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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2670/78**of 15 November 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 2510/78⁽³⁾ and subsequent amending
Regulations ;

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

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

of these currencies recorded for a given period in
relation to the Community currencies referred to
in the previous subparagraph ;

Whereas it follows from applying the provisions
contained in Regulation (EEC) No 2510/78 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 16
November 1978.

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

Done at Brussels, 15 November 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 301, 28. 10. 1978, p. 1.

ANNEX

to the Commission Regulation of 15 November 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	79.20
10.01 B	Durum wheat	120.96 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	80.58 ⁽⁶⁾
10.03	Barley	86.75
10.04	Oats	79.56
10.05 B	Maize, other than hybrid maize for sowing	79.09 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	1.61
10.07 B	Millet	46.90 ⁽⁴⁾
10.07 C	Grain sorghum	77.95 ⁽⁴⁾
10.07 D	Canary seed ; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	122.72
11.01 B	Rye flour	124.00
11.02 A I a)	Durum wheat groats and meal	198.39
11.02 A I b)	Common wheat groats and meal	131.99

⁽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 2671/78

of 15 November 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
2511/78⁽³⁾ and subsequent amending Regulations;

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

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

of these currencies recorded for a given period in
relation to the Community currencies referred to
in the previous subparagraph;

Whereas, 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 16
November 1978.

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

Done at Brussels, 15 November 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 301, 28. 10. 1978, p. 3.

ANNEX

to the Commission Regulation of 15 November 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 11	1st period 12	2nd period 1	3rd period 2
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	7.35
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 11	1st period 12	2nd period 1	3rd period 2	4th period 3
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 2672/78
of 15 November 1978
fixing the import levies on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EEC) No 1260/78 ⁽²⁾, and in particular Article 11 (2) thereof,

Whereas the import levies on rice and broken rice were fixed by Regulation (EEC) No 2364/78 ⁽³⁾, as last amended by Regulation (EEC) No 2612/78 ⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 2364/78 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 table annexed to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16 November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.
⁽²⁾ OJ No L 156, 14. 6. 1978, p. 11.
⁽³⁾ OJ No L 286, 12. 10. 1978, p. 5.
⁽⁴⁾ OJ No L 315, 9. 11. 1978, p. 16.

ANNEX

to the Commission Regulation of 15 November 1978 fixing the import levies on rice and broken rice

(u.a. / tonne)

CCT heading No	Description	Third countries ⁽¹⁾	ACP or OCT ⁽¹⁾ ⁽²⁾ ⁽³⁾
10.06	Rice :		
	A. Paddy rice ; husked rice :		
	I. Paddy rice :		
	a) Round grain	93.78	43.89
	b) Long grain	114.60	54.30
	II. Husked rice :		
	a) Round grain	117.22	55.61
	b) Long grain	143.25	68.63
	B. Semi-milled or wholly milled rice :		
	I. Semi-milled rice :		
	a) Round grain	149.17	64.69
	b) Long grain	254.22	117.25
	II. Wholly milled rice :		
	a) Round grain	158.87	69.19
	b) Long grain	272.53	126.02
	C. Broken rice :	54.55	24.78

⁽¹⁾ Subject to the application of the provisions of Article 9 of Regulation (EEC) No 706/76.

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

⁽³⁾ The import levy on rice entering the overseas department of Reunion is specified in Article 11a of Regulation (EEC) No 1418/76.

COMMISSION REGULATION (EEC) No 2673/78**of 15 November 1978****fixing the premiums to be added to the import levies on rice and broken rice**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
1418/76 of 21 June 1976 on the common organiza-
tion of the market in rice ⁽¹⁾, as last amended by Regu-
lation (EEC) No 1260/78 ⁽²⁾, and in particular Article
13 (6) thereof,

Whereas the premiums to be added to the levies on
rice and broken rice were fixed by Regulation (EEC)
No 2060/78 ⁽³⁾, as last amended by Regulation (EEC)
No 2613/78 ⁽⁴⁾;

Whereas, on the basis of today's cif prices and cif
forward delivery prices, the premiums at present in

force, which are to be added to the levies, should be
altered as shown in the table annexed to this Regula-
tion,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 16
November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽²⁾ OJ No L 156, 14. 6. 1978, p. 11.

⁽³⁾ OJ No L 240, 1. 9. 1978, p. 8.

⁽⁴⁾ OJ No L 315, 9. 11. 1978, p. 18.

ANNEX

to the Commission Regulation of 15 November 1978 fixing the premiums to be added to the import levies on rice and broken rice

(u.a. / tonne)

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

COMMISSION REGULATION (EEC) No 2674/78**of 15 November 1978****extending the temporary suspension of the advance fixing of export refunds for certain 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 1761/78⁽²⁾,

Having regard to Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds⁽³⁾, as last amended by Regulation (EEC) No 2429/72⁽⁴⁾, and in particular the first subparagraph of Article 5 (4) thereof,

Whereas Commission Regulation (EEC) No 2652/78 of 10 November 1978⁽⁵⁾ has suspended temporarily the advance fixing of export refunds for butter;

whereas the reasons which led to this suspension remain and this measure should therefore be maintained for a limited period;

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 advance fixing of export refunds for butter falling within subheading 04.03 A of the Common Customs Tariff remains suspended during the period 16 to 21 November 1978.

Article 2

This Regulation shall enter into force on 16 November 1978.

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

Done at Brussels, 15 November 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 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 264, 23. 11. 1972, p. 1.

⁽⁵⁾ OJ No L 318, 11. 11. 1978, p. 65.

COMMISSION REGULATION (EEC) No 2675/78
of 15 November 1978
fixing additional amounts for live and slaughtered poultry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat⁽¹⁾, as amended by Regulation (EEC) No 369/76⁽²⁾, and in particular Article 8 (4) thereof,

Whereas if, for a given product, the free-at-frontier offer price (hereinafter called the 'offer price') falls below the sluice-gate price, the levy applicable to that product must be increased by an additional amount equal to the difference between the sluice-gate price and the offer price determined in accordance with Article 1 of Commission Regulation No 163/67/EEC of 26 June 1967 on fixing the additional amount for imports of poultry farming products from third countries⁽³⁾, as amended by Regulation (EEC) No 1527/73⁽⁴⁾;

Whereas the offer price must be determined for all imports from all third countries; whereas, however, if exports from one or more third countries are effected at abnormally low prices, lower than prices ruling for other third countries, a second offer price must be determined for exports from these other countries;

Whereas, pursuant to Regulation (EEC) No 565/68⁽⁵⁾, the import levies on slaughtered fowls, ducks and geese originating in and coming from Poland are not increased by an additional amount;

Whereas, pursuant to Regulation (EEC) No 2261/69⁽⁶⁾, the import levies on slaughtered ducks and geese originating in and coming from Romania are not increased by an additional amount;

Whereas, pursuant to Regulation (EEC) No 2474/70⁽⁷⁾, the import levies on slaughtered turkeys originating in and coming from Poland are not increased by an additional amount;

Whereas, pursuant to Regulation (EEC) No 2164/72⁽⁸⁾, the import levies on slaughtered fowls and geese originating in and coming from Bulgaria are not increased by an additional amount;

Whereas the regular review of the information serving as a basis for the determination of average offer prices for slaughtered poultry and halves or quarters indicates that additional amounts corresponding to the figures shown in the Annex hereto should be fixed for the imports specified in that Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The additional amounts provided for in Article 8 of Regulation (EEC) No 2777/75 are hereby fixed as shown in the Annex for the products listed in Article 1 (1) of that Regulation which appear in the Annex.

Article 2

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

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 77.

⁽²⁾ OJ No L 45, 21. 2. 1976, p. 3.

⁽³⁾ OJ No 129, 28. 6. 1967, p. 2577/67.

⁽⁴⁾ OJ No L 154, 9. 6. 1973, p. 1.

⁽⁵⁾ OJ No L 107, 8. 5. 1968, p. 7.

⁽⁶⁾ OJ No L 286, 14. 11. 1969, p. 24.

⁽⁷⁾ OJ No L 265, 8. 12. 1970, p. 13.

⁽⁸⁾ OJ No L 232, 12. 10. 1972, p. 3.

ANNEX

Additional amounts applicable to live and slaughtered poultry and halves or quarters

CCT heading No	Description	Additional amount	Imports affected
01.05	Live poultry, that is to say, fowls, ducks, geese, turkeys and guinea fowls : A. Of a weight not exceeding 185 g, known as 'chicks' : II. Other	(u.a./100 units)	Origin : Spain
		5.00	
		(u.a./100 kg)	
02.02	Dead poultry (that is to say, fowls, ducks, geese, turkeys and guinea fowls) and edible offals thereof (except liver), fresh, chilled or frozen : A. Whole poultry : I. Fowls : a) Plucked and gutted, with heads and feet, known as '83 % chickens' b) Plucked and drawn, without heads and feet but with hearts, livers and gizzards, known as '70 % chickens' c) Plucked and drawn, without heads and feet and without hearts, livers and gizzards, known as '65 % chickens' B. Poultry cuts (excluding offals) : II. Unboned (bone-in) : a) Halves or quarters : 1. Of fowls		
		15.00	Origin : Spain, the German Democratic Republic or Czechoslovakia ⁽¹⁾
		15.00	Origin : Spain, the German Democratic Republic or Czechoslovakia ⁽¹⁾
		15.00	Origin : Spain, the German Democratic Republic or Czechoslovakia ⁽¹⁾
		15.00	Origin : Spain, the German Democratic Republic or Czechoslovakia ⁽¹⁾

⁽¹⁾ With the exception of the German internal trade pursuant to the Protocol on German internal trade and connected problems.

COMMISSION REGULATION (EEC) No 2676/78
of 15 November 1978
fixing additional amounts for poultrymeat products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat⁽¹⁾, as amended by Regulation (EEC) No 369/76⁽²⁾, and in particular Article 8 (4) thereof,

Whereas if, for a given product, the free-at-frontier offer price (hereinafter called the 'offer price') falls below the sluice-gate price, the levy applicable to that product must be increased by an additional amount equal to the difference between the sluice-gate price and the offer price determined in accordance with Article 1 of Commission Regulation No 163/67/EEC of 26 June 1967 on fixing the additional amount for imports of poultry farming products from third countries⁽³⁾, as last amended by Regulation (EEC) No 1527/73⁽⁴⁾;

Whereas the offer price must be determined for all imports from all third countries; whereas, if exports from one or more third countries are effected at abnormally low prices, lower than prices ruling for other third countries, a second offer price must be determined for exports from these other countries;

Whereas the regular review of the information serving as a basis for the determination of average offer prices for poultrymeat products other than slaughtered poultry and halves or quarters indicates that additional amounts corresponding to the figures shown in the Annex hereto should be fixed for the imports specified in that Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The additional amounts provided for in Article 8 of Regulation (EEC) No 2777/75 are hereby fixed as shown in the Annex for the products listed in Article 1 (1) of that Regulation which appear in the Annex.

Article 2

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

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 77.

⁽²⁾ OJ No L 45, 21. 2. 1976, p. 3.

⁽³⁾ OJ No 129, 28. 6. 1967, p. 2577/67.

⁽⁴⁾ OJ No L 154, 9. 6. 1973, p. 1.

(u.a./100 kg)

[illegible]

COMMISSION REGULATION (EEC) No 2677/78
of 15 November 1978
fixing additional amounts for ovalbumin and lactalbumin

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2783/75 of 29 October 1975 on the common system
of trade for ovalbumin and lactalbumin⁽¹⁾, and in
particular Article 5 (5) thereof,

Whereas, if for a given product, the free-at-frontier
offer price (hereinafter called the 'offer price') falls
below the sluice-gate price, the levy applicable to that
product must be increased by an additional amount
equal to the difference between the sluice-gate price
and the offer price determined in accordance with
Article 1 of Commission Regulation No 163/67/EEC
of 26 June 1967 on fixing the additional amount for
imports of poultry-farming products from third coun-
tries⁽²⁾, as last amended by Regulation (EEC) No
1527/73⁽³⁾; whereas that Article 1 applies by virtue of
Article 2 of Commission Regulation No 201/67/EEC
of 28 June 1967 on detailed rules for the application
of Regulation No 170/67/EEC on the common
system of trade for ovalbumin and lactalbumin and
repealing Regulation No 48/67/EEC⁽⁴⁾;

Whereas the offer price must be determined for all
imports from all third countries; whereas, however, if
exports from one or more third countries are effected
at abnormally low prices, lower than prices ruling for
other third countries, a second offer price must be
determined for exports from these other countries;

Whereas, pursuant to Article 2 of Regulation (EEC)
No 990/69⁽⁵⁾, the import levies on ovalbumin and
lactalbumin originating in and coming from Austria
are not increased by an additional amount;

Whereas the regular review of the information serving
as a basis for the determination of average offer prices
for the products listed in Article 1 of Regulation
(EEC) No 2783/75 indicates that additional amounts
corresponding to the figures shown in the Annex
below should be fixed for the imports specified in that
Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The additional amounts provided for in Article 5 of
Regulation (EEC) No 2783/75 are hereby fixed as
shown in the Annex for the products listed in Article
1 of that Regulation which appear in the Annex.

Article 2

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

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 104.

⁽²⁾ OJ No 129, 28. 6. 1967, p. 2577/67.

⁽³⁾ OJ No L 154, 9. 6. 1973, p. 1.

⁽⁴⁾ OJ No 134, 30. 6. 1967, p. 2836/67.

⁽⁵⁾ OJ No L 130, 31. 5. 1969, p. 4.

ANNEX

Additional amounts applicable to ovalbumin and lactalbumin

(u.a./100 kg)

CCT heading No	Description of goods	Additional amount	Imports affected
35.02	Albumins, albuminates and other albumin derivatives : A. Albumins : II. Other (i.e. other than unfit, or rendered unfit, for human consumption) : a) Ovalbumin and lactalbumin : 2. Other	15.00	Origin : Czechoslovakia

(1) With the exception of products originating in and coming from Austria.

COMMISSION REGULATION (EEC) No 2678/78
of 15 November 1978
fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation No 136/66/EEC
of 22 September 1966 on the establishment of a
common organization of the market in oils and
fats⁽¹⁾, as last amended by Regulation (EEC) No
1562/78⁽²⁾, and in particular Article 27 (4) thereof,

Whereas the amount of the subsidy referred to in
Article 27 of Regulation No 136/66/EEC was fixed by
Regulation (EEC) No 1922/78⁽³⁾, as last amended by
Regulation (EEC) No 2624/78⁽⁴⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 1922/78

to the information at present available to the Commis-
sion that the amount of the subsidy at present in force
should be altered as shown in the Annex to this Regu-
lation,

HAS ADOPTED THIS REGULATION:

Article 1

The amount of the subsidy referred to in Article 27 of
Regulation No 136/66/EEC is hereby fixed as shown
in the table annexed to this Regulation.

Article 2

This Regulation shall enter into force on 16
November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

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

⁽²⁾ OJ No L 185, 7. 7. 1978, p. 1.

⁽³⁾ OJ No L 219, 10. 8. 1978, p. 15.

⁽⁴⁾ OJ No L 316, 10. 11. 1978, p. 11.

*ANNEX***to the Commission Regulation of 15 November 1978 fixing the amount of the subsidy
on oil seeds**

Subsidy applicable from 16 November 1978 to colza and rape seed (CCT heading No ex 12.01) and
sunflower seeds (CCT heading No ex 12.01) (u.a./100 kg)

	Colza and rape seed	Sunflower seed
Subsidy	13·087	11·517
Subsidy in the case of advance fixing :		
— for the month of November 1978	13·087	11·517
— for the month of December 1978	13·397	12·263
— for the month of January 1979	13·524	12·686
— for the month of February 1979	13·834	13·112
— for the month of March 1979	14·144	—
— for the month of April 1979	14·879	—

COMMISSION REGULATION (EEC) No 2679/78
of 15 November 1978
fixing the world market price for colza and rape seed

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the markets in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 1562/78⁽²⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza and rape seed⁽³⁾, as last amended by Regulation (EEC) No 852/78⁽⁴⁾,

Having regard to Commission Regulation (EEC) No 2300/73 of 23 August 1973 laying down detailed rules for applying differential amounts for colza and rape seed and repealing Regulation (EEC) No 1464/73⁽⁵⁾, as last amended by Regulation (EEC) No 1234/77⁽⁶⁾, and in particular Article 9 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas, pursuant to Article 9 (4) of Regulation (EEC) No 2300/73, the Commission must determine the world market price for colza and rape seed;

Whereas the world market price should be determined in accordance with the rules and the criteria set out in Commission Regulation (EEC) No 1922/78 of 9 August 1978 fixing the amount of the subsidy on

oil seeds⁽⁷⁾, as last amended by Regulation (EEC) No 2678/78⁽⁸⁾;

Whereas, to enable the price system to operate normally, the world market price should be calculated on the following basis:

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

Whereas, applying all these provisions, the world market price for colza and rape seed should be fixed as shown in the table annexed to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The world market price referred to in Article 9 (4) of Regulation (EEC) No 2300/73 and the rates to be used for converting them into national currencies shall be as shown in the table annexed to this Regulation.

Article 2

This Regulation shall enter into force on 16 November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

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

⁽²⁾ OJ No L 185, 7. 7. 1978, p. 1.

⁽³⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁴⁾ OJ No L 116, 28. 4. 1978, p. 6.

⁽⁵⁾ OJ No L 236, 24. 8. 1973, p. 28.

⁽⁶⁾ OJ No L 143, 10. 6. 1977, p. 9.

⁽⁷⁾ OJ No L 219, 10. 8. 1978, p. 15.

⁽⁸⁾ See page 16 of this Official Journal.

ANNEX

World market price applicable from 16 November 1978 for colza and rape seed (CCT heading No ex 12.01)

	u.a./100 kg ⁽¹⁾
World market price	17.513
World market price where the subsidy is fixed in advance :	
— for the month of November 1978	17.513
— for the month of December 1978	17.513
— for the month of January 1979	17.696
— for the month of February 1979	17.696
— for the month of March 1979	17.696
— for the month of April 1979	16.961

⁽¹⁾ The conversion rates from units of account into national currency as foreseen by Article 9 (5) (a) of Regulation (EEC) No 2300/73 are the following :

1 u.a. = DM	3.03524
1 u.a. = Fl	3.28928
1 u.a. = Bfr/Lfr	47.7031
1 u.a. = FF	6.97496
1 u.a. = Dkr	8.56656
1 u.a. = £	0.821598
1 u.a. = I £	0.821598
1 u.a. = Lit	1 355.50

COMMISSION REGULATION (EEC) No 2680/78

of 15 November 1978

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

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organi-
zation of the market in sugar⁽¹⁾, as last amended by
Regulation (EEC) No 1396/78⁽²⁾, and in particular the
first sentence of the sixth subparagraph of Article 19
(2) thereof,

Whereas the rates of the refunds applicable from 1
November 1978 to sugar, to beet or cane syrups and
to molasses exported in the form of goods not covered
by Annex II to the Treaty were fixed by Regulation
(EEC) No 2555/78⁽³⁾;

Whereas it follows from applying the rules and
criteria contained in Regulation (EEC) No 2555/78 to

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

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds fixed by Regulation (EEC) No
2555/78 for white sugar, raw sugar and beet or cane
syrups containing by weight in the dry state 98 % or
more of sucrose, exported in the form of goods listed
in the Annex to amended Regulation (EEC) No
3330/74, are hereby altered as shown in the Annex to
this Regulation.

Article 2

This Regulation shall enter into force on 16
November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 170, 27. 6. 1978, p. 1.

⁽³⁾ OJ No L 307, 1. 11. 1978, p. 32.

ANNEX

to the Commission Regulation of 15 November 1978 altering the rates of the refunds applicable to sugar and beet or cane syrups exported in the form of goods not covered by Annex II to the Treaty

Table I

<i>Rate of refund in u.a./100 kg :</i>	White sugar :	20.25
	Raw sugar :	14.18
	Syrups of beet sugar or cane sugar containing, in the dry state, 98 % or more by weight of sucrose (including invert sugar expressed as sucrose) :	$20.25 \times \frac{S^{(1)}}{100}$
	Molasses :	—

Table II

<i>Rate of refund in u.a./100 kg :</i>	White sugar :	23.65
	Raw sugar :	17.31
	Syrups of beet sugar or cane sugar containing, in the dry state, 98 % or more by weight of sucrose (including invert sugar expressed as sucrose) :	$23.65 \times \frac{S^{(1)}}{100}$
	Molasses :	—

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

COMMISSION REGULATION (EEC) No 2681/78

of 15 November 1978

altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 1396/78⁽²⁾, and in particular the second sentence of the last subparagraph of Article 19 (2) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Regulation (EEC) No 2669/78⁽³⁾;

Whereas it follows from applying the rules, criteria and other provisions contained in Regulation (EEC) No 2669/78 to the information at present available to

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

HAS ADOPTED THIS REGULATION :

Article 1

The refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 3330/74, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EEC) No 2669/78 are hereby altered as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 16 November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 170, 27. 6. 1978, p. 1.

⁽³⁾ OJ No L 321, 15. 11. 1978, p. 36.

ANNEX

to the Commission Regulation of 15 November 1978 altering the export refunds on white sugar and raw sugar exported in the natural state

(u.a./100 kg)

CCT heading No	Description	Refund
17.01	Beet sugar and cane sugar, solid :	
	A. White sugar ; flavoured or coloured sugar	20.50
	B. Raw sugar :	
	(a) Candy sugar	21.76 ⁽¹⁾
	(b) Other raw sugar	17.00 ⁽¹⁾

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

COMMISSION REGULATION (EEC) No 2682/78
of 15 November 1978
altering the export refunds on syrups and certain other sugar products exported
in the natural state

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organi-
zation of the market in sugar ⁽¹⁾, as last amended by
Regulation (EEC) No 1396/78 ⁽²⁾, and in particular the
second sentence of the last subparagraph of Article
19 (2) thereof,

Whereas the refunds on syrups and certain other sugar
products were fixed by Regulation (EEC) No
2550/78 ⁽³⁾;

Whereas it follows from applying the rules, criteria
and other provisions contained in Regulation (EEC)
No 2550/78 to the information at present available to

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

HAS ADOPTED THIS REGULATION:

Article 1

The refunds to be granted on the products listed in
Article 1 (1) (d) of Regulation (EEC) No 3330/74,
exported in the natural states as fixed in the Annex to
Regulation (EEC) No 2550/78 are hereby altered to
the amounts shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 16
November 1978.

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

Done at Brussels, 15 November 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 170, 27. 6. 1978, p. 1.

⁽³⁾ OJ No L 307, 1. 11. 1978, p. 22.

ANNEX

to the Commission Regulation of 15 November 1978 altering the export refunds on syrups and certain other sugar products exported in the natural state

(u.a./100 kg)

CCT heading No	Description	Basic amount per percentage point of sucrose content ⁽¹⁾
17.02	Other sugars in solid form ; sugar syrups, not containing added flavouring or colouring matter ; artificial honey, whether or not mixed with natural honey ; caramel : D. Other sugars and syrups (other than lactose, glucose and maple) : ex II. Other, excluding sorbose E. Artificial honey, whether or not mixed with natural honey ex F. Caramel made from sugar falling within heading No 17.01	 0.2365 0.2365 0.2365
21.07	Food preparations not elsewhere specified or included : F. Flavoured or coloured sugar syrups : IV. Other (than lactose, glucose and isoglucose syrups)	 0.2365

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 October 1978

relating to a proceeding under Article 85 of the EEC Treaty (IV/29.133 — WANO
Schwarzpulver)

(Only the English and German texts are authentic)

(78/921/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

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

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

Having regard to the notification to the Commission
made on 28 October 1975 by Imperial Chemical
Industries Ltd, Millbank, London SW1P 3JF, England,
and Wasagchemie GmbH, 4300 Essen 1, Rolandstraße
9, Federal Republic of Germany, pursuant to Article 4
of Regulation No 17, concerning their participation in
a joint venture company for the manufacture and sale
of blackpowder, which notification included in the
alternative an application for negative clearance,

Having regard to the Commission Decision of 23 May
1978 to initiate proceedings in this case,

Having heard the undertakings concerned in accor-
dance with Article 19 (1) of Regulation No 17 and
having offered the undertakings concerned an opportu-
nity of being heard in accordance with Commission
Regulation No 99/63/EEC of 25 July 1963 ⁽²⁾, which
opportunity the undertakings declined,

Having regard to the opinion of the Advisory
Committee on Restrictive Practices and Dominant

Positions delivered pursuant to Article 10 of Regula-
tion No 17 on 27 September 1978,

Whereas :

I. THE FACTS

1. Subject matter

(a) This case concerns agreements between the parties
identified below for the manufacture and sale of
blackpowder in joint venture. Blackpowder is an
explosive. Its characteristics and uses are described
in I (4) below.

(b) The agreements comprise :

- (i) a shareholders' agreement dated 14 October
1975 and related agreements notified on 28
October 1975 for the equal ownership and
control of companies in the Federal Republic
of Germany concerned in the manufacture and
sale of blackpowder, namely WANO Schwarz-
pulver GmbH and WANO Schwarzpulver &
Co Kunigunde KG (together herein called
'WANO'). The agreements were made by and
between (A) Bohlen Industrie AG (BOHLEN),
including controlled subsidiary companies of
BOHLEN and (B) controlled subsidiary
companies of Imperial Chemical Industries
Ltd (ICI). The signatories of these agreements
include :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

(A) BOHLEN ;
Wasagchemie GmbH (WASAG), a
controlled subsidiary company of
BOHLEN ;

(B) Nobel's Explosive Company Ltd (NEC), a
controlled subsidiary company of ICI ;

(ii) a letter of intent signed by NEC and WASAG
and dated 30 July 1974 which preceded the
notified agreements and which outlines the
intention of the parties to cooperate and parti-
cipate in WANO.

(c) For the purposes of this case and where appro-
priate within the context, BOHLEN as well as
WASAG and other companies directly or indi-
rectly owned or controlled by BOHLEN are
herein collectively called 'WASAG'; and ICI as
well as NEC and other companies directly or indi-
rectly owned or controlled by ICI are herein collec-
tively called 'ICI'. WASAG and ICI are herein
sometimes together referred to as 'the parties' and
WANO as 'the joint venture' or 'the joint venture
company'.

2. The parties

(a) BOHLEN, established in the Federal Republic of
Germany, has interests, partly through its
controlled subsidiary companies, in the develop-
ment, manufacture and sale of diverse products,
including chemicals and chemical intermediates
and explosives (and devices used in conjunction
with explosives), plastics and consumer goods.
BOHLEN has numerous subsidiary companies in
the Federal Republic of Germany, in other
Community countries and elsewhere. In 1974
BOHLEN's consolidated group turnover was DM
296 016 000.

(b) Imperial Chemical Industries Ltd, established in
the United Kingdom, has interests, partly through
its controlled subsidiary companies, in the develop-
ment, manufacture and sale of diverse products,
including chemicals (and chemical intermediates
and derivatives) and explosives (and devices used
in conjunction with explosives), plastics, synthetic
fibres, dyes and paints. ICI has numerous subsid-
iary companies in the United Kingdom, in
other Community countries and elsewhere. In
1976 ICI's consolidated group turnover was
£ 4 135 000 000.

3. The agreements

(a) The result of the agreements referred to in I (1) (b)
above is that ICI, on the happening of certain

events, will purchase shares and will make certain
other capital contributions so as to achieve joint
and equal control of WANO with WASAG.
WANO is at present wholly owned by WASAG
and, as now constituted, supplies the blackpowder
requirements of WASAG. Since 1974 deliveries
from WANO and WASAG were also made to ICI.
Progressively the scale of such deliveries to ICI
was increased to correspond to the phasing out by
ICI of its own production of blackpowder. When
in October 1976 ICI closed its blackpowder plant,
supplies by WANO met all or substantially all of
ICI's blackpowder requirements.

(b) The notified agreements and information supplied
by the parties disclose the following additional
matters :

(i) The letter of intent of 30 July 1974 which fore-
shadowed the phasing out of blackpowder
production by ICI and the ultimate closure of
its plant provided :

'4. NEC would continue to operate its
existing blackpowder plant only until its
customers and own requirements can effec-
tively be transferred to the new company (the
joint venture).

5. Subject to (4), NEC and WASAG would
buy their total requirements of those grades of
blackpowder manufactured by the new
company, from the new company on terms to
be agreed'.

The letter of intent also provided in clause 2
that NEC and WASAG would 'assign to
WANO all their business including
know-how, patents and goodwill relating to the
manufacture and sale of blackpowder'.

(ii) The notified agreements ensure equal control
by the parties of WANO and an equal sharing
by each of WANO's profits and losses. No
question relating to blackpowder, including its
production and sale by WANO, can be
resolved by unilateral action of one share-
holder or party. WANO is to operate under
the management of general managers
(Geschäftsführer), appointed in equal number
by each party. The articles of association
further stipulate that certain specified impor-
tant decisions on matters outside the normal
day-to-day running of WANO require the
consent of both parties in a shareholders'
general meeting. For the distribution in the
United Kingdom and the Federal Republic of
Germany of blackpowder produced by
WANO, the letter of intent provided 'the new

company would also appoint NEC to be its exclusive distributor of blackpowder in the UK and WASAG to be its exclusive distributor thereof in West Germany, in each case on terms to be agreed'.

4. Blackpowder

(a) *The product*

- (i) Blackpowder is one of the oldest known explosives. It is produced in the form of a powder, the grain size and shape of which determine the rate of burning and amount of gas released. Its basic ingredients are charcoal, sodium nitrate, potassium nitrate and sulphur, although for some purposes sulphurless powder is produced. The size of grain is, apart from the presence of sulphur, the most important technical characteristic of the product.
- (ii) The main uses of blackpowder are in the manufacture of fireworks, other pyrotechnical devices, safety fuses and for blasting. Small quantities are used for military purposes. In none of these uses, except in the case of blasting, are other types of explosive substitutable. However, where blackpowder is used for blasting, it is so used because its relatively low power tends not to shatter the material required to be dislodged by the explosion. In the view of ICI and WASAG it is therefore the most suitable explosive for blasting slate and monumental and other decorative stones.
- (iii) An important use of blackpowder is the manufacture of safety fuse which is composed of fine-grain blackpowder contained in a tubular casing. The fuse is designed to burn at a predetermined rate so that the delay before an explosion occurs can be accurately predicted from the length of the fuse used. Safety fuse thus forms part of an initiating process for some types of explosive operations. It can be used directly to ignite blackpowder.
- (iv) In common with other explosive substances, the transport and storage of blackpowder is subject to governmental regulation and licensing. Such regulations which were said by the parties to be broadly similar in the United Kingdom and the Federal Republic generally require that buildings in which explosives are stored be isolated, with the resultant 'sterilization' of surrounding land. According to information supplied by ICI, the minimum invest-

ments required by a distributor for the acquisition of necessary storage and transport facilities for blackpowder in the United Kingdom would amount to not less than about £350 000. This would allow for the acquisition of a relatively small-size magazine with a 40 to 50 tonne capacity, steel portable storage facilities and a sufficient number of vans for the carriage of blackpowder.

There are generally no restrictions on the amounts of blackpowder that may be carried by sea in vessels chartered for the purpose of transporting explosives. However, harbour regulations generally limit the quantities that may be loaded or unloaded at one time. Notwithstanding the effect of these regulations, ICI was able to make export sales of blackpowder, for example, to Ireland, Norway, the United States of America and other countries and WASAG to Belgium, France, the Netherlands, Sweden, Egypt, Argentina and elsewhere.

(b) *The position of ICI in the market*

- (i) Following an explosion in December 1974 which reduced capacity by some 40 % at ICI's blackpowder plant at Ardeer, Scotland, ICI decided to cease production permanently and progressively phased out production, until in October 1976 it shut down its plant. Immediately subsequent to the explosion, ICI's annual production was around ... tonnes in 1975 and dropped to around ... tonnes in 1976. Prior to the explosion at its plant, ICI's annual production had been between ... and ... tonnes. ICI had produced blackpowder for blasting, use in fireworks and other pyrotechnical devices, safety fuse and for military applications. In all the above fields of use, except for safety fuse which ICI manufactures itself, ICI supplied and now continues to supply blackpowder for incorporation or further processing by the customer into a device; but this does not apply to blasting powder where the product may be used without further preparation.
- (ii) ICI was the only producer of blackpowder in the United Kingdom and the only supplier, and continues for all practical purposes to be the only supplier, to United Kingdom civilian customers. Sales of blackpowder to customers in the United Kingdom amount to around

500 tonnes per annum. According to ICI, the proportions of its sales of blackpowder in 1975, inclusive of home and export sales, attributable to various uses were :

	% (by quantity)
Fireworks powders	...
Military powders and propellants	...
Blasting powders	...
	100

The above figures exclude fuse powder retained by ICI for its manufacture of safety fuse. Corresponding figures which include the use of blackpowder also for safety fuse manufacture are :

	% (by quantity)
Fireworks powders	...
Military powders and propellants	...
Blasting powders	...
Safety fuse powder	...
	100 ⁽¹⁾

ICI has had export markets for blackpowder of at least ... tonnes per annum.

(iii) ICI is also by far the leading producer of safety fuse in the Community. Some ... tonnes of blackpowder per annum has been used by ICI for the manufacture of some ... million feet of safety fuse, most of which (approximately ... by value) has been exported from the United Kingdom. Small quantities of safety fuse have been sold by ICI in Belgium, Luxembourg and Denmark, and sales of around two million feet per annum have been made in Ireland, the remainder being sold outside the Community.

(iv) In order to meet its requirement of ... tonnes of blackpowder from a plant with a single shift capacity in 1975 of only ... tonnes, ICI had been obliged to purchase blackpowder from other manufacturers. In 1975 this shortfall was entirely met by deliveries of ... tonnes from WASAG and, since the start of operations by WANO under WASAG's control, has continued to be met from the

production of WANO. ICI's 1975 production of ... tonnes of blackpowder represented ... of a Community total production of around 3 450 tonnes.

(v) ICI controls within the United Kingdom extensive and suitable storage and transport facilities for explosives, including blackpowder, and operates two 500 tonne coasters for the transport of explosives by sea.

(c) *The position of WASAG in the market*

(i) The blackpowder works of WASAG in Kuni-gunde, now operated by WANO, produced around 750 tonnes of blackpowder per annum until 1974. In 1974 production was increased to 872 tonnes and in 1975 to 1 185 tonnes. WASAG then planned to increase production to a level of around ... tonnes in the course of 1976 and 1977 and has substantially fulfilled this target. WASAG produces blackpowder for all its uses to which this product is normally put. Except for safety and firework fuses, WASAG produces no devices but supplies blackpowder to customers for incorporation or further processing into a device.

(ii) Of the two blackpowder manufacturers in the Federal Republic of Germany, WASAG and Dynamit Nobel AG (DNAG), WASAG manufactures more than two thirds of the blackpowder produced in that country. On the basis of a rate production, through the operation of WANO, in the region of ... tonnes, WASAG is the largest producer by far of blackpowder in the Community. WASAG is furthermore the only producer of safety fuse, safety fuse powder and powder for military purposes in the Federal Republic.

(iii) The sales of blackpowder by WASAG in its home market amount to around ... tonnes. Export sales, excluding deliveries to ICI, have amounted to around ... tonnes, of which around ... tonnes are sold within the Community (1974: ... tonnes, 1975: ... tonnes). WASAG supplies blackpowder to fulfil the entire demand of the Belgian market.

(iv) Most of WASAG's production of safety fuse, of around ... million metres, is sold within the Federal Republic. Export sales account for less than a quarter of the total. The most important customer of WASAG in its home market for safety fuse is DNAG, which company accounts for up to ... of WASAG's home sales.

⁽¹⁾ ICI letters of 27 January and 16 March 1976, Appendix 2.

- (v) For the distribution and storage of its products WASAG has transport and magazine facilities in the Federal Republic.

(d) *Other producers*

Apart from DNAG (referred to in I (4) (c) above), the only other notable producers of blackpowder in the Community are Société nationale des poudres et explosifs SA in France (SNPE) and SIPE Nobel Spa in Italy (SIPE). Their annual production of blackpowder is respectively in the region of ... tonnes. Both have production capacities which are considerably under-used. SNPE has facilities to manufacture ... tonnes of blackpowder per annum, and during 1975 and 1977 supplied blackpowder to the United Kingdom. No production is undertaken in Belgium, Denmark, Ireland, the Netherlands or Luxembourg.

5. Proceedings with the parties

Following receipt by the parties of the Commission's statement of objections of 24 May 1978, they informed the Commission (ICI by letters of 30 June 1978 and WASAG by letter from its legal advisers of 29 June 1978) that they wished to withdraw the notification in this case. ICI also stated, but the letter from WASAG's legal advisers did not say so explicitly, that it had been decided, after consultation between the parties, not to implement the notified agreements. The letter from WASAG's legal advisers declined the Commission's invitation for a hearing. The letters challenged in general terms and without being specific or giving reasons the findings and conclusions set out in the Commission's statement of objections.

II. APPLICABILITY OF ARTICLE 85 (1)

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

1. The parties are undertakings and the notified agreements are agreements within the terms of Article 85 (1).

2. The agreements have the object and, if implemented, will have the effect of restricting competition as follows :

- (a) Independently of the proposed joint participation in WANO, each of the parties has substantial

separate interests in the business of blackpowder. ICI was a producer and supplier and, since the closure of its works in October 1976, continues as a purchaser and supplier of blackpowder for its home market in the United Kingdom and for export. Within the United Kingdom it fulfils almost the entire demand for blackpowder. ICI controls within the United Kingdom a comprehensive network, if not by far the most effective existing network there, of storage, transportation and distribution facilities for explosives, including blackpowder. WANO manufacture blackpowder and, apart from its export sales, supplies about 50 % of the blackpowder required in the Federal Republic of Germany. As a result of their joint participation in WANO, the parties would be likely to coordinate their conduct in the manufacture and sale of blackpowder. Since the agreements confer equal control of the joint venture upon each party, neither would make independent business decisions on any matter of importance concerning planning, financing, research, development, manufacture or sale of blackpowder. The joint venture would control the production for not less than 58 % of the sales of blackpowder in the Community.

- (b) So far as the United Kingdom market for blackpowder is concerned, the agreements and ICI's participation in the joint venture would have the effect that ICI would make all or substantially all of its future blackpowder purchases from the production of the joint venture, rather than leave itself free to obtain blackpowder also from other sources which are available in the Community, thereby committing the entire or substantially entire future blackpowder requirements solely to the production of the joint venture.

- (i) An internal ICI memorandum (investment proposal : A 132, 9 April 1975) states that the parties 'will both draw their total requirements of blackpowder from WANO and act as exclusive distributors in the UK and West Germany respectively. Other sales will be made by the joint company on the best terms available'.

- (ii) A passage in a letter dated 9 September 1976 from ICI to one of its customers also confirms that 'in future we (ICI) will purchase all our requirements (of blackpowder) from this company (WANO)'.

(c) Parties who hold significant stakes in a joint venture will not in general within the field of such a joint venture compete with each other's activities or with the activities of the joint venture, even if they are contractually free to do so. In this case in particular, neither party could afford to ignore the existence or the purpose of the joint venture. Neither party would be likely to expend its independently available effort or resources over and above those required by the joint venture, in order to market blackpowder in competition with the other party or in competition with the joint venture. Each party would be likely to obtain from the production of the joint venture the same type of blackpowder and at uniform prices. Each of the parties would align its conduct in the marketing of blackpowder to that of the other party and to that of the joint venture. The parties would not, to their own detriment, compete with each other or with the joint venture, either in respect of the prices at which blackpowder would be sold to users or in respect of the effort to be deployed to promote sales with particular customers or in particular geographical areas.

(d) The existence of a joint venture in one field provides opportunities and inducements to parent companies who have related interests also in other areas to enlarge their common activities so as to impair competition between them also in those other areas. In this case, both parties have, apart from their activity in the joint venture, also other overlapping, related and competitive interests, notably in the fields of explosives in general, accessories for explosives and in particular in the manufacture and sale of safety fuse. This coincidence of activities and interests of the parties in other areas can be expected to lead to an impairment of competition between them also in these other areas. So far as ICI is concerned, participation on their part was motivated not solely by a sharing in the production of blackpowder, but also by an intent to establish an association with WASAG with a view to its subsequent enlargement into other related markets outside the field of blackpowder, including the market for safety fuse. In respect of safety fuse, ICI is the only manufacturer and supplier in the United Kingdom and WASAG is the only manufacturer in the Federal Republic of Germany and each party could have been regarded as the other's natural potential competitor in the other's national

home market and throughout the Community. The combined safety fuse production of ICI and WASAG amounts to more than 60 million metres per annum, double the aggregate production of all other safety fuse producers in the Community. Through the control of the operations of the joint venture the parties would knowingly give themselves opportunities and strong inducements for cooperation in aligning their prices and in the sharing of markets for safety fuse. Moreover, the parties would jointly control the quantities and prices of any blackpowder to be sold by the joint venture for safety fuse production by any third-party competitors. ICI have stated (appendix 6 of the letter of 16 March 1976) that 'it remains quite possible that NEC might at some future date seek to supply WASAG's safety fuse requirements'.

(e) All the foregoing restrictive effects are significantly underlined by the considerable importance of the parties on the affected markets within the Community.

3. (a) The parties have argued in correspondence and at meetings that the notified agreements, if implemented, would not restrict competition. They submitted that, even in the absence of the notified agreements, the only possible supplier of blackpowder of acceptable grades and varieties and on acceptable terms for the entire or substantially entire United Kingdom demand was and would be likely to remain WANO. In addition, except in the case of the smaller countries, national markets within the Community were traditionally supplied by their national suppliers. So far as blackpowder for defence uses was concerned, this position was founded on military security reasons. Moreover, in general, the transport and storage of blackpowder was closely controlled by national regulations. These imposed requirements which non-national suppliers found it difficult and impractical to meet, mainly for reasons of cost. It was submitted for example that WANO could not, independently of ICI, export blackpowder direct into the United Kingdom. From this the parties concluded that there was no actual competition now and no real potential for future competition to be restricted by the notified agreements if these were put into effect. The relevant arguments of the parties have been the following:

- (i) even in the absence of ICI participation in WANO and in the absence of contractual commitments towards WANO, ICI would have no practical alternative to purchasing its blackpowder requirements for the United Kingdom demand from WANO. WANO had the only plant which was capable of supplying the right qualities of blackpowder for safety fuse, blasting, fireworks, propulsion and other applications which were suitable to meet United Kingdom demand;
- (ii) so far as military requirements were concerned, the United Kingdom Ministry of Defence were insisting that these were fulfilled by WANO; firstly, because only WANO could meet the specifications and, secondly, because WANO was an approved supplier to the Ministry of Defence and supplies from other sources would raise military security problems.
- (b) The foregoing submissions are at variance with and are in all essential respects rebutted by the following:
- (i) manufacturers of blackpowder in France and Italy, namely, Société nationale des poudres et explosifs (SNPE), and SIPE Nobel Spa (SIPE) have stated to the Commission that they are able and willing to supply blackpowder (including sulphurless powder for military applications) for United Kingdom requirements. Both these companies have considerable overcapacities and have confirmed that they can supply blackpowder, also to meet any likely new specification requirements, for military and civil uses. During 1975 and 1977, SNPE supplied in four separate shipments a total of 2 550 kg of cartridge blackpowder for the United Kingdom. While the quantities concerned were relatively small, they were not entirely insignificant and tend to show that United Kingdom demand does not by its nature need to be wholly dependent on blackpowder available from WANO and also that it is not necessarily uneconomic to ship small quantities. ICI have themselves conceded in response to a direct question put to them by the Commission that blackpowder of suitable grades for fuse, blasting and fireworks applications could be supplied from Italy and for fireworks and blasting uses from France. Blackpowder for these uses represents a high proportion of the total United Kingdom blackpowder demand (see I (4) (b) (ii) above). But in this regard, ICI have in general terms referred to 'transportation, security and economic factors' which made these other sources of supply 'impractical' ⁽¹⁾;
- (ii) the alleged importance, stressed by ICI, of the security aspects of the importation into the United Kingdom of blackpowder for military uses is negated by statements made by the United Kingdom Ministry of Defence according to which foreign supplies do not raise security problems;
- (iii) so far as transport is concerned, all suppliers of blackpowder need to conform to public safety requirements and regularly take these into account. WASAG, SNPE and SIPE have geographically widespread markets and are accustomed to have their blackpowder dispatched by road, rail and sea. Apart from its inland distribution facilities in the United Kingdom, ICI operate two 500 tonne coasters which regularly carry explosives by sea. According to ICI, in response to Commission enquiries, shipments of explosives, including blackpowder, on the ICI coasters are made from time to time between United Kingdom ports and, for example, Rouen, Bremen, Hamburg, Lisbon, Barcelona and Norwegian and Finnish ports.
- (c) The parties' submission therefore, according to which there is no likely prospect of potential competition for the supply for United Kingdom demand of blackpowder on the part of Community manufacturers other than WANO, is an assessment which cannot be sustained. While in past years the control by ICI within the United Kingdom of transportation, storage and distribution facilities for blackpowder may well have had the effect of precluding or of substantially limiting the marketing of blackpowder other than that of ICI's choice, it is apparent that there exists a demand for blackpowder within the United Kingdom for which suppliers other than WANO could compete, particularly if ICI were to be left free as a merchant to market blackpowder also from such suppliers.
4. Contrary to the submission of the parties, the agreements, if implemented, would affect trade between Member States in respect of all the restrictions referred to in II (2) above and, in particular, as follows.
- (a) The current demand for blackpowder in the Community is estimated at about 2 800 tonnes per annum, approximately as follows:
- ⁽¹⁾ ICI letter of 29 June 1977.

<i>Member State</i>	<i>Tonnes</i>
Belgium/Luxembourg	150
Denmark	less than 50
Ireland	less than 10
France	200
Federal Republic of Germany	800
Italy	400
Netherlands	300
United Kingdom	500
(Use within EEC of blackpowder for safety fuse)	400)
	2 800

Blackpowder is currently manufactured in Community countries approximately as follows :

<i>Member State</i>	<i>Tonnes</i>
France	350
Federal Republic of Germany	2 400 ⁽¹⁾
Italy	500
	3 250

(the excess of production over demand is exported).

(b) ICI's participation in the joint venture would have the effects outlined in II (2) (a) to (d) above, that :

- (i) ICI would purchase blackpowder for substantially the entire future United Kingdom blackpowder demand solely from the production of the joint venture because ICI would not be likely to make purchases also from other available sources of supply in France and Italy which would accordingly be excluded from the United Kingdom ;
- (ii) United Kingdom customers would for the foreseeable future be deprived of opportunities to purchase blackpowder of such varieties and at such prices as would be available from manufacturers in France or Italy or elsewhere ;
- (iii) additional barriers would be created to the entry into the United Kingdom of supplies of blackpowder from France, Italy or elsewhere, so as to deprive suppliers other than WANO of opportunities to make sales for United Kingdom requirements.

(c) Concerning the effect on inter-Member State trading, the parties have submitted that, for a

⁽¹⁾ This figure includes an estimated production by WANO of about 2 000 tonnes.

number of reasons, a competitive Community market for blackpowder did not exist prior to the making of the notified agreements and would not be likely to come about in the foreseeable future, so as to be affected by the notified agreements. These submissions raise in substance the points outlined in II (3) (a) above and cannot be sustained for the reasons set out in II (3) (b) above.

(d) Even if it were assumed that the circumstances put forward by the parties amounted at present to insuperable or near-insuperable obstacles to independent imports into the United Kingdom, this submission does not meet the Commission's case that ICI, in implementing the notified agreements and in participating in the joint venture, would :

(i) no longer leave itself free to purchase blackpowder for resale on the best terms from time to time available from any source, whether WANO or not ; and

(ii) increase and ensure the continuation of the difficulties faced by independent importers.

5. The effect of the restrictions on competition outlined above would be likely to be appreciable because :

- (a) both parties are groups of significant industrial importance ;
- (b) both have considerable financial resources ;
- (c) WASAG controls a substantial share of the supply of and each party controls a substantial share of the distribution facilities for blackpowder in the Community ; and
- (d) the product of the proposed joint venture is an essential homogeneous commodity in a highly oligopolistic market.

6. Article 85 (1) therefore applies to the notified agreements.

III. APPLICABILITY OF ARTICLE 85 (3)

Under Article 85 (3) of the Treaty, the provisions of Article 85 (1) of the Treaty may be declared inapplicable in the case of any agreement which contributes to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not :

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

1. The implementation of the agreements would afford the parties the possibility of eliminating competition in respect of a substantial part of the products in question in that the implementation of the agreements would result in the insulation of the United Kingdom market by precluding sales into the United Kingdom by suppliers other than WANO and by shutting out all possibilities of competition by WANO in respect of sales into the United Kingdom which are independent of ICI.

2. Accordingly, questions of contribution to the improvement of the production or distribution of goods or to the promotion of technical progress do not fall to be considered, although the parties have submitted that Article 85 (3) should be applied to the agreements. However, they have not demonstrated that the production of blackpowder would be improved as a result of the agreements. Although the parties initially alleged in their notification that the pooled technology and resources of ICI and WASAG would enable manufacture on a scale sufficient to justify developing new processes, it was later admitted that no really new processes were likely for the manufacture of blackpowder⁽¹⁾. The composition and method of manufacture of blackpowder have remained essentially the same for centuries and no radically new process or methods of manufacture can reasonably be expected to occur by reason of the joint venture. Although the supply by WASAG of all or part of the United Kingdom market for blackpowder would enable an increased rate of use of its plant and on the assumption (which has not been demonstrated) that this could result in economies of scale, these could be obtained independently of any participation by ICI in the capital of WANO.

3. The parties have also claimed that the implementation of the notified agreements would lead to a greater security of supply for blackpowder and that, in particular, ICI's participation in the joint venture was necessary for it to obtain suitable supplies of blackpowder and to guarantee supplies of suitable qualities to its customers in the United Kingdom and elsewhere. Security of supply in these circumstances, in which there are considerable under-used production capacities, is not a benefit sufficient for the purposes

of Article 85 (3). The structure of the industry is such as to exclude any probability of long-term shortage.

4. Even on the assumption (which is not fulfilled) that the agreements, if implemented, could contribute to an improvement in the production or distribution of goods or to the promotion of technical or economic progress, a fair share of any such benefits would not become available to consumers. The result of the agreement would be to enable ICI, an existing monopoly distributor of blackpowder in the United Kingdom, also to become, jointly with WASAG, a monopoly producer of blackpowder for the United Kingdom. In that position ICI would be subject to negligible competitive pressure to pass on to the consumer any savings made by increased efficiency.

5. The agreements do not therefore satisfy the tests of exemption of Article 85 (3).

IV

In the agreements it was provided that they would not come into operation until approved by the Commission, but the parties in one important respect have been acting as if they were already in force. ICI have been buying from WANO and this necessarily affects the position of other suppliers.

Under the circumstances there remains an interest for the Commission to establish clearly, in particular for the benefit of third parties, that the agreements in question came under Article 85 (1) and could not benefit from the exemption under Article 85 (3). This decision is without prejudice to any view that the Commission may take of any other arrangement which the parties may make in the future,

HAS ADOPTED THIS DECISION :

Article 1

The shareholders' agreement dated 14 October 1975 and the related agreements notified on 28 October 1975 and entered into by Bohlen Industrie AG, Wasagchemie GmbH and other companies controlled by them on the one hand and by Imperial Chemical Industries Ltd and other companies controlled by it on the other hand concerning their joint participation in a joint venture company for the manufacture and sale of blackpowder infringe Article 85 (1) of the Treaty establishing the European Economic Community, and may not be implemented.

⁽¹⁾ Meeting between representatives of ICI and the Commission, London, 23 February 1976.

Article 2

Article 85 (3) of the Treaty is not applicable to the agreements referred to in Article 1 above.

Article 3

This Decision is addressed to :

1. Imperial Chemical Industries Ltd,
Millbank, London SW1P 3JF, England
and to that company on behalf of its subsidiary companies.
2. Bohlen Industries AG, 4300 Essen, Huyssenallee
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and

Wasagchemie GmbH, 4300 Essen, Rolandstraße 9,
Federal Republic of Germany
and to those companies on behalf of their respective subsidiary companies.

Done at Brussels, 20 October 1978.

For the Commission

Raymond VOUEL

Member of the Commission

COMMISSION DECISION

of 23 October 1978

relating to a proceeding under Article 85 of the EEC Treaty (IV/1.576 — Zanussi)

(Only the Italian text is authentic)

(78/922/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 2, 5 and 7 thereof,

Having regard to the notification to the Commission made on 28 January 1963 in accordance with Article 5 of Regulation No 17 concerning the exclusive dealing agreement for Belgium with Ets. Freddy Crion, Brussels, and, following termination of this agreement in 1971 when Industrie A. Zanussi SpA formed its own sales subsidiaries in the common market, the guarantee terms applied in the new distribution system,

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

Having regard to the summary of the notification published pursuant to Article 19 (3) of Regulation No 17 in *Official Journal of the European Communities* No C 313 of 29 December 1977,

Having regard to the opinion delivered on 25 May 1977 and 14 February 1978 by the Advisory Committee on Restrictive Practices and Dominant Positions in accordance with Article 10 of Regulation No 17,

Whereas :

I. THE FACTS

1. The Zanussi Group (Zanussi), which is headed by Industrie A. Zanussi SpA, Pordenone, Italy, is in business chiefly in the domestic electrical appliances industry, manufacturing refrigerators, cookers, dishwashers, washing machines and television sets. In 1976 Zanussi recorded sales totalling around 525 million units of account and employed approximately

30 000 personnel on production in this field in Italy. The appliances are sold in Italy through wholesalers and are imported into the other common market countries by the following Zanussi Group companies :

- IAZ International France SA (IAZ France), Montreuil, France,
- IAZ International Belgium SA (IAZ Belgium), Lembeek, Belgium,
- IAZ International UK Limited (IAZ UK), Caversham, United Kingdom,
- IAZ Elektrovertrieb Deutschland GmbH (IAZ Deutschland), Frankfurt-am-Main, Federal Republic of Germany,
- IAZ International Denmark AS (IAZ Denmark), Tinglev, Denmark,
- IAZ International Nederland BV (IAZ Netherlands), Alphen a/d Rijn, which on 1 January 1977 took over from Verkoopmaatschappij Marijnen BV, Rijswijk, and afterwards from Verkoopmaatschappij Zanussi BV, Alphen, and from Zoppas Nederland BV, Woerden, which had previously been importing Zanussi appliances.

2. Zanussi's output of domestic electrical appliances is about 3.8 million units annually, half being exported; about three quarters of all appliances exported go to common market countries. Zanussi holds sizeable market shares for the relevant appliances in the Community countries, with refrigerator market shares of approximately 25 % in Italy, 15 % in Belgium and 10 % in the Netherlands, a washing machine market share of some 20 % in Denmark and a dishwasher market share of about 25 % in Italy. With the exception of IAZ UK and IAZ Belgium, which also handle the Irish and Luxembourg markets respectively, the sales subsidiaries import Zanussi appliances only into their own Member State. At the next stage of distribution, Zanussi appliances throughout the Community are marketed by dealers (wholesalers, retailers and department stores), who are all allowed by Zanussi, without exception, to resell wherever they wish within the common market at prices which they themselves set.

(1) OJ No 13, 21. 2. 1962, p. 204/62.

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

3. Zanussi appliances are distributed in the Community under different trademarks, including Zanussi, Rex, Castor and Zoppas. Their technical characteristics often differ according to the country in which they are to be sold. These differences, which concern matters such as wiring, amperage plugs, closing devices and others, flow chiefly from differences in the regulations applied in the Member States to ensure safety in the use of electrical equipment or compliance with other standards for their operation.

4. Zanussi gives Community users a guarantee according to which, during a limited period, it will carry out certain operations free of charge in the course of the after-sales service scheme which it has set up in the common market. Although they sometimes differ from country to country and from appliance to appliance, guarantee services mainly concern mechanical parts of Zanussi appliances and consist in repairing or replacing defective parts without charge and in supplying the required labour.

5. Until May 1977 guarantee service from Zanussi in the different Community countries was provided through the dealers, who, when they sold the appliance, were obliged to give the user the relevant guarantee certificate, having filled in their name and the date of sale. Among the conditions on the guarantee certificate were the following :

- (a) the user of a Zanussi appliance was entitled to service under guarantee only from the Zanussi subsidiary which imported the appliance ;
- (b) guarantee service was refused when the appliance had been used in a country other than that into which it was originally imported by the local subsidiary ;
- (c) guarantee service was also refused when the appliance had been modified, or when alterations had been carried out by persons not approved by the local subsidiary.

6. When the Commission informed Zanussi that the restrictions contained in the terms of its guarantees in the Member States were incompatible with Article 85 of the Treaty, the company decided to change its guarantee scheme to make it consistent with the rules on competition yet still conform to local technical and safety standards for electrical appliances. In May 1977, therefore, it instructed its subsidiaries to provide guarantee services for all Zanussi appliances regardless of their origin, pending the introduction of a new and more comprehensive guarantee

scheme which would no longer be incompatible with Article 85. On 11 October 1977 Zanussi notified to the Commission the new terms on which, from 15 February 1978, it would provide its guarantee service to purchasers in the Community.

These are as follows :

1. in the Community, Industrie A. Zanussi will guarantee all appliances which it has manufactured and which are distributed under any of its trademarks for sale in a Community country ;
2. after-sales service under guarantee will be provided by the Zanussi subsidiary in the Community country where the appliance is used on the terms applied locally by that subsidiary ;
3. after-sales service under guarantee may be refused :
 - (a) if the appliance is defective by reason of its having been installed and/or used in a manner inconsistent with technical and safety standards in the country where the guarantee is claimed,
 - (b) if the appliance has not been used for normal purposes or has not been used in accordance with the manufacturer's requirements and instructions ;
4. after-sales service under guarantee may also be refused if any adjustment or adaptation has been made to the appliance other than properly executed adjustments required to make it conform to the technical and safety standards in force in the country where the claim under the guarantee is made ;
5. any adjustments to meet technical and safety standards which may be required to ensure that the appliance works properly may be made by the local Zanussi subsidiary or by a qualified person capable of carrying them out properly. The full costs of adjusting the appliance will be charged to the user ; if the Zanussi subsidiary carries out the work, such work will be invoiced on the terms applying in the place where the adjustment is requested and made.

These terms, translated into the several Community languages, are printed on the guarantee certificates provided by Zanussi through its dealers, who are required, on delivery of the goods, to hand over either the completed and signed certificate (as in the

case of Denmark, Italy and the United Kingdom) or (in the other Member States) a form attesting to the purchase and entitling the customer to apply for a guarantee certificate from Zanussi.

7. No comments from other interested parties have been received following publication of the notice summarizing the notified agreement and stating the Commission's intention to give negative clearance in respect of that agreement.

II. THE LEGAL POSITION

A. Article 85 of the EEC Treaty

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

9. The guarantee which the Zanussi Group gives the user is incorporated in the supply contracts which Zanussi has entered into or will in future enter into with the dealers who resell its domestic electrical appliances in the common market. The main object of these contracts, from the manufacturer's point of view, is the sale of Zanussi appliances to each dealer; the dealers are, however, also obliged, when retailing the appliance to the customer, to include the manufacturer's guarantee. Consequently, the contracts in question are agreements between undertakings which, in so far as the conditions of guarantee contain restrictions on competition, fall within the prohibition contained in Article 85 of the EEC Treaty.

(a) *Restrictive nature of the guarantee scheme in force until May 1977*

10. The effect of the pre-May 1977 guarantee scheme was to restrict or distort competition within the common market, since the user could only seek service under the Zanussi guarantee from the subsidiary which imported the appliance into its own Member State; Zanussi was released from its obligation to provide guarantee service if the appliance was used in a Member State other than that in which the importing subsidiary was established. The result was that Zanussi dealers were placed in an artificially disadvantageous competitive situation *vis-à-vis* other firms which also distributed Zanussi appliances, or

similar appliances of other brands, when in their own country they resold Zanussi appliances bought elsewhere in the Community or when in another Member State they resold a Zanussi appliance bought in their own country, since in these users could not benefit from the Zanussi guarantee.

The clause laying down that the user's right to claim the guarantee and the manufacturer's obligation to provide it ceased to exist if the appliance had been adjusted in any way or had been altered by somebody who had not been authorized to do so by the importing subsidiary also restricted competition within the common market, since it prevented dealers who planned to import or export from making the appliance conform to safety and technical standards in other Member States, when it was essential to comply with these in order to sell the appliances.

These restrictions on free competition were all the more appreciable as they directly affected the interests of the consumer by substantially confining the scope of the free after-sales service, to which the user attaches particular importance in relation to these appliances.

11. The guarantee scheme was likely to affect trade between Member States since it could reduce or at any rate appreciably distort Community inter-State trade in Zanussi appliances. Free after-sales service for Zanussi appliances is of great importance to the user on account of the position of these appliances in relation to supply and demand within the common market.

12. Article 85 (3) could not be applied to the agreements in the original guarantee scheme. Admittedly, the Zanussi guarantee meant that service could be provided free of charge, so that the appliances could be used in optimum technical conditions to the benefit both of users and of dealers. But the offending clauses caused each dealer to confine his business to his own Member State. By discouraging dealers from expanding their business beyond the confines of the national competitive arena, the agreements prevented the latest design and technical improvements available in certain Member States from becoming available throughout the common market. Even admitting that the agreement did have certain beneficial effects, there was no evidence of the consumer being allowed a fair share of the resulting benefits. The freedom of users to acquire Zanussi appliances where they wished in the light of varying terms of sale, and particularly as regards guarantees, was directly attacked. At any rate it

could not be accepted that the restrictions imposed by Zanussi were indispensable to the smooth operation of the guarantee scheme, since their effect was to prevent or hinder the performance of guarantee service where inter-State trade was handled by firms that were not Zanussi subsidiaries.

13. The argument which was put forward as justification of the scheme, and which could not be accepted, was that the differences between technical and safety standards in the various Member States were so great that domestic electrical appliances, including those made by Zanussi, had to be manufactured to such dissimilar specifications that they could not be distributed anyway in a country other than where they conformed to the technical and safety standards and hence there could be no movement in these goods between Member States.

However, even admitting that these differences did constitute an obstacle to free movement, this could not justify the incorporation of the standards in question into the dealers' contracts in such a way (here by the provision for the termination of the guarantee) as to aggravate this obstacle; moreover, for the appliances in question the differences between the effectively binding technical and safety standards in force in the Member States were not so great as to prevent the movement of the goods across national frontiers or, more generally, to eliminate the economic advantages which third parties might gain from exporting or importing once the necessary adjustments had been made.

(b) *Non-restrictive nature of the guarantee scheme introduced in May 1977 and consequent inapplicability of Article 85*

14. The guarantee scheme introduced by Zanussi on a temporary basis in May 1977, subsequently confirmed in the certificates issued after 15 February 1978, no longer has the effect of restricting competition within the common market; the agreements between Zanussi and its dealers are therefore no longer caught by the prohibition in Article 85 (1) of the Treaty.

The new general terms of guarantee printed on the certificates, which are now the same for the different Member States, entitle users to service under guarantee from Zanussi anywhere inside the Community, regardless of where they first bought their appliance or where it is being used.

The fact that guarantee service will be provided on the terms locally applied by the Zanussi subsidiary in the State where the appliance is used, and not on the terms pertaining in the country where the appliance is bought, does not constitute a discrimination between Zanussi appliances sold by that subsidiary and appliances retailed by other subsidiaries.

The new terms of guarantee will henceforth allow dealers and users to adapt their appliances, or have them adapted, so that they will conform to the technical and safety standards of the country where they are used, without the Zanussi guarantee thereby being invalidated. These adjustments, moreover, can be done either by Zanussi or by any qualified person who is capable of carrying them out correctly. Thus a Zanussi appliance which has been imported into a Member State and then adapted by the importer himself to conform to the local technical and safety standards will continue to be covered by guarantee.

The current guarantee scheme is no longer such, therefore, as to discourage dealers from importing Zanussi appliances from, or exporting them to, other Member States. Neither does it tend to dissuade the user from buying a Zanussi appliance in some other Community country from that in which the appliance will be in use.

The Commission is therefore able to issue a negative clearance within the meaning of Article 2 of Regulation No 17 for the new guarantee scheme introduced by Zanussi, as this no longer contains anti-competitive clauses which may affect trade between Member States.

B. Article 7 (1) of Regulation No 17

15. As a result of the amendment of the conditions of guarantee, the agreements entered into by Zanussi and its dealers in the Community satisfy the tests of Article 7 (1) of Regulation No 17. These conditions, which existed at the date of entry into force of the Regulation (13 March 1962) and had been notified in respect of a standard form of contract between Zanussi and Ets. F. Drion. Brussels, did not satisfy the tests of Article 85 (3); they have however, now been changed in such a way that the relevant agreements are no longer caught by the prohibition in Article 85 (1). This prohibition can only apply, therefore, for a period to be determined by the Commission.

16. For the reasons set out below the prohibition in Article 85 (1) may be declared inapplicable to the agreements at issue for the whole period before this Decision comes into force:

- (a) during the proceedings Zanussi actively cooperated with the Commission in seeking the best way of altering its guarantee scheme to make it compatible with the Community rules on competition and at the same time with the manufacturing, marketing and service requirements imposed by technical and safety standards which vary from one Community country to another;
- (b) before new terms of guarantee, which were completely satisfactory, had been finalized, Zanussi on its own initiative introduced temporary measures designed to remove the main restrictions in its previous scheme,

HAS ADOPTED THIS DECISION:

Article 1

On the information at its disposal, the Commission considers that it has no cause to intervene pursuant to Article 85 (1) of the Treaty establishing the European Economic Community with regard to the supply

contracts between Industrie Zanussi SpA and its dealers in household electrical appliances, which contracts include the new conditions of guarantee which Zanussi has decided to apply within the Community from 15 February 1978.

Article 2

Pursuant to Article 7 (1) of Regulation No 17, the prohibition contained in Article 85 (1) of the EEC Treaty is declared inapplicable to the supply contracts containing the terms of guarantee formerly operated by the Zanussi Group within the European Economic Community for the period 13 March 1962 to 14 February 1978.

Article 3

This Decision is addressed to Industrie A. Zanussi SpA, Pordenone, Italy.

Done at Brussels, 23 October 1978.

For the Commission

Raymond VOUEL

Member of the Commission
