regulation (EEC) No 1098/68 of 27 July 1968 on detailed rules for the application of export refunds on milk and milk products⁽⁵⁾, as last amended by Regulation (EEC) No 37/75⁽⁶⁾, provides that the refund on products falling within subheading 04.02 B is equal to the sum of two

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 67, 15. 3. 1976, p. 9.

⁽³⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 264, 23. 11. 1972, p. 1.

⁽⁵⁾ OJ No L 184, 29. 7. 1968, p. 10.

⁽⁶⁾ OJ No L 5, 9. 1. 1975, p. 7.

components, the first representing the quantity of milk products and the second representing the quantity of added sucrose; whereas, however, the latter component applies only if the added sucrose was produced from beet or cane harvested within the Community;

Whereas for the products falling within subheading 04.02 B II a) or 04.02 B II b) 1 with a fat content not exceeding 9.5 % by weight the first component referred to above is fixed for 100 kg of the whole product; whereas for the other products falling within subheading 04.02 B this component is calculated by multiplying the basic amount by the milk product content of the product in question; whereas this basic amount is the refund on 1 kilogramme of milk products contained in the product;

Whereas the second component is calculated by multiplying the sucrose content of the product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1 (1) (d) of Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 1487/76⁽²⁾;

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other, at any given moment, within a band of 2.25 %, a rate of exchange based on their effective parity;
- for other currencies an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period, in

relation to the Community currencies referred to in the previous subparagraph;

Whereas the special conditions concerning the payment of the refund for skimmed-milk powder for use as feed in the country of destination were laid down in Regulation (EEC) No 196/76⁽³⁾, as amended by Regulation (EEC) No 265/76⁽⁴⁾;

Whereas it follows from applying these rules to the present situation on the market in milk and milk products, and in particular to prices for these products within the Community and on the world market, that the refund should be fixed at the amounts shown in the Annex to this Regulation;

Whereas the Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its Chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state are hereby fixed at the amounts shown in the Annex.
2. No refunds are fixed for exports to Zone E for products falling within heading Nos 04.01, 04.02, 04.03 and 23.07 of the Common Customs Tariff.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 23, 30. 1. 1976, p. 40.

⁽⁴⁾ OJ No L 33, 7. 2. 1976, p. 7.

ANNEX

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.01	Milk and cream, fresh, not concentrated or sweetened :		
	ex A. Other than whey, of a fat content, by weight, not exceeding 6 % :		
	I. Yoghourt, kephir, curdled milk, buttermilk and other fermented or acidified milk :		
	a) In immediate packings of a net capacity of 2 litres or less	0110 00	4.61
	b) Other	0120 00	—
	II. Others :		
	a) In immediate packings of a net capacity of 2 litres or less and of a fat content, by weight :		
	1. Not exceeding 4 % :		
	(aa) of a fat content, by weight, not exceeding 1.5 %	0130 10	1.14
	(bb) of a fat content, by weight, exceeding 1.5 % but not exceeding 3 %	0130 22	
	for exports to :		
	— countries near the Community		4.02
	— other destinations		5.04
	(cc) of a fat content, by weight, exceeding 3 %	0130 31	
	for exports to :		
	— countries near the Community		5.71
	— other destinations		7.32
	2. Exceeding 4 %	0140 00	
	for exports to :		
	— countries near the Community		6.13
	— other destinations		8.51
	b) Other of a fat content, by weight :		
	1. Not exceeding 4 % :		
	(aa) of a fat content, by weight, not exceeding 1.5 %	0150 10	1.14
	(bb) of a fat content, by weight, exceeding 1.5 % but not exceeding 3 %	0150 21	4.16
	(cc) of a fat content, by weight, exceeding 3 %	0150 31	5.02
	2. Exceeding 4 %	0160 00	5.41
	ex B. Other, excluding whey, of a fat content, by weight :		
	ex I. Exceeding 6 % but not exceeding 21 % :		
	(a) of a fat content, by weight, not exceeding 10 %	0200 05	15.14
	(b) of a fat content, by weight, exceeding 10 % but not exceeding 17 %	0200 11	23.56
	(c) of a fat content, by weight, exceeding 17 %	0200 21	35.59
	II. Exceeding 21 % but not exceeding 45 % :		
	(a) of a fat content, by weight, not exceeding 39 %	0300 10	42.47
	(b) of a fat content, by weight, exceeding 39 %	0300 20	73.41
	III. More than 45 % :		
	(a) of a fat content, by weight, not exceeding 68 %	0400 11	83.72
	(b) of a fat content, by weight, exceeding 68 % but not exceeding 80 %	0400 22	123.24
	(c) of a fat content, by weight, exceeding 80 %	0400 30	143.87

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.02	Milk and cream, preserved, concentrated or sweetened :		
	A. Not containing added sugar :		
	II. Milk and cream, in powder or granules :		
	a) In immediate packings of a net capacity of 2.5 kg or less and of a fat content, by weight :		
	1. Not exceeding 1.5 % :		
	(aa) in immediate packings of a net capacity of 1 kg or less	0620 10	64.85
	(bb) in hermetically sealed cans of a net capacity of over 1 kg	0620 15	64.85
	(cc) other	0620 21	64.85
	2. Exceeding 1.5 % but not exceeding 27 % :		
	(aa) of a fat content, by weight, not exceeding 11 % :		
	(111) in immediate packings of a net capacity of 1 kg or less	0720 11	64.85
	(222) in hermetically sealed cans of a net capacity of over 1 kg	0720 15	64.85
	(333) other	0720 17	64.85
	(bb) of a fat content, by weight, exceeding 11 % but not exceeding 17 %	0720 20	76.80
	(cc) of a fat content, by weight, exceeding 17 % but not exceeding 25 %	0720 30	82.77
	(dd) of a fat content, by weight, exceeding 25 %	0720 40	90.67
	3. Exceeding 27 % but not exceeding 29 %	0820 00	92.66
	4. Exceeding 29 % :		
	(aa) of a fat content, by weight, not exceeding 41 %	0920 10	94.62
	(bb) of a fat content, by weight, exceeding 41 %	0920 20	106.49
	b) Other, excluding products containing fish meal or fish oil or fish liver oil and iron carbonate or sulphate, of a fat weight content :		
	1. Not exceeding 1.5 % :		
	(aa) denatured according to Regulation (EEC) No 990/72	1020 15	64.85
	(bb) exported under the conditions set out in Regulation (EEC) No 196/76	1020 25	64.85
	(cc) other	1020 35	64.85
	2. Exceeding 1.5 % but not exceeding 27 % :		
	(aa) of a fat content, by weight, not exceeding 11 % :		
	(11) denatured according to Regulation (EEC) No 990/72	1120 11	64.85
	(22) exported under the conditions set out in Regulation (EEC) No 196/76	1120 12	64.85
	(33) other	1120 13	64.85
	(bb) of a fat content, by weight, exceeding 11 % but not exceeding 17 %	1120 20	76.80
	(cc) of a fat content, by weight, exceeding 17 % but not exceeding 25 %	1120 30	82.77
	(dd) of a fat content, by weight, exceeding 25 %	1120 40	90.67
	3. Exceeding 27 % but not exceeding 29 %	1220 00	92.66
	4. Exceeding 29 % :		
	(aa) of a fat content, by weight, not exceeding 41 %	1320 10	94.62
	(bb) of a content, by weight, exceeding 41 %	1320 20	106.49

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.02 (cont'd)	III. Milk and cream, other than in powder or granules : a) In hermetically sealed cans of a net capacity of 454 g or less or in glass containers containing 0.5 litres or less and of a fat content, by weight, not exceeding 11 % : ex 1. Of a fat content, by weight, not exceeding 8.9 % : (aa) of a fat content, by weight, exceeding 3 % but not exceeding 7.4 % (bb) of a fat content, by weight, exceeding 7.4 % 2. Other b) Other, of a fat content, by weight : ex 1. Not exceeding 45 % : (aa) of a fat content, by weight, exceeding 3 % but not exceeding 7.4 % (bb) of a fat content, by weight, exceeding 7.4 % but not exceeding 8.9 % (cc) of a fat content, by weight, exceeding 8.9 % but not exceeding 11 % (dd) of a fat content, by weight, exceeding 11 % but not exceeding 21 % (ee) of a fat content, by weight, exceeding 21 % but not exceeding 39 % (ff) of a fat content, by weight, exceeding 39 % 2. Exceeding 45 % B. Containing added sugar : I. Milk and cream, in powder or granules : ex b) Other, excluding whey : 1. In immediate packings of a net capacity of 2.5 kg or less and of a fat content, by weight : aa) Not exceeding 1.5 % bb) Exceeding 1.5 % but not exceeding 27 % : (11) of a fat content, by weight, not exceeding 11 % (22) of a fat content, by weight, exceeding 11 % but not exceeding 17 % (33) of a fat content, by weight, exceeding 17 % but not exceeding 25 % (44) of a fat content, by weight, exceeding 25 % cc) Exceeding 27 % : (11) of a fat content, by weight, not exceeding 41 % (22) of a fat content, by weight, exceeding 41 % 2. Other, of a fat content, by weight : aa) Not exceeding 1.5 %	1420 11 1420 21 1520 00 1620 11 1620 21 1620 30 1620 40 1620 50 1620 60 1720 00 2220 00 2320 10 2320 20 2320 30 2320 40 2420 10 2420 20 2520 00	14.44 19.39 23.00 14.44 19.39 23.00 23.56 42.47 73.41 83.72 0.6485 ⁽¹⁾ per kg 0.6485 ⁽¹⁾ per kg 0.7680 ⁽¹⁾ per kg 0.8277 ⁽¹⁾ per kg 0.9067 ⁽¹⁾ per kg 0.9266 ⁽¹⁾ per kg 1.0649 ⁽¹⁾ per kg 0.6485 ⁽¹⁾ per kg

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.02 (cont'd)	bb) Exceeding 1.5 % but not exceeding 27 % : (11) of a fat content, by weight, not exceeding 11 % (22) of a fat content, by weight, exceeding 11 % but not exceeding 17 % (33) of a fat content, by weight, exceeding 17 % but not exceeding 25 % (44) of a fat content, by weight, exceeding 25 % cc) Exceeding 27 % : (11) of a fat content, by weight not exceeding 41 % (22) of a fat content, by weight, exceeding 41 % ex II. Milk and cream, excluding whey other than in powder or granules : ex a) In hermetically sealed cans of a net capacity of 454 g or less and of a fat content, by weight, not exceeding 9.5 % : (1) of a fat content, by weight, not exceeding 6.9 % and of a lactic dry matter content, by weight of 15 % or more (2) of a fat content, by weight, exceeding 6.9 % and of a lactic dry matter content, by weight of 15 % or more b) Other, of a fat content, by weight : ex 1. Not exceeding 45 % : (aa) of a fat content, by weight, not exceeding 6.9 % and of lactic dry matter content, by weight of 15 % or more (bb) of a fat content, by weight, exceeding 6.9 % but not exceeding 21 % and of a lactic dry matter content, by weight, of 15 % or more (cc) of a fat content, by weight, exceeding 9.5 % but not exceeding 21 % and of a lactic dry matter content, by weight, less than 15 % (dd) of a fat content, by weight, exceeding 21 % but not exceeding 39 % (ee) of a fat content, by weight, exceeding 39 % 2. Exceeding 45 %	2620 10 2620 20 2620 30 2620 40 2720 10 2720 20 2810 10 2810 20 2910 70 2910 76 2910 80 2910 85 2910 90 3010 00	0.6485 ⁽¹⁾ per kg 0.7680 ⁽¹⁾ per kg 0.8277 ⁽¹⁾ per kg 0.9067 ⁽¹⁾ per kg 0.9266 ⁽¹⁾ per kg 1.0649 ⁽¹⁾ per kg 13.96 ⁽²⁾ 23.80 ⁽²⁾ 13.96 ⁽²⁾ 23.80 ⁽²⁾ 0.2356 ⁽¹⁾ per kg 0.4247 ⁽¹⁾ per kg 0.7341 ⁽¹⁾ per kg 0.8372 ⁽¹⁾ per kg
04.03	Butter : ex A. Of a fat content, by weight, not exceeding 85 % : (I) of a fat content, by weight, of 62 % or more, but less than 78 %	3110 05	109.59

CCT heading No	Description of goods	Code	Refund (in u.s./100 kg net weight unless otherwise indicated)
04.03 (cont'd)	(II) of a fat content, by weight, of 78 % or more, but less than 80 %	3110 16	137.89
	(III) of a fat content, by weight, of 80 % or more, but less than 82 %	3110 22	141.42
	(IV) of a fat content, by weight, of 82 % or more	3110 32	144.96
	B. Other, of a fat content, by weight :		
	(I) Not exceeding 99.5 %	3210 10	144.96
	(II) Exceeding 99.5 %	3210 20	194.90
04.04	Cheese and curd :		
	ex A. Emmentaler and Gruyère, not grated or powdered :		
	II. Other	3800 00	
	for exports to :		
	— Zone D		15.55
	— Zone E		—
	— Canada		48.00
	— Liechtenstein and Switzerland		—
	— Austria		35.34
	— other destinations		90.71
	ex C. Blue-veined cheese, not grated or powdered, other than Roquefort :	4000 00	
	for exports to :		
	— Zone D		47.90
	— Zone E		7.00
	— Canada		39.40
	— other destinations		74.86
	D. Processed cheese, not grated or powdered :		
	II. Other, of a fat content, by weight :		
	a) Not exceeding 36 % and of a fat content, by weight, in the dry matter :		
	ex 1. Not exceeding 48 % and of a dry matter content, by weight :		
	(aa) Of 33 % or more but less than 38 %	4410 10	
	for exports to :		
	— Zone D		1.70
	— Zone E		9.00
	— Canada		14.78
	— Switzerland		11.50
	— other destinations		30.63
	(bb) Of 38 % or more but less than 43 % and of a fat content, by weight, in the dry matter :		
	(11) Less than 20 %	4410 20	
	for exports to :		
	— Zone D		1.70
	— Zone E		9.00
	— Canada		14.78
	— Switzerland		11.50
	— other destinations		30.63

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(22) Of 20 % or more	4410 30	
	for exports to :		
	— Zone D		2.50
	— Zone E		13.00
	— Canada		21.84
	— Switzerland		16.50
	— other destinations		45.37
	(cc) Of 43 % or more and of a fat content, by weight, in the dry matter :		
	(11) Less than 20 %	4410 40	
	for exports to :		
	— Zone D		1.70
	— Zone E		9.00
	— Canada		14.78
	— Switzerland		11.50
	— other destinations		30.63
	(22) Of 20 % or more but less than 40 %	4410 50	
	for exports to :		
	— Zone D		2.50
	— Zone E		13.00
	— Canada		21.84
	— Switzerland		16.50
	— other destinations		45.37
	(33) Of 40 % or more	4410 60	
	for exports to :		
	— Zone D		3.65
	— Zone E		19.00
	— Canada		31.90
	— Switzerland		21.45
	— other destinations		66.37
	ex 2. Exceeding 48 % and of a dry matter content, by weight :		
	(aa) Of 33 % or more but less than 38 %	4510 10	
	for exports to :		
	— Zone D		1.70
	— Zone E		9.00
	— Canada		14.78
	— Switzerland		11.50
	— other destinations		30.63
	(bb) Of 38 % or more but less than 43 %	4510 20	
	for exports to :		
	— Zone D		2.50
	— Zone E		13.00
	— Canada		21.84
	— Switzerland		16.50
	— other destinations		45.37
	(cc) Of 43 % or more but less than 46 %	4510 30	
	for exports to :		
	— Zone D		3.65
	— Zone E		19.00
	— Canada		31.90
	— Switzerland		21.45
	— other destinations		66.37

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(dd) Of 46 % or more and of a fat content, by weight, in the dry matter :		
	(11) Less than 55 %	4510 40	
	for exports to :		
	— Zone D		3.65
	— Zone E		19.00
	— Canada		31.90
	— Switzerland		21.45
	— other destinations		66.37
	(22) Of 55 % or more	4510 50	
	for exports to :		
	— Zone D		4.33
	— Zone E		23.00
	— Canada		37.85
	— Switzerland		25.40
	— other destinations		78.79
	b) Exceeding 36 %	4610 00	
	for exports to :		
	— Zone D		4.33
	— Zone E		23.00
	— Canada		37.85
	— Switzerland		25.40
	— other destinations		78.79
	E. Other :		
	I. Not grated or powdered, of a fat content, by weight, not exceeding 40 % and a water content, calculated by weight, of the not-fatty matter :		
	ex a) Not exceeding 47 % :		
	(1) Grana, Parmigiano Reggiano	4710 11	
	for exports to :		
	— Zone D		116.64
	— Zone E		56.50
	— Canada		88.00
	— Switzerland		91.64
	— other destinations		116.64
	(2) Fiore Sardo. Pecorino	4710 16	
	for exports to :		
	— Zone D		125.27
	— Zone E		67.50
	— Canada		89.50
	— Switzerland		100.27
	— other destinations		125.27
	(3) Other, of a fat content, by weight, in the dry matter of 30 % or more	4710 21	
	for exports to :		
	— Zone D		116.64
	— Zone E		56.50
	— Canada		88.00
	— Switzerland		91.64
	— other destinations		116.64

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.04 (cont'd)	b) Exceeding 47 % but not exceeding 72 % : 1. Cheddar, including Chester : ex bb) Other, of a fat content, by weight, in the dry matter of 48 % or more for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations ex 5. Other, of a fat content, by weight, in the dry matter : (aa) Less than 5 % and of a content, by weight in the dry matter of 32 % or more for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations (bb) Of 5 % or more but less than 19 % and of a content, by weight, in the dry matter of 32 % or more for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations (cc) Of 19 % or more but less than 39 % and of a water content, calculated by weight, of the non-fatty matter not exceeding 62 % for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations (dd) Of 39 % or more : (11) Asiago, Caciocavallo, Provolone, Ragusano for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations (22) Danbo, Edam, Fontal, Fontina, Fynbo, Gouda, Havarti, Maribo, Samsø, Tilsit for exports to : — Zone D — Zone E — Canada — Switzerland — other destinations	4850 00 5120 11 5120 15 5120 21 5120 31 5120 44	9.56 — 28.00 12.00 84.50 5.58 — 12.50 9.18 32.43 6.40 — 29.90 10.70 54.54 7.63 — 35.57 13.00 66.12 84.20 49.50 77.50 15.30 116.23 24.71 3.20 40.90 18.75 77.12

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.04 (cont'd)	(33) Butterkäse, Esrom, Italico, Kernhem, Saint-Nectaire, Saint-Paulin, Taleggio	5120 54	
	for exports to :		
	— Zone D		24.71
	— Zone E		3.20
	— Canada		35.35
	— Switzerland		18.75
	— other destinations		66.74
	(44) Cantal	5120 58	
	for exports to :		
	— Zone D		9.56
	— Zone E		6.60
	— Canada		41.70
	— Switzerland		12.00
	— other destinations		79.13
	(55) Salted ricotta, of a fat content, by weight, of 30 % or more	5120 59	
	for exports to :		
	— Zone E		10.00
	— Canada		20.00
	— other destinations		35.03
	(66) Feta	5120 82	
	for exports to :		
	— Zone D		12.25 ⁽⁴⁾
	— Zone E		2.15 ⁽⁴⁾
	— Canada		34.00 ⁽⁴⁾
	— Switzerland		8.50 ⁽⁴⁾
	— Jordan, Iraq, Iran, the Arabian Peninsula and Mediterranean countries except Zone D		76.28 ⁽⁴⁾
	— other destinations		63.42 ⁽⁴⁾
	(77) Colby, Monterey	5120 83	
	for exports to :		
	— Zone D		9.56
	— Zone E		—
	— Canada		41.70
	— Switzerland		12.00
	— other destinations		79.13
	(88) Other, of a water content, calculated by weight, of the non-fatty matter :	5120 86	
	(aaa) Exceeding 47 % but not exceeding 52 %		
	for exports to :		
	— Zone D		78.26
	— Switzerland		8.50
	— Zone E		38.00
	— Canada		62.50
	— other destinations		83.68
	(bbt) Exceeding 52 % but not exceeding 62 %	5120 91	
	for exports to :		
	— Zone D		24.71
	— Zone E		3.20
	— Canada		40.90
	— Switzerland		18.75
	— other destinations		77.12

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
04.04 (cont'd)	II. Other : ex) a) Grated or powdered, of a fat content by weight exceeding 20 %, of a lactose content by weight, less than 5 % and of a dry matter content, by weight : (1) of 80 % or more but less than 85 % for exports to : — Zone E — Canada — other destinations (2) of 85 % or more but less than 95 % for exports to : — Zone E — Canada — other destinations (3) of 95 % or more for exports to : — Zone E — Canada — other destinations	5310 10 5310 21 5310 30	15-00 33-50 56-25 20-00 39-50 * 70-59 25-00 45-00 82-26
23.07	Sweetened forage ; other preparations of a kind used in animal feeding : ex B. Other, containing starch, glucose or glucose syrup falling within sub-headings 17.02 B and 17.05 B, or milk products, excluding special compound feedingstuffs (*) : I. Containing starch, or glucose or glucose syrup : a) Containing no starch or containing 10 % or less by weight of starch : 3. Containing 50 % or more but less than 75 % by weight of milk products and containing, by weight, milk powder of a fat content, by weight, not exceeding 11 %, excluding whey powder : (aa) less than 30 % (bb) 30 % or more but less than 40 % (cc) 40 % or more but less than 50 % (dd) 50 % or more but less than 60 % (ee) 60 % or more but less than 70 % (ff) 70 % or more 4. Containing 75 % or more by weight of milk products and containing, by weight, milk powder of a fat content, by weight, not exceeding 11 %, excluding whey powder : (aa) less than 30 % (bb) 30 % or more but less than 40 % (cc) 40 % or more but less than 50 % (dd) 50 % or more but less than 60 % (ee) 60 % or more but less than 70 % (ff) 70 % or more but less than 75 % (gg) 75 % or more but less than 80 % (hh) 80 % or more	5700 12 5700 22 5700 32 5700 41 5700 51 5700 61 5800 12 5800 22 5800 31 5800 41 5800 51 5800 61 5800 71 5800 81	— 20-75 27-24 33-72 40-21 46-69 — 20-75 27-24 33-72 40-21 46-69 49-93 53-18

CCT heading No	Description of goods	Code	Refund (in u.a./100 kg net weight unless otherwise indicated)
23.07 (cont'd)	II. Containing no starch, glucose or glucose syrup, but containing milk products, containing, by weight, milk powder of a fat content, by weight, not exceeding 11 %, excluding whey powder : (a) 50 % or more but less than 60 % (b) 60 % or more but less than 70 % (c) 70 % or more but less than 80 % (d) 80 % or more	5900 11 5900 21 5900 31 5900 41	33.72 40.21 46.69 53.18

(¹) The weight of added non-lactic matter and lactose should be disregarded for the purpose of calculating fat content.

The refund on 100 kg of product falling within this subheading is equal to the sum of the following components :

- (a) the amount per kg shown, multiplied by the weight of milk and cream contained in 100 kg of product ;
- (b) a component calculated in accordance with the provisions of Article 2 (3) Regulation (EEC) No 1098/68.

(²) The refund on 100 kg of product falling within this subheading is equal to the sum of the following components :

- (a) the amount per 100 kg shown and
- (b) a component calculated in accordance with the provisions of Article 2 (3) of Regulation (EEC) No 1098/68.

(³) 'Special compound feedingstuffs' are feedingstuffs containing skimmed-milk powder and either:

- (a) fish meal or fish oil and/or fish liver oil ;
- (b) active carbon and/or a mixture of Tartazine Yellow (E 102) and Patent Blue V (E 131) or Cochenal Red A (E 124) or Patent Blue V (E 131) ;
- (c) iron carbonate and/or iron sulphate and/or copper sulphate .

(⁴) This amount applies to the net weight, minus the weight of the brine.

N.B. : — For the purposes of this Regulation 'countries near the Community means : Zone D, Austria, Liechtenstein, Switzerland, Yugoslavia plus the destinations indicated in Article 3 of Regulation (EEC) No 192/75.

— Zones A, B, C, D and E are those defined in Regulation (EEC) No 1098/68 as last amended by Regulation (EEC) No 37/75.

— 'Countries of the Arabian Peninsula' are to be understood in the sense of this Regulation as the following countries situated in the Arabian Peninsula and the territories there connected : Saudi Arabia, Bahrain, Qatar, Kuwait, Sultanate of Oman, Union of Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Ummal, Quaiwain, Fujairah, Ras al Khaimah), Republic of Yemen (Yemen North) and Democratic Popular Republic of Yemen (Yemen South).

The weight of non-milk fat should be disregarded for the purposes of calculating fat content.

COMMISSION REGULATION (EEC) No 2254/76
of 16 September 1976
fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, and in particular the first sentence of the fourth subparagraph of Article 17 (2) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 17 of Regulation (EEC) No 1418/76 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 2 of Council Regulation (EEC) No 1431/76 of 21 June 1976 laying down general rules for granting export refunds on rice and criteria for fixing the amount of such refunds ⁽²⁾, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbance of the Community market;

Whereas Regulation No 669/67/EEC ⁽³⁾, as amended by Regulation (EEC) No 1057/68 ⁽⁴⁾, lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas Article 3 of Regulation (EEC) No 1431/76 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed at least once a month; whereas it may be altered in the intervening period;

Whereas, if the refund system is to operate normally, refunds should be calculated on the following basis:

- in the case of currencies which are maintained in relation to each other, at any given moment, within a band of 2.25 %, a rate of exchange based on their effective parity;
- for other currencies an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period, in relation to the Community currencies referred to in the previous subparagraph;

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund, should be fixed as shown in the Annex to this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The refunds on the products listed in Article 1 of Regulation (EEC) No 1418/76 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 September 1976.

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 166, 25. 6. 1976, p. 36.

⁽³⁾ OJ No 241, 5. 10. 1967, p. 6.

⁽⁴⁾ OJ No L 179, 25. 7. 1968, p. 31.

The zones are those defined in Regulation (EEC) No 306/76 (OJ No L 38, 13. 2. 1976).

COMMISSION REGULATION (EEC) No 2255/76

of 16 September 1976

fixing the corrective amount applicable to the refund on rice and broken rice

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
1418/76 of 21 June 1976 on the common organiza-
tion of the market in rice⁽¹⁾, and in particular the
second subparagraph of Article 17 (4) thereof,

Having regard to the opinion of the Monetary
Committee,

Whereas the first subparagraph of Article 17 (4) of
Regulation (EEC) No 1418/76 provides that the
export refund applicable to rice and broken rice on
the day on which application for an export licence is
made, adjusted for the threshold price which will be
in force during the month of exportation, must be
applied on request to exports to be effected during the
period of validity of the licence;

Whereas Regulation No 474/67/EEC⁽²⁾, as amended
by Regulation (EEC) No 1397/68⁽³⁾, lays down
detailed rules for the advance fixing of the export
refund on rice and broken rice;

Whereas that Regulation provides that the refund
applicable on the day on which application for an
export licence is made must, when it is fixed in
advance, be reduced by an amount no greater than the
difference between the cif forward delivery price and
the cif price, where the former exceeds the latter by
more than 0.25 unit of account per metric ton;
whereas, on the other hand, the refund must be
increased by an amount no greater than the difference
between the cif price and the cif forward delivery
price, where the former exceeds the latter by more
than 0.25 unit of account per metric ton;

Whereas the cif price is that determined in accor-
dance with Article 16 of Regulation (EEC) No
1418/76, whereas the cif forward delivery price is that

determined in accordance with Article 3 (2) of Regula-
tion 1428/76⁽⁴⁾, based, in respect of each month for
which the export licence is valid, on the cif price
calculated on the basis of offers for shipment during
the month of exportation;

Whereas if the refund system is to operate normally,
refunds should be calculated on the following basis:

- in the case of currencies which are maintained in
relation to each other, at any given moment,
within a band of 2.25 %, a rate of exchange based
on their effective parity;
- for other currencies an exchange rate based on the
arithmetic mean of the spot market rates of each
of these currencies recorded for a given period, in
relation to the Community currencies referred to
in the previous subparagraph;

Whereas it follows from applying all these provisions
that the corrective amount applicable on 17
September 1976 must be fixed as shown in the table
annexed to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 17 (4) of
Regulation (EEC) No 1418/76 which is applicable to
the export refunds fixed in advance in respect of rice
and broken rice is hereby fixed as shown in the table
annexed to this Regulation.

Article 2

This Regulation shall enter into force on 17
September 1976.

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No 204, 24. 8. 1967, p. 20.

⁽³⁾ OJ No L 222, 10. 9. 1968, p. 6.

⁽⁴⁾ OJ No L 166, 25. 6. 1976, p. 30.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

ANNEX

to the Commission Regulation of 16 September 1976 fixing the corrective amount applicable to the refund on rice and broken rice

(u.d. / metric ton)

CCT heading No	Description of goods	Current 9	1st period 10	2nd period 11	3rd period 12	4th period 1	5th period 2
10.06	Rice :						
	A. Paddy rice ; husked rice :						
	I. Paddy rice :						
	a) Round grain	—	—	—	—	—	—
	b) Long grain	—	—	—	—	—	—
	II. Husked rice :						
	a) Round grain	—	—	—	—	—	—
	b) Long grain	0	0	0	0	0	0
	B. Semi-milled or wholly milled rice :						
	I. Semi-milled rice :						
	a) Round grain	—	—	—	—	—	—
	b) Long grain	—	—	—	—	—	—
	II. Wholly milled rice :						
	a) Round grain	0	0	0	0	0	0
	b) Long grain	0	0	0	0	0	0
	C. Broken rice	—	—	—	—	—	—

COMMISSION REGULATION (EEC) No 2256/76
of 16 September 1976
terminating private storage aid for table wine of the type R I

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EEC) No 1167/76⁽²⁾, and in particular Article 5 (8) thereof,

Whereas Article 5 (1) of the said Regulation introduces a system of aid for the private storage of table wine and grape must and lays down that the granting of such aid is to be subject to the conclusion of a short-term or a long-term storage contract; whereas the first subparagraph of paragraph 2 of the said Article lays down that short-term storage contracts may be entered into when the weighted average price of a type of table wine remains below the activating price for two consecutive weeks and that such contracts may no longer be entered into when the weighted average price of this type of wine is above the activating price for two consecutive weeks;

Whereas Commission Regulation (EEC) No 1206/74 of 14 May 1974 concerning the private storage aid for the R I type of table wine⁽³⁾ provides for the granting of such aid for such wine from 15 May 1974;

Whereas, it has been established that the weighted average price for this type of wine during the past two weeks has been higher than the activating price;

Whereas the conditions set out in the second indent of the first subparagraph of Article 5 (2) of Regulation (EEC) No 816/70 are therefore fulfilled,

HAS ADOPTED THIS REGULATION :

Article 1

From 17 September 1976, no short-term private storage contract may be entered into for table wine of the type R I.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 99, 5. 5. 1970, p. 1.

⁽²⁾ OJ No L 135, 24. 5. 1976, p. 42.

⁽³⁾ OJ No L 132, 15. 5. 1974, p. 11.

COMMISSION REGULATION (EEC) No 2257/76

of 16 September 1976

altering the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty

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 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 559/76⁽²⁾, and in particular Article 17 (5) thereof,

Whereas Commission Regulation (EEC) No 2128/76 of 30 August 1976⁽³⁾ has fixed the rates of the refunds applicable from 1 September 1976 to certain dairy products exported in the form of goods not covered by Annex II to the Treaty;

Whereas the rates of the refunds per 100 kilogrammes of each of the basic products concerned shall be fixed for each month, according to Article 4 (1), first subparagraph of Council Regulation (EEC) No 2682/72 of 12 December 1972 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and criteria for fixing the amount of such refunds⁽⁴⁾, as amended by Regulation

(EEC) No 3058/75⁽⁵⁾; whereas this rule, established in order to create security conditions necessary for the processing industry to conclude their export contracts, should not form an obstacle to adjusting the rates of refunds during the month for which they were fixed in exceptional situations created by important fluctuations of the world market prices; it is therefore necessary to alter the rates of the refunds which applied to certain milk products exported in the form of products which are not included in Annex II to the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to certain milk products exported in the form of the products which appear in the Annex to Regulation (EEC) No 804/68 are hereby altered as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 67, 15. 3. 1976, p. 9.

⁽³⁾ OJ No L 239, 31. 8. 1976, p. 11.

⁽⁴⁾ OJ No L 289, 27. 12. 1972, p. 13.

⁽⁵⁾ OJ No L 306, 26. 11. 1975, p. 3.

ANNEX

to the Commission Regulation of 16 September 1976 altering the rates of the refunds applicable from 18 September 1976 to certain milk products exported in the form of goods not covered by Annex II to the Treaty

CCT heading No	Description of goods	Rate of the refund (in u.a./100 kg)
ex 04.02 A II	Powdered milk, obtained by the spray process, with a fat content of less than 1.5 % by weight and with a water content of less than 5 % by weight (PG 2) : a) On exportation of goods of CCT heading No 35.01 b) On exportation of other goods	— 64.85
ex 04.02 A II	Powdered milk, obtained by the spray process, with a fat content of 26 % by weight and a water content of less than 5 % by weight (PG 3)	90.67
ex 04.02 A III	Concentrated milk, with a fat content by weight of 7.5 % and a content by weight in dry matter equal to 25 % (PG 4)	19.39
ex 04.03	Butter, with a fat content by weight of 82 % (PG 6) : a) On exportation of goods of CCT heading No 19.08 or of subheadings 18.06 B and 21.07 C, and 'ice mix' of CCT subheadings ex 18.06 D and heading No ex 21.07 manufactured under the conditions laid down in Article 6 of Regulation (EEC) No 232/75 b) On exportation of other goods	— 158.72

COMMISSION REGULATION (EEC) No 2258/76**of 16 September 1976****altering the basic amount of the import levy on syrups and certain other sugar products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar ⁽¹⁾, as last amended by Regulation (EEC) No 1487/76 ⁽²⁾, and in particular Article 15 (7) thereof,

Whereas the basic amount of the import levy on syrups and certain other sugar products was fixed by Regulation (EEC) No 2143/76 ⁽³⁾, as last amended by Regulation (EEC) No 2230/76 ⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2143/76

to the information at present available to the Commission that the basic amount of the levy at present in force should be altered as shown in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The basic amount of the import levy on the products listed in Article 1 (1) d) of Regulation (EEC) No 3330/74 is hereby fixed, per 100 kilogrammes of product, at 0.1586 unit of account per percentage point of sucrose content.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 240, 1. 9. 1976, p. 26.

⁽⁴⁾ OJ No L 251, 15. 9. 1976, p. 16.

COMMISSION REGULATION (EEC) No 2259/76
of 16 September 1976
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 1487/76⁽²⁾, and in particular Article 15 (7) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Regulation (EEC) No 1564/76⁽³⁾, as last amended by Regulation (EEC) No 2247/76⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 1564/76 to the information at present available to the Commis-

sion that the levies at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The levies referred to in Article 15 (1) of Regulation (EEC) No 3330/74 are, in respect of white sugar and standard quality raw sugar, hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 172, 1. 7. 1976, p. 31.

⁽⁴⁾ OJ No L 252, 16. 9. 1976, p. 25.

ANNEX

to the Commission Regulation of 16 September 1976 fixing the import levies on white sugar and raw sugar

(u.a./100 kg)		
CCT heading No	Description of goods	Levy
17.01	Beet sugar and cane sugar, solid:	
	A. White sugar	15.86
	B. Raw sugar	17.67 ⁽¹⁾

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the levy applicable is calculated in accordance with the provisions of Article 2 of Regulation (EEC) No 837/68.

COMMISSION REGULATION (EEC) No 2260/76**of 16 September 1976****amending the amounts applicable as compensatory amounts for cereals and rice**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to the Treaty of Accession ⁽¹⁾,

Having regard to Council Regulation (EEC) No
2757/75 of 29 October 1975 laying down general
rules for the system of accession compensatory
amounts for cereals ⁽²⁾, as amended by Regulation
(EEC) No 1620/76 ⁽³⁾, and in particular Article 7
thereof,

Having regard to Council Regulation (EEC) No
1435/76 of 21 June 1976 laying down general rules
for the system of accession compensatory amounts for
rice and fixing these amounts for certain products ⁽⁴⁾,
and in particular Article 5 thereof,

Whereas compensatory amounts for cereals and rice
have been fixed pursuant to Regulation (EEC) No

2142/76 ⁽⁵⁾, as amended by Regulation (EEC) No
2216/76 ⁽⁶⁾;

Whereas the application of the rules referred to in
Regulation (EEC) No 2142/76 requires that the
amounts at present in force should be amended as
shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The amounts applicable as compensatory amounts
shown in the Annex to amended Regulation (EEC)
No 2142/76 are amended as shown in the Annex to
this Regulation.

Article 2

This Regulation shall enter into force on 17
September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 73, 27. 3. 1972, p. 5.

⁽²⁾ OJ No L 281, 1. 11. 1975, p. 104.

⁽³⁾ OJ No L 180, 6. 7. 1976, p. 2.

⁽⁴⁾ OJ No L 166, 25. 6. 1976, p. 47.

⁽⁵⁾ OJ No L 240, 1. 9. 1976, p. 19.

⁽⁶⁾ OJ No L 249, 11. 9. 1976, p. 10.

ANNEXE A — BILAG A — ANHANG A — ALLEGATO A — BIJLAGE A — ANNEX A

Importi applicabili a titolo di importi di compensazione per i cereali

Montants applicables au titre des montants compensatoires pour les céréales

Beløb, der skal anvendes som udligningsbeløb for korn

Für Getreide als Ausgleichsbeträge anzuwendende Beträge

Als compenserende bedragen toe te passen bedragen voor granen

Amounts applicable as compensatory amounts for cereals

(RE/UC/u.s./1 000 kg)

N° du tarif douanier commun Position i den fælles toldtarif Nr. des Gemeinsamen Zolltarifs N. della tariffa doganale comune Nr. van het gemeenschappelijk douanetarif CCT heading No	DK	IRL	UK
10.03	3,59	6-14	17-48

ANNEXE C — BILAG C — ANHANG C — ALLEGATO C — BIJLAGE C — ANNEX C

Importi applicabili a titolo di importi di compensazione per i prodotti trasformati dei cereali e del riso

Montants applicables au titre des montants compensatoires pour les produits transformés à base de céréales et de riz

Beløb, der skal anvendes som udligningsbeløb for produkter, der er forarbejdet på basis af korn og ris

Für Getreide- und Reisverarbeitungserzeugnisse als Ausgleichsbeträge anzuwendende Beträge

Als compenserende bedragen toe te passen bedragen voor op basis van granen en rijst verwerkte produkten

Amounts applicable as compensatory amounts for products processed from cereals or rice

(RE/UC/u.a./1 000 kg)

N° du tarif douanier commun Position i den fælles toldtarif Nr. des Gemeinsamen Zollltarifs N. della tariffa doganale comune Nr. van het gemeenschappelijk douanetarief CCT heading No	DK	IRL	UK
07.06 A	0,65	1-11	3-15
11.01 C ⁽¹⁾	5,03	8-60	24-47
11.02 A III ⁽¹⁾	5,03	8-60	24-47
11.02 B I a) 1 ⁽¹⁾	5,03	8-60	24-47
11.02 B I b) 1 ⁽¹⁾	5,03	8-60	24-47
11.02 C III ⁽¹⁾	5,03	8-60	24-47
11.02 D III ⁽¹⁾	3,66	6-26	17-83
11.02 E I a) 1 ⁽¹⁾	3,66	6-26	17-83
11.02 E I b) 1 ⁽¹⁾	5,03	8-60	24-47
11.02 F III ⁽¹⁾	3,66	6-26	17-83
11.06 A	0,65	1-11	3-15
11.07 A II a)	6,39	10-93	31-11
11.07 A II b)	4,77	8-17	23-25
11.07 B	5,56	9-52	27-09
23.02 A I a)	0,63	1-32	4-22
23.02 A I b)	0,63	1-32	4-22
23.02 A II a)	0,63	1-32	4-22
23.02 A II b)	0,63	1-32	4-22

⁽¹⁾ Pour la distinction entre les produits des n°s 11.01 et 11.02, d'une part, et ceux de la sous-position 23.02 A d'autre part, sont considérés comme relevant des n°s 11.01 et 11.02 les produits ayant simultanément :

- une teneur en amidon (déterminée d'après la méthode polarimétrique Ewers modifiée) supérieure à 45 % (en poids) sur matière sèche,
- une teneur en cendres (en poids) sur matière sèche (déduction faite des matières minérales ayant pu être ajoutées) inférieure ou égale à 1,6 % pour le riz, 2,5 % pour le froment et le seigle, 3 % pour l'orge, 4 % pour le sarrasin, 5 % pour l'avoine et 2 % pour les autres céréales.

Les germes de céréales, même en farine, relèvent en tout cas du n° 11.02.

⁽¹⁾ Für die Abgrenzung der Erzeugnisse der Tarifnummern 11.01 und 11.02 von denen der Tarifstelle 23.02 A gelten als Erzeugnisse der Tarifnummern 11.01 und 11.02 Erzeugnisse, die gleichzeitig folgendes aufweisen :

- einen auf den Trockenstoff bezogenen Stärkegehalt (bestimmt nach dem abgeänderten polarimetrischen Ewers-Verfahren) von mehr als 45 Gewichtshundertteilen,
- einen auf den Trockenstoff bezogenen Aschegehalt (abzüglich etwa zugesetzter Mineralstoffe), der bei Reis 1,6 Gewichtshundertteile oder weniger, bei Weizen und Roggen 2,5 Gewichtshundertteile oder weniger, bei Gerste 3 Gewichtshundertteile oder weniger, bei Buchweizen 4 Gewichtshundertteile oder weniger, bei Hafer 5 Gewichtshundertteile oder weniger und bei anderen Getreidearten 2 Gewichtshundertteile oder weniger beträgt.

Getreidekeime, auch gemahlen, gehören auf jeden Fall zur Tarifnummer 11.02.

- (¹) Per la distinzione tra i prodotti delle voci nn. 11.01 e 11.02 da un lato, e quelli della sottovoce 23.02 A dall'altro, si considerano come appartenenti alle voci nn. 11.01 e 11.02 i prodotti che abbiano simultaneamente :
- un tenore in amido (determinato in base al metodo polarimetrico Ewers modificato), calcolato sulla materia secca, superiore al 45 % (in peso),
 - un tenore in ceneri (in peso), calcolato sulla materia secca (dedotte le sostanze minerali che possono essere state aggiunte), inferiore o pari all'1,6 % per il riso, al 2,5 % per il frumento e la segala, al 3 % per l'orzo, al 4 % per il grano saraceno, al 5 % per l'avena e al 2 % per gli altri cereali.

I germi di cereali, anche sfarinati, rientrano comunque nella voce n. 11.02.

- (¹) Voor het onderscheid tussen de produkten van de nummers 11.01 en 11.02 enerzijds en die van de onderverdeling 23.02 A anderzijds, worden geacht onder de nummers 11.01 en 11.02 te vallen de produkten die tegelijkertijd :

- een zetmeelgehalte hebben (bepaald volgens de gewijzigde polarimetrische methode van Ewers) van meer dan 45 gewichtspercenten, berekend op de droge stof, en
- een asgehalte hebben (onder aftrek van eventueel toegevoegde minerale stoffen), berekend op de droge stof, van ten hoogste : 1,6 gewichtspercent voor rijst, 2,5 gewichtspercenten voor tarwe en rogge, 3 gewichtspercenten voor gerst, 4 gewichtspercenten voor boekweit, 5 gewichtspercenten voor haver en 2 gewichtspercenten voor andere granen.

Graankiemen ook indien gemalen, vallen in elk geval onder nummer 11.02.

- (¹) For the purpose of distinguishing between products falling within heading Nos 11.01 and 11.02 and those falling within subheading 23.02 A, products falling within heading Nos 11.01 and 11.02 shall be those meeting the following specifications :

- a starch content (determined by the modified Ewers polarimetric method), referred to dry matter, exceeding 45 % by weight,
- an ash content, by weight, referred to dry matter (after deduction of any added minerals) not exceeding 1.6 % for rice, 2.5 % for wheat and rye, 3 % for barley, 4 % for buckwheat, 5 % for oats and 2 % for other cereals.

Germ of cereals, whole, rolled, flaked or ground, falls in all cases within heading No 11.02.

- (¹) Med henblik på sondringen mellem varer tariferet under pos. 11.01 og 11.02 på den ene side og under pos. 23.02 A på den anden side anses som tariferet under pos. 11.01 og 11.02 varer, der samtidig har :

- et indhold af stivelse (bestemt ved Ewers modificerede polarimetriske metode) på over 45 vægtprocent, beregnet på grundlag af tørsubstansen,
- et askeindhold (efter fradrag af eventuelle tilsatte mineralske stoffer) på 1,6 vægtprocent eller derunder for ris, 2,5 vægtprocent eller derunder for hvede og rug, 3 vægtprocent eller derunder for byg, 4 vægtprocent eller derunder for boghvede, 5 vægtprocent eller derunder for havre og 2 vægtprocent eller derunder for de øvrige kornsorter, beregnet på grundlag af tørsubstansen.

Kim af korn samt mel deraf tariferes under alle omstændigheder under pos. 11.02.

COMMISSION REGULATION (EEC) No 2261/76
of 16 September 1976
altering the export refunds on syrups and certain other sugar products exported
in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 1487/76⁽²⁾, and in particular the second sentence of the last subparagraph of Article 19 (2) thereof,

Whereas the refunds syrups and certain other sugar products were fixed by Regulation (EEC) No 2144/76⁽³⁾;

Whereas it follows from applying the rules, criteria and other provisions contained in Regulation (EEC) No 2144/76 to the information at present available to

the Commission that the export refunds at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The refund to be granted on the products listed in Article 1 (1) (d) of Regulation (EEC) No 3330/74, exported in the natural state as fixed in the Annex to Regulation (EEC) No 2144/76, is hereby altered to the amounts shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 240, 1. 9. 1976, p. 28.

ANNEX

to the Commission Regulation of 16 September 1976 altering the export refunds on syrups and certain other sugar products exported in the natural state

(n.a./100 kg)

CCT heading No	Description of goods	Basic amount per percentage point of sucrose content ⁽¹⁾
17.02	Other sugars ; sugar syrups ; artificial honey (whether or not mixed with natural honey) ; caramel :	
	ex D. Other sugars and syrups, excluding sorbose	0.1050
	ex E. Artificial honey (whether or not mixed with natural honey)	0.1050
	ex F. Caramel made from sugar falling within heading No 17.01	0.1050
17.05	Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion :	
	ex C. Other, excluding flavoured or coloured molasses	0.1050

⁽¹⁾ The basic amount is not applicable to syrups which are less than 85 % pure (Regulation (EEC) No 394/70). Sucrose content is determined in accordance with Article 13 of Regulation (EEC) No 394/70.

COMMISSION REGULATION (EEC) No 2262/76**of 16 September 1976****altering the export refunds on white sugar and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 1487/76⁽²⁾, and in particular the second sentence of the last subparagraph of Article 19 (2) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Regulation (EEC) No 2196/76⁽³⁾;

Whereas it follows from applying the rules, criteria and other provisions contained in Regulation (EEC) No 2196/76 to the information at present available to

the Commission that the export refunds at present in force should be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 3330/74, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EEC) No 2196/76 are hereby altered as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 247, 9. 9. 1976, p. 9.

ANNEX

to the Commission Regulation of 16 September 1976 altering the refunds on white sugar and raw sugar exported in the natural state

(u.a./100 kg)		
CCT heading No	Description of goods	Refund
17.01	Beet sugar and cane sugar, solid :	
	A. White sugar	0
	B. Raw sugar :	
	(a) Candy sugar	9.66 ⁽¹⁾
	(b) Other raw sugar	0 ⁽¹⁾

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

COMMISSION REGULATION (EEC) No 2263/76**of 16 September 1976****altering the rates of the refunds applicable to sugar and beet or cane syrups
exported in the form of goods not covered by Annex II to the Treaty**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organi-
zation of the market in sugar⁽¹⁾, as last amended by
Regulation (EEC) No 1487/76⁽²⁾, and in particular the
first sentence of the sixth subparagraph of Article 19
(2) thereof,

Whereas the rates of the refunds applicable from 1
September 1976 to sugar, to beet or cane syrups and
to molasses exported in the form of goods not covered
by Annex II to the Treaty were fixed by Regulation
(EEC) No 2129/76⁽³⁾;

Whereas it follows from applying the rules and
criteria contained in Regulation (EEC) No 2129/76 to

the information at present available to the Commis-
sion that the export refunds at present in force should
be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The rates of refund fixed by Regulation (EEC) No
2129/76 for white sugar, raw sugar and beet or cane
syrups containing by weight in the dry state 98 % or
more of sucrose, exported in the form of goods listed
in the Annex to amended Regulation (EEC) No
3330/74 are hereby altered as shown in the Annex to
this Regulation.

Article 2

This Regulation shall enter into force on 17
September 1976.

This Regulation shall be binding in its entirety and directly applicable in all Member
States.

Done at Brussels, 16 September 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 167, 26. 6. 1976, p. 9.

⁽³⁾ OJ No L 239, 31. 8. 1976, p. 14.

ANNEX

to the Commission Regulation of 16 September 1976 altering the rates of the refunds applicable to sugar and beet or cane syrups exported in the form of goods not covered by Annex II to the Treaty

<i>Rate of refund in u.a./100 kg :</i>	White sugar :	10.50
	Raw sugar :	9.66
	Syrups of beet sugar or cane sugar containing, in the dry state, 98 % or more by weight of sucrose (including invert sugar expressed as sucrose) :	$10.50 \times \frac{S}{100}^{(1)}$

⁽¹⁾ S represents the weight of sucrose (including invert sugar expressed as sucrose) in 100 kilogrammes of syrup.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 July 1976

relating to a proceeding under Article 85 of the EEC Treaty (IV/28.996 — Reuter/
BASF)

(Only the German text is authentic)

(76/743/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 of 6
February 1962⁽¹⁾, and in particular Articles 1 and 3
thereof,

Having regard to the written application dated 27
January 1975 concerning BASF AG of Ludwigshafen
made by Dr Gottfried Reuter of Lemförde under
Article 3 of Regulation No 17,

Having heard the undertakings concerned pursuant to
Article 19 (1) and (2) of Council Regulation No 17
and to Commission Regulation No 99/63/EEC of 25
July 1963⁽²⁾,

Having regard to the opinion delivered by the Advi-
sory Committee on Restrictive Practices and Domi-
nant Positions pursuant to Article 10 of Regulation
No 17 on 15 June 1976,

Whereas :

I. The facts

By letter dated 27 January 1975 Dr Gottfried Reuter
lodged a complaint with the Commission under

Article 3 of Regulation No 17. The subject of the
complaint was a contractual non-competition clause
imposed upon him by the purchaser, BASF AG, on
the sale of Elastomer, a group of undertakings
concerned with the manufacture of polyurethanes.
The transfer agreement, concluded in June 1971,
prohibits Dr Reuter for eight years, that is until June
1979, from carrying on certain activities.

1. *The product*

Polyurethanes are synthetic products used in manufac-
turing a wide range of final products in a number of
industries, including the motor, building, furniture,
footwear (synthetic leather), electrical engineering
(insulating material), varnish, glue, shipbuilding and
mechanical engineering industries. The market for
these synthetics is in a state of constant growth, with
rates in recent years of more than 15 % in some
industries. The manufacture of polyurethane final
products goes through the following stages :

The principal chemical products used as basic
products in the manufacture of polyurethanes are
polyols and isocyanates. The most important polyols
are polyethers and polyesters ; the most important
isocyanates are diphenylmethane diisocyanate (MDI),
toluylendiisocyanate (TDI) and hexamethylene diiso-
cyanate (HMDI). These basic products are themselves
obtained as follows :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

- polyesters from polyalcohols (burandiol, hexandiol, neopentyl glycol, trimethylol propane, dicarbonic acids and caprolactam),
- polyethers from propylene-propylene oxide,
- isocyanates from anilines, formaldehyde and diamines (naphtylene diamine, hexamethylene diamine).

The basic products are made into semi-finished polyurethanes, that is to say :

- foam plastic components,
- elastomers,
- granulates for thermoplastic processing,
- chips and prepolymers.

These semi-finished products are in turn converted into a large number of final products of varying shapes and properties, as for example soft and hard foam plastic, varnishes, solid materials and finished components.

There are thus four stages of product :

- stage 1 : the basic materials — glycols, polyalcohols, amines, dicarbonic acid, formaldehyde, propylene oxide,
- stage 2 : polyesters and polyethers and diisocyanates,
- stage 3 : semi-finished polyurethane products,
- stage 4 : final products.

Stage 1 products are not polyurethane-specific, since they are used for the manufacture of other materials as well. They are also produced by firms which are not active in polyurethane chemicals.

Two main methods are used to produce polyurethanes :

- (a) the multi-component system, whereby polyester and polyether alcohols are combined in exact proportions with the diisocyanate in a single operation carried out by means of injection pumps.

This system was developed by Bayer, who had patents in the field of elastomer formulation which expired in 1969 ;

- (b) the two-component system, whereby polyester and polyether alcohols are pre-mixed, but the diisocyanate is added, in exact proportion, only after the foaming caused by the first mixture has ceased.

This was the method used by the Elastomer group.

The main difference between these two methods is that in the first method stage 2 intermediate products are processed directly into the final product, so that other firms cannot carry out stage 4 final processing, while the second method allows the final processor to carry out his own polyurethane production.

According to the information before the Commission, about 75 % of final polyurethane products are produced under the multi-component system and 25 % by the two-component system.

2. Market structure

By far the largest polyurethane chemical supplier in the common market is Bayer. This applies not only to the basic materials of stage 1, particularly aniline (important as a raw material in the manufacture of MDI), but also at stage 2, where Bayer is the only manufacturer of a complete range of polyester alcohols, polyether alcohols, diisocyanates (MDI and TDI) and of nuclear chain-lengthening and cross-linking agents. Bayer has considerably strengthened its position at stages 3 and 4, in particular by taking over companies of the Metzeler group.

The number of competitors is limited : apart from BASF the most important suppliers in the common market are ICI, Rhône Poulenc (linked with Bayer through Progil-Bayer-Ugine, Paris), Shell (linked with Bayer through Bayer-Shell-Isocyanates, Antwerp), Ugine-Kuhlmann (linked with BASF through BASF-Ugine 'EURANE', Antwerp), Dow Chemicals (linked with BASF in the United States through Dow-Badische), Union Carbide Corporation (UCC), Henkel, Montedison, Upjohn and Società Italiana Resine (SIR). There is also Du Pont, though its significance in the common market is limited to the manufacture of elastomer threads.

BASF is a major manufacturer of stage 1 basic materials. It has strengthened its position with respect to other stages by :

- combining with Ugine to form Eurane (isocyanates and polyethers),
- establishing or expanding its own plants (e.g. in the field of chain-lengthening agents),
- acquiring the Elastomer group.

The Elastomer group is one of the most important 'system formulators' and ranks alongside the Metzeler Group, which was recently taken over by Bayer, as one of the chief German polyurethane processors. In 1971, the Elastomer group consisted of 50 companies in 11 countries. In the EEC, apart from the Federal Republic of Germany, there were branches in France, Italy and the United Kingdom. The total turnover of the group was DM 200 million. The group was concerned not only with the production and distribution of polyurethanes but also with development and construction of plant for the production of polyurethanes. The group was particularly important in the blending of polyurethane raw materials at stage 3. This importance increased from 1969 onwards, when Bayer's patents for blending technology expired and

polyurethane processors were no longer so dependent on Bayer.

The influence of BASF on the polyurethane sector in question does not, at stage 3, even after the acquisition of the Elastomer Group, extend to Bayer, which remains the market leader.

3. *The transfer of the undertaking*

Dr Reuter is a research chemist specializing in polyurethanes. In 1969 he held, through Reuter-Holding GmbH, Zurich, 50 % of the shares of Elastomer AG, Chur (Switzerland), the holding company of the Elastomer group of companies outside Germany. Another member of the Elastomer group was Elastogran GmbH, Lemförde, the holding company for the companies based in Germany and providing the group's main economic strength. The remaining 50 % of the shares in Elastomer AG, over which Dr Reuter held an option to purchase, were held by the Investitions- und Handelsbank Zurich (IHB).

- (a) By an agreement dated 12 March 1969 between Dr Reuter and BASF, Dr Reuter undertook to exercise his option on the IHB shares and to transfer the shares in Elastomer AG so acquired to BASF. In addition, Dr Reuter granted BASF an irrevocable option with effect from 2 January 1972 to purchase the remaining 50 % of the shares in Elastomer AG held by Dr Reuter through Reuter Holding. The option was to expire on 30 June 1971. In connection with this option, and to enable Dr Reuter to acquire the shares from IHB and to discharge his and Elastomer AG's obligations towards the latter, BASF granted Dr Reuter a loan.

Under the agreement Dr Reuter remained the managing director of the Elastomer group but accepted various restrictions on his activities in respect of the period before and after the exercise of the option (*inter alia* a prohibition on competing for 10 years after the transfer of the remaining 50 % of the shares). These restrictions were, however, replaced by the subsequent agreement of 25 June 1971.

Pursuant to the agreement of 12 March 1969, Dr Reuter exercised his option to purchase the shares from IHB and transferred them to BASF.

- (b) By an agreement dated 25 June 1971 (hereinafter referred to as 'the purchase agreement') Dr Reuter sold to BASF the remaining 50 % of the shares in Elastomer AG held by him through Reuter-Holding-GmbH. By this agreement BASF acquired the companies of the Elastomer group active in the following fields ('fields covered by the agreement'):

'The research, development, manufacture, use and distribution of:

- (a) chemical products for the production of polyurethanes. Such chemical products include in particular polyester alcohols, in so far as they are used for polyurethane, and all pre-mixes used for the manufacture of polyurethane products. Included are granulates, prepolymers and adducers such as those used in thermoplastic processing, textile finishing, polyvinylchloride solvents, paints, adhesives and moulded materials. Excluded is research into the manufacture of diisocyanates and polyether-polyols;
- (b) all derived semi-manufactured products such as foils, sheets, extruded products, etc.;
- (c) finished products, in so far as they form part of the production programme of the LKG, KKM and OVG companies at the date of the agreement. The production programme includes semi-manufactured and finished products for machines and vehicles, and for lifting, handling and transport equipment of any description. In addition are included those consumer products referred to in Annex XI. Excluded are finished assemblies in which polyurethane is not an important component, such as shock-absorbers, ball-joints and transmission gear;
- (d) all technology, equipment and apparatus for the processing of the products set out in (a), together with any corresponding chain lengtheners, solvents, isocyanates, catalysts and additives used in the production of products containing polyurethane. Excluded are ordinary machines for thermoplastic materials, such as injection moulders, extrusion and calendering machines.

It is irrelevant whether intellectual or industrial property rights exist in respect of the above or not.

The companies acquired by BASF account for most of the polyurethane producing capacity of the Elastomer group and include companies within and outside the Federal Republic of Germany. Those companies involved in other fields remain under the control of Dr Reuter (in particular CAF Chemie Anlagenbau GmbH & Co.).

On 25 June 1971 an agreement was also concluded between Reuter Holding GmbH and a subsidiary of BASF, Glasurit Werke M. Winkelmann GmbH Hamburg (hereinafter referred to as 'Glasurit'), to which Dr Reuter was a party. (This agreement is hereinafter referred to as 'the know-how agreement'.) By this agreement Reuter Holding transferred all its

know-how and technology in the relevant field to Glasurit, including a detailed series of documents containing most of the scientific and technical data and know-how possessed by Elastomer AG.

Dr Reuter resigned as manager of the Group after the sale. The restrictions placed on the continuance of his activities in the fields covered by the agreement are contained in Clauses IX to XI, which are set out below.

'Clause IX

Save as provided in Clause X of this contract, Dr Reuter shall for a period of eight years from the signing of this contract refrain from engaging directly or indirectly in any activity in Germany or elsewhere in the relevant field; he shall form no new firms of his own in this field nor own any firms or shares in firms, nor maintain or enter into any contractual association with third parties, nor act as employee, adviser or in any similar function. This does not apply to dealings in officially traded securities, provided Dr Reuter does not aim at any business activity thereby.'

'Clause X

1. Dr Reuter shall have the right to engage in business in the relevant field:

- (a) as provided by Annex IX in respect of manufacturing finished parts;
- (b) as provided by Annex X in respect of contracts concluded with VEB-Synthesewerk Schwarzheide.

Dr Reuter may continue R & D activities on manufacturing processes for isocyanates and polyether polyols and may commercialize the results of his R & D by issuing licences, which may extend to the construction of manufacturing plant. However, he shall not hold shares in companies operating plants using their own processes. Otherwise, his activities shall be as agreed in the contract. He shall inform Glasurit of any results achieved in respect of the physical separation of diisocyanates and polyisocyanates.

2. In exercising his right under paragraph 1, Dr Reuter shall respect the legitimate interests of the Elastomer group and its subsidiaries and affiliates in the relevant field.'

'Clause XI

Dr Reuter undertakes, for a period of eight years following the signing of this contract, not to divulge to any third party any protected or unprotected know-how and experience in the relevant field, nor any events, circumstances or facts relating to technical, commercial, financial or staffing matters in the

companies of the Elastomer group which arose before this contract was made, unless they are already well-known or relate to the activity permitted by Clause X. Dr Reuter undertakes, in particular, not to allow third parties access to plans of plant and machinery falling within the relevant field.'

Annex IX, cited in Clause X, reads:

'Dr Reuter may, after leaving the Elastomer group, develop, plan and build factories for finished parts and hold shares in the capital of the firms owning them, even if polyurethanes are among the substances used in them.

Such factories may include establishments for the manufacture of:

- shoes,
- motor vehicles,
- boats, prefabricated building parts and furniture, and
- synthetic leather and films.

Dr Reuter shall in respect of factories in which he holds shares give the Elastomer group priority as regards the supply of all raw materials, plant and machinery in the relevant field, provided that the prices and quality of such items are competitive.

In this case the Elastomer group shall accord Dr Reuter "most-favoured-firm" treatment until 31 December 1974.

Dr Reuter shall pass on to the Elastomer group, in exchange for suitable remuneration, all business in the relevant field which becomes known to him in the course of his business activity.'

Annex X concerns transactions with the German Democratic Republic, which have in the meantime been completed.

Clause XI, according to the interpretation placed on it by BASF and by Dr Reuter, also contains a prohibition on research.

Under a licensing agreement of 26 June 1971 made between Elastogran GmbH, of the one part, and Dr Reuter and CAF, which he controlled, of the other part, Dr Reuter was able to perform contracts with the German Democratic Republic. It enabled Dr Reuter to do business in the relevant field subject to certain geographic (Eastern bloc countries only) and temporal limits.

4. The substance of the application:

- (a) Dr Reuter objects to the non-competition clause in Clauses IX and X of the contract of 25 June 1971. His argument is as follows:

This non-competition clause is a threat to his professional and economic livelihood. It covers an area of research which is identical with the activities of the Elastomer group in the field of polyurethane research. In 20 years of professional activity he has been creatively active only in this field. If the clause is upheld he will lose touch with scientific developments in his special field and thus become permanently unable to work in that field again. The clause therefore means that he would never again be able to exercise his profession.

The clause is of considerable importance for competition. BASF intended, even before taking over the Elastomer group, to enter the group's polyurethane field. In taking over that group, it eliminated a competitor and the non-competition clause shielded it from competition by Dr Reuter on the polyurethane market.

The clause also excludes any opportunity of alleviating the dependence of polyurethane processors on Bayer at stage 3. Even graver is the prohibition on passing on to third parties the know-how needed for building up fully integrated manufacturing systems and thus becoming serious competitors for Bayer and BASF. The restriction on competition is not permissible, if only because of its duration of eight years. This clause could be accepted only in order to safeguard operations while the group is being transferred, but should not exclude the seller from competition any longer than absolutely necessary.

Since BASF has taken over from Dr Reuter a fully applicable technology plus complete know-how, in other words, acquired a group as a going concern, two years would be the longest duration acceptable for securing the clientele and adapting the group to its new owners and management; since the customers are mainly German firms, a clause limited to Germany would have been sufficient to safeguard the group's operations. The extension of the non-competition clause to countries where BASF does not supply the market, together with the eight-year duration, is intended as a shield against competition in general and infringes Article 85 (1) of the EEC Treaty. There is no justification for the prohibition on research. Dr Reuter makes no complaint against the obligation to keep know-how secret, as there are areas in which he could carry out research without infringing this obligation.

Pursuant to this application the Commission investigated the facts and in consequence sent a statement of objections to BASF.

(b) In its answer BASF submits that :

At stage 2 only polyester polyols are affected by the non-competition clause. These are manufactured and sold by 12 undertakings within the Community. BASF names 46 European firms as stage 3 producers. BASF is itself represented in this sector only by Elastomer. BASF was not active in this field before 1971.

The scope of the non-competition clause is in accordance with the wishes of Dr Reuter himself, for he had seen a future for himself in areas not affected by the clause, i.e. in polyether polyols and isocyanates, as well as participation in or operation of plant for the application of technology in this field or the manufacture of final products. The areas excluded from the non-competition clause under Clause X of the agreement of 25 June 1971 allow unrestricted activity by Dr Reuter in by far the largest part of polyurethane technology. Under Clause 2 of the licensing agreement of 26 June 1971 between Elastogran GmbH, of the one part, and Dr Reuter and CAF, of the other part, Dr Reuter was able, up to 31 December 1973, to conclude contracts in the relevant field. He was allowed to perform these contracts, and thus engage in business in the relevant field, until 31 December 1976, i.e. for five-and-a-half years.

Furthermore, Dr Reuter had accepted a 10-year prohibition of similar scope in the 1969 agreements. Both the scope and duration of the restriction had been necessary. Because of its poor financial situation the Elastomer group would certainly have collapsed and ceased to be a competitor had BASF not rescued it by taking over at least its polyurethane-producing activities. In addition to the purchase price, liabilities of more than DM 130 million were taken over, an outlay not covered by the value of the assets of the undertaking and its know-how alone. In order to enable BASF to consolidate the takeover and reorganize the firm, it was essential that Dr Reuter abstain for a certain time from all activity in the relevant field, particularly as any new activity on his part would inevitably have been directed towards his old customers. The same arguments apply to the restriction on research. It is stressed that the essence of the transaction with Dr Reuter was not to transfer an undertaking but to transfer goodwill and technical know-how. The acquirer of know-how, like the

acquirer of a patent, is entitled to its sole use. This is legitimate protection from competition, since BASF has in effect acquired this sector of the market. Dr Reuter is therefore no longer entitled to make use of the technical knowledge transferred by him, unless specifically authorized to do so. All research activity in the relevant field involves the use of this transferred know-how and knowledge. Economically profitable polyurethane research is possible at stages 3 and 4 only in close cooperation with the customer. Only the customer can verify in his plant whether the product developed in the laboratory possesses the properties needed for its application, and where necessary make suggestions for improvements. Although non-commercialized research is possible even without practical testing by the customer, the product of such research developed without such cooperation could not be sold without at least precise instructions for storing and processing, even if its composition were kept secret. According to his own evidence, Dr Reuter as early as 1971 possessed know-how in all the presently known fields of application. Thus any know-how passed on by him in respect of blending or application would be based on knowledge that had been transferred when the undertaking was sold.

BASF further contends that, inasmuch as Dr Reuter has research carried out by experts employed by him for this purpose, he is bound to pass on his knowledge to them and hence to commit an infringement of the obligation to keep secret and not to exploit the relevant know-how. Competition from Dr Reuter in the relevant field if the restrictions were lifted would diminish the value of the assets transferred by him.

The period of eight years fixed for the duration of the non-competition clause was the time needed by BASF to familiarize itself with polyurethanes. Dr Reuter obtained from Bayer basic materials and the know-how necessary for their application; BASF did not receive know-how from Bayer with its supplies of basic materials. BASF has had to acquire this know-how by its own efforts in order to become a real competitor for Bayer with the Reuter know-how. BASF took over Elastomer without having done much preliminary work of its own in this field. The range of formulations acquired from Dr Reuter is still the core of BASF's polyurethane business. The purpose of polyurethane research is to develop a kind of 'recipe book' for the mixes needed in the various fields of application. These recipes are a sensitive type of know-how, easily transmissible to competitors or customers and therefore in particular need of protection. Through his familiarity with the know-how, the customers and their requirements, and possibly in combination with the raw material know-how provided by Bayer, Dr Reuter is in a position to deprive BASF of all benefits of the busi-

ness so expensively purchased from him. BASF has been unable to strengthen its competitive position adequately in the past four years and it is uncertain whether it will be able to do so in eight years.

At the hearing Dr Reuter denied having received at the time of the sale raw material know-how from Bayer, claiming that the value of the Elastomer group lay primarily in the development of know-how of its own, independently of Bayer.

Dr Reuter explained that in the field of reactive synthetics research was constantly being carried out to improve their properties, with every new raw material produced necessitating a process of redevelopment; in particularly research-intensive fields, the developments in chemistry are such that 'recipe books' require revision at least every two years.

In reply, BASF stated that the revision of recipe books was only a technicality, conducted in gradual steps, in the further development of know-how. Not every improvement of the properties of a raw material necessitated revision, for the recipe often produced better results with the improved product without revision. Research should not provide the know-how for the present but for the future — for products to be marketed in two, five or 10 years' time.

II. Applicability of Article 85 (1) of the EEC Treaty

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

1. The agreement of 18 June 1971 containing the non-competition clause is an agreement between undertakings. Dr Reuter is also to be regarded as an undertaking for the purpose of Article 85, since he engages in economic activity through those firms of the Elastomer group which remain under his control, by exploiting the results of his own research and as commercial adviser to third parties.

2. Dr Reuter is prohibited by the non-competition clause in Clause IX of the agreement of 25 June 1971 from engaging in business as a supplier of services and goods in the relevant field and from competing in the polyurethane market, both within and outside Germany, for a period of eight years from the conclusion of the agreement, i.e. until June 1979. This applies to all forms of activity, including participation in third-party undertakings or partnerships and advisory and similar activities for third parties. The prohibition extends to research, development, manufacture, application and sales. But for this clause, Dr Reuter could, because of his personal technical knowledge and experience, have engaged in activity in all these fields and, for example, could have developed and exploited new application processes, even after the transfer of that part of the Elastomer group which had been acquired by BASF.

The exception made for the manufacture of finished products in accordance with Annex IX is confined to areas in which polyurethanes are used together with other substances.

The performance of the contracts with the German Democratic Republic was a transitional arrangement only valid until 31 December 1973 and limited to specific Eastern European countries. The fact that under the licensing agreement of 26 June 1971 the performance of contracts concluded by 31 December 1973 was permitted up to 31 December 1976 does not negate, but rather emphasizes, that Dr Reuter could also have competed within the EEC but was prevented by the clause in question.

The exception made for research, development and exploitation of manufacturing processes for isocyanates and polyether polyols covers a field which was not that of Dr Reuter and in which he had never been active (stages 1 and 2).

Even within the permitted exceptions the freedom of action of Dr Reuter is restricted to the extent that he is obliged to communicate certain results of his research to Glasurit and in general to preserve the 'legitimate interests' of BASF. This requirement in effect precludes competitive behaviour towards BASF.

3. When the material assets of a business are sold it is not normally necessary to protect the purchaser by imposing a prohibition on competition on the seller. In the present case, however, the sale included goodwill and know-how; indeed these items constituted a

substantial part of the assets transferred. In order to determine whether Article 85 (1) applies to the non-competition clause in the agreement, it is above all necessary to examine how far the clause is essential to the preservation of the transferred worth of the undertaking and whether it exceeds what is necessary for such preservation.

- (a) It is recognized that it may be necessary in certain cases to provide safeguards to ensure the effective performance of an agreement. These may take the form of a contractual non-competition clause in cases where not only the material assets of an undertaking but also its commercial goodwill, including relations with customers, are to be transferred to the purchaser. In such cases it is essential to prevent a seller from re-acquiring his old customers either directly or indirectly through cooperation with the purchaser's competitors in the period immediately following the transfer. Compliance by the seller with such a non-competition clause means no more than that he must respect his obligation under the agreement to transfer the full value of the undertaking. Application of Article 85 (1) to such a non-competition clause in an agreement can be excluded in such cases, since it would make more difficult or even impossible transactions which are generally recognized as legitimate.

This does not imply that the purchaser may benefit from protection without limit as to time, since the goodwill of an undertaking enjoys no absolute right of protection. It consists rather in a purely factual state of affairs which is constantly exposed to attacks by competing firms. The protection claimed by a purchaser against the competitive activity of the seller is justified only on the ground that the seller, as the former owner of the undertaking, may enjoy an advantage over outsiders in possessing special information about the undertaking's production and sales situation; this makes him more dangerous than other competitors. However, this protection must be limited to the period required by an active competitive purchaser for him to take over undiminished the undertaking's market position such as it was at the time of transfer. Account must be taken of such organizational problems as may arise until the newly acquired firm has been integrated into the purchaser's undertaking or group.

- (b) It is further recognized that it may be necessary in certain cases to provide additional safeguards to ensure the effective performance of an agreement in cases where technical knowledge, constituting an important part of the value of a transferred undertaking, is placed at the disposal of the transferee. As in the case of goodwill, it must be possible to prevent the transferrer for a certain time from using such knowledge in a manner which would prevent the transferee from acquiring the undertaking with its market position undiminished.

Here too, the protection afforded to the transferrer should be limited in time, since the transfer of legally unprotected know-how confers no exclusive rights on the purchaser. Contrary to the contention of BASF, the transfer of technical know-how in connection with the sale of an undertaking does not automatically preclude any further activity on the part of the seller based on such know-how. The opportunity of using know-how which is unknown to competitors is, like goodwill, a competitive advantage. This advantage can be diminished by the development by third party competitors of their own know-how in the particular field of research. Unlike third parties the transferrer of an undertaking remains aware of the contents of any transferred know-how, since he cannot divest himself of his own knowledge. For this reason it appears legitimate to protect the transferee in order for a certain time to enable him to acquire the undertaking with its competitive position undiminished. This need to protect the competitive position of the undertaking provides the justification for and prescribes the time limits to any non-competition clause involved.

In determining the duration of the non-competition clause, the factors particularly to be taken into account are the nature of the transferred know-how, the opportunities for its use and the knowledge possessed by the purchaser. It is also reasonable to assume that the transferee will actively exploit the assets transferred. A distinction must be made between know-how existing at the date of transfer and new or further developments by the transferrer based on or in connection with the transferred know-how. A non-competition clause extending to new or further developments can be of shorter duration.

In respect of geographical extent and subject-matter the non-competition clause must in normal circumstances be confined to those markets in which the undertaking was active before its sale, or in which it may be regarded as a potential compe-

titor on the basis of its relevant and demonstrable activity.

4. Having regard to the foregoing considerations the Commission finds that in this case the non-competition clause greatly exceeds that which is needed to secure the legitimate object of the agreement, namely, to secure to the buyer the transfer of the full commercial value of the transferred undertaking, and that at the time of this Decision the maintenance of that clause constitutes an appreciable restriction of competition.

- (a) In so far as the non-competition clause also covers non-commercialized research and development, it clearly exceeds the limits of what may be agreed to safeguard the takeover of an undertaking.

The development by the transferrer of the results of his research even to the stage of industrial use does not, provided no breach of the obligation of secrecy is involved, jeopardize the achievement of the legitimate purpose of the agreement. As long as the transferrer does not exploit the results of his research and development activity in such a way as to compete directly or indirectly with the purchaser of the undertaking, there is no adverse effect either on the undertaking's market position or on the value of the acquisition, and likewise there is no risk of customers being taken away.

It is clear that Dr Reuter would lose touch with scientific and technical progress if he did not continue research and development in polyurethanes, where there is constant innovation. His continuance in research would be in line with the Community's interest in maintaining genuine competition within the common market. If the prohibition on research and development were upheld, there would be a danger of his being eliminated once and for all as a potential competitor. This prohibition must thus be regarded as a clause which was *ab initio* unjustified as a safeguard for the takeover and which has as its object and effect an appreciable restriction of competition.

- (b) A non-competition clause restricting the commercial exploitation of technical knowledge in the areas covered by the agreement can be accepted only to the extent that such exploitation would hinder the acquisition of the transferred assets of the undertakings concerned and thereby diminish their value.

During the period required by BASF to incorporate the acquired undertakings within its group and to build up its own clientele, BASF considered it reasonable justification for the restriction of

competition that the transferrer might use the assigned know-how in competing for the customers of the transferred undertakings. The know-how in the present case consists mainly of recipes for mixes of polyurethane raw materials adapted to particular types of use and thus to particular customers. On the other hand, it should be remembered that the transferred undertakings have continued to use the assigned know-how, so that it is reasonable to assume that, after an initial period of several years of complete protection from the 'insider competition' of Dr Reuter, BASF is now able to make full use of the know-how transferred in its dealings with its customers. There are therefore no grounds remaining for preventing Dr Reuter, by means of the non-competition clause, from entering the market as a competitor with new further developments based on the transferred know-how.

With respect to the determination of the period necessary for the incorporation of the transferred undertakings, there is no evidence to suggest that BASF met any special difficulties in reorganizing these fully operational undertakings which could not be overcome by an active management in a relatively short time. As to the practical arrangement of customer-supplier relationships — taking polyurethane customers in the motor vehicle industry as an example — BASF stated that supply contracts were normally terminable at six months' notice, or a year's notice at the most. Thus Elastomer's existing customers had repeated opportunities over a period of several years to change their supplier. Those who chose not to do so after this time must therefore be regarded as among the clientele acquired by BASF's own efforts. In this sense BASF can be said to have attained the former market position of the undertakings it had taken over. A longer protection by means of the non-competition clause seems unjustified, because the customer relationships with Elastomer have been replaced by new relationships with BASF.

Account has been taken of the fact that the field of activity of the transferred undertakings was a wide one and that the customer relations were not easy to manage in view of the activities of the Elastomer group, which in 1971 comprised 50 firms extending over 11 countries.

On the other hand, BASF is a financially strong multinational enterprise with an internationally experienced management, with its own relevant experience appropriate to the new field of activities. Moreover, the acquired group of undertakings was taken over as a going concern.

In considering the transfer of know-how in this field it is to be noted that the rapid progress of polyurethane research and the constant emergence of new raw materials produces constant changes in manufacturing processes, so that continuous research efforts are needed.

Even if it were accepted that the development of new know-how emerges in a step-by-step process, it may be considered that over a period of several years the sum of these individual steps would give an active firm a considerable competitive advantage over an inactive firm.

Having considered these aspects, the Commission still takes the view that, in spite of the importance of the acquired goodwill and know-how at the time of transfer, BASF should not, in any event at the date of this Decision (being approximately five years after the takeover), need special protection from the competition of Dr Reuter.

- (c) The contention by BASF that the non-competition clause, in its scope as agreed between the parties, was necessary in order to protect the secrecy of the transferred know-how cannot be accepted.

It is not necessary to decide whether the terms of the obligation of secrecy agreed between the parties with respect to the assigned know-how are compatible at all with the rules of competition in the Treaty. The following general observations may however be made.

The obligation of secrecy towards third parties does not in itself affect the competitive relationship between transferrer and transferee, but is completely compatible with independent behaviour by the transferrer in the fields covered by the agreement. In the present case the technical knowledge transferred consisted primarily of recipes for polyurethane mixes specifically adapted to customers' requirements.

In view of the rapid development of technology in polyurethane chemistry, it may be questioned whether such know-how has at the present time sufficient economic value to justify its continued protection by an obligation of secrecy.

In no circumstances may an obligation to keep know-how secret from third parties, imposed on the transfer of an undertaking, be used to prevent the transferrer, after the expiry of the reasonable term of a non-competition clause, from competing with the transferee by means of new and further developments of such know-how.

(d) Nor can it be said that a non-competition clause of a particularly long duration would be justified by the high costs incurred by BASF in taking over the undertaking. Since the undertaking was taken over very much as a going concern, its existing liabilities could have affected the purchase price but could not have prolonged the time for which protection was needed from the competition of Dr Reuter.

(e) It follows from the foregoing that a non-competition clause may only be used to secure the market position of an undertaking. In consequence, the contention of BASF that it needed first to acquire for itself the raw material know-how which Dr Reuter had formerly received from Bayer together with raw materials and which it would no longer receive, is irrelevant.

Since the know-how involved here is that of a third party, the only question to be considered is whether the supplier-customer relationship with Bayer, on which the right to use the know-how is based, can be protected by a restriction of competition imposed upon the transferrer for a period of time longer than that necessary for taking effective charge of the acquired undertaking.

According to BASF's own statement, Bayer, a third party, ceased providing know-how of its own accord, quite independently of any action on the part of Dr Reuter. The customer relationship with Bayer was from the beginning subject to the uncertainties which occurred in the subsequent behaviour of this third party. The lack of protection against Bayer as a third party was sought to be compensated for by a restriction of competition imposed on the transferrer, not called for by any 'peculiar competitive threat' posed by the latter and therefore unreasonable.

It is moreover established that raw materials are constantly changing. The parties differ only in their views on what effect this had on the 'revision of recipe books'. These continuing developments in raw materials constitute in the eyes both of Bayer and of BASF new developments and cannot therefore be included among the assets of the transferred firm contributing to its competitive position at the time it was taken over. Both Bayer and the Elastomer group carry out independent research and development at their respective production stages. Because their research and development can take separate courses, it cannot be said to follow, even if one were to accept the

submissions of BASF, that BASF would have been able to go on using the Bayer raw material even if Bayer had continued to provide know-how. The raw material problem is a general one which arises from the rapid advances which are being made in polyurethane chemistry.

The protection of such advances, i.e. the protection of future activity, cannot serve as justification for the prohibition. As soon as the takeover of the assets was complete, the production facilities of the undertakings being fully operational, were able to use the Bayer raw materials supplied at that time; and it is clear that, at least as far as raw materials are concerned, Bayer continued its supplies.

5. The non-competition clause is also likely to affect trade between Member States, since it affects goods and services which, if they could be offered by Dr Reuter, would or could be the subject of trade between Member States. This applies also to cooperation between Dr Reuter and undertakings in non-Community countries, which may be restricted by the clause in so far as such undertakings could become suppliers and competitors in the common market.

Through his remaining companies, and by reason of his advisory activities, Dr Reuter would normally be able to act as a competitor in the relevant European market. His importance is in relation to that field of the polyurethane market in which stage 3 products are transformed by end-users, for the most part by such users themselves, in accordance with their own needs. This field amounts to 25 % of the entire polyurethane market in Europe. Dr Reuter supplied systems in this field and could again do so were the restriction on competition to be removed. It seems clear that the provision of application know-how to enable foaming to be carried out in the various localities where polyurethane is used has, as regards inter-State trade in finished polyurethane foams, immediate advantages in terms of reduced transport costs. BASF itself stressed that competition could be more easily affected if Dr Reuter, acting as an adviser, were to place his extensive knowledge at the disposal of competing firms. With the systems he has developed, Dr Reuter could help to reduce considerably the share of the market (at present some 75 %) now held by goods foamed from stage 2 products to end-products under the multicomponents system. The polyurethane market is already a substantial one and continues to expand as new applications for polyurethanes are found. The restriction of competition on this market and the effect on trade between Member States is therefore appreciable.

III. Applicability of Article 85 (3) of the EEC Treaty

An exemption under Article 85 (3) cannot be considered, since the agreement, although notifiable, was not notified to the Commission (Article 4 (1) and (2) of Regulation No 17). The agreement in that it excludes any activity by Dr Reuter throughout the common market, relates to imports and exports between Member States (Article 4 (2) (1)). The exception set out in Article 4 (2) (2) (b) does not apply, because restrictions have been imposed on Dr Reuter as the assignor of the know-how. Moreover, it is not apparent how a restriction of competition of the scope of the prohibition on research, development, manufacture and application in the present case contributes to promoting technical or economic progress while allowing the consumer a fair share of the resulting benefit. It cannot be contended, in the light of BASF's financial strength, which now supports the acquired group of companies, that the assumption by BASF of liabilities amounting to DM 130 million entitled it to special protection for a period of eight years. The restriction of competition provides no appreciable objective advantages to offset the serious disadvantages for competition in the relevant market.

IV. Applicability of Article 3 (1) of Council Regulation No 17

Article 3 (1) of Regulation No 17 empowers the Commission, where it finds, upon application or upon its own initiative, that there is an infringement of Article 85 of the EEC Treaty, by decision to require the undertakings or associations of undertakings concerned to bring such infringement to an end,

HAS ADOPTED THIS DECISION :

Article 1

Clauses IX and X of the contract of sale concluded on 25 June 1971 between Dr Gottfried Reuter and Gottfried-Reuter-Holding-GmbH of the one part and BASF Aktiengesellschaft of the other constitute an infringement of Article 85 (1) of the EEC Treaty.

Article 2

The undertakings named in Article 3 shall forthwith bring to an end the infringement referred to in Article 1.

Article 3

This Decision is addressed to the following :

1. BASF Aktiengesellschaft,
6700 Ludwigshafen, Federal Republic of Germany ;
2. Dr Gottfried Reuter,
Bergstraße,
2844 Lemförde/Hannover, Federal Republic of Germany ;
3. Gottfried-Reuter-Holding-GmbH,
Zürich, Switzerland.

Done at Brussels, 26 July 1976.

For the Commission

G. M. THOMSON

Member of the Commission

COMMISSION DECISION

of 16 September 1976

prolonging the duty-free importation of goods for free distribution to the earthquake victims in the Friuli region

(Only the Italian text is authentic)

(76/744/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 1410/74 of 4 June 1974 on the tariff treatment applicable to goods imported for free circulation in the event of disasters occurring in the territory of one or more Member States⁽¹⁾, and in particular Article 2 thereof,

Having regard to the request made by the Government of the Italian Republic dated 12 May 1976,

Whereas, by the Decision of 14 May 1976⁽²⁾ in response to this request, the Commission authorized the duty-free importation of goods for free distribution to the earthquake victims in the Friuli region; whereas this duty-free admission was extended until 15 September 1976 by the Commission Decision of 15 July 1976⁽³⁾;

Whereas the Commission's consultation with the Italian Government under Article 3 of the said Decision has revealed that the current situation in the region concerned justifies the extension of the provisions in Article 1 thereof for all goods imported for free circulation under the conditions laid down in Article 1 of Regulation (EEC) No 1410/74;

Whereas such extension should be limited to the period ending 31 December 1976 in order to allow the Commission to re-examine the situation on the basis of information communicated by the Government of the Italian Republic concerning the scale and nature of importations carried out under the exemption;

Whereas the other Member States have been consulted as laid down in Article 2 of Regulation (EEC) No 1410/74,

1. The provision for admission free of import duties, under Article 1 (1) of the Commission Decision of 14 May 1976, shall be extended until 31 December 1976 for all goods imported for free circulation by State organization or by organizations approved by the competent Italian authorities for the purpose of being distributed by them free to the earthquake victims in the Friuli region, or made available free of charge whilst remaining the property of the organizations in question.

2. The provision for admission free of import duties, under Article 1 (2) of the said Decision, for goods imported for free circulation by the relief units to cover their own requirements during the period of their operations shall also be extended until 31 December 1976.

Article 2

1. The Government of the Italian Republic shall communicate to the Commission all information regarding the nature and quantities of the various goods admitted free of duty under Article 1.

2. The communication required under paragraph 1, covering the period 7 September to 7 December 1976 shall reach the Commission not later than 13 December 1976.

Article 3

After consultation with the Government of the Italian Republic, the Commission shall consider within three months from the date of the notification of this Decision, whether this Decision should be maintained, modified or repealed.

⁽¹⁾ OJ No L 150, 7. 6. 1974, p. 4.

⁽²⁾ OJ No L 131, 20. 5. 1976, p. 19.

⁽³⁾ OJ No L 195, 21. 7. 1976, p. 16.

Article 4

This Decision shall come into effect from 16 September 1976.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 September 1976.

For the Commission

Carlo SCARASCIA MUGNOZZA

Vice-President
