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I

*(Acts whose publication is obligatory)***COMMISSION REGULATION (EEC) No 303/77****of 14 February 1977****laying down general rules for the supply of skimmed-milk powder and butteroil
as food aid**

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 Articles 6 (7), 7 (5) and 28 thereof,

Whereas the Community food-aid programme
provides for the supply of considerable quantities of
skimmed-milk powder and butteroil to certain deve-
loping countries and international organizations;
whereas the skimmed-milk powder and the butter,
from which the butteroil to be supplied is manufac-
tured, should in principle be provided from the stocks
of the intervention agencies; whereas taking into
account the market situation purchases may however
also be made on the Community market, in particular
in the case of skimmed-milk powder when the inter-
vention stocks do not correspond to the characteristics
required for its particular destination;

Whereas the relevant basic rules also provide that in
respect of individual deliveries a tendering procedure
is in principle to be held to determine the transport
costs and, where necessary, the purchase price;
whereas in exceptional cases a direct award procedure
may be decided upon;

Whereas, in the light of the experience gained from
implementing food-aid programmes, it appears useful
to harmonize and consolidate into one Regulation the
implementing provisions which have hitherto applied
to individual operations;

Whereas Commission Regulation (EEC) No 1687/76
of 30 June 1976 laying down common detailed rules
for verifying the use and/or destination of products
from intervention⁽³⁾, as last amended by Regulation
(EEC) No 3135/76⁽⁴⁾, applies to products from inter-
vention stocks to be supplied as food aid under this
Regulation;

Whereas the proof that goods have been delivered to
the destination prescribed should continue to be
furnished by producing the control copy referred to in
Article 1 of Regulation (EEC) No 2315/69 of 19
November 1969 on the use of Community transit
documents for the purpose of applying Community
measures for verifying the use and/or destination of
goods⁽⁵⁾, as amended by Regulation (EEC) No
690/73⁽⁶⁾;

Whereas the following Regulations will become
redundant on publication of these general rules and
therefore have to be repealed:

- Commission Regulation (EEC) No 1365/74 of 31
May 1974 on the supply of butteroil as food aid to
certain developing countries⁽⁷⁾, as last amended by
Regulation (EEC) No 2390/75⁽⁸⁾,
- Commission Regulation (EEC) No 2121/74 of 9
August 1974 on the supply of butteroil as food aid
to the World Food Programme⁽⁹⁾, as last amended
by Regulation (EEC) No 2390/75,
- Commission Regulation (EEC) No 2557/74 of 4
October 1974 concerning the invitation to tender
for the cost of delivery, as food aid, of skimmed-
milk powder to certain third countries⁽¹⁰⁾,

⁽¹⁾ OJ No L 190, 14. 7. 1976, p. 1.

⁽⁴⁾ OJ No L 353, 23. 12. 1976, p. 38.

⁽⁵⁾ OJ No L 295, 24. 11. 1969, p. 14.

⁽⁶⁾ OJ No L 66, 13. 3. 1973, p. 23.

⁽⁷⁾ OJ No L 147, 1. 6. 1974, p. 46.

⁽⁸⁾ OJ No L 246, 20. 9. 1975, p. 5.

⁽⁹⁾ OJ No L 222, 12. 8. 1974, p. 10.

⁽¹⁰⁾ OJ No L 274, 9. 10. 1974, p. 7.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 67, 15. 3. 1976, p. 9.

- Commission Regulation (EEC) No 597/75 of 6 March 1975 concerning invitations to tender for the cost of delivery of skimmed-milk powder in public storage as food aid to the countries of the Sahel and Ethiopia⁽¹⁾,
- Commission Regulation (EEC) No 750/75 of 21 March 1975 concerning invitations to tender for the costs of manufacture and delivery of butteroil as food aid to the countries of the Sahel and Ethiopia⁽²⁾, as last amended by Regulation (EEC) No 2212/76⁽³⁾,
- Commission Regulation (EEC) No 1221/75 of 6 May 1975 concerning the conditions for invitations to tender for the costs of delivery, as food aid, of skimmed-milk powder for the World Food Programme⁽⁴⁾, as amended by Regulation (EEC) No 2061/75⁽⁵⁾,
- Commission Regulation (EEC) No 2247/75 of 29 August 1975 on the terms of invitations to tender for the cost of manufacture and delivery of butteroil as food aid to certain developing countries and to the World Food Programme⁽⁶⁾, as last amended by Regulation (EEC) No 2402/76⁽⁷⁾,
- Commission Regulation (EEC) No 2660/75 of 20 October 1975 on invitations to tender for the supply of butteroil bought on the Community market as food aid to certain developing countries and to the World Food Programme⁽⁸⁾;

Whereas the Annex to Regulation (EEC) No 1687/76 must be adapted to take account of the new legal position;

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:

TITLE I

General provisions

Article 1

When a decision is taken to supply skimmed-milk powder or butteroil as food aid to an international organization or to a developing country (hereinafter referred to as 'the recipient') the general provisions of this Regulation shall apply without prejudice to special provisions to be laid down in specific cases.

⁽¹⁾ OJ No L 63, 8. 3. 1975, p. 7.

⁽²⁾ OJ No L 74, 22. 3. 1975, p. 30.

⁽³⁾ OJ No L 249, 11. 9. 1976, p. 5.

⁽⁴⁾ OJ No L 121, 14. 5. 1975, p. 17.

⁽⁵⁾ OJ No L 209, 7. 8. 1975, p. 19.

⁽⁶⁾ OJ No L 229, 30. 8. 1975, p. 60.

⁽⁷⁾ OJ No L 270, 2. 10. 1976, p. 23.

⁽⁸⁾ OJ No L 270, 21. 10. 1975, p. 11.

Article 2

1. The delivery of skimmed-milk powder or butteroil as food aid shall be carried out by a business established in the Community (hereinafter called 'the successful tenderer') and selected in accordance with one of the procedures referred to in Article 12.

2. The delivery shall be made at one of the delivery stages listed in Annex I to this Regulation. The delivery shall be governed by the detailed procedures laid down therein, the terms used in commercial trade being disregarded.

3. When carrying out the delivery to the recipient according to the conditions laid down, the successful tenderer shall act as the agent of the Community.

Article 3

1. The successful tenderer shall be responsible for any loss or damage to the goods and shall therefore insure the goods for their value on the Community market, up to the time when the recipient draws up the relevant take-over certificate referred to in Article 4 (2).

2. Additional costs of insurance which arise from delays of over eight days, on the part of the recipient, between the actual delivery of the goods and the drawing up of the take-over certificate shall be reimbursed to the successful tenderer by the intervention agency concerned on production of the relevant proof and shall be borne by the Community without prejudice to subsequent reimbursement by the recipient.

Article 4

1. The successful tenderer shall submit to any checks carried out by the recipient's agent and for this purpose shall hand over to him a list containing the following information relating to the goods supplied:

- (a) the quantity, type, markings and numbers of the packages,
- (b) the gross and net weight of the goods,
- (c) the number of empty sacks delivered under Article 6 (3), and taken over at the relevant delivery stage,
- (d) as necessary, the number of the control copy referred to in Article 19 (2).

2. The take-over certificate which the recipient's agent shall hand over to the successful tenderer at the time of the take-over shall contain the following information :

- (a) the place and date of the take-over,
- (b) a description of the goods taken over as set out in paragraph 1 (a), (b) and (c) and, when necessary, the number of the control copy referred to in Article 19 (2),
- (c) any comments on the condition of the goods.

Article 5

1. Where delivery is made 'to the port of unloading', the intervention agency concerned shall as soon as possible notify the recipient's agent indicated by the Commission, of the name of the vessel, the date of loading, the port of unloading and the particulars referred to in Article 4 (1) (a), (b) and (c) as noted at the time of dispatch.

The successful tenderer shall notify the recipient of the expected date of arrival of the vessel at the port of unloading at least 10 days before that date.

The successful tenderer shall ensure that the charter-party contains a term that the captain shall notify the recipient at least 72 hours in advance of the estimated date of arrival of the vessel at the port of unloading.

2. Where delivery is made 'free at destination', the intervention agency concerned shall as soon as possible notify the recipient's agent indicated by the Commission, of the date of loading, the means of transport used for transporting the goods to their destination, the port of unloading and the particulars referred to in Article 4 (1) (a), (b) and (c) as noted at the time of dispatch.

The successful tenderer shall notify the recipient of the estimated date of arrival of the goods at their destination at least two days before that date.

TITLE II

Special provisions for deliveries of skimmed-milk powder

Article 6

1. The skimmed-milk powder to be supplied shall, as appropriate :

- (a) be placed at the disposal of the successful tenderer in the stores of a specified intervention agency, or
- (b) be purchased on the Community market.

2. The skimmed-milk powder shall meet the quality and packaging requirements laid down in the

Annex to Commission Regulation (EEC) No 1108/68 of 27 July 1968 on detailed rules of application for public storage of skimmed-milk powder⁽¹⁾, as last amended by Regulation (EEC) No 1457/75⁽²⁾. The packaging shall be dry, clean and undamaged.

If the skimmed-milk powder is to contain vitamin additives, the appropriate requirements shall be laid down separately for each individual delivery.

In exceptional cases, specific packaging requirements may be laid down.

3. In the case referred to in paragraph 1 (a), the intervention agency shall provide an additional 2 % of empty sacks corresponding to the sacks containing the goods. In the case referred to in paragraph 1 (b), the purchase on the Community market shall include these additional empty sacks.

In the case of delivery 'to the port of unloading' or 'free at destination' the successful tenderer shall enter these empty sacks on the bill of lading.

Article 7

1. If the skimmed-milk powder to be delivered comes from intervention stocks, it shall not be handed over by the intervention agency unless a security for delivery has been lodged, the amount of which shall correspond to the intervention price for skimmed-milk powder, applicable on the day when the milk powder is taken over, increased by 1.5 units of account per 100 kilograms.

2. The successful tenderer shall ensure that the quantity of skimmed-milk powder made available by the intervention agency corresponds to the quantity to be delivered.

It shall further ensure that the packaging of the skimmed-milk powder is dry, clean and undamaged.

3. The intervention agency shall make available the skimmed-milk powder as follows :

- in the case of a railway truck or a lorry, loaded (but not stowed) on the means of transport at the loading platform of the warehouse,
- in the case of any other means of transport, in particular a container, on the loading platform of the warehouse.

4. The insurance contract referred to in Article 3 (1) shall contain a clause whereby the insurer shall, in case of accident, pay the intervention agency compensation equal to the value of the skimmed-milk powder concerned (at the intervention price applicable on the day when the powder was taken over).

⁽¹⁾ OJ No L 184, 29. 7. 1968, p. 34.

⁽²⁾ OJ No L 145, 6. 6. 1975, p. 17.

Article 8

1. If the goods to be delivered are purchased on the Community market, the competent agency in the Member State concerned shall check that the quality and packaging comply with the conditions laid down and shall issue a certificate to that effect on conclusion of the said check.

2. For the purposes of the check referred to in paragraph 1, the successful tenderer shall notify the competent agency carrying out the check, of the date when the packaging of the skimmed-milk powder is to begin, at least three working days before that date. The skimmed-milk powder may only be dispatched from the place of packaging after authorization by the competent authority.

3. From the time of the check referred to in paragraph 1, the skimmed-milk powder shall be subject to customs control or similar administrative control providing equivalent security up to the time when, in the case of delivery 'to the port of shipment', one copy of the take-over certificate referred to in Article 4 (2) is returned to the competent authority referred to in Article 19 (6) and, in the case of delivery 'to the port of unloading' or 'free at destination', the goods have left the geographical territory of the Community.

TITLE III

Special provisions for deliveries of butteroil*Article 9*

1. The butteroil to be supplied shall be manufactured, as appropriate, from :

- (a) butter placed at the disposal of the successful tenderer in the stores of a specified intervention agency, or
- (b) butter or cream of Community origin available on the Community market.

2. The butteroil to be supplied shall meet the quality and packaging requirements laid down in Annex II to this Regulation.

The conformity of the packaging materials used with the requirements laid down shall be established by the presentation of the certificate referred to in Annex II (2), issued by the approved package testing agency, and still valid on the day of using the said packages.

3. Only those processing undertakings which are approved for that purpose by the Member State on whose territory the manufacture of the butteroil takes place may be entrusted with the supply of butteroil. Only those undertakings which provide sufficient guarantee that they will comply with the obligations laid down in this Regulation may be approved.

Such approval shall be withdrawn if it becomes evident that these conditions are no longer satisfied.

Article 10

1. If the butteroil to be delivered is to be manufactured from butter from intervention stocks :

- (a) the intervention agency, before the tender or the conclusion of the directly awarded contract, shall take all necessary measures to enable interested parties to examine at their own expense samples taken from the butter,
- (b) the butter shall not be handed over by the intervention agency unless a security for processing and delivery has been lodged, the amount of which shall correspond to the Community intervention price for butter applicable on the day when the butter is taken over increased by two units of account per 100 kilograms.

2. The successful tenderer shall undertake :

- (a) to pay for the butter delivered by the intervention agency according to the following conditions :
 - the purchase price of the butter on leaving the cold store shall be equal to the Community intervention price applicable on the day fixed as the closing date for receipt of tenders, where the successful tenderer was selected under the tendering procedure laid down in Article 12 (1), or the day of concluding the directly awarded contract, where the successful tenderer was selected under the procedure laid down in Article 12 (2);
 - subject to Article 21 (3), the successful tenderer shall pay for the butter delivered within 90 days of the final date fixed by the intervention agency for delivery;
 - (b) not to make any complaint concerning the quality and nature of the butter made available by the intervention agency,
 - (c) to manufacture the butteroil to be delivered only from the butter handed over by the intervention agency for that purpose.
3. The intervention agency shall make available the butter loaded (but not stowed) on the means of transport at the loading platform of the cold store.
4. The insurance contract referred to in Article 3 (1) shall contain a clause whereby the insurer shall, in case of accident, pay the intervention agency compensation equal to the value of the butter concerned (at the intervention price applicable on the day when the goods were taken over).

Article 11

1. The competent agency of the Member State concerned shall check that Article 9 (1) (b) and (2) and Article 10 (2) (c) are complied with and shall issue a certificate to that effect on conclusion of the said check.

2. For the purpose of the check referred to in paragraph 1, the successful tenderer shall notify the competent agency carrying out the check, of the date when the manufacture and packaging of the butteroil is to begin, at least three working days before that date. The butteroil may only be dispatched from the place of manufacture and packaging after authorization by the competent authority.

3. From the time of the check referred to in paragraph 1, the butteroil bought on the market shall be subject to customs control or similar administrative control providing equivalent security up to the time when, in the case of delivery 'to the port of shipment', one copy of the take-over certificate referred to in Article 4 (2) is returned to the competent authority referred to in Article 19 (6) and, in the case of delivery 'to the port of unloading' or 'free at destination', the goods have left the geographical territory of the Community.

TITLE IV

Tendering procedure and direct award procedure*Article 12*

1. In order to determine the transport cost and, where appropriate, the price for the purchase or manufacture and the packaging of the skimmed-milk powder or butteroil, a tendering procedure shall be held in accordance with the rules laid down in Articles 13 to 17.

2. In cases of special urgency, however, or when the quantities involved are relatively small, a direct award procedure may be adopted, and shall be subject to the rules laid down in Article 18.

Article 13

1. When the decision is taken to conduct a tendering procedure, the intervention agency or agencies entrusted with supplying the goods shall give notice of an invitation to tender indicating in particular:

- the quantity of goods to be delivered,
- the destination and the delivery stage within the meaning of Annex I,
- the closing date and the address for the receipt of tenders,

- the date by which the delivery is to take place,
- if appropriate, the location of the warehouse or warehouses in which the skimmed-milk powder to be supplied or the butter intended for the manufacture of the butteroil to be supplied are stored,
- in cases of delivery 'to the port of unloading' or 'free at destination', the name and address of the recipient's agent responsible for taking delivery.

2. The notice of invitation to tender shall be published in the *Official Journal of the European Communities* at least 12 days before the closing date for submission of tenders. In addition, the intervention agencies may proceed with publication elsewhere.

Article 14

1. Tenders shall be submitted in writing and either handed in to the intervention agency against a receipt or sent by registered letter to the intervention agency. The intervention agency may also authorize the use of telex.

If the goods to be supplied are purchased on the Community market the tender shall be handed in to the intervention agency of the Member State on whose territory the goods are to be manufactured and packaged in accordance with Article 6 (2) in the case of skimmed-milk powder or in accordance with Article 9 (2) and Annex II in the case of butteroil.

2. Where the invitation to tender is in respect of several lots each tender shall relate to one lot only.

A tender shall be valid only if it relates to the whole of a lot.

The Regulation concerning an individual tendering procedure may, however, provide that tenders are still valid if they relate only to a partial quantity of 500 tonnes or a multiple of 500 tonnes of the total quantity of the lot in question. In this case the tenderer whose tender relates to a multiple of 500 tonnes shall state the minimum partial quantity which may be awarded to him.

3. The tender shall indicate:

- (a) the name and address of the tenderer,
- (b) the port of shipment chosen from among Community ports accessible for ocean-going ships, provided that the individual tendering procedure does not provide for any special limitations. In the case of a delivery 'to the port of shipment' only one port may be indicated in a tender;
- (c) the amount tendered, exclusive of taxes, expressed in the currency of the Member State to whose intervention agency the tender is submitted and to which the tenderer undertakes to make the delivery concerned on the terms laid down; this

amount shall include insurance costs under Article 3 and, in the case of butteroil manufactured from intervention stocks, the purchase price of the butter in accordance with Articles 10 (2) (a) and 21 (3).

4. No tender shall be valid unless it further indicates both the amount tendered referred to in paragraph 3 (c) and, according to the circumstances, what proportion thereof covers :

- (a) the cost of transportation to the port of shipment ;
- (b) the cost of transportation beyond the port of shipment.

5. No tender shall be valid if it contains conditions and/or reservations which are not expressly authorized.

6. No tender shall be valid unless it is accompanied by :

- (a) proof that the tendering security referred to in Article 15 has been lodged before the final date for submission of tenders ;
- (b) an undertaking from the tenderer that he will abide by the conditions of the tendering procedure ;
- (c) in the case of a delivery of butteroil, the document certifying the approval referred to in Article 9 (3) and, where appropriate, the undertakings referred to in Article 10 (2).

7. Tenders may not be withdrawn.

Article 15

1. The tendering security shall amount to :

- (a) five units of account per tonne of skimmed-milk powder from intervention stocks ;
- (b) 20 units of account per tonne of skimmed-milk powder purchased on the Community market ;
- (c) 15 units of account per tonne of butteroil produced from butter from intervention stocks ;
- (d) 40 units of account per tonne of butteroil purchased on the Community market.

2. It shall be provided, at the choice of the tenderer, either in cash or in the form of a guarantee from an appropriate institution which satisfies the criteria fixed by the Member State in which the security is provided.

Article 16

1. In the light of the tenders received and in accordance with the procedure laid down in Article 30 of Regulation (EEC) No 804/68, a maximum amount shall be fixed in units of account or a decision shall be taken to make no award.

2. For the purposes of the decision referred to in paragraph 1 and for the award, as regards the delivery

of butteroil bought on the Community market, the amounts of the tenders made to the United Kingdom and Irish intervention agencies shall, after conversion into units of account, be considered to have been increased by the accession compensatory amount which is applicable to the quantities of butteroil concerned in trade between the original Community and Denmark and the new Member State concerned.

The accession compensatory amount expressed in units of account referred to in the preceding subparagraph shall be calculated on the basis of a fat content in the butteroil of 99.9 %.

Article 17

1. A tender shall be refused if the amount proposed, converted into units of account and, where necessary, adjusted under Article 16 (2), exceeds the maximum amount referred to in Article 16 (1).

2. Without prejudice to paragraph 1, the successful tenderer shall be the one whose tender is the lowest, when converted into units of account and, where necessary, adjusted under Article 16 (2).

3. If the tendering procedure is carried out simultaneously by several intervention agencies and if two or more of them receive tenders for the same amount expressed in units of account which prove to be the most favourable, the intervention agency which is to award the tender shall be determined in accordance with the procedure referred to in Article 16 (1).

Where a single intervention agency has to take into account more than one tender for the same amount, the award shall be made by the drawing of lots.

4. Each tenderer shall immediately be notified by the intervention agency of the result of his participation in the tendering procedure.

5. Rights and obligations arising from the award shall not be transferable.

6. The intervention agency shall immediately notify the Commission of the name and address of the successful tenderer.

Article 18

1. Where it is decided to determine the delivery costs by means of a direct award procedure, the intervention agency entrusted with the delivery shall conclude the relevant contracts on the most favourable terms as regards costs.

2. In these contracts, the delivery costs shall be broken down in accordance with Article 14 (4).

3. The intervention agency shall immediately forward to the Commission a copy of the contract(s) under the direct award.

TITLE V

Special rules, in particular on the use of the control copy*Article 19*

Where the goods to be delivered neither come from nor are to be manufactured from products coming from intervention agency stocks, the following conditions shall apply:

1. The completion of customs export formalities and, in the case of vitamin-enriched skimmed-milk powder or butteroil, also the manufacture and packaging shall take place in the Member State in which the tender was submitted or the contract under the direct award procedure was concluded.
2. (a) In the case of a delivery 'to the port of shipment', where the port of shipment designated in the tender or in the contract under the direct award procedure is situated in a Member State other than that in which the customs export formalities were completed, or
 - (b) in the case of a delivery 'to the port of unloading' or 'free at destination', where the goods leave the geographical territory of the Community from a Member State other than that in which the customs export formalities were completed, the goods shall from the time of completion of the said formalities until the termination of the control referred to in Articles 8 (3) and 11 (3), be accompanied by the control copy provided for in Regulation (EEC) No 2315/69.
3. The control copy shall be issued only on production of a certificate from the competent authority which issued the certificate referred to, as appropriate, in Article 8 (1) or in Article 11 (1). Such certificate shall be numbered and shall contain the following details:
 - a description of the goods in the manner prescribed for completion of Section 31 of the control copy and, where appropriate, any other information necessary for the purposes of control,
 - the quantity, the type, markings and numbers of the packages,
 - the gross and net weight of the goods,
 - a reference to this Regulation.

The certificate shall be kept by the customs office of departure.

4. Sections 101, 103, 104 and 106 of the control copy shall be completed.

Section 104 shall be completed by deleting as appropriate and entering under the second indent one of the following endorsements:

- (a) In the case of a delivery 'to the port of shipment':

- 'Food aid (Regulation (EEC) No .../77) to be delivered to the port of';
- 'Fødevarehjælp (forordning (EØF) nr. .../77) bestemt til levering i havnen i';
- 'Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77), zur Lieferung zum Hafen von bestimmt';
- 'Aide alimentaire (règlement (CEE) n° .../77) destinée à être livrée au port de';
- 'Aiuto alimentare (regolamento (CEE) n. .../77) destinato ad essere consegnato nel porto di';
- 'Voedselhulp (Verordening (EEG) nr. .../77), bestemd om te worden geleverd in de haven van';

- (b) In the case of a delivery 'to the port of unloading' or 'free at destination':

- 'For export as food aid (Regulation (EEC) No .../77)';
- 'Bestemt til udførsel som fødevarehjælp (forordning (EØF) nr. .../77)';
- 'Als Nahrungsmittelhilfe auszuführen (Verordnung (EWG) Nr. .../77)';
- 'Destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) n° .../77)';
- 'Destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. .../77)';
- 'Bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. .../77)';

Section 106 shall contain the number of the certificate referred to in paragraph 3.

5. As regards the use of the control copy, Articles 8 and 14 of Regulation (EEC) No 1687/76 shall apply *mutatis mutandis*.
6. In the case of deliveries 'to the port of shipment', control shall be deemed to have been completed, without prejudice to Article 20 (1), when the competent customs authority or, when there has been no control, another appointed authority has received a copy of the take-over certificate referred to in Article 4 (2). This copy shall be kept by the authority concerned.

Article 20

1. In the case of a delivery 'to the port of shipment', the Member State in which the port of shipment is situated shall take all necessary measures to check whether the goods taken over by the recipient leave the geographical territory of the Community by that port of shipment.

2. If the goods are not exported within three months from the day on which the take-over certificate referred to in Article 4 (2) was issued by the recipient, the Member State concerned shall inform the Commission thereof giving any available information as to the reasons therefor.

TITLE VI

Conditions for the payment and release of securities

Article 21

1. The amount agreed with the intervention agency for the delivery shall be paid only on production of the following documents:

- (a) the original of the take-over certificate referred to in Article 4 (2) drawn up by the recipient's agent;
- (b) if appropriate, the certificate referred to in Article 8 (1) or 11 (1);
- (c) in the case of goods from intervention stocks or goods manufactured therefrom, the proof referred to in Article 12 of Regulation (EEC) No 1687/76;
- (d) in the case of goods other than those referred to under (c), the control copy referred to in Article 19 (2) to (5) or, if the destination has been checked only by the authorities of a single Member State, the documents laid down by that Member State.

2. If, in the case of delivery 'to the port of unloading' or 'free at destination' of skimmed-milk powder or butteroil purchased on the Community market, owing to circumstances beyond the control of the successful tenderer, the time limit set for delivery has to be extended or if the submission of the take-over certificate referred to in paragraph 1 (a) is delayed, the competent agency may, on production of the supporting documents referred to in paragraph 1 (b) and (d), make a payment on account.

If, in the case of delivery 'to the port of shipment' of skimmed-milk powder or butteroil purchased on the Community market, the circumstances referred to in the first subparagraph occur, the competent agency, with the prior permission of the Commission, may also make a payment on account.

However, such payment on account may not exceed 90 % of the sum agreed for the delivery and shall only be paid if the successful tenderer lodges a security under the terms of Article 15 (2), equal to 10 % of the payment on account.

3. In the case of delivery of butteroil manufactured from butter from intervention stocks, the competent authority of the Member State of sale shall, on presen-

tation of the supporting documents referred to in paragraph 1, annul the obligation of the successful tenderer to pay pursuant to Article 10 (2) (a) the purchase price for the butter delivered, up to the amount indicated in the tender or in the contract under the direct award, and shall pay to the successful tenderer the difference between the two amounts within 15 days from the presentation of the supporting documents, if such difference represents a credit to the successful tenderer.

Article 22

1. At the request of the Commission, if it subsequently designates a port of shipment or unloading or a destination other than that originally scheduled, and in agreement with the successful tenderer, the competent intervention agency may cause the products to be delivered to the new port or destination designated.

In such a case the competent intervention agency shall agree with the successful tenderer the reduction or increase in the costs as originally established.

The intervention agency shall immediately notify the Commission of the new amounts of costs agreed.

2. If the successful tenderer, for reasons of *force majeure*, has to bear exceptional costs which cannot be covered by insurance, it may receive compensation therefor on production of supporting documents and with the prior agreement of the Commission.

Article 23

Except in case of *force majeure*, the successful tenderer shall bear any financial consequences for the Community by reason of non-delivery of the goods to the place and at the time appointed, provided that the recipient allowed delivery to be effected to such place and at such time.

Any costs resulting from non-delivery of the goods as a result of *force majeure* shall be assumed by the competent agency of the Member State concerned and shall be borne by the Community.

Article 24

1. Except in case of *force majeure*, the tendering security referred to in Article 15 shall be released only where:

- (a) the tenderer did not withdraw his tender before the tender was awarded and where:
 - in the cases referred to in Article 15 (1) (a) and (c), the security for delivery provided for in Article 7 (1) or 10 (1) has been lodged,

- in the cases referred to in Article 15 (1) (b) and (d), the supporting documents referred to in Article 21 (1) have been forwarded to the intervention agency;

(b) the tender was not accepted.

2. Except in case of *force majeure*, the securities for delivery provided for in Articles 7 (1) and 10 (1) shall be released only where the supporting documents referred to in Article 21 (1) have been forwarded to the intervention agency.

3. In the case of deliveries 'to the port of shipment' or 'free at destination' of goods from intervention stocks or goods manufactured therefrom, the supporting document referred to in Article 21 (1) (a) may be replaced, for the purpose of the release of the securities referred to in paragraph 2, by a copy of the insurance contract referred to in Article 3 containing the clause provided for in Article 7 (4) or 10 (4), as appropriate.

4. Except in case of *force majeure*, the security provided for in the third subparagraph of Article 21 (2) shall be released only on production of the certificate referred to in Article 21 (1) (a).

5. All securities shall be released as soon as the requisite supporting documents have been produced.

6. Except in case of *force majeure*, if the necessary supporting documents are not produced within six months from the last day of the delivery period, the security concerned shall be forfeited.

Article 25

1. In case of *force majeure* occurring during the period of control referred to in Article 8 (3) of 11 (3),

as appropriate, Article 11 of Regulation (EEC) No 1687/76 shall apply as in the case of goods from intervention stocks or goods manufactured therefrom.

2. In any other case of *force majeure*, the intervention agency concerned shall take the measures which it considers necessary in the light of the circumstances invoked.

TITLE VII

Final provisions

Article 26

No refund or monetary or accession compensatory amount shall be applied to the goods supplied pursuant to this Regulation.

Article 27

1. Regulations (EEC) No 1365/74, (EEC) No 2121/74, (EEC) No 2557/74, (EEC) No 597/75, (EEC) No 750/75, (EEC) No 1221/75, (EEC) No 2247/75 and (EEC) No 2660/75 are hereby repealed.

However, they shall continue to apply to deliveries in respect of which there is provision for their application in individual Regulations concerning the delivery of food aid.

2. The Annex to Regulation (EEC) No 1687/76 is hereby amended in accordance with Annex III hereto.

Article 28

This Regulation shall enter into force on 1 April 1977.

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

Done at Brussels, 14 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

DELIVERY STAGES AND ARRANGEMENTS

I. Delivery to the port of shipment

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products are deposited at the port of shipment designated for the delivery, at the berth indicated by the recipient or his agent. Costs beyond such delivery shall be borne by the recipient in accordance with Article 3.
2. The successful tenderer shall effect delivery on a date within the period fixed therefor. The recipient shall determine the delivery schedule with him.
3. Where the recipient is unable to take delivery of the goods on the date referred to in paragraph 2, his agent shall notify the successful tenderer without delay.

In that case, the successful tenderer and the agent of the recipient may agree a new date for the start of the delivery and, if necessary, a new schedule. In any event, the costs resulting from the delay shall, except in case of *force majeure*, be borne by the recipient.

II. Delivery to the port of unloading, ship's hold

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the latter's agent actually takes possession of the goods in the ship's hold at the port of unloading.

The recipient shall bear all the costs incurred subsequent to delivery, including unloading costs (e.g. breaking bulk, hoisting, reception) as well as lighterage.

2. Any demurrage cost or dispatch money at the port of unloading shall respectively be charged or payable to the recipient.

The rates thereof and the rules relating thereto, laid down in the contract between the successful tenderer and the carrier, must be agreed between the successful tenderer and the receiving agent of the recipient.

III. Delivery to the port of unloading, deposit on quay or on lighter

1. Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products are actually deposited on the quay at the port of unloading or, where appropriate, on the lighter.

The recipient shall bear all the costs incurred subsequent to delivery, including reception costs and lighterage.

2. Any demurrage costs or dispatch money at the port of unloading shall respectively be charged or payable to the recipient.

The rates thereof and the rules thereto, laid down in the contract between the successful tenderers and the carrier, must be agreed between the successful tenderer and the receiving agent of the recipient.

IV. Delivery 'free at destination'

Delivery shall be deemed to have taken place and the risks shall pass from the successful tenderer to the recipient at the moment when the products actually arrive at the place of destination fixed for the delivery.

The recipient shall bear all the costs incurred subsequent to delivery, including reception costs and any transshipment costs.

*ANNEX II***I. Quality requirements for butteroil**

Characteristics of the product: concentrated milk fat with a minimum pure fat content of 99.8 %.

Composition characteristics:

moisture content and non-milk fat constituents: maximum 0.2 %,

fats: minimum 99.8 %,

free fatty acids: maximum 0.5 % (oleic acid),

amount of peroxide/kg: maximum one unit (in milliequivalents of activated oxygen per kg),

flavour: fresh,

smell: absence of smells unconnected with butteroil.

The use of neutralizing agents is not permitted.

For certain deliveries, special requirements may be specified.

II. Packaging of butteroil

1. The butteroil is to be packed in metal canisters completely filled and hermetically sealed in an atmosphere of nitrogen.

The metal canisters are to be packed in cartons containing:

- either four five-kilogram canisters, or
- one 20-kilogram canister.

The complete packaging should be strong enough to withstand a long sea journey and transportation by land in a tropical climate.

Closed cartons, as prepared for delivery, containing either one 20-kilogram metal canister or four five-kilogram canisters 95 % full of water, must be able to resist:

- (a) three falls from a height of one metre on three different edges relating to different axes; this test, for which five complete packages are to be used, must be effected in accordance with ISO standard No 2248. After the tests:
 - the metal canisters may be crushed out of shape but no leakage must occur after elimination of the vacuum;
 - the cartons may be damaged and show small tears in the seams and sealed flaps but seams must not be completely torn and flaps must not have come unstuck or be torn off;
 - the damage must not be such as to endanger the safe transport of the canister(s) in the carton;

- (b) a compression test in accordance with ISO standards No 2872 and No 2874. For this test, each complete packaging is placed separately, in the normal transportation position, between the plates of the press;

During the test, the relative speed of the plates is 10 mm/minute. After application of a pressure of 3 500 kg/m² over the base area, the entire packaging (metal canisters and carton) may get slightly out of shape but must keep its entirety. Five complete packagings must be tested.

Before the tests the complete, filled packagings are subjected to the following treatment in accordance with ISO standard No 2233: storage for 48 hours at 25 °C with a relative humidity of 90 %.

2. The conformity of the packaging with the standards defined above must have been verified by a testing agency approved by the Member State concerned, which shall issue the appropriate certificate and test report together with a description of the technical characteristics of the packaging material.

The certificate provided for above shall only be valid for a period of six months. Before the expiry thereof the type of packaging used must undergo a new verification, and a new certificate valid for six months must be issued.

3. Markings on the packaging

The metal canister shall have stamped upon it the following information in the language or languages specified in the notice of invitation to tender :

- (a) the description : 'Butteroil' ;
- (b) the words : 'Gift of the European Economic Community' (to be completed as appropriate for each individual delivery) ;
- (c) the net weight ;
- (d) the month and year of manufacture ;
- (e) the processing undertaking — in code.

In addition to the above, the following must be marked on both sides of each carton : the manufacturer's lot number and the number of cartons making up the lot.

ANNEX III

AMENDMENTS TO THE ANNEX TO REGULATION (EEC) No 1687/76

1. In 'I. Products to be exported in the same state as that in which they were when removed from intervention stock' add after paragraph 9 the following paragraph 10 and the footnote ⁽¹⁰⁾:

'10. Commission Regulation (EEC) No 303/77 of 14 February 1977 on general rules for the supply of skimmed-milk powder and butteroil as food aid ⁽¹⁰⁾.

⁽¹⁰⁾ OJ No L 43, 15. 2. 1977, p. 1.'

2. In 'II. Products subject to a use and/or destination other than that mentioned under I'.

A. delete paragraph 8 and the corresponding footnote; these provisions shall, however, continue to apply to deliveries for which there is provision in individual Regulations for the application of Regulation (EEC) No 2247/75,

B. add after paragraph 13 the following paragraph 14 and the corresponding footnote ⁽⁵⁾:

'14. Commission Regulation (EEC) No 303/77 of 14 February 1977 on general rules for the supply of skimmed-milk powder and butteroil as food aid ⁽⁵⁾:

(a) on the release of butter for processing into butteroil:

— Section 104: 'for processing and subsequent delivery as food aid (Regulation (EEC) No .../77)',

'til forarbejdning og efterfølgende levering som fødevarehjælp (forordning (EØF) nr. .../77)';

'zur Verarbeitung und anschließenden Lieferung im Rahmen der Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77)',

'destiné à la transformation et à livraison ultérieure au titre de l'aide alimentaire (règlement (CEE) n° .../77)',

'destinato alla trasformazione e successivamente alla fornitura a titolo di aiuto alimentare (regolamento (CEE) n. .../77)',

'bestemd om te worden verwerkt en vervolgens als voedselhulp te worden geleverd (Verordening (EEG) nr. .../77)';

(b) on the dispatch of butteroil 'to the port of unloading' or 'free at destination':

— Section 104: 'For export as food aid (Regulation (EEC) No .../77)',

'Bestemt til udførsel som fødevarehjælp (forordning (EØF) nr. .../77)',

'Als Nahrungsmittelhilfe auszuführen (Verordnung (EWG) Nr. .../77)',

'Destiné à être exporté au titre de l'aide alimentaire (règlement (CEE) n° .../77)',

'Destinato ad essere esportato a titolo di aiuto alimentare (regolamento (CEE) n. .../77)',

'Bestemd om te worden uitgevoerd als voedselhulp (Verordening (EEG) nr. .../77)';

— Section 106: The weight of butter used to produce the quantity of butteroil indicated in Section 103.

(c) on the dispatch of skimmed-milk powder or butteroil 'to the port of shipment':

— Section 104: 'Food aid (Regulation (EEC) No .../77) to be delivered to the port of

'Fødevarehjælp (forordning (EØF) nr. .../77), bestemt til levering i havnen i

'Nahrungsmittelhilfe (Verordnung (EWG) Nr. .../77), zur Lieferung zum Hafen von bestimmt',

'Aide alimentaire (règlement (CEE) n° .../77) destinée à être livrée au port de

'Aiuto alimentare (regolamento (CEE) n. .../77), destinato ad essere consegnato nel porto di

'Voedselhulp (Verordening (EEG) nr. .../77), bestemd om te worden geleverd in de haven van

— Section 106: Where appropriate the weight of butter used to produce the quantity of butteroil indicated in Section 103.

⁽⁵⁾ OJ No L 43, 15. 2. 1977, p. 1.

COMMISSION REGULATION (EEC) No 304/77

of 14 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 15 February
1977.

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

Done at Brussels, 14 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 14 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	80.22
10.01 B	Durum wheat	126.46 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	62.48 ⁽⁶⁾
10.03	Barley	39.54
10.04	Oats	35.20
10.05 B	Maize, other than hybrid maize for sowing	50.06 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	54.54 ⁽⁴⁾
10.07 C	Grain sorghum	57.20 ⁽⁴⁾
10.07 D	Other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	123.91
11.01 B	Rye flour	99.05
11.02 A I a)	Durum wheat groats and meal	206.61
11.02 A I b)	Common wheat groats and meal	132.81

⁽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 305/77**of 14 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 15 February
1977.

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

Done at Brussels, 14 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 14 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	1.99
10.02	Rye	0	0	0	3.42
10.03	Barley	0	0.38	0.38	0.46
10.04	Oats	0	0	0	6.08
10.05 B	Maize, other than hybrid maize for sowing	0	2.28	2.28	3.80
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0.76	0.76	2.28
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	0.68	0.68	0.82	0.82
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0.51	0.51	0.61	0.61
11.07 B	Roasted malt	0	0.59	0.59	0.71	0.71

COMMISSION REGULATION (EEC) No 306/77
of 14 February 1977
fixing the import levies on milk and milk products

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 14 (8) thereof,

Whereas the import levies on milk and milk products
were fixed by Regulation (EEC) No 580/76⁽³⁾, as last
amended by Regulation (EEC) No 187/77⁽⁴⁾;

Whereas it follows from applying the rules contained
in Regulation (EEC) No 580/76 to the prices known

to the Commission that the levies at present in force
should be altered as shown in the Annex to this Regu-
lation,

HAS ADOPTED THIS REGULATION:

Article 1

The levies referred to in Article 14 (2) of Regulation
(EEC) No 804/68 are hereby fixed as shown in the
Annex.

Article 2

This Regulation shall enter into force on 16 February
1977.

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

Done at Brussels, 14 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 69, 15. 3. 1976, p. 19.

⁽⁴⁾ OJ No L 25, 29. 1. 1977, p. 19.

ANNEX

to the Commission Regulation of 14 February 1977 fixing the import levies of milk and milk products

Tariff Nomenclature		Code	Levy (in u.s./100 kg net weight unless otherwise indicated)
CCT heading No	Description of goods		
04.01	Milk and cream, fresh, not concentrated or sweetened :		
	A. Of a fat content, by weight, not exceeding 6 % :		
	I. Yoghourt, kephir, curdled milk, whey, buttermilk and other fermented or acidified milk :		
	a) In immediate packings of a net capacity of two litres or less	0110	21.21
	b) Other	0120	19.21
	II. Other :		
	a) In immediate packings of a net capacity of two litres or less and of a fat content, by weight :		
	1. Not exceeding 4 %	0130	19.21
	2. Exceeding 4 %	0140	23.50
	b) Other, of a fat content, by weight :		
	1. Not exceeding 4 %	0150	18.21
	2. Exceeding 4 %	0160	22.50
	B. Other, of a fat content, by weight :		
	I. Exceeding 6 % but not exceeding 21 %	0200	46.78
	II. Exceeding 21 % but not exceeding 45 %	0300	98.96
	III. Exceeding 45 %	0400	152.94
04.02	Milk and cream, preserved, concentrated or sweetened :		
	A. Not containing added sugar :		
	I. Whey	0500	14.80
	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 %	0620	94.74
	2. Exceeding 1.5 % but not exceeding 27 %	0720	116.30
	3. Exceeding 27 % but not exceeding 29 %	0820	118.30
	4. Exceeding 29 %	0920	130.73
	b) Other, of a fat content, by weight :		
	1. Not exceeding 1.5 %	1020	88.74
	2. Exceeding 1.5 % but not exceeding 27 %	1120	110.30
	3. Exceeding 27 % but not exceeding 29 %	1220	112.30
	4. Exceeding 29 %	1320	124.73
	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 of a capacity of 0.5 litre or less and of a fat content, by weight, of 11 % or less :		
	1. Of a fat content, by weight, of 8.9 % or less	1420	29.77
	2. Other	1520	40.19
	b) Other, of a fat content, by weight :		
	1. Not exceeding 45 %	1620	98.96
	2. Exceeding 45 %	1720	152.94

Tariff Nomenclature		Code	Levy (in u.a./100 kg net weight unless otherwise indicated)
CCT heading No	Description of goods		
04.02 (cont'd)	B. Containing added sugar :		
	I. Milk and cream, in powder or granules :		
	a) Special milk for infants ⁽¹⁾ , in hermetically sealed cans of a net capacity of 500 g or less and of a fat content, by weight, exceeding 10 % but not exceeding 27 % ⁽²⁾	1820	30.00
	b) Other :		
	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 % ⁽³⁾	2220	per kg 0.8874 ⁽⁹⁾
	bb) Exceeding 1.5 % but not exceeding 27 % ⁽³⁾	2320	per kg 1.1030 ⁽⁹⁾
	cc) Exceeding 27 % ⁽³⁾	2420	per kg 1.2473 ⁽⁹⁾
	2. Other, of a fat content, by weight :		
	aa) Not exceeding 1.5 % ⁽³⁾	2520	per kg 0.8874 ⁽¹⁰⁾
	bb) Exceeding 1.5 % but not exceeding 27 % ⁽³⁾	2620	per kg 1.1030 ⁽¹⁰⁾
	cc) Exceeding 27 % ⁽³⁾	2720	per kg 1.2473 ⁽¹⁰⁾
	II. Milk and cream, other than in powder or granules :		
04.03	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 %	2810	31.71
	b) Other, of a fat content, by weight :		
	1. Not exceeding 45 % ⁽³⁾	2910	per kg 0.9896 ⁽¹⁰⁾
	2. Exceeding 45 % ⁽³⁾	3010	per kg 1.5294 ⁽¹⁰⁾
	Butter :		
04.04	A. Of a fat content, by weight, not exceeding 85 %	3110	179.93
	B. Other	3210	219.51
04.04	Cheese and curd :		
	A. Emmentaler, Gruyère, Sbrinz, Bergkäse and Appenzell, not grated or powdered :		
	I. Of a minimum fat content of 45 % by weight, referred to dry matter, matured for at least three months ⁽³⁾ :		
	a) Whole cheese ⁽⁴⁾ of a free-at-frontier value ⁽⁵⁾ per 100 kg net weight of :		
	1. 212.44 u.a. (a) or more but less than 232.44 u.a. (a)	3320	15.00
	2. 232.44 u.a. (a) or more	3419	123.24 ⁽¹¹⁾

Tariff Nomenclature		Code	Levy (in u.a./100 kg net weight unless otherwise indicated)
CCT heading No	Description of goods		
04.04 (cont'd)	b) Pieces packed in vacuum or in inert gas :		
	1. With rind on at least one side, of a net weight :		
	aa) Of 1 kg or more but less than 5 kg and of a free-at-frontier value ⁽⁵⁾ of 232.44 u.a. (a) or more but less than 260.44 u.a. (a) per 100 kg net weight	3520	15.00
	bb) Of 450 g or more and of a free-at-frontier value ⁽⁵⁾ of 260.44 u.a. (a) or more per 100 kg net weight	3618	123.24 ⁽¹¹⁾
	2. Other, of a net weight of 75 g or more but not exceeding 250 g ⁽⁶⁾ and of a free-at-frontier value ⁽⁵⁾ of 280.44 u.a. (a) or more per 100 kg net weight	3718	123.24 ⁽¹¹⁾
	II. Other	3800	123.24
	B. Glarus herb cheese (known as Schabziger) made from skimmed milk and mixed with finely-ground herbs ⁽²⁾	3900	145.07 ⁽¹²⁾
	C. Blue-veined cheese, not grated or powdered	4000	122.31
	D. Processed cheese, not grated or powdered :		
	I. In the blending of which only Emmentaler, Gruyère and Appenzell have been used and which may contain, as an addition, Glarus herb cheese (known as Schabziger), put up for retail sale ⁽⁷⁾ , of a free-at-frontier value ⁽⁵⁾ of not less than 150 u.a. per 100 kg net weight and of a fat content, by weight, in the dry matter, not exceeding 56 % ⁽²⁾	4120	30.00
	II. Other, of a fat content, by weight :		
	a) Not exceeding 36 % and of a fat content, by weight, referred to dry matter :		
	1. Not exceeding 48 %	4410	124.15
	2. Exceeding 48 %	4510	132.04
	b) Exceeding 36 %	4610	212.04
	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 non-fatty matter :		
	a) Not exceeding 47 %	4710	145.07

Tariff Nomenclature		Code	Levy (in u.a./100 kg net weight unless otherwise indicated)
CCT heading No	Description of goods		
04.04 (cont'd)	b) Exceeding 47 % but not exceeding 72 % : 1. Cheddar, including Chester : aa) Whole Cheddar cheeses ⁽⁴⁾ made from unpasteurized milk, of a minimum fat content of 50 % by weight, in the dry matter, matured for a least nine months and of a free-at-frontier value of not less than 207.00 u.a. per 100 kg net weight ⁽²⁾ bb) Other 2. Tilsit and Butterkäse, of a fat content, by weight, referred to the dry matter ⁽³⁾ : aa) Not exceeding 48 % bb) Exceeding 48 % 3. Kashkaval ⁽²⁾ 4. Cheese of sheep's milk or buffalo milk in containers holding brine, or in sheep- or goat-skin bottles ⁽²⁾ 5. Other c) Exceeding 72 % : 1. In immediate packings of a net capacity not exceeding 500 g 2. Other II. Not specified : a) Grated or powdered b) Other	4833 4850 4922 5022 5030 5060 5120 5210 5250 5310 5410 5500 5600 5700 5800	15.00 153.46 131.44 ⁽¹³⁾ 131.44 ⁽¹⁴⁾ 131.44 ⁽¹⁵⁾ 131.44 ⁽¹⁶⁾ 131.44 98.58 211.44 145.07 211.44 18.25 18.25 68.56 88.97
17.02	Other sugars ; sugar syrups ; artificial honey (whether or not mixed with natural honey) ; caramel : A. Lactose and lactose syrup : II. Other than that containing, in the dry state, 99 % or more by weight of the pure product ⁽¹⁸⁾		
17.05	Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion : A. Lactose and lactose syrup		
23.07	Sweetened forage ; other preparations of a kind used in animal feeding : B. Other, containing starch or glucose or glucose syrup falling within subheadings 17.02 B and 17.05 B, or milk products ⁽⁹⁾ : I. Containing starch, or glucose or glucose syrup : a) Containing no starch or containing 10 % or less by weight of starch : 1. 2. 3. Containing 50 % or more but less than 75 % by weight of milk products 4. Containing 75 % or more by weight of milk products		

Tariff Nomenclature		Code	Levy (in u.a./100 kg net weight unless otherwise indicated)
CCT heading No	Description of goods		
23.07 (cont'd)	b) Containing more than 10 % but not more than 30 % by weight of starch : 1..... 2..... 3. Containing 50 % or more by weight of milk products	5900	82.74
	c) Containing more than 30 % by weight of starch : 1..... 2..... 3. Containing 50 % or more by weight of milk products	6000	66.83
	II. Containing no starch, glucose or glucose syrup, but containing milk products	6100	88.97

For notes (1) to (6), see notes (1) to (6) of Council Regulation (EEC) No 823/68 (OJ No L 151, 30. 6. 1968).

(7) The levy 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) 6 u.a.; and
- c) 10.15 u.a.

(8) The levy 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; and
- b) 10.15 u.a.

(9) The levy is limited to 7.50 u.a. per 100 kg net weight.

(10) The levy is limited to 6% of the value for customs purposes.

(11) The levy is limited to 64.00 u.a. per 100 kg net weight for imports from Austria, Finland, Romania and Switzerland (Regulation (EEC) No 1054/68 as amended).

(12) The levy is limited to 84.00 u.a. per 100 kg net weight for imports from Austria, Finland, Romania and Switzerland (Regulation (EEC) No 1054/68 as amended).

(13) The levy is limited to 64.00 u.a. per 100 kg net weight for imports from Bulgaria, Hungary, Romania and Turkey (Regulation (EEC) No 1054/68 as amended).

(14) Lactose and lactose syrup falling within subheading 17.02 A I are, in pursuance of Regulation (EEC) No 2730/75, subject to the same levy as that applicable to lactose and lactose syrup falling within subheading 17.02 A II.

(a) For imports into the United Kingdom, this free-at-frontier value shall be reduced by 3.47 u.a. per 100 kg net.

NB : For the purposes of heading No 04.04, the exchange rate to be applied in converting into national currencies the unit of account referred to in the subdivisions of this heading shall, notwithstanding general rule C 3 contained in Part I, Section I of the Common Customs Tariff be the representative rate, if such a rate is fixed pursuant to Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy (OJ No 106, 30. 10. 1962, p. 2553/62).

COMMISSION REGULATION (EEC) No 307/77

of 11 February 1977

repealing Commission Regulation (EEC) No 170/77 of 26 January 1977 re-establishing the levying of customs duties on primary cells and primary batteries falling within heading No 85.03, originating in Hong Kong to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3021/76 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3021/76 of 13 December 1976 establishing preferential tariff arrangements in respect of certain products originating in developing countries⁽¹⁾, and in particular Article 4 (2) thereof,

Whereas Commission Regulation (EEC) No 170/77 of 26 January 1977⁽²⁾ re-established, as from 31 January 1977, the levying of customs duties on primary cells and primary batteries falling within heading No 85.03, originating in Hong Kong to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3021/76 apply;

Whereas the calculation of the charges which justified the abovementioned re-establishment was based on information which turned out to be inaccurate; whereas, after investigation, it was established that

imports into the Community of primary cells and primary batteries, originating in Hong Kong, to which the preferential tariff arrangements apply, had not reached the Community maximum amount of 1 332 300 units of account;

Whereas it is therefore desirable to repeal Commission Regulation (EEC) No 170/77 of 26 January 1977 with effect from 31 January 1977,

HAS ADOPTED THIS REGULATION:

Article 1

Commission Regulation (EEC) No 170/77 of 26 January 1977 is hereby repealed.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*. It shall apply with effect from 31 January 1977.

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

Done at Brussels, 11 February 1977.

For the Commission

Étienne DAVIGNON

Member of the Commission

⁽¹⁾ OJ No L 349, 20. 12. 1976, p. 23.

⁽²⁾ OJ No L 24, 28. 1. 1977, p. 17.

COMMISSION REGULATION (EEC) No 308/77**of 14 February 1977****amending the amount of the countervailing charge on certain varieties of sweet oranges originating in Greece**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 795/76⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas under Commission Regulation (EEC) No 171/77 of 27 January 1977⁽³⁾, as amended by Regulation (EEC) No 234/77⁽⁴⁾, a countervailing charge is charged on the importation of certain varieties of sweet oranges originating in Greece ;

Whereas Article 26(1) of Regulation (EEC) No 1035/72 laid down the conditions under which a

charge introduced, in application of Article 25 of that Regulation is amended ; whereas, if these conditions are taken into consideration the countervailing charge on the import of certain varieties of sweet oranges originating in Greece must be amended,

HAS ADOPTED THIS REGULATION :

Article 1

The amount of 0.11 unit of account appearing in Article 1 of Regulation (EEC) No 171/77 is replaced by the amount of 2.43 units of account.

Article 2

This Regulation shall enter into force on 15 February 1977.

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

Done at Brussels, 14 February 1977.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 93, 8. 4. 1976, p. 6.

⁽³⁾ OJ No L 24, 28. 1. 1977, p. 19.

⁽⁴⁾ OJ No L 31, 3. 2. 1977, p. 18.

COMMISSION REGULATION (EEC) No 309/77

of 14 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 297/77⁽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 15 February
1977.

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

Done at Brussels, 14 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 42, 12. 2. 1977, p. 13.

ANNEX

to the Commission Regulation of 14 February 1977 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	19.88
	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 16 November 1976

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

(Only the French text is authentic)

(77/132/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 9 November 1976 by the French Government to the Commission by telex from the Office of its Permanent Representative to the European Communities, for authorization not to apply Community treatment to natural honey falling within heading No 04.06 of the Common Customs Tariff, originating in the People's Republic of China and in free circulation in the other Member States,

Whereas there are no opportunities for the importation into France of the product in question from the People's Republic of China on account of its sensitivity as regards national production;

Whereas, according to information supplied by the French Government, the honey-producing sector — which is a feature of certain economically underprivileged mountain areas (the Alps, the Pyrenees and the Massif Central) — is facing a serious crisis resulting largely from difficulties in disposing of this year's exceptionally plentiful harvest;

Whereas the indirect importation on which the application is based, although it appears to be an isolated operation, would be likely to aggravate further the precarious situation of the national production concerned in view of the substantial amount involved (about 2 % of French imports of natural honey from all third countries in 1975, namely 5 553 tonnes);

Whereas it is not possible to set in motion rapidly the machinery for bringing about the necessary cooperation from the other Member States;

Whereas authorization should accordingly be given for the application of the protective measures under the first paragraph of Article 115, subject to the conditions specified in the Commission Decision of 12 May 1971 ⁽¹⁾, and in particular Article 1 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic is authorized not to apply Community treatment to imports of natural honey falling within heading No 04.06 of the Common Customs Tariff, where they originate in the People's Republic of China and are in free circulation in the other Member States, and in respect of which applica-

⁽¹⁾ OJ No L 121, 3. 6. 1971, p. 26.

tions for import licences lodged after 28 October 1976 are, at the date of this Decision, pending with the French authorities.

Done at Brussels, 16 November 1976.

For the Commission

Finn GUNDELACH

Member of the Commission

Article 2

This Decision is addressed to the French Republic.

COMMISSION DECISION**of 9 December 1976****authorizing Ireland not to apply Community treatment to knitted goods falling within Chapter 60 of the Common Customs Tariff, originating in Hungary and in free circulation in the United Kingdom****(Only the English text is authentic)****(77/133/EEC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 2 December 1976 by the Government of Ireland to the Commission by telex from the Office of its Permanent Representative to the European Communities, for authorization not to apply Community treatment to knitted goods falling within Chapter 60 of the Common Customs Tariff, originating in Hungary and in free circulation in the United Kingdom,

Whereas, with regard to goods of Chapter 60 of the Common Customs Tariff, Ireland in accordance with the Council Decision of 18 December 1975 ⁽¹⁾ opened an annual quota of £ 110 for Hungary ;

Whereas according to information supplied by Ireland, there are serious economic difficulties in the sector in question which is demonstrated, in particular, by a growing rate of unemployment ;

Whereas the indirect imports in question, which would be in addition to those already effected, would be likely to aggravate these economic difficulties ;

Whereas it is not possible to set in motion rapidly the machinery for bringing about the necessary cooperation from the United Kingdom and the other Member States ;

Whereas authorization should accordingly be given for the application of protective measures under the first paragraph of Article 115, subject to the conditions specified in the Commission Decision of 12 May 1971 ⁽²⁾, and in particular Article 1 thereof,

HAS ADOPTED THIS DECISION :

Article 1

Ireland is authorized not to apply Community treatment to imports of knitted goods falling within Chapter 60 of the Common Customs Tariff, where they originate in Hungary, and are in free circulation in the United Kingdom, and in respect of which applications for import licences lodged after 24 November 1976 are, on the date of this Decision, pending with the Irish authorities.

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 9 December 1976.

For the Commission

Finn GUNDELACH

Member of the Commission

⁽¹⁾ OJ No L 332, 29. 12. 1975, p. 1.

⁽²⁾ OJ No L 121, 3. 6. 1971, p. 26.

COMMISSION DECISION

of 22 December 1976

authorizing the Italian Republic not to apply Community treatment to certain tube and pipe fittings — joints of malleable cast iron, falling within subheading ex 73.20 of the Common Customs Tariff, originating in Poland and in free circulation in the other Member States

(Only the Italian text is authentic)

(77/134/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the application under the first paragraph of Article 115 of the Treaty, made on 20 December 1976 by the Italian Government to the Commission by telex from the Office of its Permanent Representative, for authorization not to apply Community treatment to certain tube and pipe fittings — joints of malleable cast iron falling within subheading ex 73.20 of the Common Customs Tariff, originating in Poland and in free circulation in the other Member States,

Whereas for imports of the products in question, Italy, in accordance with the Council Decision of 18 December 1975 ⁽¹⁾, has opened in respect of Poland a quota of Lit 320 million, which is now used up;

Whereas there are serious economic difficulties in the national industry concerned resulting *inter alia* in a growing rate of unemployment;

Whereas the indirect imports on which the application is based are likely to aggravate these economic difficulties owing to the considerable amount involved (about 60 % of the quota referred to above);

Whereas it is not possible at the present time to set in motion rapidly the machinery for bringing about the necessary cooperation from the other Member States;

Whereas authorization should be given for the application of protective measures under the first paragraph of Article 115, subject to the conditions specified in the Commission Decision of 12 May 1971 ⁽²⁾, and in particular Article 1 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The Italian Republic is authorized not to apply Community treatment to the following tube and pipe fittings: joints of malleable cast iron falling within subheading ex 73.20 of the Common Customs Tariff, where they originate in Poland and are in free circulation in the other Member States, and in respect of which applications for import licences lodged after 13 December 1976 are, at the date of this Decision, still pending with the Italian authorities.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 22 December 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission

⁽¹⁾ OJ No L 332, 29. 12. 1975, p. 1.

⁽²⁾ OJ No L 121, 3. 6. 1971, p. 26.

COMMISSION DECISION

of 22 December 1976

authorizing the acquisition by Klöckner-Werke AG of a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH (Article 66 of the ECSC Treaty)

(Only the German text is authentic)

(77/135/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66 thereof,

Having regard to High Authority Decision No 24-54 of 6 May 1954 laying down in implementation of Article 66 (1) of the Treaty a Regulation on what constitutes control of an undertaking ⁽¹⁾,

Having regard to the application made on 20 August 1976 by Klöckner-Werke AG for authorization to acquire a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH,

Having obtained the comments of the Government of the Federal Republic of Germany,

I

Whereas :

1. Klöckner-Werke AG (KW), Duisburg, a public limited liability company with a capital of DM 347 million, is a steel-producing undertaking covered by Article 80 of the Treaty.

2. KW is in a position to control, within the meaning of Decision No 24-54, either alone or together with others, several undertakings producing, distributing or using steel, including the following :

Undertaking	Capital (DM million)	Business	KW's holding
Klöckner-Ferromatik GmbH, Castrop-Rauxel	1.5	Mining and steel- making machinery	100 %
Klöckner-Ferroform GmbH, Osnabrück	0.2	Engineering	100 %
Klöckner-Stahl GmbH, Essen	0.02	Steel stockholding	100 %
Klöckner-Ironon GmbH, Cologne	2	Engineering	50 %
Vereinigte Drahtindustrie GmbH, Hamm	3.5	Wire-drawing	50 %
Vereinigte Drahtseilwerke GmbH, Dortmund	4.5	Cable-making	50 % (Holding of Vereinigte Drahtindustrie GmbH)

⁽¹⁾ OJ of the ECSC No 9, 11. 5. 1954, p. 345/54.

3. These undertakings may be regarded as constituting a concentration within the meaning of Article 66 (1) of the Treaty with Klöckner-Werke and between themselves.

4. KW, through Ferrocontor-Beteiligungsgesellschaft mbH, Hamburg (in which KW has a 50 % holding, the remaining 50 % being in the hands of Hamburgische Landesbank Girozentrale, Hamburg), and Korf Stahl AG, Baden-Baden (KSAG) jointly exercise group control over Hamburger Stahlwerke GmbH, Hamburg (HSW); KW indirectly holds 49 % of HSW, the remaining 51 % being in the hands of KSAG; KW and HSW, which produces wire rod and merchant bars and supplies the KW plant at Hagen-Haspe with semi-finished products, constitute a concentration.

5. In 1974/75 KW's external sales totalled DM 3 386 million; the number of staff employed on 30 September 1975 was 24 954.

6. Eisenwerke-Gesellschaft Maximilianshütte mbH, Sulzbach-Rosenberg (Maxhütte) is a steel-producing undertaking covered by Article 80 of the Treaty; its entire capital of DM 100 million is held by VG-Verwaltungsgesellschaft für industrielle Unternehmungen Friedrich Flick GmbH, Düsseldorf.

7. Maxhütte holds all the shares in the following undertakings engaged in distribution:

Undertaking	Capital (DM million)	Main business
Südferrum Eisenhandels-gesellschaft mbH, Munich	7	Steel stockholding
Fränkischer Eisenhof GmbH, Bamberg	2.5	Steel stockholding
Maxhütte-Eisenhandels-gesellschaft mbH, Sulzbach-Rosenberg	0.1	Steel stockholding

8. Maxhütte is in a position to control these undertakings; all of them may thus be regarded as constituting a concentration within the meaning of Article 66 (1) of the Treaty with Maxhütte and between themselves.

9. In 1975 Maxhütte's external sales totalled DM 895.6 million; the number of staff employed on 31 December 1975 was 7 511.

10. Subject to prior authorization by the Commission, KW and VG have reached an agreement under which KW will initially acquire 51 % of Maxhütte's capital held by VG, with an option to acquire the rest expiring on 31 December 1978; it has been agreed between the parties that KW, after the transfer of the 51 % of Maxhütte's capital, in accordance with the German law and with the statutes of Maxhütte, will exercise control over the latter company; this acquisition will bring about a concentration between KW and Maxhütte and between the undertaking which are concentrated with each of them.

11. According to the parties involved, the main purpose of this concentration is to ensure the supply of semi-finished products to KW's Georgsmarienhütte, Hagen-Haspe and Mannstaedt plants, particularly in view of the cessation of metallurgical activities at the Haspe plant some years ago and Maxhütte's crude-steel producing capacity since the reorganization of the OBM steel plant at Sulzbach-Rosenberg. It is also designed to secure deliveries of wide hot-rolled strip from KW to Maxhütte, which at present are made under a long-term supply contract due to expire in nine years; these deliveries totalled some 280 000 tonnes in 1975, representing a value of around DM 140 million. KW also carries out hire rolling operations for Maxhütte and has a share in Maxhütte's galvanizing line at Salzgitter.

II

12. The position of KW and Maxhütte on the steel market can be assessed for the most part by reference to the nature and volume of their respective outputs and their shares of aggregate production and market shares.

13. The production of pig iron, crude steel and finished steel products by KW and Maxhütte in 1975 can be seen from the following table; this table also shows the proportion of total steel production accounted for by KW and Maxhütte in 1975 in Germany, which is their principal market (55 % of sales in terms of value for Klöckner and 74 % for Maxhütte), the proportion of Community production for which they accounted and their ranking among Community producers.

IRON AND STEEL PRODUCTS WHICH COME UNDER THE ECSC TREATY

Production in 1975 (in '000 tonnes) of KW and Maxhütte, proportion of production accounted for by KW/Maxhütte and ranking of KW/Maxhütte within the Community

Group of products	KW (' 000 t)	Maxhütte (' 000 t)	KW/Maxhütte combined (' 000 t)	Total		Ranking within the Community
				Germany %	Community %	
Pig iron	1 867	673	2 540	8.4	2.9	13
Crude steel	3 024	827	3 851	9.5	3.1	13
Wide hot-rolled strip (total production)	1 490	—	1 490	13.8	4.5	—
Finished rolled products including	2 357	871	3 228	11.2	3.6	—
Permanent way material	123	52	175	26.6	9.9	5
Girders, sections and Zorès sections	19	111	130	10.5	3.0	10
Tube rounds and squares	—	32	32	2.6	1.2	—
Wire rod	314	—	314	10.4	3.4	—
Merchant bars	664	384	1 048	20.5	5.3	5
Sheet	144	—	144	2.6	1.0	} 9
Plate	589	292	881	14.6	4.1	
Wide hot-rolled strip (as finished product)	504	—	504	17.5	7.0	—
Final products :						
Coated sheet	—	160	160	12.6	4.3	10
Electrical sheet	—	26	26	8.1	2.9	7

14. It is clear from this table that KW's total production of pig iron and crude steel is far larger than Maxhütte's; the same applies to rolled products. Only KW produces wide hot-rolled strip, while Maxhütte has to have its needs supplied by other companies, notably KW. As regards finished rolled products, several lines complement rather than compete with each other, for KW is the only one of the two to produce wire rod and medium and heavy plate and Maxhütte is not in the markets for these products, while the reverse is true for tube rounds and squares and, to all intents and purposes, for girders and sections and coated and electrical sheets (final products). Maxhütte is, however, an important producer of permanent way material, merchant bars and sheets — though its output is well below that of KW.

15. KW and Maxhütte, as can also be seen from the table, will not have a leading share in the production of any of the main groups of iron and steel products. Their share in the production of pig iron and crude steel will not exceed 9 % in Germany and 3 % in the Community as a whole, thus making them the 13th-ranking producer in the Community. KW does have a relatively important position in respect of wide hot-rolled strip, with a 14 % share of production in Germany and 4.5 % in the Community, but its position will not be altered by the proposed transaction since Maxhütte is not equipped with rolling mills for wide hot-rolled strip. As far as wire rod and medium and heavy plate, tube rounds and squares and, to all intents and purposes, girders and sections are concerned, as well as coated and electrical sheets, the production and market position of KW/Maxhütte will not be changed by the proposed transaction (with the possible exception of girders and sections) for either KW or Maxhütte (depending on the product) is not equipped to produce and is thus absent from the market. As regards girders and sections, the low production of KW added to that of Maxhütte brings their total to 10.5 % in Germany and 3 % in the Community, which ranks them 10th in the Community.

16. As regards permanent way material, merchant bars and sheet, KW's position will be strengthened by Maxhütte's production capacities, but the share represented by their joint production of each of these groups of products will not exceed 26 %, 20 % and 15 % respectively in Germany and 10 %, 5 % and 4 % respectively in the Community, where KW/Maxhütte will rank fifth in respect of the first

two groups of products and ninth for the third. It is Community production as a whole and not only that of Germany that should be taken into account, since the proportion of imported rolled steel products on the German market is a high one, accounting for more than a quarter of total consumption in 1975, while KW/Maxhütte's share of the German market in terms of value does not exceed 26 % for permanent way material, 14 % for bars, 12 % for concrete reinforcing bars and 14 % for sheet. The Community as a whole is therefore the relevant market. KW/Maxhütte has to face competition in respect of each of these products from a relatively large number of other producers in the Community — some 15 in respect of permanent way material, close to 150 in respect of merchant bars and 25 in respect of sheet — some of whom represent powerful groups with a much larger output. There is competition from iron and steel products imported from countries outside the Community as well, so German buyers have an adequate choice of suppliers.

17. In respect of ordinary steel products, then, KW/Maxhütte does not hold a particularly important position and is not able to hinder effective competition. The same applies to special steel products, for only in respect of special steel bars is KW in a relatively important position; the addition of Maxhütte's low output will not noticeably change KW's market share, which does not exceed 12 % in Germany and 4 % in the Community.

18. KW/Maxhütte's position should not change significantly over the next few years. The inquiry into investments in the Community's coal and steel industries carried out by the Commission in 1975 shows that any increase in the share held by KW/Maxhütte in the Community's iron and steel production capacity is likely to be small, with that share remaining at about 3 % in 1979.

19. These facts apply equally to Germany, the main market for KW and Maxhütte, and to the other parts of the Community steel market. As regards KW's total market deliveries, 45 % of which are exported, only 17.5 % go to other Community countries, and this percentage is not exceeded for any of KW's principal groups of products, KW's position on the Community market will not be noticeably altered by the proposed transaction, for only 0.6 % of Maxhütte's total deliveries are for other Community countries. Even if KW/Maxhütte's overall export capacity should be strengthened by the transaction, this would in no way jeopardize the maintenance of effective competition.

20. Consequently, examination of KW/Maxhütte's share of production and its market position shows that the proposed transaction will not give the undertakings concerned the power to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market in steel.

III

21. In 1975 KW's internal consumption of finished rolled products from its own plants totalled some ...⁽¹⁾ tonnes, ...⁽¹⁾ tonnes of that being special steels; this represents less than 5 % of the total deliveries of finished products made by KW. Maxhütte consumes none of its own finished products. It does not seem that the planned concentration would allow the undertakings concerned to make a significant increase in the aggregate internal consumption of finished products by the new group.

22. Maxhütte already obtains part of its requirements of wide hot-rolled strip from KW; KW's deliveries of this product to Maxhütte amounted in 1975 to some 280 000 tonnes, while its deliveries to the market were about twice that amount. Even if KW should be in a position to increase its deliveries as a result of the proposed transaction, this would not significantly alter the existing pattern of supply.

23. The undertakings concerned expect the proposed transaction to put them in a position to increase consumption within the new group of semi-finished products for making sections — products which are now bought outside but will be supplied to KW by Maxhütte. Trade in semi-finished steel products between groups of the same type and the same size are customary in the Community; KW's

internal deliveries of semi-finished products in 1975 totalled 57 000 tonnes (with 93 000 tonnes put on the market), compared with Maxhütte's 79 000 tonnes of external deliveries.

24. Consequently, even if the planned concentration results in a strengthening of vertical integration and may lead to an increase in self-sufficiency which cannot at present be computed, it will not give the undertakings concerned an artificially privileged position involving a substantial advantage in access to supplies or markets or provide them with other means of evading the rules of competition instituted under the Treaty.

25. The transaction therefore satisfies the tests of Article 66 (2) and may be authorized,

HAS ADOPTED THIS DECISION:

Article 1

Klöckner-Werke AG, Duisburg, is authorized to acquire a majority holding in Eisenwerk-Gesellschaft Maximilianshütte mbH, Sulzbach-Rosenberg.

Article 2

This Decision is addressed to Klöckner-Werke AG, Duisburg.

Done at Brussels, 22 December 1976.

For the Commission

R. VOUEL

Member of the Commission

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