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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 269/77
of 8 February 1977**

amending Regulation (EEC) No 1794/76 introducing a derogation from Regulation (EEC) No 155/71 on the production refund on olive oil used in the manufacture of certain preserved foods

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1707/73⁽²⁾, and in particular the second paragraph of Article 19 thereof,

Having regard to Council Regulation No 162/66/EEC of 27 October 1966 on trade in oils and fats between the Community and Greece⁽³⁾, and in particular Article 8 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 601/76 of 15 March 1976 laying down special measures in particular for the determination of the offers of olive oil on the world market⁽⁴⁾ and Council Regulation (EEC) No 602/76 of 15 March 1976 laying down special measures in particular for the determination of the offers of olive oil on the Greek market⁽⁵⁾ provide that, when certain conditions are fulfilled, the import levies must be fixed by tendering procedure;

Whereas Regulation (EEC) No 1794/76⁽⁶⁾ derogates, in cases where the tendering procedure referred to in Article 2 of Regulations (EEC) No 601/76 and (EEC) No 602/76 applies, from Article 3 of Council Regulation (EEC) No 155/71 of 26 January 1971 on the production refund on olive oil used in the manufacture of certain preserved foods⁽⁷⁾;

Whereas Regulations (EEC) No 601/76 and (EEC) No 602/76 have been replaced by Regulations (EEC) No 2843/76⁽⁸⁾ and (EEC) No 2844/76⁽⁹⁾; whereas reference should therefore be made to the latter two Regulations,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 (1) of Regulation (EEC) No 1794/76 the reference to Regulations (EEC) No 601/76 and (EEC) No 602/76 is hereby replaced by a reference to Regulations (EEC) No 2843/76 and (EEC) No 2844/76.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 8 February 1977.

For the Council

The President

Anthony CROSLAND

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 175, 29. 6. 1973, p. 5.

⁽³⁾ OJ No 197, 29. 10. 1966, p. 3393/66.

⁽⁴⁾ OJ No L 72, 28. 3. 1976, p. 1.

⁽⁵⁾ OJ No L 72, 28. 3. 1976, p. 3.

⁽⁶⁾ OJ No L 201, 27. 7. 1976, p. 3.

⁽⁷⁾ OJ No L 22, 28. 1. 1971, p. 5.

⁽⁸⁾ OJ No L 327, 26. 11. 1976, p. 4.

⁽⁹⁾ OJ No L 327, 26. 11. 1976, p. 6.

COUNCIL REGULATION (EEC) No 270/77**of 8 February 1977**

opening, allocating and administering a Community tariff quota for ferro-chromium containing not less than 4 % by weight of carbon, falling within subheading ex 73.02 E I of the Common Customs Tariff, and extending the benefit of this quota to certain imports of ferro-chromium containing a quantity of between 3 and 4 % by weight of carbon (1977)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Having regard to the draft Regulation submitted by the Commission,

Whereas for ferro-chromium containing not less than 4 % by weight of carbon, Community production is, to a variable degree, inadequate and producers are unable to meet the total requirements of consumer industries in the Community; whereas it is therefore in the Community's interest to suspend totally in respect of this metal the application of the Common Customs Tariff duty until 31 December 1977, within a suitable tariff quota; whereas in order not to raise the question of the prospects for development of the Community production sector and taking into account the uncertainties which surround the different ferro-alloy consumption sectors, it is appropriate to fix the quota volume at the provisional level of 52 000 tonnes; whereas for the same reasons Member States should be free to authorize charges to be made against this volume only subject to the products being used for certain purposes; whereas the fixing of this amount, relating to prudent estimates, does not exclude future adjustment;

Whereas relatively limited imports of ferro-chromium containing a quantity of between 3 and 4 % by weight of carbon are foreseeable for this quota period; whereas provision should be made on a temporary basis for the extension of the benefit of the tariff quota in question to these imports, limiting it however to 20 % of the quota volume taking account of the existence of Community production;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate of duty for the tariff quota should be applied consistently to all imports until the quota is exhausted; whereas in the light of these principles, arrangements for the utilization of the tariff quota based on an allocation among Member States would

seem to be consistent with the Community nature of the quota; whereas, to correspond as closely as possible to the actual trend in the market in the product in question, allocation of the quota should be in proportion to the requirements of the Member States as calculated by reference to statistics of imports from third countries during a representative reference period and to the economic outlook for the quota period in question;

Whereas, however, since the quota is an autonomous Community tariff quota intended to cover import needs arising in the Community, it may, as an experiment, be allocated on the basis of the temporary import needs from third countries expressed by each of the Member States; whereas this system of allocation also ensures the uniform application of the Common Customs Tariff;

Whereas, to take account of future import trends for the product concerned, the quota should be divided into two tranches, the first being allocated among the Member States and the second held as a reserve to cover subsequently the requirements of Member States which have exhausted their initial shares and any additional requirements which might arise in the other Member States; whereas, to give importers of the Member States some degree of certainty, the first tranche of the tariff quota should be fixed at a relatively high level which could be 48 460 tonnes;

Whereas Member States may exhaust their initial shares at different rates; whereas to avoid disruption of supplies on this account it should be provided that any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas each time its additional share is almost exhausted a Member State should draw a further share, and so on as many times as the reserve allows; whereas the initial and additional shares should be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the Commission and the Commission must be in a position to keep account of the extent to which the quotas have been used up and to inform the Member States accordingly;

Whereas if at a given date in the quota period a considerable quantity of a Member State's initial share remains unused it is essential that such State should return a significant proportion thereof to the reserve, in order to prevent a part of a quota from remaining unused in one Member State while it could be used in others ;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any measures concerning the administration of the shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION :

Article 1

1. From the date of entry into force of this Regulation and until 31 December 1977 a tariff quota of 52 000 tonnes shall be opened within the Community in respect of ferro-chromium containing not less than 4 % by weight of carbon, falling within subheading ex 73.02 E I of the Common Customs Tariff.

2. During this period the Member States shall be authorized within the 20 % limit of the quotas allocated to them or which they levy on the reserve in accordance with Articles 2 and 3 to charge against the said tariff quota, imports of ferro-chromium containing a quantity of between 3 and 4 % by weight of carbon.

3. Importations of the products in question, which already benefit from exemption from customs duties under another preferential tariff system, are not to be charged against this tariff quota.

4. Within this quota, the customs tariff duty shall be totally suspended.

5. New Member States shall apply duties on imports within this quota calculated in accordance with the relevant provisions of the Act of Accession.

Article 2

1. A first instalment of 48 460 tonnes of this Community tariff quota shall be allocated among the Member States ; the shares, which, subject to Article 5 shall be valid until 31 December 1977, shall be as follows :

Benelux	9 500 tonnes,
Denmark	84 tonnes,
Germany	12 714 tonnes,
France	7 624 tonnes,
Ireland	8 tonnes,
Italy	4 000 tonnes,
United Kingdom	14 530 tonnes.

2. The second instalment of 3 540 tonnes shall constitute the reserve.

Article 3

1. As soon as one of the Member States referred to in Article 2 has used 90 % or more of its initial share as fixed in Article 2 (1), or of that share minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10 % of its initial share rounded up as necessary to the next whole number.

2. As soon as one of the Member States, after exhausting its initial share, has used 90 % or more of the second share drawn by it, that Member State shall forthwith, in the manner and to the extent provided in paragraph 1, draw a third share equal to 5 % of its initial share.

3. As soon as one of the Member States, after exhausting its second share, has used 90 % or more of the third share drawn by it, that Member State shall forthwith and on the same conditions draw a fourth share equal to the third.

This process shall continue until the reserve is exhausted.

4. Notwithstanding paragraphs 1 to 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 31 December 1977.

Article 5

The Member States shall not later than 1 October 1977 return to the reserve the unused portion of their initial share which on 15 September 1977 exceeds 20 % of the initial amount. They may return a greater portion if there are grounds for believing that such portion may not be used in full.

Not later than 1 October 1977 the Member States shall notify the Commission of the total quantities of the products in question imported up to and including 15 September 1977 and charged against the Community quota and of any portion of their initial shares returned to the reserve.

Article 6

Member States may restrict the product in question which may be charged against their quota shares to products to be used for certain purposes.

Article 7

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the information reaches it, inform each State of the extent to which the reserve has been used up.

Not later than 5 October 1977 it shall inform the Member States of the amounts still in reserve following any return of shares pursuant to Article 5.

It shall ensure that when an amount exhausting the reserve is drawn, the amount so drawn does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

Article 8

1. The Member States shall take all appropriate measures to ensure that additional shares drawn

pursuant to Article 3 are opened in such a way that importations may be charged without interruption against their accumulated share of the tariff quota.

2. The Member States shall ensure that importers of the product in question established in their territories have free access to the shares allocated to them.

3. The Member States shall charge imports of the product in question against their shares as and when the product is entered with the customs authorities for home use.

4. The extent to which the Member States have used up their shares shall be determined on the basis of the importations charged against their shares in accordance with paragraph 3.

Article 9

At the request of the Commission, the Member States shall inform it of imports charged against their shares.

Article 10

The Member States and the Commission shall cooperate closely to ensure that this Regulation is complied with.

Article 11

This Regulation shall enter into force on the seventh day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 8 February 1977.

For the Council

The President

Anthony CROSLAND

COMMISSION REGULATION (EEC) No 271/77**of 9 February 1977****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 organiza-
tion of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 3138/76⁽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 Regula-
tion (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 10 February
1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 354, 24. 12. 1976, p. 1.

⁽³⁾ OJ No L 206, 31. 7. 1976, p. 62.

ANNEX

to the Commission Regulation of 9 February 1977 fixing the import levies on cereals and on wheat or rye flour groats and meal

(u.a./tonne)

CCT heading No	Description of goods	Levies
10.01 A	Common wheat, and meslin	81.74
10.01 B	Durum wheat	127.22 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	62.48 ⁽⁶⁾
10.03	Barley	38.03
10.04	Oats	36.15
10.05 B	Maize, other than hybrid maize for sowing	47.02 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	54.54 ⁽⁴⁾
10.07 C	Grain sorghum	56.44 ⁽⁴⁾
10.07 D	Other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	126.04
11.01 B	Rye flour	99.05
11.02 A I a)	Durum wheat groats and meal	207.79
11.02 A I b)	Common wheat groats and meal	135.11

⁽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./tonne.

⁽²⁾ Where maize originating in the ACP or OCT is imported into the French overseas departments, the levy is reduced by 6 u.a./tonne 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./tonne.

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

⁽⁵⁾ Where durum 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./tonne.

⁽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 272/77**of 9 February 1977****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 3138/76⁽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 10 February
1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 354, 24. 12. 1976, p. 1.

⁽³⁾ OJ No L 206, 31. 7. 1976, p. 64.

ANNEX

to the Commission Regulation of 9 February 1977 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(u.a./tonne)

CCT heading No	Description of goods	Current 2	1st period 3	2nd period 4	3rd period 5
10.01 A	Common wheat, and meslin	0	0	0	0
10.01 B	Durum wheat	0	0	0	1.23
10.02	Rye	0	0	0	4.75
10.03	Barley	0	0.76	0.76	3.30
10.04	Oats	0	0	0	4.75
10.05 B	Maize, other than hybrid maize for sowing	0	4.37	4.37	6.46
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	1.14	1.14	2.66
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

(u.a./tonne)

CCT heading No	Description of goods	Current 2	1st period 3	2nd period 4	3rd period 5	4th period 6
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	1.35	1.35	5.87	5.87
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	1.01	1.01	4.39	4.39
11.07 B	Roasted malt	0	1.18	1.18	5.12	5.12

COMMISSION REGULATION (EEC) No 273/77
of 9 February 1977
fixing the import levies 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 Article
11 (2) thereof,

Whereas the import levies on rice and broken rice
were fixed by Regulation (EEC) No 2137/76 ⁽²⁾, as last
amended by Regulation (EEC) No 226/77 ⁽³⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 2137/76
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 table annexed to
this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the products listed
in Article 1 (1) (a) and (b) of Regulation (EEC) No
1418/76 are hereby fixed as shown in the table
annexed to this Regulation.

Article 2

This Regulation shall enter into force on 10 February
1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 240, 1. 9. 1976, p. 5.

⁽³⁾ OJ No L 31, 3. 2. 1977, p. 5.

(2) In accordance with Regulation (EEC) No 706/76, the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

COMMISSION REGULATION (EEC) No 274/77**of 9 February 1977****fixing the premiums to be added to the import levies 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 Article
13 (6) thereof,

Whereas the premiums to be added to the levies on
rice and broken rice were fixed by Regulation (EEC)
No 2138/76 ⁽²⁾, as last amended by Regulation (EEC)
No 227/77 ⁽³⁾;

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 table annexed to this Regula-
tion,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums to be added to the import levies fixed
in advance in respect of rice and broken rice are
hereby fixed as shown in the table annexed to this
Regulation.

Article 2

This Regulation shall enter into force on 10 February
1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 240, 1. 9. 1976, p. 8.

⁽³⁾ OJ No L 31, 3. 2. 1977, p. 7.

ANNEX

to the Commission Regulation of 9 February 1977 fixing the premiums to be added to the import levies on rice and broken rice

(u.a. / tonne)

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

COMMISSION REGULATION (EEC) No 275/77

of 9 February 1977

fixing the 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 3138/76⁽²⁾, and in particular the first sentence of the last subparagraph of Article 19 (2) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 19 of Regulation (EEC) No 3330/74 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar⁽³⁾, as last amended by Regulation (EEC) No 1489/76⁽⁴⁾, provides that when refunds on white and raw sugar, undenatured and exported in the natural state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 3 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽⁵⁾;

Whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar⁽⁶⁾, as amended by Regulation (EEC) No 1499/76⁽⁷⁾;

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

Whereas, in special cases, the amount of the refund may be fixed by other legal means;

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 refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying these rules to the present situation on the market in sugar and in particular to quotations or prices for sugar 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 measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

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, are hereby fixed at the amounts shown in the Annex.

Article 2

This Regulation shall enter into force on 10 February 1977.

(1) OJ No L 359, 31. 12. 1974, p. 1.

(2) OJ No L 354, 24. 12. 1976, p. 1.

(3) OJ No L 143, 25. 6. 1968, p. 6.

(4) OJ No L 167, 26. 6. 1976, p. 13.

(5) OJ No L 89, 10. 4. 1968, p. 3.

(6) OJ No L 50, 4. 3. 1970, p. 1.

(7) OJ No L 167, 26. 6. 1976, p. 29.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 9 February 1977 fixing the refunds on white sugar and raw sugar exported in the natural state

<i>(u.a./100 kg)</i>		
CCT heading No	Description of goods	Refund
17.01	Beet sugar and cane sugar, solid :	
	A. White sugar	16.64
	B. Raw sugar :	
	(a) Candy sugar	13.16 ⁽¹⁾
	(b) Other raw sugar	15.31 ⁽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 276/77

of 9 February 1977

amending Regulation (EEC) No 753/76 laying down detailed rules for the sale of skimmed-milk powder for use in animal feed pursuant to Regulation (EEC) No 563/76

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 7 (5) thereof,

Having regard to Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs⁽³⁾, and in particular Article 9 (1) thereof,

Whereas, with a view to the introduction of new rules on the use of skimmed-milk powder from intervention stocks for animal feed, Article 7a of Commission Regulation (EEC) No 753/76 of 31 March 1976 laying down detailed rules for the sale of skimmed-milk powder for use in animal feed pursuant to Regulation (EEC) No 563/76⁽⁴⁾, as last amended by Regulation (EEC) No 94/77⁽⁵⁾, established a transitional system to be applied with effect from the end of the system of compulsory purchase ;

Whereas the time limits laid down for the transitional system must be extended to allow for the introduction of the new provisions ;

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

HAS ADOPTED THIS REGULATION :

Article 1

Article 7a of Regulation (EEC) No 753/76 is hereby amended as follows :

1. in the second subparagraph of paragraph 2, for '28 February 1977' read '31 March 1977' ;
2. in paragraph 4, for '1 March 1977' read '15 March 1977'.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 67, 15. 3. 1976, p. 9.

⁽³⁾ OJ No L 67, 15. 3. 1976, p. 18.

⁽⁴⁾ OJ No L 88, 1. 4. 1976, p. 1.

⁽⁵⁾ OJ No L 16, 19. 1. 1977, p. 5.

COMMISSION REGULATION (EEC) No 277/77**of 9 February 1977****amending Regulation (EEC) No 22/77 on the transfer to the Italian intervention agency of the first instalment of butter pursuant to Regulation (EEC) No 2452/76**

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 6 (7) thereof,

Having regard to Council Regulation (EEC) No 2452/76 of 5 October 1976 on the transfer to the Italian intervention agency of butter held by the intervention agencies of other Member States⁽³⁾, and in particular Article 1 (2) thereof,

Whereas Article 5 of Commission Regulation (EEC) No 22/77 of 5 January 1977 on the transfer to the Italian intervention agency of the first instalment of butter pursuant to Regulation (EEC) No 2452/76⁽⁴⁾ provides that, pending other provisions, 1 000 tonnes of that first instalment may be sold pursuant to Commission Regulation (EEC) No 1717/72 of 8 August 1972 on the sale of butter at a reduced price to non-profit-making institutions and organizations⁽⁵⁾, as last amended by Regulation (EEC) No 2575/76⁽⁶⁾; whereas in view of the specific reason for the transfer and taking account of the development of the butter market in Italy, the 4 000 tonnes of butter remaining for sale should be made available in accordance with Commission Regulation (EEC) No 2315/76 of 24

September 1976 on the sale of butter from public stocks⁽⁷⁾;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 5 of Regulation (EEC) No 22/77 is hereby amended to read as follows:

Article 5

The sale by the Italian intervention agency of the butter referred to in this Regulation shall be carried out as follows:

- (a) 1 000 tonnes shall be sold, in accordance with Regulation (EEC) No 1717/72, to non-profit-making institutions and organizations established in Italy;
- (b) the remaining 4 000 tonnes shall be sold in accordance with Regulation (EEC) No 2315/76.

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

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

(2) OJ No L 67, 15. 3. 1976, p. 9.

(3) OJ No L 279, 9. 10. 1976, p. 1.

(4) OJ No L 5, 7. 1. 1977, p. 8.

(5) OJ No L 181, 9. 8. 1972, p. 11.

(6) OJ No L 293, 23. 10. 1976, p. 23.

(7) OJ No L 261, 25. 9. 1976, p. 12.

COMMISSION REGULATION (EEC) No 278/77**of 9 February 1977****amending Regulation (EEC) No 2990/76 on special detailed rules for the application of the system of import and export licences for 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 3138/76⁽²⁾, and in particular Article 12 (2) thereof,

Whereas special detailed rules for the application of the system of import and export licences were established for sugar by Commission Regulation (EEC) No 2990/76 of 9 December 1976 on special detailed rules for the application of the system of import and export licences for sugar⁽³⁾; whereas, in view of the need to facilitate sales to third countries of raw sugar and of sugars produced outside the maximum quota, the period of validity of export licences for these sugars should be extended from three to five months;

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

HAS ADOPTED THIS REGULATION:

Article 1

The first subparagraph of Article 5 (3) of Regulation (EEC) No 2990/76 is hereby amended to read as follows:

'3. Unless otherwise decided under the terms of the relevant invitation to tender, an export licence for the products specified in Article 1 (1) of Regulation (EEC) No 3330/74 shall be valid:

- from its day of issue, within the meaning of Article 9 (1) of Regulation (EEC) No 193/75, until the end of the third following month, except for the sugar referred to in Article 3 (1), in which case the licence shall be valid until the end of the fifth following month,
- in the case of the products falling within tariff subheading 17.01 A where Article 9 applies, from its effective day of issue until the end of the third following month,
- in the case of the products falling within tariff subheading 17.01 B where Article 9 applies, from its effective day of issue until the end of the fifth following month.

Article 2

This Regulation shall enter into force on 10 February 1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 354, 24. 12. 1976, p. 1.

⁽³⁾ OJ No L 341, 10. 12. 1976, p. 14.

COMMISSION REGULATION (EEC) No 279/77

of 9 February 1977

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 organ-
ization of the market in sugar ⁽¹⁾, as last amended by
Regulation (EEC) No 3138/76 ⁽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 268/77 ⁽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 10 February
1977.

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

Done at Brussels, 9 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 354, 24. 12. 1976, p. 1.

⁽³⁾ OJ No L 172, 1. 7. 1976, p. 31.

⁽⁴⁾ OJ No L 37, 9. 2. 1977, p. 5.

ANNEX

to the Commission Regulation of 9 February 1977 fixing the import levies on white sugar
and raw sugar

(u.u./100 kg)		
CCT heading No	Description of goods	Levy
17.01	Beet sugar and cane sugar, solid :	
	A. White sugar	19.34
	B. Raw sugar	17.03 ⁽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.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 December 1976

relating to a proceeding under Article 85 of the EEC Treaty

(IV/28.812 Theal/Watts)

(Only the English and Dutch texts are authentic)

(77/129/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 3, 5 and
15 thereof,

Having regard to the notification made on 24 January
1963, pursuant to Article 5 (1) of Regulation No 17,
by Theal N.V. of Amsterdam, Netherlands, of an oral
agreement made on 8 September 1956 between Theal
N.V. and Mr Cecil E. Watts of Sunbury-on-Thames in
the United Kingdom,

Having regard to the application submitted to the
Commission on 30 January 1974 pursuant to Article
3 of Regulation No 17 on behalf of Mr Jacob Dietrich
Wilkes of Leeuwarden, Netherlands,

Having regard to the Commission's decision of 2
December 1975 to initiate a proceeding in this case,

Having heard the undertakings and persons
concerned in accordance with Article 19 of Regula-
tion No 17 and with Regulation No 99/63/EEC of 25
July 1963⁽²⁾,

Having regard to the opinion of the Advisory
Committee on Restrictive Practices and Dominant
Positions, delivered pursuant to Article 10 of Regula-
tion No 17 on 19 October 1976,

Whereas :

I. THE FACTS MAY BE SUMMARIZED AS
FOLLOWS

In 1954, Mr Cecil E. Watts of Sunbury-on-Thames,
United Kingdom, who had recently invented the first
of a series of products for cleaning and maintaining
gramophone records, started a business for the manu-
facture and sale of these products.

The principal products now manufactured by Cecil E.
Watts Ltd are as follows :

- (a) Watts' 'Dust Bug'. This device is an automatic
record cleaner for transcription turntables. It was
the first product to be manufactured by Watts.
- (b) Watts' 'Parostatik' Disc Preener. This device is
used for the maintenance of new records which
have not had previous anti-static treatment.
- (c) Watts' 'Manual Parastat'. This device is for use with
both new and old records and for restoring the
quality of old records. It is also sold with a 'humid
mop' which is a device to moisten the record
before using the Manual Parastat.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

- (d) The Hi-Fi Parastat kit, consisting of stylus cleaner, brush and pad for use with high quality record-playing equipment.

On 8 September 1956, Mr Watts appointed Theal N.V. of Amsterdam in the Netherlands (later Theal B.V., and which changed its name on 13 April 1976 to Tepea B.V., but which is hereinafter referred to as 'Theal') as his exclusive distributor in the Netherlands. This appointment was made orally.

In connection with this appointment and at about the same time Mr Watts also expressly granted Theal the exclusive right to use in the Netherlands the trade marks in respect of all the products supplied to it by Mr Watts. This grant was also made orally.

In 1960 Mr Watts incorporated his firm as a limited company under United Kingdom law with the name Cecil E. Watts Ltd (hereinafter referred to as 'Watts'). This company took over the rights and obligations of the agreement under which Mr Watts had appointed Theal as his exclusive distributor in the Netherlands with the right to use the trade marks in respect of the products concerned.

On 24 January 1963 Theal notified to the Commission an oral agreement made with Watts on 8 September 1956. This agreement referred to Theal's appointment as exclusive distributor in the Netherlands. The agreement was described as an exclusive distribution agreement of indefinite duration under which Watts was obliged to supply Theal exclusively in the Netherlands and to pass on to Theal all orders which Watts received for the Netherlands.

Theal stated in the form of notification that the agreement contained no restrictions on the freedom to purchase from, or resell to, third parties nor did it relate to the sharing of markets. Theal further stated that the agreement did not exclude free competition within the Member States or between Member States.

No mention was made of the fact that Theal had also been granted the right to use the trade marks in question in its own right in the Netherlands.

The Commission first became aware of the grant of the exclusive right to use the trade marks in question on 11 July 1975 at a meeting with Theal and Watts. Both parties, moreover, formally stated at the hearing on 23 February 1976 that the agreement of 8 September 1956 had never been amended.

On 18 April 1969 the Commission informed Theal by letter, receipt of which it admitted, that the agreement as notified, appeared, on a preliminary examination, to come within that class of agreements which do not contain restrictions on competition other than those permitted by Regulation No 67/67/EEC. The Commis-

sion referred particularly to the fact that exemption under this Regulation did not apply when the parties in any way sought to achieve absolute territorial protection either by formal agreement or by any other means.

The letter went on to inform Theal that it appeared, on the basis of the agreement as notified and the information supplied by Theal, that there was no provision affording absolute territorial protection and that accordingly the agreement could benefit from the exemption provided by the Regulation. The Commission however at the same time stated that if, in fact, the agreement did not comply with the conditions for exemption contained in Regulation No 67/67/EEC, it should be amended accordingly, in which event the agreement would only be exempted from the date of such amendment.

Theal was requested to inform the Commission of any comments arising from the preliminary examination of the agreement. Theal did not reply and accordingly the Commission had no reason to doubt that the agreement complied with the provisions of Article 1 (1) of Regulation No 67/67/EEC.

The products manufactured in the United Kingdom by Watts to which this agreement relates have proved very successful. By 1973 approximately 56 % of total production was being exported to countries outside the common market. Within the common market sales in the United Kingdom accounted for approximately 27 % of production, in the Netherlands approximately 7 % and in Germany just over 5 %. In the other Member States sales were less significant, amounting in all to less than 5 %. According to the parties sales in the United Kingdom in 1975 represented not less than 5 %, but not more than ...⁽¹⁾ of the total market for record cleaning products and in the Netherlands approximately 15 %.

After setting up the firm in 1954 to manufacture and sell the products which he invented, Mr Watts entered into oral agreements with other distributors in Belgium, Denmark, France, Germany, Ireland and Italy, all of which were impliedly continued on the incorporation of his firm. According to Watts, the terms of these oral agreements are simply that the distributor will act as exclusive distributor in his territory except in the case of Germany where the two distributors are not exclusive.

Watts supplies about 20 wholesalers in the United Kingdom according to a standard inland wholesalers' price list. Watts does not supply retailers in the United Kingdom. It does, however, maintain a small mail order business for the supply of its products direct to the consumer.

⁽¹⁾ The undisclosed data are covered by trade secrecy.

In the United Kingdom Watts has on its own admission, at least since May 1972, sold the products to its wholesale customers on the express condition that the products were not to be exported.

The instruction leaflets included with products supplied to individual wholesalers in the United Kingdom indicated that the products had been specially packed for that wholesaler and were marked 'Not for export'.

The prohibition was enforced by Watts in that Watts withdrew supplies from the United Kingdom wholesaler, Howland-West Ltd after this company had exported Watts products to the Netherlands in May 1972. Furthermore, on 28 November 1973 Watts wrote to a Dutch firm Fortissimo of Leeuwarden, in answer to an enquiry, stating:

'We thank you for your letter of 26th inst. and have to advise you that we do not accept any orders from countries where we have established distributors and we have an agreement with all our U.K. customers that they will not export any of our products sold to them for consumption on the U.K. market'.

On 11 July 1975 Watts informed the Commission that this prohibition had been intended to protect the home market and had been discontinued when the United Kingdom became a member of the EEC because it conflicted with EEC rules on competition. Watts also produced to the Commission examples of the current instruction leaflets for dispatch to United Kingdom wholesalers which did not include any prohibition on export.

At the hearing on 23 March 1976, however, the applicant, Mr Wilkes, produced conclusive evidence that the products were still being sold in the United Kingdom in February 1976 with leaflets bearing an export prohibition. As late as June 1976 a large quantity of Watts products, each with a leaflet bearing the export prohibition, were exported from a United Kingdom retailer to a dealer in the Netherlands. These products had been manufactured and packed after 11 July 1975.

The products sold for export, which are identical to the products available for the home market, are sold in accordance with the distributors' export price list expressed in sterling, all prices being stated to be wholesale nett ex works. In 1972, export prices which hitherto had been the same as or similar to the prices on the home market, began to rise in comparison with the prices on the home market. By July 1974 there were considerable differences in price for the same product, the export price generally being higher

than the domestic price, in some cases by as much as 32 %. The first rises in price coincided approximately with the imposition of the export prohibition on UK wholesalers. These differences in price were further widened by differences in currency values, particularly between the currencies of the United Kingdom and the Netherlands.

The products manufactured by Watts are all sold under trade marks registered in the United Kingdom. Watts has also obtained similar trade marks in its own name or in the name of its wholly owned subsidiary, Cecil E. Watts Export Sales Ltd, in Denmark, Germany and France. In Belgium, Luxembourg and the Netherlands, however, the trade marks relating to the products are now registered in the Benelux trade mark registry in the name of Theal in accordance with the grant referred to above. In 1971 and 1972, due to what the parties described as an administrative error, Watts and Theal had each registered the trade marks in question in the Benelux trade mark register. Watts, however, withdrew its registrations in October and November 1973, at the express request of and in agreement with Theal.

In 1972 Theal was Watts' most important exclusive distributor within the EEC, selling three times more than all the other exclusive distributors together. Watts products were also very important to Theal, representing substantially more than 25 % of its turnover. These close economic ties between them had earlier received impetus from the fact that in about 1960 Watts had agreed to put special seals on all its products supplied to Theal. These seals, bearing the Theal trade mark and the words 'Een Theal Produkt' were supplied to Watts by Theal with instructions to attach them to all Watts products supplied to Theal. The products delivered to Theal still carry such a seal.

Mr Jacob Dietrich Wilkes of Leeuwarden, Netherlands, is the proprietor of a firm known as Poort's Muziekhandel of Voorstreek 6, Leeuwarden, and his business is that of a retailer to the public for radios, record players, records and similar products, including record maintenance equipment. Up to 1972, Mr Wilkes had been a regular customer of Theal, purchasing the products of Watts for resale in his shop. In 1972, the recommended resale prices in the Netherlands were, however, substantially higher than those in the United Kingdom.

In 1972 Mr Wilkes was also the director of a business known as Audiogram B.V. of Leeuwarden which had been formed to act as wholesaler and importer for its members. Other directors were Mr P. Kardoos, of the firm Partimex Holland B.V. which owned a shop

known as King Peter in Bussum, Mr H. van der Tuin, director of the firm Willem de Jong N.V., of Rotterdam and Mr N.A. van Norden proprietor of the firm Intermezzo of Amsterdam. All these firms sold record maintenance equipment to the public.

In May 1972, Mr van Norden, acting on behalf of Audiogram, purchased a quantity of Watts products direct from Howland-West Ltd, a wholesaler in London which had purchased the products direct from Watts in the United Kingdom. The price paid by Audiogram was such that this firm was able to resell the products to Mr Wilkes at prices which put him in the position to offer these products for resale at substantially lower prices than he could for the same products purchased from Theal.

At about this time, Partimex-Holland and Willem de Jong also purchased quantities of Watts products from Audiogram and offered them for resale to the public in their shops.

On 5 September 1972 Theal wrote to Audiogram complaining that Mr van Norden of Intermezzo was selling Watts products to the public which had not been supplied by Theal.

Theal claimed that, as it was the sole owner of the trade marks for these products in the Netherlands, this act constituted an infringement of Theal's trade mark rights and was contrary to the law.

On 10 November 1972 Theal summoned Mr Wilkes to appear in summary proceedings before the President of the District Court at Leeuwarden for selling Watts products which it had not supplied and in contravention of its rights. Theal alleged in the summons that Theal alone was entitled to exploit the trade marks 'Parastat', 'Disc Preenner', 'Dust Bug' and 'Watts' and that Mr Wilkes had infringed Theal's rights by marketing goods bearing these trade marks in the Netherlands which had not been supplied by Theal.

By judgment given on 20 November 1972 the president of the Leeuwarden District Court ordered Mr Wilkes at the petition of Theal to cease within 24 hours all trade in the products bearing the trade marks referred to.

Theal has obtained similar judgments against Willem de Jong on 16 January 1973 from the District Court of Rotterdam and against Partimex Holland on 5 June 1973 from the District Court of Amsterdam. Since the Commission commenced its enquiries into this case Theal has obtained a further judgment of similar nature in the District Court of the Hague on 30 May 1975 against Radio-Technisch Bureau All-Wave B.V.

of Delft, and is continuing to write to retailers in the Netherlands who have purchased Watts products directly or indirectly from United Kingdom wholesalers claiming that such acts infringe Theal's trade mark rights in the Netherlands.

On 30 July 1973 Mr Wilkes summoned both Watts and Theal before the Amsterdam District Court seeking *inter alia* an order preventing Theal from enforcing the judgment of the Leeuwarden District Court and also a declaration that he had the right to deal in Watts products and that the defendants, Theal and Watts had no legal right to prevent him from so doing. In addition Wilkes claimed that the action of the defendants in using trade mark rights to prevent parallel imports conflicts with the rules on competition in the Treaty establishing the EEC. This action is still pending before the Court. In his summons, Mr Wilkes also referred to the duplicate registration of the trade marks then subsisting in the Benelux register. As a result Theal wrote to Watts on 10 December 1973 acknowledging Watts' ownership of the trade marks in question and requesting Watts to withdraw its registration on condition that Theal would transfer the rights back at any time on Watts' request. Watts relied on this letter and withdrew its own registrations in favour of Theal in October and November 1973.

In all the actions referred to above brought by Theal, the substance of the plaintiff's claim had been that it is entitled to exploit the trade marks referred to and that even the marketing of genuine Watts products in the Netherlands infringed the plaintiff's rights in those trade marks if such products were not supplied by Theal. Theal has expressly claimed that it is entitled to exercise trade mark rights obtained as a result of the exclusive distribution agreement with Watts and to prevent parallel imports from whatever source, including other Member States, into the Netherlands.

Theal has subsequently stated, however, both in pleadings before the Amsterdam District Court and to the representatives of the Commission at the meeting held on 11 July 1975 and at the hearing that in fact its complaints are that the goods sold by the various defendants were not genuine Watts products and that the substance therefore of the action is not infringement by marketing genuine goods but infringement by marketing counterfeit goods. The basis for all the judgments, however, and the defence hitherto in the action brought by Mr Wilkes, was that the goods were genuine Watts products which had not been supplied by Theal and that the sale of such goods without Theal's consent infringed Theal's rights in the trade marks which it owned.

In all the cases referred to above, the invoices, samples and other supporting documents submitted to the Commission, indicate that the goods imported for Mr Wilkes and the others were in fact genuine Watts products obtained from Howland-West and other United Kingdom wholesalers which had in turn obtained the goods direct from Watts. It is true that Theal has submitted evidence to the Commission of cases in which products were marketed in the Netherlands which may have infringed the trade mark rights of Theal on the grounds that they were either counterfeit or were different products which were being passed off as Watts products, but such cases have no bearing on the substance of this case.

In their formal replies to the summons which both defendants entered in the pleadings before the Amsterdam District Court on 21 November 1973, Theal declared that only Theal had the right to use the trade marks concerned and that Mr Wilkes had accordingly no right to sell the products bearing those trade marks unless he had obtained them through Theal.

In its reply Watts declared that it fully supported all the declarations and denials submitted by Theal.

Theal has, since April 1973, ceased to supply Watts products to Mr Wilkes, and Mr Wilkes has suffered substantial damage as a result both of this and the action brought by Theal.

II. THE EEC RULES ON COMPETITION

A. Article 85 (1)

Article 85 (1) of the Treaty establishing the European Economic Community prohibits, as incompatible with the common market, all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which may have as their object or effect the prevention, restriction or distortion of competition within the common market.

Watts and Theal are both undertakings and the oral exclusive distribution agreement is an agreement, within the meaning of Article 85 (1). The agreement between the parties consists firstly of Watts' oral appointment of Theal, made on 8 September 1956, as the sole distributor for Watts products in the Netherlands, whereby Watts undertook to supply only Theal in the Netherlands and to pass on to Theal all orders received by Watts for delivery in the Netherlands. The agreement also consists of the oral grant by Watts to

Theal, made at about the same time as the appointment, of the exclusive right to use the trade marks attaching to the products in the Netherlands. The agreement in the Netherlands provided Theal with absolute territorial protection, a matter which in 1956, was governed only by the applicable national law.

The export prohibition imposed on United Kingdom wholesalers enforced and strengthened the exclusivity conferred by Watts on Theal and its other exclusive distributors in the common market. In view of its special position as Watts' most important exclusive distributor in the common market, Theal was the principal beneficiary of the export prohibition.

The agreement as thus defined and performed has both as its object and effect the prevention, restriction and distortion of competition within the common market, as in combination with the effects of national law relating to trade marks, it provides Theal with the means of preventing parallel imports from the United Kingdom or any other Member State into the Netherlands.

The imposition by Watts of an export prohibition on United Kingdom wholesalers was likely to impede the freedom of action of third parties and therefore to reinforce the exclusivity enjoyed by all Watts' exclusive distributors in the common market, particularly Theal.

Competition is prevented in the Netherlands by Theal's exercise of trade mark rights to ensure that only those products supplied directly to Theal by Watts are offered for resale there. Other dealers who might wish to take advantage of the favourable prices applicable in the United Kingdom are unable to purchase from wholesalers who might otherwise agree to sell to them, with the result that consumers in the Netherlands are prevented from enjoying the benefits of any advantage in price which might be passed on to them. Dealers in the Netherlands are effectively inhibited in such trade with the United Kingdom because of the serious and real risk which confronts them that Theal will take legal action against them in the Dutch courts to enforce its rights under national law in respect of the trade marks registered in its name and to obtain substantial damages and costs. The reality of this risk has been demonstrated by Theal's success in closing four outlets for Watts products in the Netherlands through the judgments it has already obtained against retailers.

In the United Kingdom wholesalers who are or have been restricted in their outlets for the products in question by the prohibition on exports imposed on them by Watts, are further restricted as a result of

Theal's conduct in opposing parallel imports into the Netherlands from the United Kingdom by the exercise of trade mark rights.

Competition is distorted within the common market as a result of the conduct of both Watts and Theal in the performance of the agreement, which has both as its object and effect the isolation of the Netherlands from the United Kingdom for these products and which makes it possible for Theal to be unaffected by the lower prices obtaining in the United Kingdom and therefore free to charge such prices for the products in the Netherlands as are completely sheltered from all effective intra-brand competition.

Furthermore, the exercise by a trade mark owner of a right he enjoys under the legislation of one Member State to prohibit the sale, in that State, of a product that has been marketed under the same trade mark in another Member State by the original trade mark owner or with his consent, is incompatible with the rules of the EEC Treaty concerning the free movement of goods within the common market where such trade marks have a common origin.

The agreement affects both competition and the free flow of trade between the Netherlands and the United Kingdom and between the Netherlands and the other Member States thereby interfering with the objective of establishing a single market between Member States. The exercise of trade mark rights and the prohibition on exports have a direct effect on market conditions and appreciably modify the market position of both non-participating undertakings and of consumers with regard to their outlets and sources of supply respectively. This is so even though the known quantities of parallel imports in this case were small, because the restriction on potential competition is considerable. In such circumstances therefore the exercise of trade mark rights and the use of export prohibitions to suppress actual or potential competition directly affect trade between Member States to an appreciable extent and consequently come within the prohibition of Article 85 (1) of the Treaty.

Article 85 (1) of the EEC Treaty accordingly applies to the agreement.

B. Article 85 (3)

By virtue of Article 85 (3) of the Treaty, the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement which contributes to improving the production or distribution of goods, or to promoting technical or economic progress while

allowing consumers a fair share of the resulting benefit, and which does not :

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

For the benefit of exemption under Article 85 (3) to apply, however, such an agreement must first have been notified to the Commission in accordance with the provisions of either Article 4 (1) or 5 (1) of Regulation No 17, except where the requirement to make such notification is removed by the terms of Article 5 (2) or 4 (2) of that Regulation.

The agreement is not exempt from notification under Article 5 (2) or 4 (2) (b) of Regulation No 17 because its effect is not limited to imposing restrictions on the exercise of the rights of the assignee or user of trade mark rights, since third parties are prevented from freely exporting the products from the United Kingdom and importing them into the Netherlands.

In this case, although an oral agreement was notified to the Commission in accordance with Article 5 (1) of Regulation No 17, within the time limit prescribed by Article 7 (2) of that Regulation, the information supplied in the notification was incorrect and misleading. No mention was made therein of the grant by Watts to Theal of the right to use the trade marks of Watts or that the agreement, in effect, conferred upon Theal absolute territorial protection.

The agreement as notified, therefore, did not include the entire arrangement made by the parties and the actual agreement was accordingly not properly notified.

Even if the entire arrangement had been properly notified or was not required to be notified, exemption would still be unavailable as the requirements of Article 85 (3) are not satisfied. The agreement between the parties under which Theal obtained the right to use trade marks and thereby achieve absolute territorial protection by preventing parallel imports, which protection was further strengthened by the imposition of an export prohibition by Watts, does not contribute to improving the production or distribution of goods or to promoting technical or economic progress. Any benefit accruing from such absolute territorial protection is conferred only on the parties themselves and not on the consumer who is thereby deprived of the

advantages deriving from effective intra-brand competition which might arise from increased outlets and lower prices. In the circumstances of this case where no objective justification exists for restrictions enabling the parties to suppress parallel imports, such restrictions cannot be regarded as indispensable to the attainment of the objectives referred to in Article 85 (3).

C. Regulation No 67/67/EEC

Since there is expressly excluded from the exemption provided for by Regulation No 67/67/EEC both in the preamble and under the terms of Article 3 (b) thereof, any agreement under which either party makes it difficult for intermediaries or consumers to obtain the goods to which the agreement relates from other dealers within the common market, particularly by the exercise of industrial property rights, the agreement cannot benefit from this Regulation. The letter from the Commission dated 18 April 1969 could not reasonably have led Theal to believe that the agreement came within that class of agreement to which exemption was automatically granted by Regulation No 67/67/EEC because the views expressed by the Commission were based, as at least Theal well knew, on the information contained in the notification which was, for the reasons stated above, incorrect and misleading. In any event, the conclusions of the Commission were stated expressly to be subject to the condition that the agreement contained no restrictive provisions other than those notified.

D. Article 25 of Regulation No 17

Even in 1963 the agreement restricted competition within the common market since it was intended to prevent Watts products from being imported into the Netherlands, other than by Theal, either direct from the United Kingdom or via other Member States. The Court of Justice, in its ruling in the case of *Béguelin Import Co. v. G.L. Import Export S.A.* (Case No 22/71, 25 November 1971, Recueil Vol. XVII, 1971-6, page 949), held that 'An exclusive distribution agreement between a producer domiciled in a third country and a distributor established in the common market is subject to the prohibition of Article 85 of the Treaty where, in law or in fact, it prevents... these products from being imported from other Member States into the protected territory and distributed in that territory by persons other than the licensee or its customers'. The agreement is not therefore covered by Article 25 of Regulation No 17 as amended by Article 29 of the Act concerning the conditions of accession and the adjustments to the Treaties, since it does not fall

within the scope of Article 85 by virtue of accession but was in fact covered by this Article even before accession.

E. Article 15 of Regulation No 17

Article 15 (1) of Regulation No 17 provides that the Commission may by decision impose on undertakings fines of from 100 to 5 000 units of account where, intentionally or negligently, they supply incorrect or misleading information in a notification pursuant to Article 4 or 5 thereof.

Under Article 15 (2) the Commission has similar powers to impose fines of from 1 000 to 1 000 000 units of account, or a sum in excess thereof, but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently they infringe Article 85 (1) of the Treaty. In fixing the fine, regard shall be had both to the gravity and to the duration of the infringement.

Under Article 15 (5) of that Regulation, fines for infringement of Article 85 (1) of the Treaty shall not be imposed in respect of acts taking place after notification to the Commission and before its decision in application of Article 85 (3) of the Treaty, provided they fall within the limits of the activity described in the notification.

On the facts of this case, therefore, the Commission is of the opinion that the imposition of fines is justified in respect of the submission of incorrect and misleading information by Theal in the notification to the Commission dated 24 January 1963 whereby the Commission was misled as to the true contents of the agreement until its attention was drawn thereto by Mr Wilkes in his application dated 30 January 1974.

The Commission is of the opinion that fines should also be imposed on both parties in respect of their territorial exclusivity agreement because of:

- (a) the exercise of trade mark rights by Theal to prevent the parallel imports of the products in question, which did not fall within the limits of activity described in the notification, and
- (b) the enforcement of the agreement by the prohibition on export of the products in question imposed by Watts on its UK wholesalers, which was also not notified.

Having regard to the circumstances of this case the Commission does not propose to fine Watts for being concerned in supplying false or misleading information.

In assessing the amount of the fines to be imposed on either Watts or Theal in respect of the other infringements of the Treaty, the Commission does not propose to take account of infringements subsisting before May 1972, the date on which the export prohibition was clearly in force and having an effect.

The infringement by Theal in supplying incorrect and misleading information was, if not intentional, at the very least negligent in that the attention of Theal was clearly drawn in the form of notification not only to the provisions of Article 85 (1) of the Treaty but also to the obligation to inform the Commission *inter alia* of the contents of the agreement, whether the agreement involved the sharing of markets or contained restrictions on freedom to purchase from or resell to third parties, or in any other way might have the object or effect of restricting or distorting competition.

The infringement by Theal in exercising trade mark rights to prevent the parallel imports of the products in question can only have been the result of deliberate and intentional conduct. Apart from the fact that Theal was clearly aware of the existence of the rules on competition laid down by the EEC Treaty from the very fact of notification, the contents of the letter dated 18 April 1969, which Theal admits receiving, stated in the clearest terms that exclusive distribution agreements could not obtain the benefit of exemption under Article 85 (3) of the Treaty if, in particular, the agreement in any way permitted the parties to achieve absolute territorial protection whether by formal agreement or by any other means. In the light of that full explanation, any subsequent action to prevent parallel imports into the contractual territory must be regarded as involving a deliberate and intentional infringement of the provisions of Article 85 of the Treaty.

The infringement by Watts in imposing an export prohibition was intentional. Watts must have been aware of the restrictions on competition resulting from this prohibition, particularly having regard to the fact that prices of the products in question on the home market were lower than the prices of such products for export. The export prohibition combined with the exclusivity enjoyed by most of its distributors within the other Member States, could only result in the effective prevention of the free movement of the products concerned between Member States and the suppression of parallel imports.

In assessing the amount of the fines to be imposed for an infringement of Article 85 (1), the Commission must have regard both to the gravity and duration of the infringement. With regard therefore to the duration of the infringements of Article 85 (1) the Commission takes the following facts into account:

- (a) on the evidence available Theal first exercised its trade mark rights to prevent parallel imports in September 1972 and has continued to claim that right;
- (b) in respect of Watts, the export prohibition was imposed from at least May 1972 onwards during a time when its effect was likely to be most felt having regard to the widening differences between prices obtaining in the United Kingdom and prices elsewhere. The Commission is satisfied that, notwithstanding the assertions of Watts, the products were still being sold in the United Kingdom bearing a printed prohibition on export in June 1976.

In so far as the gravity of the infringements of Article 85 (1) is concerned the Commission takes into account the following facts:

- (a) only two undertakings are involved, neither of which enjoys a large share of the market for the products in question within the Community as a whole or within any single Member State;
- (b) the nature of the product is not such that it can be regarded as necessary for the consumer or to form an essential part of his expenditure;
- (c) the conduct of the parties, on the other hand, has resulted in clear restrictions on competition such as conflict with one of the basic aims of the EEC Treaty which is to establish a single market within the Community in which the undistorted forces of competition may act to the benefit of the consumer;
- (d) the conduct of Watts, in imposing a prohibition on exports, clearly contributed to the establishment of absolute territorial protection for Theal in the Netherlands. The conduct of Watts in this respect is aggravated by the fact that notwithstanding repeated assurances given by Watts to the Commission that the prohibition had been discontinued, certain products were still distributed thereafter by Watts to wholesalers in the United Kingdom with a prohibition on export contained on the leaflet enclosed with each article;
- (e) the loss to the consumer, although apparent has not been extreme, having regard to the type of product, its price and its lack of importance in the scale of priorities for the average consumer. Nevertheless the conduct of the parties has effectively contributed to the suppression of intra-brand competition and the potential effect that this competition could have on the level of prices for the products;
- (f) Theal has consistently and repeatedly claimed to have the right to use the trade marks attaching to Watts products and has exercised those rights

before the Dutch Courts on at least four occasions, continuing to do so notwithstanding that its attention had been drawn to the rules laid down by the Treaty of Rome.

Having regard to the above considerations the Commission proposes to impose the fines totalling 15 000 units of account, amounting to 54 300 Dutch guilders on Theal and the fine of 10 000 units of account, amounting to 4 166 pounds sterling on Watts, as set out in Article 4 of this Decision.

F. Article 3 (1) of Regulation No 17

The Commission proposes, therefore, to find that the undertakings party to the agreement have infringed Article 85 (1) of the Treaty establishing the European Economic Community and, in accordance with Article 3 of Regulation No 17, by decision to require such undertakings to bring the infringements to an end without further delay by refraining from any further action towards any person or undertaking calculated to prevent the sale of Watts products imported into the Netherlands.

G. Article 192 of the EEC Treaty

This Decision shall be enforceable in accordance with the provisions of Article 192 of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. The oral exclusive distribution agreement made between Theal N.V. and Mr Cecil E. Watts, now between Tepea B.V. and Cecil E. Watts Ltd, including the grant of the exclusive right to use trade marks in the Netherlands, constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

2. The supplying of incorrect and misleading information in the notification dated 24 January 1963 made by Theal N.V., now Tepea B.V., infringed Article 15 (1) (a) of Regulation No 17 of 6 February 1962.

Article 2

The application for a declaration under Article 85 (3) that Article 85 (1) is inapplicable is refused in respect of the agreement referred to in Article 1 hereof.

Article 3

The undertakings to which this Decision is addressed shall bring the infringement referred to in Article 1 (1) to an end without delay. In particular these undertakings shall refrain from all further action of any kind calculated to prevent the importation into or resale in the Netherlands of any Watts products.

Article 4

1. The following fines are imposed for infringement of Article 85 (1):

- (a) On Tepea B.V. a fine of 10 000 units of account, that is 36 200 Dutch guilders;
- (b) On Cecil E. Watts Limited, a fine of 10 000 units of account, that is 4 166 pounds sterling.

2. In addition a fine of 5 000 units of account, that is 18 100 Dutch guilders, is imposed on Tepea B.V. for supplying incorrect and misleading information in a notification made under Article 5 of the aforesaid Regulation No 17.

Article 5

This Decision shall be enforceable in accordance with the provisions of Article 192 of the Treaty establishing the European Economic Community.

Article 6

This Decision is addressed to Tepea B.V. of Amsterdam Postbus 396, Netherlands, and Cecil E. Watts Limited of Darby House, Sunbury-on-Thames, Middlesex, England.

Done at Brussels, 21 December 1976.

For the Commission

R. VOUEL

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 3093/76 of 17 December 1976 amending Regulation (EEC) No 193/75 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products

(Official Journal of the European Communities, No L 348 of 18 December 1976)

Page 19, Article 1 (Article 4a 2 (a)):

for: 'In that event, the words "licence and certificate rules observed" in that box shall be deleted',

read: 'In that event, the words "regulations on licences or certificates observed" in that box shall be deleted'.
