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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 124/79**of 25 January 1979****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 2724/78⁽³⁾ and subsequent amending
Regulations;

Whereas it follows from applying the provisions
contained in Regulation (EEC) No 2724/78 to the

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 January
1979.

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

Done at Brussels, 25 January 1979.

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 329, 24. 11. 1978, p. 1.

ANNEX

to the Commission Regulation of 25 January 1979 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	85.07
10.01 B	Durum wheat	133.63 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	86.94 ⁽⁶⁾
10.03	Barley	93.48
10.04	Oats	88.78
10.05 B	Maize, other than hybrid maize for sowing	77.94 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	4.72
10.07 B	Millet	74.38 ⁽⁴⁾
10.07 C	Grain sorghum	79.84 ⁽⁴⁾
10.07 D	Canary seed ; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	130.59
11.01 B	Rye flour	133.20
11.02 A I a)	Durum wheat groats and meal	218.11
11.02 A I b)	Common wheat groats and meal	140.14

⁽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 125/79**of 25 January 1979****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
2725/78 ⁽³⁾ and subsequent amending Regulations ;

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

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 2

This Regulation shall enter into force on 26 January
1979.

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

Done at Brussels, 25 January 1979.

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 329, 24. 11. 1978, p. 4.

ANNEX

to the Commission Regulation of 25 January 1979 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 1	1st period 2	2nd period 3	3rd period 4
10.01 A	Common wheat, and meslin	0	2.60	2.60	2.60
10.01 B	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	0.30	0.30	0.30
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	1.51
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0	0	1.21
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	3.64	3.64	3.64

B. Malt

(u.a./tonne)

CCT heading No	Description	Current 1	1st period 2	2nd period 3	3rd period 4	4th period 5
11.07 A I (a)	Unroasted malt, obtained from wheat, in the form of flour	0	4.63	4.63	4.63	4.63
11.07 A I (b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	3.46	3.46	3.46	3.46
11.07 A II (a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	0.53	0.53	0.53	0.53
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0.40	0.40	0.40	0.40
11.07 B	Roasted malt	0	0.47	0.47	0.47	0.47

COMMISSION REGULATION (EEC) No 126/79**of 25 January 1979****fixing minimum levies on the importation of olive oil and levies on the importation of other olive oil sector products**

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 16 (2) thereof,

Having regard to Council Regulation (EEC) No 2749/78 of 23 November 1978 on trade in oils and fats between the Community and Greece⁽³⁾, and in particular Article 5 (2) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil originating in Algeria⁽⁴⁾, as amended by Regulation (EEC) No 2761/78⁽⁵⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil originating in Morocco⁽⁶⁾, as last amended by Regulation (EEC) No 2761/78, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil originating in Tunisia⁽⁷⁾, as amended by Regulation (EEC) No 2761/78, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1180/77 of 17 May 1977 on imports into the Community of certain agricultural products originating in Turkey⁽⁸⁾, as amended by Regulation (EEC) No 2766/78⁽⁹⁾, and in particular Article 10 (2) thereof,

Having regard to Council Regulation (EEC) No 1620/77 of 18 July 1977 laying down detailed rules for the importation of olive oil from Lebanon⁽¹⁰⁾,

Whereas by Regulation (EEC) No 3131/78 of 28 December 1978⁽¹¹⁾ the Commission decided to use the tendering procedure to fix levies on olive oil ;

Whereas Article 3 of Regulation (EEC) No 2751/78 of 23 November 1978 laying down general rules for fixing the import levy on olive oil by tender⁽¹²⁾ specifies that the minimum levy rate shall be fixed for each of the products concerned on the basis of the situation on the world or Greek markets and the Community market and of the levy rates indicated by tenderers ;

Whereas in the collection of the levy account should be taken of the provisions in the Agreements between the Community and certain third countries ; whereas in particular the levy applicable for those countries must be fixed taking as a basis for calculation the levy to be collected on imports from the other third countries ;

Whereas application of the rules recalled above to the levy rates indicated by tenderers on 22 and 23 January 1979 leads to the minimum levies being fixed as indicated in Annex I to this Regulation ;

Whereas the import levy on olives falling within subheadings 07.01 N II and 07.03 A II of the Common Customs Tariff and on products falling within subheadings 15.17 B I and 23.04 A II of the Common Customs Tariff must be calculated from the minimum levy applicable on the olive oil contained in these products ; whereas, however, the levy charged for olive oil may not be less than an amount equal to 8 % of the value of the imported product, such amount to be fixed at a standard rate ; whereas application of these provisions leads to the levies being fixed as indicated in Annex II to this Regulation,

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

⁽²⁾ OJ No L 185, 7. 7. 1978, p. 1.

⁽³⁾ OJ No L 331, 28. 11. 1978, p. 1.

⁽⁴⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁵⁾ OJ No L 332, 29. 11. 1978, p. 13.

⁽⁶⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽⁸⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽⁹⁾ OJ No L 332, 29. 11. 1977, p. 26.

⁽¹⁰⁾ OJ No L 181, 21. 7. 1977, p. 4.

⁽¹¹⁾ OJ No L 370, 30. 12. 1978, p. 60.

⁽¹²⁾ OJ No L 331, 28. 11. 1978, p. 6.

HAS ADOPTED THIS REGULATION :

Article 1

The minimum levies on olive oil imports are fixed in Annex I.

Article 2

The levies applicable on imports of other olive oil sector products are fixed in Annex II.

Article 3

This Regulation shall enter into force on 26 January 1979.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX I

Minimum import levies on olive oil

(u.a./100 kg)

CCT heading No	Greece	Non-member countries
15.07 A I a)	29.00 ⁽¹⁾	54.00 ⁽¹⁾
15.07 A I b)	28.00 ⁽¹⁾	53.00 ⁽¹⁾
15.07 A I c)	32.00 ⁽¹⁾	56.00 ⁽¹⁾
15.07 A II a)	35.00	63.00 ⁽²⁾
15.07 A II b)	48.00	88.00 ⁽³⁾

⁽¹⁾ For imports of oil falling within this tariff subheading and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by:

(a) Greece, Spain and Lebanon: 0.50 u.a./100 kg;

(b) Turkey: 18.50 u.a./100 kg provided that the operator furnishes proof of having paid the export tax applied by that country; however, the repayment may not exceed the amount of the tax in force;

(c) Algeria, Morocco, Tunisia: 20.50 u.a./100 kg provided that the operator furnishes proof of having paid the export tax applied by those countries; however, the repayment may not exceed the amount of the tax in force.

⁽²⁾ For imports of oil falling within this tariff subheading:

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 3.20 u.a./100 kg;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 2.56 u.a./100 kg.

⁽³⁾ For imports of oil falling within this tariff subheading:

(a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 6 u.a./100 kg;

(b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 4.80 u.a./100 kg.

ANNEX II

Import levies on other olive oil sector products

(u.a./100 kg)

CCT heading No	Greece	Non-member countries
07.01 N II	6.00	11.00
07.03 A II	6.00	11.00
15.17 B I a)	14.00	27.00
15.17 B I b)	22.00	42.00
23.04 A II	3.00	4.00

COMMISSION REGULATION (EEC) No 127/79

of 25 January 1979

fixing the export refunds on 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 organiza-
tion of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 1254/78⁽²⁾, and in particular the
fourth subparagraph of Article 16 (2) thereof;

Having regard to the opinion of the Monetary
Committee,

Whereas Article 16 of Regulation (EEC) No 2727/75
provides that the difference between quotations or
prices on the world market for the products listed in
Article 1 of those Regulations and prices for those
products within the Community may be covered by
an export refund;

Whereas Article 2 of Council Regulation (EEC) No
2746/75 of 29 October 1975 laying down general
rules for granting export refunds on cereals and
criteria for fixing the amount of such refunds⁽³⁾,
provides that when refunds are being fixed account
must be taken of the existing situation and the future
trend with regard to prices and availabilities of cereals
on the Community market on the one hand and
prices for cereals on the world market on the other;
whereas the same Article provides that it is also impor-
tant to ensure equilibrium and the natural develop-
ment of prices and trade on the markets in cereals
and, furthermore, to take into account the economic
aspect of the proposed exports, and the need to avoid
disturbances on the Community market;

Whereas Council Regulation (EEC) No 2744/75 of 29
October 1975 on the import and export system for
products processed from cereals and from rice⁽⁴⁾, as
last amended by Regulation (EEC) No 2245/78⁽⁵⁾,
defines the specific criteria to be taken into account
when the refund on these products is being calcu-
lated;

Whereas it follows from applying these rules and
criteria to the present situation on the market in
products processed from cereals and rice that the
export refund should be fixed at an amount which
will cover the difference between Community prices
and world market prices;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1 (d) of
Regulation (EEC) No 2727/75 subject to Regulation
(EEC) No 2744/75 are hereby fixed as shown in the
Annex to this Regulation.

Article 2

This Regulation shall enter into force on 26 January
1979.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 156, 14. 6. 1978, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽⁵⁾ OJ No L 273, 29. 9. 1978, p. 1.

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

Done at Brussels, 25 January 1979.

For the Commission
Finn GUNDELACH
Vice-President

ANNEX

to the Commission Regulation of 25 January 1979 fixing the export refunds on malt

(u.d. / tonne)	
CCT heading No	Refund
11.07 A I b)	86.45
11.07 A II b)	105.35
11.07 B	122.78

COMMISSION REGULATION (EEC) No 128/79**of 25 January 1979****fixing the levies and sluice-gate prices for pigmeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by Regulation (EEC) No 1423/78⁽²⁾, and in particular Articles 8 and 12 (1) thereof,

Whereas sluice-gate prices for pig carcasses and for the other products specified in Article 1 of Council Regulation (EEC) No 2766/75 of 29 October 1975 establishing the list of products for which sluice-gate prices are to be fixed and laying down the rules for fixing the sluice-gate prices for pig carcasses⁽³⁾, as amended by Regulation (EEC) No 370/76⁽⁴⁾, and levies for the products specified in Article 1 (1) of Regulation (EEC) No 2759/75, must be fixed in advance for each quarter in accordance with the methods of calculation laid down in Commission Regulation (EEC) No 1614/78 of 11 July 1978 fixing the levies and sluice-gate prices on pigmeat⁽⁵⁾;

Whereas, since sluice-gate prices and levies for pigmeat were last fixed by Regulation (EEC) No 2369/78⁽⁶⁾ for the period 1 November 1978 to 31 January 1979, they must be fixed anew for the period 1 February to 30 April 1979; whereas such prices and levies should in principle be fixed by reference to feed grain prices for the period 1 August to 31 December 1978;

Whereas, when the sluice-gate price applicable from 1 November, 1 February and 1 May is being fixed, trends in world market prices for feed grain are to be taken into account only if the value of the quantity of feed grain required varies by at least a specified minimum in relation to that used in calculating the sluice-gate price for the preceding quarter; whereas this minimum was fixed by Regulation (EEC) No 2766/75 at 3 %;

Whereas the value of the quantity of feed grain varies by more than 3 % from that used for the preceding quarter; whereas trends in world market prices for feed grain must therefore be taken into account when

fixing sluice-gate prices for the period 1 February to 30 April 1979;

Whereas, when the levies applicable from 1 November, 1 February and 1 May are being fixed, trends in world market prices for feed grain should be taken into account only if at the same time a new sluice-gate price is being fixed;

Whereas, since a new sluice-gate price is to be fixed, trends in world market prices for feed grain must be taken into account in fixing the levies;

Whereas, in the case of products falling within any of subheadings 02.01 B II c) 1 to 7, 15.01 A I, 16.01 A or 16.02 A II of the Common Customs Tariff, in respect of which the rate of duty has been bound within GATT, the levies should be limited to the amounts resulting from that binding;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the period 1 February to 30 April 1979, the sluice-gate prices provided for in Article 12 of Regulation (EEC) No 2759/75 for the products specified in Article 1 of Regulation (EEC) No 2766/75 and the levies provided for in Article 8 of Regulation (EEC) No 2759/75 for the products specified in Article 1 (1) of that Regulation shall be as shown in the Annex hereto.

2. Provided that, in the case of products falling within any of subheadings 02.01 B II c) 1 to 7, 15.01 A I, 16.01 A or 16.02 A II of the Common Customs Tariff, in respect of which the rate of duty has been bound within GATT, the levy shall not exceed the amount resulting from that binding.

Article 2

This Regulation shall enter into force on 1 February 1979.

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 171, 28. 6. 1978, p. 19.

⁽³⁾ OJ No L 282, 1. 11. 1975, p. 25.

⁽⁴⁾ OJ No L 45, 21. 2. 1976, p. 4.

⁽⁵⁾ OJ No L 189, 12. 7. 1978, p. 5.

⁽⁶⁾ OJ No L 286, 12. 10. 1978, p. 15.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 25 January 1979 fixing the levies and sluice-gate prices
on pigmeat

[illegible]

CCT heading No	Description	Sluice-gate price u.a./100 kg	Amount of levies u.a./100 kg	Conventional rate of duty bound within GATT (%)
02.06	Meat and edible meat offals (except poultry liver), salted, in brine, dried or smoked :			
	B. Meat and edible meat offals of domestic swine :			
	I. Meat :			
	a) Salted or in brine :			
	1. Carcases or half-carcases, with or without heads, feet or flare fat	63.85	41.36	—
	2. Bacon sides, spencers, 3/4 sides and middles :			
	aa) Bacon sides	86.20	55.84	—
	bb) Spencers	—	55.84	—
	cc) 3/4 sides and middles	—	62.04	—
	3. Hams and cuts of hams, unboned (bone-in)	98.97	64.11	—
	4. Shoulders (fores) and cuts of shoulders, unboned (bone-in)	77.90	50.46	—
	5. Loins and cuts of loins, unboned (bone-in)	103.44	67.01	—
	6. Bellies (streaky) and cuts of bellies	55.55	35.98	—
	7. Other	—	67.01	—
	b) Dried or smoked :			
	1. Carcases or half-carcases, with or without heads, feet or flare fat	—	62.04	—
	2. Bacon sides, spencers, 3/4 sides and middles :			
	aa) Bacon sides	—	62.04	—
	bb) Spencers	—	62.04	—
	cc) 3/4 sides and middles	—	68.25	—
	3. Hams and cuts of hams, unboned (bone-in) :			
	aa) Slightly dried or slightly smoked	—	82.72	—
	bb) Other	—	116.64	—
	4. Shoulders (fores) and cuts of shoulders, unboned (bone-in) :			
	aa) Slightly dried or slightly smoked	—	57.91	—
	bb) Other	—	91.82	—
	5. Loins and cuts of loins, unboned (bone-in) :			
	aa) Slightly dried or slightly smoked	—	86.86	—
	bb) Other	—	115.40	—
	6. Bellies (streaky) and cuts of bellies :			
	aa) Slightly dried or slightly smoked	—	41.36	—
	bb) Other	—	59.97	—
	7. Other :			
	aa) Slightly dried or slightly smoked	—	86.86	—
	bb) Other	—	116.64	—
	II. Edible meat offals :			
	a) Heads and cuts of heads ; necks	—	13.24	—
	b) Feet ; tails	—	3.72	—
	c) Kidneys	—	43.43	—
	d) Livers	—	50.05	—
	e) Hearts ; tongues ; lungs	—	24.82	—
	f) Livers, hearts, tongues and lungs attached to the trachea and gullet	—	36.40	—
	g) Other	—	36.40	—

CCT heading No	Description	Sluice-gate price u.a./100 kg	Amount of levies u.a./100 kg	Conventional rate of duty bound within GATT (%)
15.01	Lard, other pig fat and poultry fat, rendered or solvent extracted :			
	A. Lard and other pig fat :			
	I. For industrial uses other than the manufacture of foodstuffs for human consumption (a)	—	13.24	3
	II. Other	20.43	13.24	—
16.01	Sausages and the like, of meat, meat offal or animal blood :			
	A. Liver sausages	—	76.98	24
	B. Other (b) :			
	I. Sausages, dry or for spreading, uncooked	—	123.80	—
	II. Other	—	85.60	—
16.02	Other prepared or preserved meat or meat offal :			
	A. Liver :			
	II. Other	—	79.82	25
	B. Other :			
	III. Other :			
	a) Containing meat or offal of domestic swine :			
	1. Containing bovine meat, uncooked	—	179.05	—
	2. Other, containing, by weight :			
	aa) 80 % or more of meat or offal, of any kind, including fats of any kind or origin :			
	11. Hams, fillets and loins ; pieces thereof	—	132.01	—
	22. Shoulders and pieces thereof	—	108.50	—
	33. Other	—	74.94	—
	bb) 40 % or more but less than 80 % of meat or offals, of any kind, including fats of any kind or origin	—	66.40	—
	cc) Less than 40 % of meat or offal, of any kind, including fats of any kind or origin	—	43.41	—

(a) Entry under this subheading is subject to conditions to be determined by the competent authorities.

(b) The levy on sausages imported in containers which also contain preserving liquid, shall be charged on the net weight, i.e. minus the weight of the liquid.

COMMISSION REGULATION (EEC) No 129/79

of 25 January 1979

amending Regulation (EEC) No 1579/70 laying down special conditions for the export of certain cheeses to Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 1761/78⁽²⁾, and in particular the first subparagraph of Article 17 (4) thereof,

Whereas footnote (3) to Annex IV to Commission Regulation (EEC) No 1579/70⁽³⁾, as last amended by Regulation (EEC) No 889/78⁽⁴⁾, contains the free-at-Spanish-frontier prices which must be observed for certain cheeses from the Community if they are to be subject to a fixed regulatory duty on their entry into Spain;

Whereas, following an increase in the price of its milk, Spain has had to increase its threshold prices for certain cheeses;

Whereas higher threshold prices mean that higher free-at-Spanish-frontier prices must be observed; whereas footnote (3) to Annex IV to Regulation (EEC) No 1579/70 must therefore be amended accordingly;

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

Footnote (3) to Annex IV to Regulation (EEC) No 1579/70 is replaced by the following:

'(3) The prices per 100 kg net weight must not be less than:

- 19 668 pesetas for Emmentaler and Gruyère whole cheeses falling within subheading 04.04 A I a) 1 of the Spanish customs tariff;
- 20 879 pesetas for Emmentaler and Gruyère cheese in vacuum-packed pieces of a weight

exceeding one kilogram falling within subheading 04.04 A I b) 1 of the Spanish customs tariff;

- 21 670 pesetas for Emmentaler and Gruyère cheese in vacuum-packed pieces of a weight not exceeding one kilogram but exceeding 75 grams falling within subheading 04.04 A I c) 1 of the Spanish customs tariff;
- 16 588 pesetas for blue-veined cheeses falling within subheading 04.04 C 2 of the Spanish customs tariff;
- 18 182 pesetas for cheeses processed from Emmentaler or Gruyère falling within subheading 04.04 D I a) or D I b) of the Spanish customs tariff;
- 18 434 pesetas for cheeses processed from Emmentaler or Gruyère falling within subheading 04.04 D I c) of the Spanish customs tariff;
- 15 888 pesetas for other processed cheeses falling within subheading 04.04 D 2 a) of the Spanish customs tariff;
- 16 132 pesetas for other processed cheeses falling within subheading 04.04 D 2 b) of the Spanish customs tariff;
- 16 370 pesetas for other processed cheeses falling within subheading 04.04 D 2 c) of the Spanish customs tariff;
- 17 808 pesetas for Parmigiano Reggiano, Grana Padano, Pecorino and Fiore Sardo cheeses falling within subheading 04.04 G I a) 1 of the Spanish customs tariff;
- 15 723 pesetas for Cheddar cheese ripened for less than three months falling within subheading 04.04 G I b) 1 of the Spanish customs tariff;
- 16 999 pesetas for Cheddar cheese ripened for more than three months falling within subheading 04.04 G I b) 1 of the Spanish customs tariff;
- 16 959 pesetas for Provolone, Asiago, Caciocavallo and Ragusano cheeses falling within subheading 04.04 G I b) 2 of the Spanish customs tariff;

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

(2) OJ No L 204, 28. 7. 1978, p. 6.

(3) OJ No L 172, 5. 8. 1970, p. 26.

(4) OJ No L 117, 29. 4. 1978, p. 41.

- 16 123 pesetas for first quality Dutch Edam cheese of a minimum fat content by weight in the dry matter of 40 % and ripened for seven to eight weeks falling within subheading 04.04 G I b) 3 of the Spanish customs tariff ;
- 17 720 pesetas for cheeses of a water content calculated by weight of the non-fatty matter exceeding 62 % but not exceeding 72 % falling within subheading 04.04 G I b) 5 of the Spanish customs tariff ;
- 17 720 pesetas for cheeses of a water content calculated by weight of the non-fatty matter

exceeding 72 % in packings of a net capacity not exceeding 500 grams falling within subheading 04.04 G I c) 1 of the Spanish customs tariff.'

Article 2

This Regulation shall enter into force on the 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, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION REGULATION (EEC) No 130/79

of 25 January 1979

on the granting of aid for concentrated grape must used in wine-making during the 1978/79 wine year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EEC) No 3065/78⁽²⁾, and in particular Article 6 (e) (2) thereof,

Having regard to Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 2580/78⁽⁴⁾, and in particular Articles 4 (3) and 5 thereof,

Whereas Article 6 (e) of Regulation (EEC) No 816/70 provides for the possibility of granting aid for concentrated grape must produced within the Community and used to increase the alcoholic strength of wines;

Whereas the conditions which have marked the beginning of the 1978/79 wine year call for the application of this enrichment measure provided for in Article 18 of Regulation (EEC) No 816/70;

Whereas enrichment operations by the addition of concentrated grape must and the quantities of that product which are held must be declared to the competent authorities; whereas the quantities of concentrated must which are or which have been used for enrichment are known; whereas the retroactive application of the proposed measure does not therefore give rise to difficulties;

Whereas in the wine-growing regions where the natural alcoholic strength may be increased by the addition of saccharose, use of concentrated grape must is the exception; whereas it is therefore appropriate that producers in the said regions should not receive the aid;

Whereas, in order to give preference to those producers most severely affected by a bad season, this aid should be restricted to those producers who are able to furnish proof of a yield lower than 70 hectolitres per hectare;

Whereas it is necessary to fix the aid at an amount which takes account of the market price for concentrated grape must;

Whereas the cost price of grape must used in the production of concentrated grape must depends on its natural alcoholic strength; whereas the market price of grape must with a high natural alcoholic strength potential is higher than that of other musts; whereas, in order to take this into account, it is essential to graduate the amount of the aid by fixing a higher amount for concentrated musts produced from grape musts with the highest natural alcoholic strength; whereas, since the concentration operations have already been carried out, and since it is consequently no longer possible to check the natural alcoholic strength of the musts used, it is necessary to restrict the higher amount of aid to the regions in the Community which traditionally produce must with a high natural alcoholic strength;

Whereas Article 4 (1) of Regulation (EEC) No 878/77 provides that, as regards the effect on rights and obligations existing at the moment when a representative rate is altered, the provisions in respect of an alteration in the relationship between the parity of the currency of a Member State and the value of the unit of account which are contained in Council Regulation (EEC) No 1134/68 of 30 July 1968 laying down rules for the implementation of Regulation (EEC) No 653/68 on conditions for alterations to the value of the unit of account used for the purposes of the common agricultural policy⁽⁵⁾ shall apply;

Whereas, under Article 4 (2) of Regulation (EEC) No 1134/68, sums referred to in the said Article are to be paid on the basis of the conversion rate applicable at the time when the transaction or part-transaction was carried out; whereas under Article 6 of the same Regulation the time when a transaction is carried out shall be considered as being the date on which the event, as defined by Community rules or, in the absence of and pending adoption of such rules, by the rules of the Member State concerned, occurs which gives entitlement to the amount involved in the transaction; whereas, however, by virtue of Article 4 (3) of Regulation (EEC) No 878/77, derogations may be made from the abovementioned provisions;

(1) OJ No L 99, 5. 5. 1970, p. 1.

(2) OJ No L 366, 28. 12. 1978, p. 9.

(3) OJ No L 106, 29. 4. 1977, p. 27.

(4) OJ No L 309, 1. 11. 1978, p. 13.

(5) OJ No L 188, 1. 8. 1968, p. 1.

Whereas, pursuant to Article 2a (2) (e) of Regulation (EEC) No 878/77, the representative rates fixed by the said Regulation apply from 16 December 1978 in the wine sector;

Whereas it is necessary, in order to avoid any discrimination among the operators concerned, to provide for the application of a single representative rate for all payments relating to the enrichment operations referred to in this Regulation; whereas the enrichment operations referred to in this Regulation may be carried out by 31 December 1978 but whereas they were almost all carried out before 15 December 1978; whereas, therefore, the representative rates used should be those prevailing in the wine sector on the date from which this Regulation is applicable, namely 15 September 1978;

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

HAS ADOPTED THIS REGULATION:

Article 1

Aid shall be granted on the terms laid down in this Regulation to producers of wine grapes intended for the production of table wines who are able to furnish proof of a yield lower than 70 hectolitres per hectare from the 1978 harvest and whose holdings are situated in wine-growing Zone C, with the exception of the French regions where the increase in the natural alcoholic strength may be achieved by the addition of saccharose pursuant to Article 19 (3) of Regulation (EEC) No 816/70.

Article 2

1. The amount of aid provided for in Article 1 is hereby fixed, for concentrated must used in the operations described in Articles 18 and 19 of Regulation (EEC) No 816/70, in units of account per degree of potential alcoholic strength per hectolitre at:

— 1.16 units of account for concentrated musts originating in the Italian part of Zone C III and in Corsica,

— 1.04 units of account for concentrated musts originating in other Community regions.

2. Conversion into national currency of the amounts referred to in paragraph 1 shall be carried out by means of the representative rates applicable in the wine sector on 15 September 1978.

Article 3

1. Producers wishing to take advantage of the aid provided for in Article 1 shall apply to the competent intervention agency by 15 February 1979 at the latest.

2. Before paying aid, the intervention agencies shall satisfy themselves that the conditions laid down in Article 1 are fulfilled.

Article 4

The Member States shall communicate to the Commission by 15 June 1979 the number of producers who have received aid, the quantities of wine subjected to enrichment and the quantities of concentrated must used for this purpose expressed in degrees of potential alcoholic strength per hectolitre.

Article 5

The Member States shall designate an intervention agency to be responsible for applying this Regulation.

Article 6

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

It shall be applicable from 15 September 1978.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION REGULATION (EEC) No 131/79

of 25 January 1979

amending for the third time Regulation (EEC) No 649/78 on the sale at reduced prices of intervention butter for direct consumption as concentrated butter, and amending Regulation (EEC) No 1036/78

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products⁽¹⁾, as last amended by Regulation (EEC) No 1761/78⁽²⁾, and in particular Articles 6 (7) and 28 thereof,

Having regard to Council Regulation (EEC) No 974/71 of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States⁽³⁾, as last amended by Regulation (EEC) No 557/76⁽⁴⁾, and in particular Article 6 thereof,

Whereas Commission Regulation (EEC) No 649/78⁽⁵⁾, as last amended by Regulation (EEC) No 1369/78⁽⁶⁾, provides that Member States may be authorized *inter alia* to grant aid in respect of butter which has been in private storage and is to be sold for direct consumption as concentrated butter; whereas the purpose of that provision is to ensure a balance between the release of butter from public storage and its release from private storage; whereas, given the close relationship between butter and cream in private storage, which are subject to the same rules and conditions as regards storage aid, as laid down in Commission Regulation (EEC) No 685/69⁽⁷⁾, as last amended by Regulation (EEC) No 1025/78⁽⁸⁾, it is likewise advisable to extend the application of Regulation (EEC) No 649/78 to include cream;

Whereas, in order to allow for particular cases where the processing deadlines cannot be met, it must be stipulated either that the processing security will not be forfeit in full or that the aid will not be completely withdrawn, and that the Member States are to inform the Commission of such cases; whereas, furthermore,

to ensure the most effective supervision and the uniform application of the system of securities in the Member States, and to harmonize the guarantees offered by the system of securities with those offered by the aid procedure, it is necessary to specify the deadline for producing the proof that the butter has been used required by Commission Regulation (EEC) No 1687/76⁽⁹⁾, as last amended by Regulation (EEC) No 1665/78⁽¹⁰⁾, beyond which deadline the security shall be forfeit;

Whereas the monetary compensatory amounts fixed pursuant to Regulation (EEC) No 974/71 should take account of the value of cream; whereas provision should be made for a coefficient to be applied to the amounts set out in Commission Regulation (EEC) No 1036/78 of 19 May 1978 fixing the monetary compensatory amounts and certain coefficients and rates for their application⁽¹¹⁾, as last amended by Regulation (EEC) No 101/79⁽¹²⁾;

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

Regulation (EEC) No 649/78 is amended as follows:

1. (a) The provisions of Article 1 become paragraph 1 of that Article.
- (b) The following paragraph 2 is added to Article 1:

'2. The aid referred to in paragraph 1 (b) may be granted for cream in respect of which private storage aid has been granted in accordance with Article 27 of Regulation (EEC) No 685/69 and which has been in storage for at least four months. In this case,

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

(2) OJ No L 204, 25. 7. 1978, p. 6.

(3) OJ No L 106, 12. 5. 1971, p. 1.

(4) OJ No L 67, 15. 3. 1976, p. 1.

(5) OJ No L 86, 1. 4. 1978, p. 33.

(6) OJ No L 166, 22. 6. 1978, p. 30.

(7) OJ No L 90, 15. 4. 1969, p. 12.

(8) OJ No L 132, 20. 5. 1978, p. 51.

(9) OJ No L 190, 14. 7. 1976, p. 1.

(10) OJ No L 192, 15. 7. 1978, p. 49.

(11) OJ No L 133, 22. 5. 1978, p. 1.

(12) OJ No L 15, 22. 1. 1979, p. 1.

- the word "butter" used in this Regulation to describe the butter removed from storage referred to in paragraph 1 (b) must be understood to mean "butter" or "cream converted into butter equivalents",
 - the quantities of cream shall be converted into butter equivalents by multiplying their fat content by 1.25.
2. (a) The second indent of Article 5 (1) is replaced by the following indent :
- '— have undergone, to the exclusion of all processing other than that referred to in paragraph 4, the incorporation provided for in paragraph 2.'
- (b) The following paragraphs 3 and 4 are added to Article 5 :
- '3. If the cream referred to in Article 1 (2) is used, incorporation shall take place at the final stage in the manufacture of the concentrated butter, and the quantity of products incorporated shall be calculated as a function of the fat content of the cream converted into butter equivalents.
4. Nitrogen gas may be added to concentrated butter meeting the requirements of paragraphs 1 and 2 immediately before packing to cause foaming; the increase in volume resulting from this treatment may not exceed 10 % of the volume of the concentrated butter before treatment.'
3. The second subparagraph of Article 6 (4) is replaced by the following subparagraph :
- 'Furthermore, Section 106 of the control copy must include :
- where the butter or cream is exported in its natural state for processing into concentrated butter and packing pursuant to Article 4, the date of receipt of the acknowledgement of receipt referred to in Article 3 (2);
 - where the butter or cream is exported after processing into concentrated butter and packing, an indication of the quantity of butter or cream used to manufacture the quantity of concentrated butter indicated in Section 103. If cream is used, its fat content must be stated.'
4. The following paragraph is added to Article 7 :
- 'If cream is used, the inspection must relate to its fat content.'
5. (a) In Article 9, the following paragraph 3 is added :
- '3. In case of cream being removed from storage, in the statements listed in paragraph 2 :
- "butter" shall be replaced by "cream" ;
 - "smør" shall be replaced by "Fløde" ;
 - "Butter" shall be replaced by "Rahm" ;
 - "beurre" shall be replaced by "crème" ;
 - "burro" shall be replaced by "crema di latte" ;
 - "boter" shall be replaced by "room".
- (b) Paragraph 3 of Article 9 becomes paragraph 4.
6. The following Article 10a is added :
- Article 10a*
1. In cases of *force majeure* not specified in Article 11 (1) of Regulation (EEC) No 1687/76, the intervention agency shall decide what measures should be taken in the circumstances invoked.
2. In circumstances which cannot be regarded as constituting *force majeure* and where :
- the processing deadline laid down in Article 4 (2) has been exceeded by no more than 20 days, and where :
 - failure to meet the deadline is not due to serious negligence on the part of the person concerned, the processing security forfeit shall, at that person's reasoned request, amount to no more than three units of account per tonne per day elapsed since the prescribed deadline, where butter referred to in Article 1 (1) (a) is concerned.
- Where butter referred to in Article 1 (1) (b) is concerned, the aid specified in Article 3 (1) shall be reduced by three units of account per tonne per day elapsed since the deadline.
- Such request as referred to in the preceding subparagraph shall be admitted only if it is lodged with the relevant intervention agency within 20 days of the specified deadline.
3. Member States shall inform the Commission each quarter of the cases in which they have applied paragraph 1 or paragraph 2, specifying the circumstances invoked, the quantity involved and the measures taken.
4. Except in cases of *force majeure*, the processing security referred to in the second indent of the second subparagraph of Article 2 (3) shall be forfeit for the quantities in respect of which the proof required under Regulation (EEC) No 1687/76 has not been furnished within 12 months of the day on which the product has been taken over.'

7. Article 11 is replaced by the following Article 11 :

'Article 11

The Member States shall communicate to the Commission on the Tuesday of each week, giving, for each of the three products below, separate figures for the quantities to be processed in another Member State :

- the quantities of butter referred to in Article 1 (1) (a) which have been the subject of contracts of sale ;
- the quantities of butter and cream referred to in Article 1 (1) (b) for which the Member State in question has issued acknowledgements of receipt.'

Article 2

In Part 5 of Annex I to Regulation (EEC) No 1036/78 :

(a) The following note ⁽¹¹⁾ is added :

⁽¹¹⁾ For cream covered by the measures provided for in Regulation (EEC) No 649/78 (OJ No L 86, 1. 4.

1978), the monetary compensatory amount shall be multiplied by the coefficient 0.40.'

(b) The note ⁽¹¹⁾ is inserted in column 3 'Notes' in respect of subheadings 04.01 B II and 04.01 B III.

Article 3

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

However, the provisions of Article 10a (1), (2) and (3) shall apply to butter covered by contracts pursuant to Regulation (EEC) No 649/78 before this Regulation enters into force if the request of the person concerned is lodged within 20 days either of the date of entry into force of this Regulation or of the last day of the processing deadline laid down in Article 4 (2) of Regulation (EEC) No 649/78 where that deadline occurs after the date of entry into force of this Regulation.

The 12 month time limit referred to in Article 10a (4) shall apply to butter which is the subject of contracts signed after the entry into force of this Regulation.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION REGULATION (EEC) No 132/79

of 25 January 1979

fixing the corrective amount applicable to the refund on 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 organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1254/78⁽²⁾, and in particular the third sentence of the second subparagraph of Article 16 (4) thereof,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds⁽³⁾,

Having regard to the opinion of the Monetary Committee,

Whereas Article 16 (4) of Regulation (EEC) No 2727/75 provides that the export refund applicable to cereals on the day on which application for an export licence is made, adjusted for the threshold price in force during the month of exportation, must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, the corrective amount must be applied to the refund;

Whereas Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and from rice⁽⁴⁾, as last amended by Regulation (EEC) No 2245/78⁽⁵⁾, made possible the fixing of a corrective amount for certain products listed in Article 1 (d) of Regulation (EEC) No 2727/75;

Whereas Regulation (EEC) No 1281/75⁽⁶⁾ laid down detailed rules for the advance fixing of export refunds for cereals and certain products processed from cereals;

Whereas, pursuant to that Regulation, when the corrective amount is being fixed in respect of malt, account must be taken of the existing situation and the future trend with regard to the possibilities and conditions for the sale of the cereals concerned and of malt on the world market; whereas the same Regulation also provides that account must be taken of the quantity of cereals needed for making malt, the economic aspect

of exports and the need to prevent disturbances on the Community market;

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

Whereas the corrective amount must be fixed at the same time as the refund and according to the same procedure; whereas it may be altered in the period between fixings;

Whereas, if the system of corrective amounts is to operate normally, corrective amounts 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 preceding subparagraph;

Whereas it follows from applying the provisions referred to above that the corrective amount must be fixed as shown in the tables annexed to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 16 (4) of Regulation (EEC) No 2727/75 which is applicable to export refunds fixed in advance in respect of malt is hereby fixed as shown in the tables annexed to this Regulation.

Article 2

This Regulation shall enter into force on 1 February 1979.

(1) OJ No L 281, 1. 11. 1975, p. 1.

(2) OJ No L 156, 14. 6. 1978, p. 1.

(3) OJ No L 281, 1. 11. 1975, p. 78.

(4) OJ No L 281, 1. 11. 1975, p. 65.

(5) OJ No L 273, 29. 9. 1978, p. 1.

(6) OJ No L 131, 22. 5. 1975, p. 15.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 25 January 1979 fixing the corrective amount applicable to the refund on malt

(u.a./tonne)

CCT heading No	Current 2	1st period 3	2nd period 4	3rd period 5	4th period 6	5th period 7
11.07 A I a)	0	0	0	0	0	—
11.07 A I b)	0	0	0	0	0	0
11.07 A II a)	0	0	0	0	0	—
11.07 A II b)	0	0	0	0	0	0
11.07 B	0	0	0	0	0	0

(u.a./tonne)

CCT heading No	6th period 8	7th period 9	8th period 10	9th period 11	10th period 12	11th period 1
11.07 A I a)	—	—	—	—	—	—
11.07 A I b)	0	0	0	—	—	—
11.07 A II a)	—	—	—	—	—	—
11.07 A II b)	0	0	0	—	—	—
11.07 B	0	0	0	—	—	—

COMMISSION REGULATION (EEC) No 133/79

of 25 January 1979

fixing the refunds 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 organ-
ization of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 1254/78⁽²⁾, and in particular the
first sentence of the fourth subparagraph of Article 16
(2) thereof,

Having regard to the opinion of the Monetary
Committee,

Whereas Article 16 of Regulation (EEC) No 2727/75
provides that the difference between quotations or
prices on the world market for the products listed in
Article 1 of that Regulation and prices for those
products in the Community may be covered by an
export refund;

Whereas Article 2 of Council Regulation No (EEC)
No 2746/75 of 29 October 1975 laying down general
rules for granting export refunds on cereals and
criteria for fixing the amount of such refunds⁽³⁾,
provides that when refunds are being fixed account
must be taken of the existing situation and the future
trend with regard to prices and availabilities of cereals
on the Community market on the one hand and
prices for cereals and cereal products on the world
market on the other; whereas the same article
provides that it is also important to ensure equi-
librium and the natural development of prices and
trade on cereal markets and, furthermore, to take into
account the economic aspect of the proposed exports
and the need to avoid disturbances on the Commu-
nity market;

Whereas Article 3 of Regulation (EEC) No 2746/75
defines the specific criteria to be taken into account
when the refund on cereals is being calculated;

Whereas these specific criteria are defined, as far as
wheat and rye flour, groats and meal are concerned, in
Article 4 of Regulation (EEC) No 2746/75; whereas,
furthermore, when the refund on these products is
being calculated, account must be taken of the quanti-
ties of cereals required for their manufacture; whereas

these quantities were fixed in Regulation No 162/
67/EEC⁽⁴⁾, as amended by Regulation (EEC) No
1607/71⁽⁵⁾;

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

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

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

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

Whereas it follows from applying the rules outlined
above to the present situation on the market in
cereals, and in particular to quotations or prices for
these products within the Community and on the
world market, that the refunds should be fixed as
shown in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The refunds on the products listed in Article 1 (a), (b)
and (c) of Regulation (EEC) No 2727/75, exported in
the natural state, are hereby fixed as shown in the
Annex to this Regulation.

Article 2

This Regulation shall enter into force on 26 January
1979.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 156, 14. 6. 1978, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No 128, 27. 6. 1967, p. 2574/67.

⁽⁵⁾ OJ No L 168, 27. 7. 1971, p. 16.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 25 January 1979 fixing the refunds on cereals and on wheat or rye flour, groats and meal

CCT heading No	Description	Refund (u.a./tonne)
10.01 A	Common wheat and meslin : — for exports to : — Switzerland, Austria and Liechtenstein — the People's Republic of China — Zones I, II, III, IV, V, VI and VII a) and b) — other third countries	65.00 80.00 0 74.00
10.01 B	Durum wheat	0
10.02	Rye : — for exports to : — Switzerland, Austria and Liechtenstein — other third countries	70.00 80.00
10.03	Barley : — for exports to : — Switzerland, Austria and Liechtenstein — Zones I, II, III, IV, V and VI — other third countries	70.00 0 80.00
10.04	Oats	60.00
10.05 B	Maize, other than hybrid maize for sowing	—
10.07 C	Grain sorghum	—
ex 11.01 A	Wheat flour : — of an ash content of 0 to 520 — of an ash content of 521 to 600 — of an ash content of 601 to 900 — of an ash content of 901 to 1 100 — of an ash content of 1 101 to 1 650 — of an ash content of 1 651 to 1 900	114.00 114.00 104.00 104.00 94.00 94.00
ex 11.01 B	Rye flour : — of an ash content of 0 to 700 — of an ash content of 701 to 1 150 — of an ash content of 1 151 to 1 600 — of an ash content of 1 601 to 2 000	103.00 103.00 103.00 103.00
11.02 A I a)	Durum wheat groats and meal : — of an ash content of 0 to 950 — of an ash content of 951 to 1 300 — of an ash content of 1 301 to 1 500	166.00 166.00 166.00
11.02 A I b)	Common wheat groats and meal : — of an ash content of 0 to 520	114.00

N.B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977).

COMMISSION REGULATION (EEC) No 134/79

of 25 January 1979

fixing the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1254/78⁽²⁾, and in particular the third sentence of the second subparagraph of Article 16 (4) thereof,

Having regard to Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds⁽³⁾,

Having regard to the opinion of the Monetary Committee,

Whereas Article 16 (4) of Regulation (EEC) No 2727/75 provides that the export refund applicable to cereals on the day on which application for an export licence is made, adjusted for the threshold price in force during the month of exportation, must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, the corrective amount must be applied to the refund;

Whereas Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and from rice⁽⁴⁾, as last amended by Regulation (EEC) No 2245/78⁽⁵⁾, made possible the fixing of a corrective amount for certain products listed in Article 1 (c) of Regulation (EEC) No 2727/75;

Whereas Regulation (EEC) No 1281/75⁽⁶⁾ laid down detailed rules for the advance fixing of export refunds for cereals and certain products processed from cereals;

Whereas, pursuant to that Regulation, when the corrective amount is being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals on the Commu-

nity market on the one hand and prices for cereals and cereal products on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on cereal markets and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances on the Community market;

Whereas for the products listed in Article 1 (c) of Regulation (EEC) No 2727/75 account should be taken of the specific criteria laid down in Article 2 (2) of Regulation (EEC) No 1281/75;

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

Whereas the corrective amount must be fixed at the same time as the refund and according to the same procedure;

Whereas it may be altered in the period between fixings;

Whereas, if the system of corrective amounts is to operate normally, corrective amounts 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 preceding subparagraph;

Whereas it follows from applying the provisions referred to above that the corrective amount must be fixed as shown in the table annexed to this Regulation;

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

(1) OJ No L 281, 1. 11. 1975, p. 1.

(2) OJ No L 156, 14. 6. 1978, p. 1.

(3) OJ No L 281, 1. 11. 1975, p. 78.

(4) OJ No L 281, 1. 11. 1975, p. 65.

(5) OJ No L 273, 29. 9. 1978, p. 1.

(6) OJ No L 131, 22. 5. 1975, p. 15.

HAS ADOPTED THIS REGULATION :

hereby fixed as shown in the table annexed to this Regulation.

Article 1

The corrective amount referred to in Article 16 (4) of Regulation (EEC) No 2727/75 which is applicable to export refunds fixed in advance in respect of cereals is

Article 2

This Regulation shall enter into force on 26 January 1979.

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

Done at Brussels, 25 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 25 January 1979 fixing the corrective amount applicable to the refund on cereals

(u.a. / tonne)

CCT heading No	Description	Current 1	1st period 2	2nd period 3	3rd period 4	4th period 5	5th period 6	6th period 7
10.01 A	Common wheat, and meslin	0	0	0	0	0	—	—
10.01 B	Durum wheat	0	0	0	—	—	—	—
10.02	Rye	0	0	0	0	0	—	—
10.03	Barley	0	+ 1.50	+ 1.50	+ 1.50	+ 1.50	—	—
10.04	Oats	0	0	0	—	—	—	—
10.05 B	Maize other than hybrid maize for sowing	—	—	—	—	—	—	—
10.07 C	Grain sorghum	—	—	—	—	—	—	—
11.01 A	Common wheat flour	0	0	0	0	0	—	—
11.01 B	Rye flour	0	0	0	0	0	—	—
11.02 A I a)	Durum wheat groats and meal	0	0	0	0	0	—	—
11.02 A I b)	Common wheat groats and meal	0	0	0	0	0	—	—

COMMISSION REGULATION (EEC) No 135/79

of 25 January 1979

altering the import levies on products processed from cereals and rice

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 organi-
zation of the market in cereals ⁽¹⁾, as last amended by
Regulation (EEC) No 1254/78 ⁽²⁾, and in particular
Article 14 (4) thereof,

Having regard to Council Regulation (EEC) No
1418/76 of 21 June 1976 on the common organiza-
tion of the market in rice ⁽³⁾, as last amended by Regu-
lation (EEC) No 1260/78 ⁽⁴⁾, and in particular Article
12 (4) thereof,

Whereas the import levies on products processed
from cereals and rice were fixed by Regulation (EEC)
No 3095/78 ⁽⁵⁾, as last amended by Regulation (EEC)
No 60/79 ⁽⁶⁾;

Whereas the levy on the basic product as last fixed
differs from the average levy by more than 2.5 units of

account per tonne of basic product ; whereas, pursuant
to Article 1 of Regulation (EEC) No 1579/74 ⁽⁷⁾, the
levies at present in force must therefore be altered as
shown in the table annexed to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies to be charged on products
processed from cereals and rice covered by Regulation
(EEC) No 2744/75 ⁽⁸⁾, as last amended by Regulation
(EEC) No 1603/78 ⁽⁹⁾, as fixed in the Annex to
amended Regulation (EEC) No 3095/78, are hereby
altered as shown in the table annexed to this Regula-
tion.

Article 2

This Regulation shall enter into force on 26 January
1979.

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

Done at Brussels, 25 January 1979.

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 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 156, 14. 6. 1978, p. 11.

⁽⁵⁾ OJ No L 369, 29. 12. 1978, p. 25.

⁽⁶⁾ OJ No L 9, 13. 1. 1979, p. 25.

⁽⁷⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽⁸⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽⁹⁾ OJ No L 188, 11. 7. 1978, p. 1.

ANNEX

to the Commission Regulation of 25 January 1979 altering the import levies on products processed from cereals and rice

CCT heading No	Levies in u.a./tonne	
	Third countries (other than ACP or OCT)	ACP or OCT
11.02 A II ⁽²⁾	162.79	157.79
11.02 B II b) ⁽²⁾	119.09	116.59
11.02 C II ⁽²⁾	142.76	140.26
11.02 D II ⁽²⁾	91.91	89.41
11.02 E II b) ⁽²⁾	162.79	157.79
11.02 F II ⁽²⁾	162.79	157.79

⁽²⁾ For the purpose of distinguishing between products falling within heading Nos 11.01 and 11.02 and those falling within subheading 23.02 A, products falling within heading Nos 11.01 and 11.02 shall be those meeting the following specifications :

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

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

COMMISSION REGULATION (EEC) No 136/79
of 25 January 1979
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar ⁽¹⁾, as last amended by Regulation (EEC) No 1396/78 ⁽²⁾, and in particular Article 15 (7) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Regulation (EEC) No 1550/78 ⁽³⁾, as last amended by Regulation (EEC) No 123/79 ⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 1550/78 to the information at present available to the Commis-

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 January 1979.

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

Done at Brussels, 25 January 1979.

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 182, 5. 7. 1978, p. 17.

⁽⁴⁾ OJ No L 18, 25. 1. 1979, p. 15.

ANNEX

to the Commission Regulation of 25 January 1979 fixing the import levies on white sugar and raw sugar

CCT heading No	Description	Levy (u.a. / 100 kg)
17.01	Beet sugar and cane sugar, in solid form : A. White sugar ; flavoured or coloured sugar B. Raw sugar	28.09 23.14 ⁽¹⁾

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 January 1979

relating to a proceeding under Article 85 of the EEC Treaty (IV/C-29.290
Vaessen/Moris)

(Only the Dutch text is authentic)

(79/86/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

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

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

Having regard to the application made to the Commis-
sion on 11 August 1976, under Article 3 of Regulation
No 17 by a Dutch company, H. Vaessen BV,

Having heard the undertakings concerned on 26 April
1978 in accordance with Article 19 (1) of Regulation
No 17 and with Regulation No 99/63/EEC of 25 July
1963⁽²⁾,

Having regard to the opinion of the Advisory
Committee on Restrictive Practices and Dominant
Positions delivered in accordance with Article 10 of
Regulation No 17 on 24 October 1978,

Whereas :

I. The facts

The facts are as follows :

1. On 11 August 1976, a Dutch company, H.
Vaessen BV, Deventer, filed a complaint with the

Commission against Mr Alex Moris and his company
Alex Moris PVBA ('ALMO'), Schilde, Belgium,
requesting a finding that they had infringed Article 85
of the Treaty establishing the EEC.

Mr Alex Moris holds Belgian patent No 610 778,
issued on 15 December 1961, relating to a process
and a device for use in manufacturing meat sausages,
and particularly saucissons de Boulogne. No patents
have been applied for outside Belgium. The company
Alex Moris (hereinafter 'ALMO'), of which Mr Moris is
manager and principal shareholder, manufactures and
sells synthetic casings for all types of sausages, and
particularly for saucissons de Boulogne manufactured
according to the patented process and with the
patented device. These casings are not covered by the
patent.

A label giving the abbreviated business name of the
company (ALMO) and a patent number is affixed to
one end of each casing.

Mr Moris has given ALMO a licence to work his
patent, and the company has in turn sublicensed a
number of Belgian sausage manufacturers, including
Vleeswarenfabrieken Impérial NV (hereinafter
'Impérial'), Lovendegem, one of the largest producers
of preserved meat products on the Belgian market.
The right to use the patented process, by means of the
device which Mr Moris places at the manufacturers'
disposal free of charge, is licensed on condition that
the manufacturers undertake to obtain all their
supplies of casings from ALMO.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

2. The complainant, H. Vaessen, manufactures and sells, notably in Belgium, synthetic casings similar to those sold by ALMO. Its attempts to penetrate the Belgian market have been impeded by the exclusive purchasing commitment entered into by several Belgian manufacturers, including Impérial, with ALMO.

On 18 October 1973 Vaessen, convinced that patent No 610 778 held by Mr Alex Moris was void for lack of novelty and originality of invention at the date it was applied for (27 November 1961), sent a circular to Belgian manufacturers of saucissons de Boulogne using the patented process, alerting them against any attempt by ALMO to hold them to their exclusive purchasing agreement for casings.

3. On 4 November 1974 Mr Moris and ALMO brought an action against Vaessen for unfair competition in the Commercial Court at Antwerp.

Vaessen then brought an action against Mr Moris and ALMO in the Court of First Instance at Antwerp, seeking a declaration that patent No 610 778 was avoid and of no effect. By judgment of 17 May 1976, the Commercial Court ordered the case pending before it to be transferred to the Court of First Instance.

4. When they learned that Impérial had obtained casings from Vaessen, Mr Moris and ALMO obtained an attachment order from the Court of First Instance in Ghent, and an inventory was taken at Impérial's premises on 26 September 1973. Following this, and to avoid the consequences of an action for infringement of the patent, Impérial wrote to the plaintiffs on 28 September 1973 informing them that it was returning to its supplier the three thousand or so casings which it had received and requesting Mr Moris to supply a corresponding quantity.

To settle the litigation between them, Impérial on the one hand and Mr Moris and ALMO on the other entered into an agreement on 23 November 1973, whereby the former recognized the validity of Mr Moris's Belgian patent No 610 778 and undertook to refrain from challenging it, and further undertook to obtain exclusively from ALMO the casings used for manufacturing sausages by the patented process.

Mr Moris in consequence discontinued his action against Impérial.

5. In the course of its proceeding, the Commission informed Mr Moris and ALMO that the exclusive purchasing agreement and the no-challenge clause

imposed on Impérial by the agreement of 23 November 1973 fell within the scope of the prohibition in Article 85 (1) of the EEC Treaty, and that an exemption under Article 85 (3) did not appear possible.

6. By letters dated 28 February 1977 and 27 February 1978, as well as at the hearing held on 26 April 1978, Mr Moris and ALMO gave the Commission their views, which can be summed up as follows :

- (i) The oral agreements between the licensee (ALMO) and the sublicensees (certain Belgian manufacturers of meat products) require the sublicensees to obtain casings from ALMO only where they are to be used in operating Mr Moris's patented process.
- (ii) Neither Mr Moris nor ALMO has ever prevented these manufacturers from obtaining casings from other suppliers in Belgium or elsewhere when the patented process is not used.
- (iii) The agreement of 23 November 1973 between Moris and Impérial is a business transaction which is not contrary to Article 85 of the EEC Treaty. This agreement, the only one to have been reduced to writing, was made without any pressure being brought to bear on Impérial.
- (iv) These agreements have no adverse effects on trade between Member States and have neither the object nor the effect of preventing, restricting or distorting competition within the common market.
- (v) Even if it is accepted that these agreements could have some adverse effect, the Commission still itself requires that both this effect and the restrictions of competition should be appreciable (Commission Decisions in Grundig-Consten and Dru-Blondel and Commission Notice of 27 May 1970). Since ALMO's market share is below 5 % and its annual turnover is very small, the case must be regarded as being of minor importance.
- (vi) The casings manufactured and sold by ALMO differ from those supplied by Vaessen. They were specifically designed and developed by Moris for the manufacture of square sausages by the patented process. It is partly because of the special qualities of these casings that most Belgian manufacturers of saucissons de Boulogne have remained faithful to ALMO even though Vaessen charges a substantially lower price for a similar product.
- (vii) The label affixed to the end of each casing serves solely to detect infringements in connection with the use of the patented process.

7. By letter dated 3 April 1978 in reply to the Commission's statement of objections, Impérial stated that it entered into the agreement with Mr Moris and ALMO on 23 November 1973 in order to avoid disrupting the manufacture and sale of its products; it added that if the Commission were to take a decision prohibiting the exclusive purchasing obligation, Impérial would abide by it.

8. Vaessen, for its part, refused to accept the argument that Article 85 was inapplicable because the case was of minor importance. It demonstrated that the tests of the Commission Notice of 27 May 1970 on agreements of minor importance are not satisfied in this case since ALMO's share of the Belgian market in casings for saucissons de Boulogne far exceeds the 5 % threshold laid down in that Notice. The market share must be calculated by reference not to the entire market for casings but to the market for casings specifically designed for saucissons de Boulogne, since the casings manufactured and sold by ALMO are for these sausages. Moreover, these products are marked with the number of the patent on which Mr Moris and ALMO rely in order to compel its sublicensed manufacturers to comply with the exclusive purchasing agreement.

It contested the originality of the casing sold by ALMO and argued that its own casing was perfectly adequate for manufacturing sausages using the process and device patented by Mr Moris. The obvious proof of this was that Vaessen had managed to sell its product to certain Belgian manufacturers using the Moris process, notably Impérial.

It objected to the practice of putting a label with a reference to a patent on a product (the casings) when the patent extend solely to the process and device used for manufacturing another product (the sausages).

It submitted accordingly that the Commission should decide that where an undertaking which is the holder or licensee of a patent makes the right to work the patent conditional upon an undertaking by the licensee or sublicensee to obtain products not covered by the patent exclusively from the licensor, competition is restricted in a manner contrary to Article 85 of the EEC Treaty.

9. The Commission's information is that the casings used for preparing saucissons de Boulogne consist of pig intestine remains, stuck together. Before Mr Moris's invention, only double-skin casings could be used because of the pressure exerted on the casing

by the filling process. With the Moris process, single-skin casings can also be used for the preparation of this type of sausage.

There are now only two manufacturers of these casings operating in the Belgian market — ALMO and Vaessen. ALMO has at least two thirds of the market. This type of casing is not sold outside Belgium since saucissons de Boulogne, a Belgian speciality, are manufactured only in that country. The sausage is square in section and used to be made exclusively of horsemeat, but the rising cost of this sort of meat means that it now tends to be made with a mixture of horsemeat, beef and pork. Nevertheless the consumer still regards the sausage as basically a horsemeat product.

The economic value of Mr Moris's patent lies primarily in the substantial labour savings that are available with the patented process, which enables the number of workers to be reduced to one quarter.

10. For the purpose of this proceeding the Commission is presuming Mr Moris's patent to be valid, although it is contested by Vaessen. This is a matter which has to be settled by the national courts.

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

11. Article 85 (1) of the EEC 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.

12. ALMO and Impérial are undertakings within the meaning of Article 85; Mr Moris exploits his invention commercially via his company, ALMO and in this way he carries on the business of an undertaking.

13. The agreement made on 23 November 1973 constitutes an agreement between undertakings which has the object and effect of restricting competition within the common market by means of the following of its provisions:

14. The clause whereby Impérial recognizes the validity of Mr Moris's Belgian patent No 610 778 and undertakes not to challenge it is not a requirement imposed by the patent. Rather it constitutes a contrac-

tual restriction of competition⁽¹⁾ in that it deprives the sublicensee of the possibility, which is available to everyone else, of removing an obstacle to his freedom of action in the commercial field by means of an action for revocation of the patent. This is no less the case where the relevant authority examines an application for novelty and degree of inventiveness before granting a patent, since such an examination does not affect the right of undertakings which might profit from the non-existence of the patent to oppose it or to bring actions for its revocation.

Even if it is the licensee or sublicensee who is best placed to attack the patent on the basis of information given to him by the licensor, the public interest in the revocation of patents which ought not to have been granted requires that the licensee and the sublicensee should not be deprived of this possibility.

15. Clause 2 of the agreement, which requires Impérial to obtain supplies of casings exclusively from ALMO when it intends to use the patented process and device licensed to it by Moris, has the object and effect of restricting competition since it deprives the sublicensee of its business freedom to obtain supplies from other undertakings, perhaps on more favourable terms as in the case of its purchases from Vaessen.

This clause is likewise not a requirement imposed by the industrial property right, for its deletion would in no way jeopardize the patent holder's exclusive right to work his invention himself or through others, since the products supplied by ALMO to Impérial are not covered by the patent; the clause thus constitutes an unlawful extension by contractual means of the monopoly given by the patent.

16. The foregoing restrictions of competition have appreciable effects on the market in casings for saucissons de Boulogne, since ALMO supplies at least two thirds of the market and its customers comprise a number of large manufacturers of saucissons de Boulogne, including Impérial. Other types of casing cannot be used for these sausages and can therefore be disregarded for this purpose. For the same reasons, the Commission Notice of 19 December 1977⁽²⁾ concerning agreements of minor importance is inapplicable here.

⁽¹⁾ This has always been the Commission's policy: Decision of 9 June 1972 in Davidson Rubber Co., OJ No L 143, 23. 6. 1972; Decision of 9 June 1972 in Raymond-Nagoya, OJ No L 143, 23. 6. 1972; Decision of 2 December 1975 in AOIP v. Beyrard, OJ No L 6, 13. 1. 1976.

⁽²⁾ OJ No C 313, 29. 12. 1977, p. 3 (replacing the Notice of 27 May 1970 referred to above).

17. The clause prohibiting Impérial from challenging the patent is an appreciable restriction of competition which may affect trade between Member States, since by placing a legal barrier in the way of the free use of the process and device if they have been wrongfully patented, it prevents Impérial from obtaining a release from its obligations towards the licensor, notably the exclusive purchasing agreement, and from obtaining supplies freely on better terms from a source in another Member State (as would be the case here); moreover, the no-challenge clause reinforces the licensor's patent right, not only against the sublicensee but also against all the licensor's competitors throughout the Community.

18. The obligation on the part of Impérial to obtain supplies of casings exclusively from ALMO prevents Impérial from obtaining supplies from competitors in other Member States, such as Vaessen in the Netherlands. It has a direct and appreciable effect on trade between the Netherlands and Belgium, as Impérial is one of the leading Belgian manufacturers of saucissons de Boulogne. Moreover, the impact of this obligation on trade between Member States must be viewed against the background of similar oral obligations which Moris has obtained from other Belgian manufacturers of these sausages, the cumulative effect of which is to modify appreciably the demand structure for the products in question so that penetration of the Belgian market by a firm from another Member State is rendered that much more difficult.

19. The clauses considered above may thus affect trade within the meaning of Article 85 (1) of the EEC Treaty, since they can directly or indirectly jeopardize freedom of trade between Member States in a manner deleterious to the attainment of the objectives of a single market between those States. Their effect on trade is appreciable in view of the size of the national market share for the relevant products held by ALMO and in view of the importance of the firms bound by the restrictive clauses.

20. Clauses 1 and 2 of the agreement accordingly fall within the scope of the prohibition in Article 85 (1) of the EEC Treaty.

III. Inapplicability of Article 85 (3)

21. The agreement is not exempted from notification by Article 4 (2) (2) (b) of Council Regulation No 17 since it contains restrictions on competition going beyond those referred to in that Article, namely the no-challenge clause and the clause imposing an exclusive purchasing obligation relating to products not covered by the patent.

22. However, the only parties to the agreement are undertakings from one Member State and it does not relate either to imports or to exports between Member States⁽¹⁾. The agreement accordingly enjoys the benefit of Article 4 (2) (1) of Regulation No 17, so that the fact that it has not been notified does not preclude an exemption from being granted under Article 85 (3). Even so, the application of the latter provision is excluded in this case for the following reasons :

23. The agreement contains anticompetitive clauses that do not satisfy all the tests of Article 85 (3). Neither the no-challenge clause nor the clause requiring Impérial to obtain products not covered by the patent exclusively from ALMO contributes to improving the production or distribution of the goods in question, or to promoting technical or economic progress. On the contrary, these clauses are impediments to such progress, the first because it prevents Impérial and any other manufacturers who have entered into the same commitment from being free to carry on activities within the limits of the patent claims, and the second by preventing them from obtaining casings from another supplier at a more favourable price. Moreover, the exclusive purchasing clause imposes a restriction which is not essential to the proper exploitation of the Moris patent, since it is proved that the casings supplied by Vaessen are perfectly adequate for use with the patented process and device.

24. Accordingly the licensing agreement does not qualify for exemption under Article 85 (3).

IV. Non-application of Article 15 (2) of Regulation No 17

25. Under Article 15 (2) of Regulation No 17, the Commission may, on the basis of a decision, impose fines of 1 000 to 1 000 000 units of account, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year, on undertakings which intentionally or negligently infringe Article 85 (1).

26. In the course of investigation of the case it was found that ALMO is a very small firm. Instead of charging royalties, Mr Moris and ALMO have merely required customers to obtain all their casings from

ALMO. The sale of casings is the sole return which they receive.

27. The Commission accordingly does not consider that it would be appropriate to fine Mr Moris and ALMO,

HAS ADOPTED THIS DECISION :

Article 1

The following clauses of the patent licensing agreement entered into on 23 November 1973 between the parties listed in Article 4 of this Decision constitute infringements of Article 85 (1) of the EEC Treaty :

1. Clause 1 of the agreement, prohibiting the licensee from challenging the patent ;
2. Clause 2 of the agreement, imposing an exclusive purchasing obligation concerning products not covered by the patent.

Article 2

A declaration of inapplicability under Article 85 (3) is refused.

Article 3

The undertakings listed in Article 4 shall forthwith terminate the infringements found in Article 1.

Article 4

This Decision is addressed to :

- Mr Alex Moris, Picardiëlaan, 22, B — 2230 Schilde ;
- Alex Moris PVBA, Picardiëlaan, 22, B — 2230 Schilde ;
- Vleeswarenfabrieken Impérial NV, Grote Baan, 172, B — 9920 Lovendegem.

Done at Brussels, 10 January 1979.

For the Commission.

Raymond VOUEL

Member of the Commission

⁽¹⁾ Judgment of the Court of Justice of the European Communities of 18 March 1970 in Case 43/69, 18. 3. 1970, p. 127.

COMMISSION DECISION

of 12 January 1979

authorizing an agreement strictly analogous to a specialization agreement between Cockerill SA and Klöckner-Werke AG in respect of wire rod and stainless steel sheet and plate

(Only the French and German texts are authentic)

(79/87/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 65 thereof,

Having regard to the application made on 8 June 1978 by SA Cockerill-Ougrée-Providence et Espérance-Longdoz,

Whereas :

I

1. SA Cockerill-Ougrée-Providence et Espérance-Longdoz (Cockerill), Seraing, Belgium, with a capital of Bfrs 7 756 850 000, has requested authorization under Article 65 (2) of the ECSC Treaty for an agreement made on 28 March 1978 with Klöckner-Werke AG (Klöckner), Duisburg, Germany, a firm with a capital of DM 447 000 000 ;

2. The main provisions of the agreement, which is made subject to Commission authorization, are as follows :

- (a) Cockerill will transfer to Klöckner a 10 % holding in a new company to be set up with its registered office at Seraing under the provisional name of 'Train à Fil du Val' (TFV) to operate a four-strand Morgan mill with an annual capacity of approximately one million tonnes of wire rod. TFV will have a capital of Bfrs 1 920 million. In return for this transfer, Klöckner will assign to Cockerill 118 565 bearer shares in Klöckner of a par value of DM 100. Cockerill will grant Klöckner an option allowing it to increase its holding in TFV to 25 % plus one share provided certain conditions are met.

TFV's operations will be confined to hire-rolling work for its shareholders processing billets supplied by them into wire rod at prices sufficient to cover its costs. Klöckner will have access to processing capacity in proportion to its holding.

TFV's fixed charges will be paid by each shareholder in proportion to his holding irrespective of the quantities processed for him. Variable costs will be paid in proportion to the tonnage produced for each shareholder. Klöckner will be entitled to two seats on TFV's board of directors.

- (b) Cockerill will transfer to Klöckner a 20 % holding plus one share in its subsidiary ALZ NV, Genk, a stainless steel producer, in return for 168 597 Klöckner shares of a par value of DM 100.

Cockerill will grant Klöckner an option allowing it to increase its holding in ALZ to 25 % plus one share provided certain conditions are met.

Klöckner will be entitled to two seats on ALZ's board.

ALZ undertakes to contract out a tonnage of its stainless steel output corresponding to Klöckner's shareholding in ALZ for hot rolling at Klöckner's Bremen works. The charge for this rolling will be fixed separately for each order, it being understood that the prices free delivered ALZ will be the same for both Cockerill and Klöckner.

If Klöckner should have insufficient hot rolling capacity available, the Cockerill group undertakes to offer Klöckner the use of hot rolling capacity proportionate to the size of Klöckner's holding in TFV.

Cockerill and Klöckner agree to concentrate on ALZ all their production of stainless steel sheet and plate, with the exception of the hot rolling operations in Bremen.

Both firms further undertake to inform ALZ of any scheme to expand output of these products either directly or indirectly. Should such a scheme be beyond ALZ's capacities, the parties agree to offer each other the option of an equal share in its execution.

3. Cockerill has notified the Commission of a wire rod agreement with the ESTEL group that is similar to its agreement with Klöckner.

II

4. The agreement examined here restricts the normal play of competition between the parties in the following respects :

- Klöckner's shareholdings in TFFV and in ALZ, together with its right to proportionate shares in these firms' output and to supply proportionate shares of input products, will result in practice in the renunciation by Klöckner of investment in the branches concerned and will, in the case of the lines produced jointly, lead to Klöckner's production costs becoming standardized with those of Cockerill and the other shareholders in TFFV.
- The joint undertaking by Cockerill and Klöckner to concentrate their production of stainless steel sheet and plate on ALZ restricts Klöckner's freedom to make that product itself.
- The presence of Klöckner's representatives on the boards of TFFV and ALZ alongside representatives from Cockerill and other shareholders entails a risk that the firms involved will concert their investment and marketing policies ;

5. The agreement is accordingly caught by the prohibition in Article 65 (1) of the Treaty ;

6. Under Article 65 (2) specialization agreements and agreements which are strictly analogous in nature and effect thereto may nonetheless be authorized if the Commission finds that they satisfy certain tests ;

7. The agreement in question will allow Klöckner to use a very modern wire rod mill offering a full product range, obviating any need for new investment to supplement its present wire rod capacity. Consequently this agreement may be considered strictly analogous in nature and effect to a specialization agreement. The agreement further provides for ALZ to specialize in stainless steel sheet and plate production, apart from the hot rolling operations in Bremen. This agreement may therefore be authorized under Article 65 (2) if it makes for a substantial improvement in the production or distribution of the relevant products, is essential in order to achieve these

results, is not more restrictive than is necessary for that purpose, and is not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

III

8. With regard to *wire rod*, Cockerill has invested large sums of money in the TFFV project but has had to suspend this investment temporarily on account of the poor economic climate ; Cockerill considers that the TFFV project can only be completed if other firms are associated with it by sharing in the financing costs and by ensuring outlets for part of the production.

9. Klöckner at present has an outdated mill which produced approximately 220 000 tonnes of wire rod in 1977 ; this mill is not equipped to produce the high-quality wire rod required by the Klöckner Group's customers, nor to offer a complete product range on the market.

10. Access to TFFV's more modern works will allow Klöckner to obtain better quality wire rod without having to take the commercial risk of investment to enlarge and modernize its own plant. Furthermore, the resultant fuller utilization of TFFV's better equipped and more economical mill will increase its productivity.

11. This agreement may accordingly make for a substantial improvement in the production of wire rod.

12. With regard to *stainless steel sheet and plate*, Klöckner possesses a wide hot strip mill in Bremen with spare capacity which it uses to carry out hire rolling work for several firms. Cockerill's hot rolling capacity, however, is insufficient to handle its steel output. The arrangement by which 20 % of the stainless steel produced by ALZ is hot rolled by Klöckner in Bremen therefore provides a means of satisfying both Klöckner's requirement for additional rolling work to improve the rate of utilization of its mill and Cockerill's need to achieve a balance between its steel production and its rolling requirements.

13. The concentration of all production of cold rolled stainless steel sheet and plate on ALZ, together with the hot rolling to be carried out in Bremen, should lead to increased levels of utilization of the most efficient mills, with a beneficial effect on costs. This agreement may therefore make for a substantial improvement in the production of both cold and hot rolled stainless steel sheet and plate.

14. The agreement in question is essential to the attainment of the improvements described above, which could not be achieved to the same extent by each firm operating independently in its own sphere, taking into account the structural crisis and the size of the investments concerned. The agreement in question is limited to the production side and is not more restrictive than is necessary for its purpose.

15. Nevertheless, the Commission must ensure that improvements do actually occur; to this end the parties will be required to provide the Commission every two years with details and evidence of all savings obtained.

16. Subject to this condition the agreement satisfies the tests of Article 65 (2) (a) and (b).

IV

17. In 1977 the parties' output of products covered by the agreement was as follows:

(in 1 000 tonnes)

	Community	Klöckner		Cockerill		Total
Wire rod	10 246	221	2.2 %	354	3.5 %	5.7 %
Stainless steel sheet and plate	950	(51)	(5.4 %)	56	6.0 %	(11.4 %)

18. Both Cockerill and Klöckner export a large proportion of their output of the relevant products outside their home markets to other Community countries, where they face competition from local producers, producers from other Member States and producers from non-member countries.

19. In view of the interdependence of national markets within the Community, the Community market as a whole constitutes the relevant market.

20. As regards *wire rod*, the parties rank fifth among Community producers with 5.7 % of total output: the four largest firms or groups have respective shares of 14.1 %, 13.6 %, 12.6 % and 12 %. The 10 largest producers account for 73.4 % of Community output, the remainder being shared amongst approximately 45 other firms.

21. In respect of wire rod Cockerill has entered into an agreement with the ESTEL group which is similar to the one examined here; the cumulative effect of these two agreements must therefore be taken into account. If ESTEL is included, the group's total share of the Community market is 6.3 %, which does not affect its ranking on the Community wire rod market.

22. Klöckner does not supply the *stainless steel sheet and plate* market, since its activities in respect of this product are confined to hire rolling for outside firms using their materials, for the purpose of increasing its hot rolling capacity utilization. It is therefore unnecessary to add its output to that of Cockerill, which has a market share of 6 %, ranking sixth among Community producers of stainless steel sheet and plate.

23. The interpretation of the above figures must reflect the fact that they refer to the cumulative output of the firms involved. While competition at the production stage has been limited by the agreement, it will continue to exist at the distribution stage; the Commission will therefore ensure that the parties do not coordinate their distribution activities.

24. The agreement is accordingly not liable to give the firms concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the wire rod and stainless steel sheet and plate within the common market, or to shield them against effective competition from other firms within the common market.

25. The agreement therefore satisfies the tests of Article 65 (2) (c).

V

26. To ensure that the parties' freedom of action on the market is not affected, authorization of this agreement must be made subject to the condition that the firms do not coordinate their distribution activities.

27. The Commission must ensure that all measures taken by the firms concerned on the basis of the agreement examined here are consonant with the authorization hereby given. To that end the parties will be required to inform the Commission of all amendments or additions to the agreement, which may then be put into effect only when the Commission has declared them compatible with Articles 65 and 66 of the Treaty.

28. It is Commission policy to allow interlocking directorates and share holdings or contractual links between large firms only in exceptional cases, and then only if normal competition is not affected. The steel market is at present suffering from a structural crisis with considerable excess capacity and very keen competition, and specific cooperation between firms in certain fields, such as that between Cockerill, ESTEL and Klöckner, may provide a means of restoring Community firms to profitability. It is, however, essential for such forms of cooperation to be regularly reviewed in the light of market trends and of restructuring operations in the Community steel industry. Provisions must therefore be made for the Commission to review its authorization after a reasonable period of time, to take account of the effects of cooperation between the parties and of the market situation; consequently this authorization will be granted for a limited period, expiring on 31 December 1983.

29. Subject to the attached condition, the agreement satisfies the tests of Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreement made on 28 March 1978 between SA Cockerill-Ougrée-Providence et Espérance-Longdoz,

Seraing, and Klöckner-Werke AG, Duisburg, in respect of wire rod and stainless steel sheet and plate is hereby authorized.

Article 2

This authorization is subject to the condition that the firms involved shall refrain from coordinating their distribution activities.

Article 3

Every two years the firms involved shall provide the Commission with a report giving details and evidence of the improvements achieved during that period in the relevant products.

Article 4

1. The firms concerned shall forthwith inform the Commission of all amendments and additions to the agreement of 28 March 1978.

2. Such amendments or additions may be put into effect only when the Commission has confirmed that they are consonant with the authorization hereby given or has authorized them under Articles 65 or 66 of the Treaty.

Article 5

This Decision is addressed to SA Cockerill-Ougrée-Providence et Espérance-Longdoz, Seraing, and to Klöckner-Werke AG, Duisburg.

It shall enter into force on the day of its notification by the Commission and shall expire on 31 December 1983.

Done at Brussels, 12 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission

COMMISSION DECISION

of 12 January 1979

authorizing an agreement strictly analogous to a specialization agreement
between Cockerill SA and Estel NV in respect of wire rod

(Only the French and Dutch texts are authentic)

(79/88/ECSC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

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

Having regard to the application made on 8 June
1978 by SA Cockerill-Ougrée-Providence et Espérance-Longdoz,

Whereas :

I

1. SA Cockerill-Ougrée-Providence et Espérance-Longdoz (Cockerill), Seraing, Belgium, with a capital of Bfrs 7 756 850 000, has requested authorization under Article 65 (2) of the ECSC Treaty for an agreement made on 5 June 1978 with Estel NV, Nijmegen, the Netherlands, a firm with a capital of Fl 1 000 004 000.

2. The main provisions of the agreement, which was made subject to Commission authorization being obtained, are as follows :

- (a) Cockerill will transfer to Estel, for payment in cash, a 5 % holding in a new company to be set up with its registered office at Seraing under the provisional name of 'Train à fil du Val' (TFV) to operate a four-strand Morgan mill with an annual capacity of approximately one million tonnes of wire rod, which will replace the obsolete facilities used at present. TFV will have a capital of Bfrs 1 920 million. Cockerill will grant Estel an option allowing it to increase its holding in TFV to 10 %, provided certain conditions are met.

TFV's operations will be confined to hire-rolling work for its shareholders, processing billets supplied by them into wire rod at prices sufficient to cover its costs. Estel will have access to processing capacity in proportion to its holding.

TFV's fixed charges will be paid by each shareholder in proportion to the latter's holding, irrespective of the quantities processed. Variable costs will be paid in proportion to the tonnage produced for each shareholder. Estel will be entitled to one seat on TFV's board of directors.

- (b) Cockerill undertakes to buy from certain subsidiary companies to be determined by Estel, a volume of billets, slabs and blooms equivalent to the tonnage of billets which Estel will supply to TFV for hire-rolling into wire rod.

3. Cockerill has notified the Commission of a wire rod agreement with the German firm Klöckner-Werke AG, Duisburg, that is similar to its agreement with Estel.

II

4. The agreement examined here restricts the normal play of competition between the parties in the following respects :

- (i) Estel's shareholding in TFV, together with its right to a proportionate share in that firm's output and to supply a proportionate share of intermediate products, will result in its virtual withdrawal from investment in the wire rod sector and will lead to its production costs becoming standardized with those of Cockerill and the other shareholders in TFV.
- (ii) The presence of a representative of Estel on TFV's board alongside representatives from Cockerill and other shareholders entails a risk that the firms involved will concert their investment and marketing policies.

5. The agreement is accordingly caught by the prohibition in Article 65 (1) of the Treaty.

6. Under Article 65 (2) specialization agreements and agreements which are strictly analogous in nature and effect thereto may nonetheless be authorized if the Commission finds that they satisfy certain tests.

7. The agreement in question will allow Estel to use a very modern wire rod mill with a full product range, obviating any need for new investment to replace its present obsolete wire rod mills. Consequently this agreement may be considered strictly analogous in nature and effect to a specialization agreement and may therefore be authorized under Article 65(2) if it makes for a substantial improvement in the production or distribution of the relevant products, is essential in order to achieve these results, is not more restrictive than is necessary for that purpose, and is not liable to give the undertakings concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the products in question within the common market, or to shield them against effective competition from other undertakings within the common market.

III

8. Cockerill has invested large sums of money in the TFV project but has had to suspend this investment temporarily on account of the poor economic climate, it considers that the TFV project can only be completed if other firms are involved in its financing and in marketing a proportion of its output.

9. Estel at present possesses an old single-strand mill, which produced 62 000 tonnes of wire rod in 1977 but is due to be scrapped in 1980 because it is obsolete. Access to TFV's more modern works will allow Estel to obtain better quality wire rod without having to take the commercial risk of investment to replace its own mill. Furthermore, the resultant fuller utilization of TFV's mill, already better equipped and more profitable, will further increase its productivity.

10. This agreement may accordingly make for a substantial improvement in the production of wire rod.

11. The agreement is essential to the attainment of the improvements described, above, which could not be achieved without cooperation of the firms concerned, in view of the structural crisis and the size of investment involved. The agreement is limited to production and is not more restrictive than is necessary for its purpose.

12. Nevertheless, the Commission must ensure that improvements do actually occur; to this end the parties will be required to provide the Commission every two years with details and evidence of all savings obtained.

13. Subject to this condition the agreement satisfies the tests of Article 65 (2) (a) and (b).

IV

14. In 1977 Cockerill produced 354 000 tonnes of wire rod (3.5 % of Community output of that

product), while in the same year Estel produced 62 000 tonnes (0.60 % of Community output).

15. Both Cockerill and Estel export a large proportion of their output of the relevant product outside their home market to other Community countries, where they face competition from local producers, producers from other Member States and producers from non-member countries.

16. In view of the interdependence of national markets within the Community, the Community market as a whole constitutes the relevant market.

17. The firms concerned account for 4.1 % of Community production of wire rod, which ranks them sixth behind five other firms or groups with respective shares of 14.1 %, 13.6 %, 12.6 %, 12 % and 5.2 %. The 10 largest producers account for 73.4 % of Community output, the rest being shared amongst approximately 45 other firms.

18. In respect of wire rod Cockerill has entered into an agreement with Klöckner-Werke which is similar to the one scrutinized here; the cumulative effect of these two agreements must therefore be taken into account. If Klöckner-Werke is included, the group's overall share of the Community market is 6.3 %, which does not significantly affect its ranking on the Community wire rod market.

19. The interpretation of the above figures must reflect the fact that they refer to the cumulative output of the firms involved. While competition at the production stage has been limited by the agreement, it will continue to exist at the distribution stage; the Commission will therefore ensure that the parties do not coordinate their distribution activities.

20. The agreement is accordingly not liable to give the firms concerned the power to determine the prices, or to control or restrict the production or marketing, of a substantial part of the wire rod within the common market, or to shield them against effective competition from other firms within the common market.

21. The agreement therefore satisfies the tests of Article 65 (2) (c).

V

22. To ensure that the parties' freedom of action on the market is not affected, authorization of this agreement must be made subject to the condition that the firms do not coordinate their distribution activities.

23. The Commission must furthermore ensure that all measures taken by the firms concerned on the basis of the agreement examined here are consonant with the authorization hereby given. To that end the parties will be required to inform the Commission of all amendments or additions to the agreement, which

may then be put into effect only when the Commission has declared them compatible with Articles 65 and 66 of the Treaty.

24. It is Commission policy to allow interlocking directorates and shareholdings or contractual links between large firms only in exceptional cases, and then only if normal competition is not affected. The steel market is at present suffering from a structural crisis with considerable excess capacity and very keen competition, and specific cooperation between firms in certain fields, such as that between Cockerill, Estel and Klöckner, may provide a means of restoring Community firms to profitability. It is, however, essential for such forms of cooperation to be regularly reviewed in the light of market trends and of restructuring operations in the Community steel industry. Provision must therefore be made for the Commission to review its authorization, after a reasonable period of time, to take account of the effects of cooperation between the parties and of the market situation; consequently this authorization will be granted for a limited period, expiring on 31 December 1983.

25. Subject to the attached condition, the agreement satisfies the tests of Article 65 (2) of the Treaty and may therefore be authorized,

HAS ADOPTED THIS DECISION:

Article 1

The agreement made on 5 June 1978 between SA Cockerill-Ougrée-Providence et Espérance-Longdoz, Seraing, and Estel NV, Nijmegen, in respect of wire rod is hereby authorized.

Article 2

This authorization is subject to the condition that the firms involved shall refrain from coordinating their distribution activities.

Article 3

Every two years the firms involved shall provide the Commission with a report giving details and evidence of the improvements achieved during that period in the production of wire rod.

Article 4

1. The firms concerned shall forthwith inform the Commission of all amendments and additions to the agreement of 5 June 1978.

2. Such amendments or additions may be put into effect only when the Commission has confirmed that they are consonant with the authorization hereby given or has authorized them under Articles 65 or 66 of the Treaty.

Article 5

This Decision is addressed to SA Cockerill-Ougrée-Providence et Espérance, Seraing, and to Estel NV, Nijmegen.

It shall enter into force on the day of its notification by the Commission and shall expire on 31 December 1983.

Done at Brussels, 12 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission

COMMISSION DECISION

of 15 January 1979

**authorizing the acquisition of the coal wholesale firm Lange, Kühl & Co. KG,
Kiel (KGH), by Hugo Stinnes AG, Mülheim (Ruhr)**

(Only the German text is authentic)

(79/89/ECSC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Coal and Steel Community, and in particular Articles
66 and 80 thereof,

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

Having regard to the application made on 2 June
1978 by Hugo Stinnes AG, Mülheim (Ruhr), Federal
Republic of Germany, for authorization to acquire the
coal wholesaler Lange, Kühl & Co. KG, Kiel (KGH),

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

Whereas :

Hugo Stinnes AG is a wholly owned subsidiary of
VEBA Aktiengesellschaft. Like certain other subsidi-
aries and firms controlled by VEBA, with which it is
concentrated through the parent company, it is
engaged in the distribution of solid fuels and is there-
fore an undertaking covered by Article 80. In 1977,
the wholesale sales of solid fuel in the Federal Repu-
blic of Germany of the firms concentrated in VEBA
totalled some 5.7 million tonnes.

Lange, Kühl & Co. KG, Kiel (KGH) is engaged in the
wholesale distribution of solid fuels, and therefore is
also an undertaking covered by Article 80.

Its sales in 1977 were approximately 335 000 tonnes
of solid fuel.

The takeover of Lange, Kühl & Co. KG by a whole-
saler controlled by VEBA Aktiengesellschaft will lead
to a concentration within the meaning of Article 66
(1) of the Treaty, and the firm taken over will be
linked with the other firms controlled by VEBA.

The Government of the Federal Republic of Germany,
in its comments obtained in accordance with the
fourth paragraph of Article 66 (2), draws attention to
VEBA's large market share in the area supplied by
Lange, Kühl & Co. KG, which would be further
increased as a result of the merger, and recommends
that under these circumstances authorization should

be refused, unless the entire coal wholesaling activity
of the firm Lange, Kühl & Co. KG were transferred to
another firm under a cooperation agreement entered
into for at least five years. This has not occurred.

VEBA, together with its subsidiaries and the other
firms which it controls, has an estimated 17 % share
of the relevant market, which is the wholesale distribu-
tion of solid fuels in West Germany. This figure does
not, however, give a true picture of VEBA's market
position. The majority of solid fuel users have
converted their plants to run on fuel oil or have
adapted them to dual operation, thus leaving them
with the option between solid or liquid fuels. Since
1962, sales of solid fuels for domestic heating and
industry have fallen by 70 %. Consequently, at
present less than 30 % of sales by coal wholesalers
(tonne for tonne) are of solid fuels, the greater propor-
tion being accounted for by fuel oil.

The price of solid fuels is thus largely dependent on
the price of light and heavy fuel oil. This means that
VEBA will not be in a position to determine prices
within the meaning of Article 66 (2), despite the fact
that VEBA itself produces and sells oil products, since
the volume of its business in this field also accounts
for only about 17 % of fuel oil consumption in
Germany. The small proportion of crude oil from its
own production used in VEBA's refineries (4.9 %) is
an important contributing factor in preventing VEBA
from controlling the price of fuel oil. Nor will VEBA
be in a position to control distribution, since under
the conditions which have reigned on the market in
solid and liquid fuels for almost 20 years, as a result of
the competition from fuel oil, it does not have the
market power it would need to direct supplies,
determine types and volumes of sales, share markets
or restrict production.

The merger is not likely to give VEBA the power to
evade the rules of competition instituted under the
Treaty. In particular, it will not have an artificially priv-
ileged position involving a substantial advantage in
access to markets.

The objections raised by the Federal Government
relate to the impact of the merger on competition in a
limited geographical area which does not constitute a
substantial part of the common market. These objec-

⁽¹⁾ OJ of the ECSC, 11. 5. 1954, p. 375.

tions therefore do not provide sufficient grounds for withholding authorization.

The proposed transaction accordingly satisfies the tests for authorization in Article 66 (2) and may be authorized,

HAS ADOPTED THIS DECISION :

Article 1

Hugo Stinnes AG, Mülheim (Ruhr), is hereby authorized to acquire the coal wholesaler Lange, Kühl and Co. KG, Kiel (KGH).

Article 2

This Decision is addressed to Hugo Stinnes AG, Mülheim (Ruhr), Federal Republic of Germany.

Done at Brussels, 15 January 1979.

For the Commission

Raymond VOUEL

Member of the Commission

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