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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2020/78**of 25 August 1978****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 1254/78⁽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 1815/78⁽³⁾ and subsequent amending
Regulations ;

Whereas it follows from applying the provisions
contained in Regulation (EEC) No 1815/78 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 26 August
1978.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 156, 14. 6. 1978, p. 1.

⁽³⁾ OJ No L 210, 1. 8. 1978, p. 4.

ANNEX

to the Commission Regulation of 25 August 1978 fixing the import levies on cereals and on wheat or rye flour groats and meal

(u.a./tonne)

CCT heading No	Description	Levies
10.01 A	Common wheat, and meslin	81.34
10.01 B	Durum wheat	124.48 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	84.51 ⁽⁶⁾
10.03	Barley	82.94
10.04	Oats	71.74
10.05 B	Maize, other than hybrid maize for sowing	75.79 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	52.87 ⁽⁴⁾
10.07 C	Grain sorghum	78.78 ⁽⁴⁾
10.07 D	Canary seed ; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	124.64
11.01 B	Rye flour	129.06
11.02 A I a)	Durum wheat groats and meal	203.72
11.02 A I b)	Common wheat groats and meal	134.59

⁽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 1180/77 and Commission Regulation (EEC) No 2622/71.

COMMISSION REGULATION (EEC) No 2021/78

of 25 August 1978

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 1254/78 ⁽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
1816/78 ⁽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 26 August
1978.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 156, 14. 6. 1978, p. 1.

⁽³⁾ OJ No L 210, 1. 8. 1978, p. 6.

ANNEX

to the Commission Regulation of 25 August 1978 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	Current 8	1st period 9	2nd period 10	3rd period 11
10.01 A	Common wheat, and meslin	0	0	0	0
10.01 B	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	0	0	0
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0	0	0
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	Current 8	1st period 9	2nd period 10	3rd period 11	4th period 12
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	0	0	0
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 B	Roasted malt	0	0	0	0	0

COMMISSION REGULATION (EEC) No 2022/78**of 25 August 1978****fixing the import levies on live cattle and on beef and veal other than frozen**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
805/68 of 27 June 1968 on the common organization
of the market in beef and veal ⁽¹⁾, as last amended by
Regulation (EEC) No 425/77 ⁽²⁾, and in particular
Article 12(8) thereof,

Whereas the import levies on live cattle and on beef
and veal other than frozen were fixed by Regulation
(EEC) No 1015/78 ⁽³⁾, as last amended by Regulation
(EEC) No 1772/78 ⁽⁴⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 1015/78

to the quotations and other information known to the
Commission that the levies at present in force should
be altered as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies on live cattle and on beef and veal
other than frozen shall be as specified in the Annex to
this Regulation.

Article 2

This Regulation shall enter into force on 4 September
1978.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 61, 5. 3. 1977, p. 1.

⁽³⁾ OJ No L 132, 20. 5. 1978, p. 5.

⁽⁴⁾ OJ No L 204, 28. 7. 1978, p. 21.

ANNEX

to the Commission Regulation of 25 August 1978 fixing the import levies on live cattle and on beef and veal other than frozen ⁽¹⁾ for the period beginning 4 September 1978

(u.a./100 kg)

CCT heading No	Austria/Sweden/Switzerland	Other third countries
— Live weight —		
01.02 A II a) (a)	—	59·633
01.02 A II b) (b)	30·270	59·633
— Net weight —		
02.01 A II a) 1 aa) (a)	—	113·303
02.01 A II a) 1 bb)	57·514	113·303
02.01 A II a) 2 aa) (a)	—	90·643
02.01 A II a) 2 bb)	46·012	90·643
02.01 A II a) 3 aa) (a)	—	135·964
02.01 A II a) 3 bb)	69·017	135·964
02.01 A II a) 4 aa)	86·271	169·956
02.01 A II a) 4 bb)	98·682	194·405
02.06 C I a) 1	86·271	169·956
02.06 C I a) 2	98·682	194·405
16.02 B III b) 1 aa)	98·682	194·405

(¹) In accordance with Regulation (EEC) No 706/76, levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

(a) The levy shall be established in accordance with the provisions set out in Annex I to the Trade Agreement between the EEC and the Socialist Federal Republic of Yugoslavia.

(b) The levy which is to be applied to young male bovine animals, intended for fattening, of a live weight of 300 kg or less, imported under the conditions set out in Article 13 of Council Regulation (EEC) No 805/68 of 27 June 1968, and in the provisions adopted for its application, is totally or partially suspended in accordance with those provisions.

COMMISSION REGULATION (EEC) No 2023/78
of 25 August 1978
fixing the import levies on frozen beef and veal

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
805/68 of 27 June 1968 on the common organization
of the market in beef and veal ⁽¹⁾, as last amended by
Regulation (EEC) No 425/77 ⁽²⁾, and in particular
Article 12 (8) thereof,

Whereas the import levies on frozen beef and veal
were fixed by Regulation (EEC) No 1016/78 ⁽³⁾, as last
amended by Regulation (EEC) No 1773/78 ⁽⁴⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 1016/78

to the quotations and other information known to the
Commission, that the levies should be fixed as shown
in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies on frozen beef and veal shall be as
specified in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 4 September
1978.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 61, 5. 3. 1977, p. 1.

⁽³⁾ OJ No L 132, 20. 5. 1978, p. 9.

⁽⁴⁾ OJ No L 204, 28. 7. 1978, p. 23.

ANNEX

to the Commission Regulation of 25 August 1978 fixing the import levies on frozen beef and veal ⁽¹⁾ for the period beginning 4 September 1978

(u.a./100 kg)

CCT heading No	Levy
	— Net weight —
02.01 A II b) 1	126·983
02.01 A II b) 2	101·587 (a)
02.01 A II b) 3	158·729
02.01 A II b) 4 aa)	190·476
02.01 A II b) 4 bb) 11	158·729 (a)
02.01 A II b) 4 bb) 22 (b)	158·729 (a)
02.01 A II b) 4 bb) 33	218·411 (a)

(¹) In accordance with Regulation (EEC) No 706/76, levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

(a) Where products are imported under the conditions set out in Article 14 of Council Regulation (EEC) No 805/68 of 27 June 1968 and in provisions adopted for its application, the levy is totally or partially suspended in accordance with those provisions.

(b) Entry under this subheading is subject to the production of a certificate issued on conditions laid down by the competent authorities of the European Communities.

COMMISSION REGULATION (EEC) No 2024/78

of 25 August 1978

amending Regulation (EEC) No 1053/68 defining the conditions for the admission of certain milk products to certain tariff headings

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 1761/78⁽²⁾, and in particular Article 14 (7) thereof,

Whereas Commission Regulation (EEC) No 1053/68 of 23 July 1968 defining the conditions for the admission of certain milk products to certain tariff headings⁽³⁾, as last amended by Regulation (EEC) No 1084/75⁽⁴⁾, provides that the admission of a product to these tariff headings is subject to the production of a certificate issued by the exporting country in a specific form; whereas such a certificate is required for Kashkaval cheese and for sheep or buffalo cheeses in brine or in sheepskin or goatskin bottles;

Whereas the Customs authorities in certain Member States have encountered difficulties with regard to imports of these cheeses owing to the form of the relevant wording, which could be interpreted as meaning that even Kashkaval cheeses must be put up in brine or in sheepskin or goatskin bottles; whereas this is not the practice in the trade in these cheeses; whereas

to avoid any errors in interpretation a certificate should be established for each type of cheese;

Whereas, in order to allow the old type of certificates to be used for deliveries which are in progress and also to enable the exporting countries to adjust to the new provisions, a reasonable period should be allowed to elapse before this Regulation takes effect;

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

HAS ADOPTED THIS REGULATION:

Article 1

The certificate 'for Kashkaval or sheep or buffalo cheeses in brine or sheepskin or in goatskin bottles' annexed to Regulation (EEC) No 1053/68 is replaced by the certificates annexed to this Regulation.

Article 2

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

It shall take effect three months after its entry into force.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 204, 28. 7. 1978, p. 6.

⁽³⁾ OJ No L 179, 25. 7. 1968, p. 17.

⁽⁴⁾ OJ No L 107, 26. 4. 1975, p. 10.

**CERTIFICAT / BESCHEINIGUNG / CERTIFICATO / CERTIFICAAT / CERTIFIKAT /
CERTIFICATE**

N°

**pour les fromages de brebis ou de bufflonne, en récipients contenant de la saumure ou en
outres en peau de brebis ou de chèvre**

**für Schaf- oder Büffelmilch in Behältern, die Salzlauge enthalten, oder in Beuteln aus Schaf-
oder Ziegenfell**

**per formaggi di pecora o di bufala, in recipienti contenenti salamoia o in otri di pelle di
pecora o di capra**

**voor schape- of buffelkaas, in recipiënten die pekels bevatten of in zakken van schape- of
geitevellen**

**for ost af fåre- eller bøffelmælk i emballage indeholdende saltlage eller i beholdere af fåre-
eller gedekind**

for sheep or buffalo cheeses in brine or in sheepskin or goatskin bottles

L'autorité compétente
Die zuständige Stelle
L'autorità competente
De bevoegde autoriteit
Den kompetente myndighed
The competent authority

certifie que le lot de
bescheinigt, daß die Sendung von
certifica che la partita di
bevestigt dat de partij van
bekræfter, at sendingen på
certifies that the lot weighing

kilogrammes de produit, faisant l'objet de la facture n°
Kilogramm, für welche die Rechnung Nr.
chilogrammi di prodotto, oggetto della fattura n.
kilogram van het produkt, waarvoor factuur nr.
kilogram af produktet, anført i faktura nr.
kilograms of goods against invoice No

du
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of

délivré par / ausgestellt wurde durch / emessa da / werd afgegeven door / udstedt af / issued by

consiste en / besteht aus / consiste in / bestaat uit / består af / consists of

Matière première : exclusivement lait de brebis / de bufflonne ⁽¹⁾ de production nationale
 Rohstoff : ausschließlich Schafmilch / Büffelmilch ⁽¹⁾ nationaler Erzeugung
 Materia prima : esclusivamente latte di pecora / di bufala ⁽¹⁾ di produzione nazionale
 Grondstof : uitsluitend schapemelk / buffelmelk ⁽¹⁾ van binnenlandse produktie
 Råvare : udelukkende indenlandsk produceret fåremælk / bøffelmælk ⁽¹⁾
 Raw material : exclusively home-produced milk from sheep / buffaloes ⁽¹⁾

Teneur minimale de la matière grasse en poids de la matière sèche :

Mindestfettgehalt in Gewichtshundertteilen in der Trockenmasse :

Tenore minimo di materie grasse in peso della sostanza secca :

Minimumvetgehalte, berekend op de droge stof :

Mindste fedtindhold i tørstoffet i vægtprocent :

Minimum fat content by weight referred to dry matter

Teneur (en poids) en eau dans la matière non grasse :

Wassergehalt in der fettfreien Käsemasse :

Tenore di acqua in peso della materia non grassa :

Vochtgehalte in de vetvrije kaasmassa :

Vandindhold (i vægtprocent) i den fedtfri ostemasse :

Water content by weight of the non-fatty matter :

Le produit en question a été fabriqué au (en)

Das betreffende Erzeugnis ist in

Il prodotto in causa è stato fabbricato in

Het betreffende produkt is in

Den pågældende varer er fremstillet i (på)

The product in question was made in

et il sera exporté directement à destination de

hergestellt worden und wird unmittelbar ausgeführt nach

e sarà esportato direttamente verso

geproduceerd en wordt rechtstreeks uitgevoerd naar

og udføres direkte til

and will be exported directly to

Lieu et date d'émission

Ausstellungsort und -datum

Luogo e data d'emissione

Plaats en datum van afgifte

Sted og dato for udstedelsen

Place and date of issue

Signature(s)

Unterschrift(en)

Firma(e)

Handtekening(en)

Underskrift(er)

Signature(s)

Cachet de l'organisme émetteur

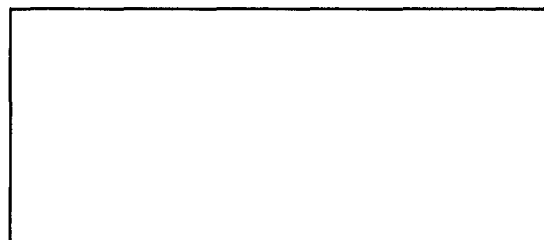
Stempel der ausstellenden Stelle

Timbro dell'organismo emittente

Stempel van het met de afgifte belaste bureau

Den udstedende myndigheds stempel

Stamp of issuing agency



⁽¹⁾ Biffer les mentions inutiles / Nichtzutreffendes ist zu streichen / Cancellare la menzione inutile / Doorhalen wat niet van toepassing is / Det ikke gældende overstreges / Delete where inapplicable

**CERTIFICAT / BESCHEINIGUNG / CERTIFICATO / CERTIFICAAT / CERTIFIKAT /
CERTIFICATE**

N°

pour le fromage kashkaval**für Kashkaval-Käse****per il formaggio Kashkaval****voor Kashkavalkaas****for Kashkaval-ost****for Kashkaval cheese**

L'autorité compétente
Die zuständige Stelle
L'autorità competente
De bevoegde autoriteit
Den kompetente myndighed
The competent authority

certifie que le lot de
bescheinigt, daß die Sendung von
certifica che la partita di
bevestigt dat de partij van
bekræfter, at sendingen på
certifies that the lot weighing

kilogrammes de produit, faisant l'objet de la facture n°
Kilogramm, für welche die Rechnung Nr.
chilogrammi di prodotto, oggetto della fattura n.
kilogram van het produkt, waarvoor factuur nr.
kilogram af produktet, anført i faktura nr.
kilograms of goods against invoice No

du
vom
del
van
af
of

délivré par / ausgestellt wurde durch / emessa da / werd afgegeven door / udstedt af / issued by

consiste en / besteht aus / consiste in / bestaat uit / består af / consists of

Matière première : exclusivement lait de brebis de production nationale
Rohstoff : ausschließlich Schafmilch nationaler Erzeugung
Materia prima : esclusivamente latte di pecora di produzione nazionale
Grondstof : uitsluitend schapemelk van binnenlandse produktie
Råvare : udelukkende indenlandsk produceret fåremælk
Raw material : exclusively home-produced milk from sheep

Teneur minimale de la matière grasse en poids de la matière sèche :
Mindestfettgehalt in Gewichtshundertteilen in der Trockenmasse :
Tenore minimo di materie grasse in peso della sostanza secca :
Minimumvetgehalte, berekend op de droge stof :
Mindste fedtindhold i tørstoffet i vægtprocent :
Minimum fat content by weight referred to dry matter :

Teneur (en poids) en eau dans la matière non grasse :
Wassergehalt in der fettfreien Käsemasse :
Tenore di acqua in peso della materia non grassa :
Vochtgehalte in de vetvrije kaasmassa :
Vandindhold (i vægtprocent) i den fedtfri ostemasse :
Water content by weight of the non-fatty matter :

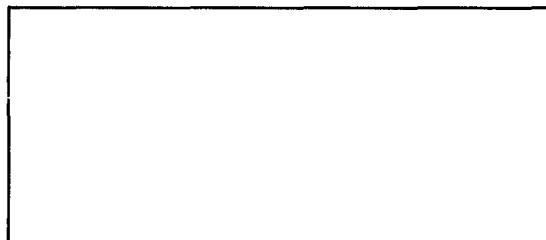
Le produit en question a été fabriqué au (en)
Das betreffende Erzeugnis ist in
Il prodotto in causa è stato fabbricato in
Het betreffende produkt is in
Den pågældende varer er fremstillet i (på)
The product in question was made in

et il sera exporté directement à destination de
hergestellt worden und wird unmittelbar ausgeführt nach
e sarà esportato direttamente verso
geproduceerd en wordt rechtstreeks uitgevoerd naar
og direkte til
and will be exported directly to

Lieu et date d'émission
Ausstellungsort und -datum
Luogo e data d'emissione
Plaats en datum van afgifte
Sted og dato for udstedelsen
Place and date of issue

Signature(s)
Unterschrift(en)
Firma(e)
Handtekening(en)
Underskrift(er)
Signature(s)

Cachet de l'organisme émetteur
Stempel der ausstellenden Stelle
Timbro dell'organismo emittente
Stempel van het met de afgifte belaste bureau
Den udstedende myndigheds stempel
Stamp of issuing agency



COMMISSION REGULATION (EEC) No 2025/78

of 25 August 1978

amending Regulation (EEC) No 1937/78 introducing a countervailing charge on
peaches 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 1766/78⁽²⁾, and in
particular Article 27 (2) thereof,

Whereas Regulation (EEC) No 1937/78⁽³⁾, as
amended by Regulation (EEC) No 1982/78⁽⁴⁾, intro-
duced a countervailing charge on peaches 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 peaches originating in Greece must
be amended,

HAS ADOPTED THIS REGULATION :

Article 1

The amount '6.75 units of account' appearing in
Article 1 of Regulation (EEC) No 1937/78 is replaced
by the amount '11.29 units of account'.

Article 2

This Regulation shall enter into force on 26 August
1978.

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

Done at Brussels, 25 August 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.
⁽²⁾ OJ No L 204, 28. 7. 1978, p. 12.
⁽³⁾ OJ No L 220, 11. 8. 1978, p. 20.
⁽⁴⁾ OJ No L 227, 18. 8. 1978, p. 14.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 28 July 1978

relating to proceedings under Article 85 of the EEC Treaty (IV/29.440 : Arthur Bell and Sons Ltd — conditions of sale)

(Only the English text is authentic)

(78/696/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 17 of 6 February 1962⁽¹⁾, and in particular Article 3 thereof,

Having regard to the Commission's decision of 21 September 1977 to open, on its own initiative, proceedings in respect of Bell's conditions of sale, pursuant to Article 3 (1) of Council Regulation No 17,

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

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered on 17 January 1978 pursuant to Article 10 of Regulation No 17,

Whereas :

I. THE FACTS

The present proceedings concern conditions of sale which Arthur Bell and Sons Ltd applied to sales of its Scotch whisky to trade customers established in the United Kingdom from at least 1 January 1973 to 14 October 1977.

Hereinafter Arthur Bell and Sons Ltd is referred to as 'Bell', Bell's trade customers established in the United Kingdom as 'trade customers' and the conditions of sale which are the subject of these proceedings as 'old conditions of sale'.

1. Arthur Bell and Sons Limited

- (a) Bell is a United Kingdom company registered in Edinburgh on 19 December 1921 and established since 1825. Bell has several subsidiary companies in the United Kingdom. In 1974 Bell acquired Canning Town Glass Works, a United Kingdom undertaking engaged in the production of glass bottles.
- (b) Bell is mainly engaged in the business of distilling malt whisky, blending whisky and distributing blended and malt Scotch whisky. Its best selling brand by far is 'Bell's Extra Special Scotch Whisky', a standard blended Scotch whisky, at least three years old.
- (c) The total turnover represented by sales of Scotch whisky by Bell was around £117 million for the year 1976, including approximately £75 million tax and duty. Bell's turnover in the United Kingdom in 1976, excluding tax and duty, was around £20 000 000 and in the rest of the EEC £ ...⁽³⁾.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

⁽³⁾ In the published version of this Decision, some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

- (d) Bell estimates its market share of total malt whisky production in the United Kingdom to have been ...% in 1976.
- (e) Bell's market share in sales of Scotch whisky in the United Kingdom is estimated to have been ...% over the past three years, while it was ...% 10 years ago. Bell's position on the market of whiskies from all sources in the United Kingdom would be of similar importance since, compared with Scotch whisky, the quantities of other whiskies sold there are insignificant. Bell is the second biggest seller of Scotch whisky in the United Kingdom and Bell's Extra Special Scotch Whisky is the best selling Scotch whisky brand in the United Kingdom.
- (f) As to sales of Scotch whisky in EEC countries other than the United Kingdom, Bell had a market share of around ...% in 1974, ...% in 1975 and ...% in 1976.
- (g) Bell sells in the United Kingdom direct to around 2 400 customers who are either independent wholesalers (and supermarkets) or brewers. Some of them are of considerable economic importance. These customers are undertakings which buy for resale. They are in this text referred to as 'trade customers'. In the other EEC countries, Bell distributes its brands of Scotch whisky through distributors, supplied with under-bond whisky; distributors of Bell's Extra Special Scotch Whisky, who are one per country, had been supplied since 1975 at prices somewhat lower than those charged to trade customers.

2. The old conditions of sale

- (a) On 5 March 1976, Bell submitted to the Commission in reply to a request for information made on 4 February 1976 in accordance with Article 11 of Regulation No 17, the text of the old conditions of sale which Bell was applying to its sales of Scotch whisky to trade customers for a number of years.
- (b) These conditions of sale were endorsed on the standard form sales invoices used by Bell for all sales in the United Kingdom.
- (c) These conditions of sale contained a provision stating that :

"The acceptance of the invoice by the purchaser binds him that whisky supplied in bond shall not be offered directly or indirectly by sub-sale or otherwise for exportation outside Great Britain".

- (d) Bell submitted that this provision did not appreciably restrict competition within the common market, in particular since Bell's under bond sales, amounting to ...% of its total sales in volume, represent on average less than ..% of the total volume of Scotch whisky sold in the United Kingdom.
- (e) On 14 October 1977, Bell put into use new conditions of sale which limit the prohibition to export only to countries outside the European Economic Community.

3. Excise duty system in the United Kingdom

- (a) United Kingdom excise duty is payable at the time at which the spirits are removed from bond. Spirits may circulate under bond.
- (b) The system of excise duty does not provide for the payment of duty on spirits for export or for a reimbursement of duty if paid. Exports are therefore made under bond.
- (c) Excise duties in the United Kingdom on a case of 12 bottles of Bell's Extra Special Scotch Whisky at 1 March 1977 amounted to £37.92. This amount represents around four times Bell's selling price to trade customers.

II. APPLICABILITY OF ARTICLE 85 OF THE EEC TREATY

1. Applicability of Article 85 (1)

Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market any agreement between undertakings which is likely to affect trade between the Member States and which has as its object or effect the prevention, restriction or distortion of competition within the common market.

- (a) Bell and each of the trade customers who purchase Bell's Scotch whisky for resale are undertakings within the meaning of Article 85 (1).
- (b) The old conditions of sale, endorsed on the standard form sales invoice used by Bell, were evidence of the essential terms of the standard contracts of sale between Bell and its trade customers. These contracts, of which the old conditions of sale formed an essential part, are agreements between undertakings within the meaning of Article 85 (1).

- (c) The old conditions of sale contained a provision which had as its object and effect the restriction of competition within the common market from at least 1 January 1973 to 14 October 1977.

The provision prevented trade customers from reselling directly or indirectly, by sub-sale or otherwise, outside the United Kingdom, Bell's Scotch whisky bought under bond. Excise duties in the United Kingdom are very high (about four times Bell's prices to trade customers) and are not reimbursable once paid. Accordingly, only Scotch whisky bought under bond, and on which United Kingdom duties have not yet been paid, is capable of being exported and resold in another EEC country at a competitive price.

This provision therefore was aimed at preventing altogether the trade customers and their subsequent purchasers from exporting Bell's Scotch whisky and competing in the common market countries other than the United Kingdom.

Since this provision had clearly as its object to restrict competition within the common market, it is not necessary for the Commission to establish that it had also this effect, for the purpose of finding an infringement of Article 85 (1).

Bell had submitted, without however detailed supporting evidence, that there was little likelihood of exports by trade customers and therefore little effect on competition within the common market. Since prices to trade customers were higher than prices to EEC distributors from 1975 to 1977, there would have been practically no possibility for a dealer buying at the United Kingdom home price to resell profitably in another Member State and to compete with EEC distributors even making allowances for their 'mark-up' (distribution costs, profit margin, etc.).

It may indeed have been difficult at certain periods for parallel importers of Bell's Scotch whisky bought in the United Kingdom to undercut Bell's distributors in other EEC countries. Since distributors are said to have higher distribution costs than parallel importers, these difficulties would have depended in particular on the extent to which such higher costs of the distributors were below the time-to-time differences between the two Bell price levels.

The prohibition under consideration, however, prevented all trade customers and their purchasers from exercising any actual or potential competition with dealers in Bell's Scotch whisky in other

EEC countries. In particular, they were prevented even from potentially exercising pressure on distributors so that the latter would have been induced to minimize their distribution costs and confine themselves to reasonable margins. Further, the provision had also the actual effect of preventing trade customers from competing in the other EEC countries with dealers in other brands of Scotch whisky. Finally, the prohibition to export affected the structure of competition on the Scotch whisky or non-Scotch whisky market in other common market countries by excluding, in relation to Bell's Scotch whisky, the source of important supplies, namely, dealers in the country of the producer.

- (d) The provision of the old conditions of sale under consideration appreciably restricted competition within the common market.

The creation of obstacles to trade between Member States on the basis of export prohibition of the type under consideration hinders the establishment of a single market among Member States and prevents actual and potential competition on the part of dealers affected by such prohibition. Although the quantities of Bell's whisky which were being sold by Bell itself or through distributors in EEC countries other than the United Kingdom are currently relatively small, the provision in question impeded potential exports of large quantities of the product in question on the part of numerous trade customers and subsequent purchasers.

In this respect the share of the market in Scotch whisky or whisky from all sources held by Bell in the United Kingdom is of direct relevance. Bell holds around ...% of these markets and therefore the export prohibition under consideration restricted to an appreciable extent otherwise available supplies of whisky for dealers and consumers in other EEC countries.

That the prohibition applied only to sales of under bond Bell's Scotch whisky, which has represented only ...% of total sales of Scotch whisky in the United Kingdom, is not a relevant consideration. The prohibition to export affected potentially all Bell's sales in the United Kingdom which, if intended for export, would have to be made under bond.

Concerning the position of the parties who were affected by Bell's restrictive conditions, the export prohibition prevented all 2 400 trade customers from exporting and competing with the numerous

dealers in whisky in other EEC countries. Many of these trade customers are of considerable importance and were willing and able to engage in export activities and also numerous dealers in other EEC countries were potential buyers of Scotch whisky resold by United Kingdom trade customers.

Also relevant is the importance of the commercial position held by Bell, whose turnover has been substantial.

The non-exportation provision contained in the old conditions of sale cannot therefore be considered as having had such insignificant effect on competition within the common market as to leave it outside the prohibition of Article 85 (1).

- (e) The direct export prohibition contained in the old conditions of sale was likely to affect trade between Member States.

The restriction by its nature was likely to affect trade between Member States, since it prevented trade by trade customers from the United Kingdom to other EEC Member States. It caused an artificial partitioning of the common market and hindered the establishment of a single market among Member States. In this case, it had a direct, actual and potential influence on the pattern of trade between Member States since it prevented exports by trade customers and their subsequent purchasers of a product which is already distributed and established in EEC countries other than the United Kingdom. Furthermore, in the light of the considerations set out under (d) above, the provision in question was capable of affecting trade within Member States to an appreciable extent.

The provision referred to above and contained in the conditions of sale applied by Bell until 14 October 1977 therefore amounted to an infringement of Article 85 (1) from at least 1 January 1973 to 14 October 1977.

2. Inapplicability of Article 85 (3) of the EEC Treaty

Under the terms of Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement between undertakings which contributes to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equi-

table share in the profit resulting therefrom, and which :

- neither imposes on the undertakings concerned any restrictions not indispensable to the attainment of the above objectives,
- nor enables such undertakings to eliminate competition in respect of a substantial proportion of the goods concerned.

Pursuant to Articles 4 and 25 of Regulation No 17, agreements should be notified in order to qualify for the application of an exemption under Article 85 (3), unless they fall within the categories of agreements described under Article 4 (2), in particular agreements where the only parties thereto are undertakings from one Member State and which do not relate to exports between Member States (Article 4 (2) (1)).

The old conditions of sale were not exempt from notification pursuant to Article 4 (2) (1) of Regulation No 17 because, although they were contained in a series of agreements between undertakings from one Member State, namely the United Kingdom, they did relate to exports between Member States.

Further, the old conditions of sale have not been formally notified in accordance with the provisions of Commission Regulation No 27 ⁽¹⁾, but merely communicated to the Commission at its request.

The old conditions of sale cannot therefore benefit from an exemption under Article 85 (3).

III. APPLICABILITY OF ARTICLE 3 (1) OF COUNCIL REGULATION No 17

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

The Commission has noted that Bell has withdrawn the explicit export prohibition towards EEC countries which was contained in the old conditions of sale applied by Bell until 14 October 1977. The Commission requires that Bell should refrain from any further action by means of their sales conditions calculated to restrict the exportation from the United Kingdom to other EEC countries of their Scotch whisky bought by trade customers. This applies, in particular, to any action on Bell's part to restrict under bond sales of Scotch whisky,

⁽¹⁾ OJ No 35, 10. 5. 1962, p. 1118/62.

HAS ADOPTED THIS DECISION :

Article 1

The explicit prohibition to export from the United Kingdom to other EEC countries contained in conditions of sale, which were part of the contracts for the sale of Scotch whisky entered into by Arthur Bell and Sons Ltd with its trade customers established in the United Kingdom until 14 October 1977, amounted to an infringement of Article 85 (1) of the Treaty establishing the European Economic Community from at least 1 January 1973 until 14 October 1977.

Article 2

Arthur Bell and Sons Ltd shall refrain from further action by means of their sales conditions calculated to

restrict the exportation from the United Kingdom to other EEC countries of Scotch whisky bought by trade customers established in the United Kingdom.

Article 3

This Decision is addressed to Arthur Bell and Sons Ltd, Cherrybank, Perth PH2 0NG, Scotland.

Done at Brussels, 28 July 1978.

For the Commission

Raymond VOUEL

Member of the Commission

COMMISSION DECISION

of 28 July 1978

relating to proceedings under Article 85 of the EEC Treaty (IV/28.859: Wm. Teacher and Sons Ltd—conditions of sale)

(Only the English text is authentic)

(78/697/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 17 of 6 February 1962⁽¹⁾, and in particular Articles 3 and 4 thereof,

Having regard to the notification made on 17 April 1974 pursuant to Article 4 of Regulation No 17, by Wm. Teacher and Sons Ltd, Glasgow, Scotland, of conditions of sale applied to trade customers established in the United Kingdom,

Having regard to the Commission's decision of 21 June 1977 to initiate proceedings in this case,

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

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions delivered on 17 January 1978 pursuant to Article 10 of Regulation No 17,

Whereas :

I. THE FACTS

The present proceedings concern conditions of sale which Wm. Teacher and Sons Ltd applies to sales of Teacher's Highland Cream Scotch Whisky to trade customers established in the United Kingdom since August 1974.

Hereinafter Wm. Teacher and Sons Ltd is referred to as 'Teacher', Teacher's Highland Cream Scotch Whisky as 'Highland Cream', and Teacher's trade customers established in the United Kingdom as 'trade customers'.

1. Wm. Teacher and Sons Limited

(a) Teacher is a United Kingdom company registered in Edinburgh on 30 December 1948. Teacher has

several subsidiary companies in the United Kingdom and elsewhere. In November 1976, 96.8 % of Teacher's shares were acquired by Allied Breweries Ltd, a large United Kingdom undertaking engaged in the production and distribution of drinks such as beer, soft drinks, wines and spirits and whose turnover in 1975/76 amounted to £885 million.

(b) Teacher is engaged in the business of distilling malt whisky, blending whisky and distributing blended and malt Scotch whisky. Its best selling brand by far is 'Teacher's Highland Cream Scotch Whisky', a standard blended Scotch whisky, at least three years old, which can be taken as accounting for the entire selling activities of Teacher.

(c) The total turnover represented by sales of Scotch whisky by Teacher was around £56 million for the year 1975/76, including approximately £30 million tax and duty. Teacher's turnover in the United Kingdom in 1975 excluding tax and duty was around £10 500 000 and in the rest of the EEC £ ...⁽³⁾.

(d) Teacher estimates its market share of total malt whisky production in the United Kingdom to have been ...% in 1975.

(e) Teacher's market share in sales of Scotch whisky in the United Kingdom is estimated to have been ... % in 1973, ... % in 1974 and ... % in 1975. Teacher's position on the market of whiskies from all sources in the United Kingdom would be of similar importance since, compared with Scotch whisky, the quantities of other whiskies sold there are insignificant. Teacher is the third biggest seller of Scotch whisky in the United Kingdom and Highland Cream is the best selling Scotch whisky brand in England and the second best in the United Kingdom as a whole. Highland Cream sales represent ... % of total spirits sales in the United Kingdom.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

⁽³⁾ In the published version of this Decision some figures have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

(f) As to sales of Scotch whisky in EEC countries other than the United Kingdom, Teacher had a market share of around ... % in 1973, ... % in 1974 and ... % in 1975. Highland Cream is among the best selling brands of Scotch whisky in these countries. Teacher's estimated market share for 1975 of total imports of whisky into these countries (from all sources) ranged from ... % in Denmark to ... % in France and, of total spirits consumption in these countries, from ... % in Ireland to ... % in Italy.

(g) Teacher sells in the United Kingdom direct to 3 000 to 4 000 customers who are either independent wholesalers and supermarkets or brewers. Some of them are of considerable economic importance. These customers are undertakings which buy for resale. They are in this text referred to as 'trade customers'. In the other EEC countries Teacher distributes Highland Cream through distributors, except in Germany where Teacher has its own subsidiary. These distributors are one per country.

2. The notified conditions of sale

(a) On 17 April 1974, Teacher notified to the Commission conditions of sale which have applied to its sales of Highland Cream to trade customers since August 1974. Teacher asked for a negative clearance pursuant to Article 2 of Regulation No 17 or alternatively requested an exemption under Article 85 (3) of the EEC Treaty.

(b) These conditions of sale are endorsed on the standard form sales invoices used by Teacher for all sales in the United Kingdom of Highland Cream.

(c) These conditions of sale contain the following two provisions which were introduced in 1974 :

(i) trade customers to whom Highland Cream has been sold for delivery in Great Britain may not resell it outside Great Britain. This condition must be incorporated in all sub-sales,

(ii) trade customers who purchase Highland Cream under bond may only resell or otherwise transfer this product out of bond and after payment of all excise (or customs), duties due upon removal of the product from bond.

3. Excise duty system in the United Kingdom

(a) United Kingdom excise duty is payable at the time at which the spirits are removed from bond. Spirits may circulate under bond.

(b) The system of excise duty does not provide for the payment of duty on spirits for export nor for a reimbursement of duty if paid.

(c) Excise duties in the United Kingdom on a case of 12 bottles of Highland Cream at 1 March 1977 amounted to £37.92. This amount represents around four times Teacher's selling price to trade customers.

II. APPLICABILITY OF ARTICLE 85 OF THE EEC TREATY

1. Applicability of Article 85 (1)

Article 85 (1) of the EEC Treaty prohibits as incompatible with the common market any agreement between undertakings which is likely to affect trade between the Member States and which has as its object or effect the prevention, restriction or distortion of competition within the common market.

(a) Teacher and each of the trade customers who purchase Highland Cream for resale are undertakings within the meaning of Article 85 (1).

(b) The conditions of sale notified on 17 April 1974, endorsed on the standard form sales invoice used by Teacher, are evidence of the essential terms of the standard contracts of sale between Teacher and its trade customers. These contracts, of which the conditions of sale form an essential part, are agreements between undertakings within the meaning of Article 85 (1).

(c) The following provisions of the notified conditions of sale have as their object and effect the restriction of competition within the common market since August 1974 :

(i) The prohibition on reselling, outside Great Britain, Highland Cream sold for delivery in Great Britain, such prohibition to be incorporated in all sub-sales, is aimed at preventing and does prevent the trade customers and their subsequent purchasers from reselling Highland Cream and competing in the common market countries other than the United Kingdom.

(ii) The prohibition on reselling under bond has as its object and effect the prevention of competition from trade customers with dealers in common market countries other than the United Kingdom. This arrangement indeed obliges trade customers to pay United

Kingdom excise duty before reselling Highland Cream. The resale price of this product in another common market country would thus include a high amount of United Kingdom excise duty, around four times the purchase price, which is not reimbursable. Excise duty has also to be paid in the particular EEC country where the product is consumed. Possibilities of any resale outside the United Kingdom are therefore ruled out. This prohibition amounts to an indirect export prohibition.

These direct and indirect export prohibitions are intended to protect distributors in Highland Cream in EEC countries other than the United Kingdom, who are supplied in bond directly by Teacher, from competition on the part of dealers purchasing this product in the United Kingdom.

- (d) The two provisions of the notified conditions of sale appreciably restrict competition within the common market, contrary to Teacher's submissions based on its small market share on the whisky and spirits markets in EEC countries other than the United Kingdom.

The creation of obstacles to trade between Member States on the basis of export prohibitions of the type under consideration hinder the establishment of a single market among Member States and prevent actual and potential competition on the part of dealers affected by such prohibitions. Although the quantities of Highland Cream which are currently being sold in EEC countries other than the United Kingdom are small, the provisions in question impede potential exports of large quantities of the product in question on the part of numerous dealers in the United Kingdom.

In this respect the share of the market in Scotch whisky or whisky from all sources held by Teacher in the United Kingdom is of direct relevance. Teacher holds around ... % of these markets and therefore the export prohibitions under consideration restrict to an appreciable extent otherwise available supplies of whisky for dealers and consumers in other EEC countries.

These restrictions are also the more significant in view of the following considerations. In EEC countries other than the United Kingdom, Highland Cream is among the best selling brands of Scotch whisky with a market share which has continuously grown over the past few years. In addition,

the provisions restrict the export trade of a branded product for which the primary level of competition is that among dealers in that brand and eliminate the main usual source of parallel imports and competition, namely, dealers in the country of the producer.

Concerning the position of the parties who are affected by Teacher's restrictive conditions, the export prohibitions prevent all 3 000 to 4 000 trade customers from exporting and competing with the numerous dealers in whisky in other EEC countries. Many of these trade customers are of considerable importance and are willing and able to engage in export activities.

Also relevant is the importance of the commercial and financial position held by Teacher, whose turnover until 1976 was substantial. In 1976 Teacher was acquired by Allied Breweries Ltd, and is therefore now part of a group of considerable importance which is widely established also in Community countries other than the United Kingdom and accordingly could benefit from Allied Breweries' retail outlets, both in the United Kingdom and in other EEC countries.

The non-exportation provisions contained in the notified conditions of sale cannot therefore be considered as having such insignificant effect on competition within the common market as to leave them outside the prohibition of Article 85 (1).

- (e) The direct and indirect export prohibitions contained in the conditions of sale are likely to affect trade between Member States.

The restrictions by their nature are likely to affect trade between Member States, since they prevent trade by trade customers from the United Kingdom to other EEC Member States. They cause an artificial partition of the common market and hinder the establishment of a single market among Member States. In this case, they have a direct and actual influence on the pattern of trade between Member States since they prevent exports by trade customers and their purchasers of a product which is already distributed and established in EEC countries other than the United Kingdom. Furthermore, in the light of the considerations set out under (d) above, the provisions in question are capable of affecting trade within Member States to an appreciable extent.

The two provisions referred to above and contained in the notified conditions of sale applied by Teacher therefore amount to infringements of Article 85 (1) since August 1974.

2. Inapplicability of Article 85 (3) of the EEC Treaty

Under the terms of Article 85 (3), the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement between undertakings which contributes to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equitable share in the profit resulting therefrom, and which :

- neither imposes on the undertakings concerned any restrictions not indispensable to the attainment of the above objectives,
- nor enables such undertakings to eliminate competition in respect of a substantial proportion of the goods concerned.

(a) In the notification of the conditions of sale on 17 April 1974, and in reply by letter of 29 August 1977 to the Commission's statement of objections of 12 July 1977, Teacher submitted that in order that consumers' interests are served by the availability of Highland Cream as an alternative product of quality, it is indispensable that Teacher should provide for orderly and rational marketing of its whisky in the United Kingdom and in the other EEC countries. Distributors in these countries, who with Teacher material and financial collaboration promote sales of that product, would refuse to deal with Teacher's whisky in the absence of a reasonable degree of security.

(b) However, the sales contracts, of which the provisions in question are an essential part, are not capable in themselves of directly achieving an improvement of distribution in the United Kingdom or in the other EEC countries. They simply concern sales to trade customers and conditions on which such sales are made, mainly that trade customers and subsequent purchasers may not resell outside the United Kingdom and trade in the other EEC countries.

The non-exportation provisions further deprive consumers in EEC countries other than the United Kingdom of an important source of supply of Scotch whisky, while the nature of the goods in question and their distribution requirements do not justify a complete isolation of the United Kingdom from the rest of the common market.

The notified conditions of sale do not therefore fulfil the conditions set out in Article 85 (3).

Accordingly, the request made by Teacher for an exemption under Article 85 (3) of the conditions of sale notified on 17 April 1974 is rejected.

III. APPLICABILITY OF ARTICLE 3 (1) OF COUNCIL REGULATION NO 17

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

In view of the serious effect on competition within the common market resulting from the conditions of sale, Teacher should be required to terminate without delay the infringement constituted by the prohibitions to export and to resale in bond contained in these conditions of sale unless it has already done so. It should also be required to refrain from any further action by means of sales conditions calculated to restrict the exportation from the United Kingdom to other EEC countries of Highland Cream bought by trade customers,

HAS ADOPTED THIS DECISION :

Article 1

The prohibition to export from the United Kingdom to other EEC countries and the prohibition to resell in bond contained in the conditions of sale notified on 17 April 1974, which are part of the contracts for the sale of Highland Cream entered into by Wm. Teacher and Sons Ltd with its trade customers established in the United Kingdom, amount to infringements of Article 85 (1) of the Treaty establishing the European Economic Community since August 1974.

Article 2

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

Article 3

Wm. Teacher and Sons Ltd shall bring the infringement referred to in Article 1 hereof to an end without delay unless it has already done so and shall refrain from further action by means of sales conditions calculated to restrict the exportation from the United Kingdom to other EEC countries of Highland Cream bought by trade customers in the United Kingdom.

Article 4

Done at Brussels, 28 July 1978.

This Decision is addressed to Wm. Teacher and Sons Ltd, St Enoch Square, Glasgow GL 4BZ, Scotland.

For the Commission

Raymond VOUEL

Member of the Commission
