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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 152/79**of 29 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 30 January
1979.

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

Done at Brussels, 29 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 29 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	88.05
10.05 B	Maize, other than hybrid maize for sowing	78.54 ⁽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 153/79**of 29 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 30 January
1979.

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

Done at Brussels, 29 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 29 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	1.81
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0.76
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0	0	4.23
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 154/79

of 29 January 1979

fixing 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 organization 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 organization of the market in rice⁽³⁾, as last amended by Regulation (EEC) No 1260/78⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the rules to be applied to calculating the variable component of the import levy on products processed from cereals and rice are laid down in Article 14 (1) (A) of Regulation (EEC) No 2727/75 and Article 12 (1) (a) of Regulation (EEC) No 1418/76; whereas Article 2 of Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and rice⁽⁵⁾, as last amended by Regulation (EEC) No 2245/78⁽⁶⁾, provides that the incidence on the prime costs of these products of the levies applicable to their basic products should be calculated on the basis of the average of the levies applicable to these basic products for the first 25 days of the month preceding that of importation; whereas this average, adjusted on the basis of the threshold price valid for the basic products in question during the month of importation, is calculated on the basis of the quantities of basic products considered to have been used in the manufacture of the processed product or the competing product which serves as a reference for processed products not containing cereals;

Whereas Commission Regulation (EEC) No 1579/74 of 24 June 1974 on the procedure for calculating the import levy on products processed from cereals and from rice and for the advance fixing of this levy for these products and for compound feedingstuffs manu-

factured from cereals⁽⁷⁾, as last amended by Regulation (EEC) No 1740/78⁽⁸⁾, provides that the levy thus determined, increased by the fixed component, is valid in general for one month but is altered where the levy applicable to the basic product concerned differs by not less than 2.5 units of account per tonne from the average of the levies calculated as described above;

Whereas in accordance with Article 5 of Regulation (EEC) No 2744/75 and Article 2 of Regulation (EEC) No 1579/74, the levy on certain processed products must be reduced by an amount equal to the production refund granted in respect of basic products for processing; whereas Regulation (EEC) No 1921/75⁽⁹⁾, as amended by Regulation (EEC) No 2415/75⁽¹⁰⁾, laid down certain transitional measures in respect of starches;

Whereas the fixed component of the levy is specified in Regulation (EEC) No 2744/75; whereas, in accordance with Regulation (EEC) No 2742/75⁽¹¹⁾, as last amended by Regulation (EEC) No 1127/78⁽¹²⁾, the variable component of the levy on certain processed products must be reduced by the incidence of the production refund granted in respect of basic products intended for processing;

Whereas, in order that account may be taken of the interests of the African, Caribbean and Pacific States or in the 'overseas countries and territories', the levy relating to them in respect of certain products processed from cereals must be reduced by the amount of the fixed component and, in respect of some of these products, by part of the variable component; whereas this reduction must be made in accordance with Article 12 of Council Regulation (EEC) No 706/76 of 30 March 1976 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'⁽¹³⁾, as last amended by Regulation (EEC) No 1198/78⁽¹⁴⁾;

Whereas Article 4 (2) of Regulation (EEC) No 2744/75 provides that the levy to be charged on the products listed in the Annex to that Regulation under subheading 07.06 A is limited, with effect from the date of entry into force of the Geneva Protocol (1967)

⁽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 281, 1. 11. 1975, p. 65.

⁽⁶⁾ OJ No L 273, 29. 9. 1978, p. 1.

⁽⁷⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽⁸⁾ OJ No L 202, 26. 7. 1978, p. 8.

⁽⁹⁾ OJ No L 195, 26. 7. 1975, p. 25.

⁽¹⁰⁾ OJ No L 247, 23. 9. 1975, p. 22.

⁽¹¹⁾ OJ No L 281, 1. 11. 1975, p. 57.

⁽¹²⁾ OJ No L 142, 30. 5. 1978, p. 24.

⁽¹³⁾ OJ No L 85, 31. 3. 1976, p. 2.

⁽¹⁴⁾ OJ No L 147, 3. 6. 1978, p. 1.

annexed to the General Agreement on tariffs and trade, to the amount resulting from application of the rate of duty bound within GATT;

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

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

Whereas, in accordance with Article 18 (1) of Regulation (EEC) No 2727/75, the nomenclature provided

for in this Regulation is incorporated in the Common Customs Tariff,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the products listed in Article 1 (d) of Regulation (EEC) No 2727/75 and in Article 1 (1) (c) of Regulation (EEC) No 1418/76 and 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 1 February 1979.

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

Done at Brussels, 29 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 29 January 1979 fixing the import levies on products
processed from cereals and rice

CCT heading No	Imports	
	Third countries (other than ACP or OCT)	ACP or OCT
07.06 A	16.67 ⁽¹⁾	15.17 ⁽¹⁾⁽³⁾
11.01 C ⁽²⁾	171.72	166.72
11.01 D ⁽²⁾	163.56	158.56
11.01 E I ⁽²⁾	151.34	146.34
11.01 E II ⁽²⁾	85.43	82.93
11.01 F ⁽²⁾	69.75	67.25
11.01 G ⁽²⁾	86.94	84.44
11.02 A II ⁽²⁾	169.07	164.07
11.02 A III ⁽²⁾	171.72	166.72
11.02 A IV ⁽²⁾	163.56	158.56
11.02 A V a) 1 ⁽²⁾	120.74	115.74
11.02 A V a) 2 ⁽²⁾	151.34	146.34
11.02 A V b) ⁽²⁾	85.43	82.93
11.02 A VI ⁽²⁾	69.75	67.25
11.02 A VII ⁽²⁾	86.94	84.44
11.02 B I a) 1 ⁽²⁾	150.69	148.19
11.02 B I a) 2 aa)	92.35	89.85
11.02 B I a) 2 bb) ⁽²⁾	161.06	158.56
11.02 B I b) 1 ⁽²⁾	150.69	148.19
11.02 B I b) 2 ⁽²⁾	161.06	158.56
11.02 B II a) ⁽²⁾	118.08	115.58
11.02 B II b) ⁽²⁾	123.73	121.23
11.02 B II c) ⁽²⁾	132.58	130.08
11.02 B II d) ⁽²⁾	134.95	132.45
11.02 C I ⁽²⁾	141.54	139.04
11.02 C II ⁽²⁾	148.34	145.84
11.02 C III ⁽²⁾	236.55	231.55
11.02 C IV ⁽²⁾	143.44	140.94
11.02 C V ⁽²⁾	132.58	130.08
11.02 C VI ⁽²⁾	134.95	132.45
11.02 D I ⁽²⁾	91.14	88.64
11.02 D II ⁽²⁾	95.47	92.97
11.02 D III ⁽²⁾	96.97	94.47
11.02 D IV ⁽²⁾	92.35	89.85
11.02 D V ⁽²⁾	85.43	82.93
11.02 D VI ⁽²⁾	86.94	84.44
11.02 E I a) 1 ⁽²⁾	96.97	94.47
11.02 E I a) 2 ⁽²⁾	92.35	89.85
11.02 E I b) 1 ⁽²⁾	190.24	185.24
11.02 E I b) 2 ⁽²⁾	181.18	176.18
11.02 E II a) ⁽²⁾	161.42	156.42
11.02 E II b) ⁽²⁾	169.07	164.07
11.02 E II c) ⁽²⁾	151.34	146.34
11.02 E II d) 1 ⁽²⁾	119.19	114.19
11.02 E II d) 2 ⁽²⁾	154.00	149.00
11.02 F I ⁽²⁾	161.42	156.42
11.02 F II ⁽²⁾	169.07	164.07

(u.a./tonne)

CCT heading No	Imports	
	Third countries (other than ACP or OCT)	ACP or OCT
11.02 F III ⁽²⁾	171.72	166.72
11.02 F IV ⁽²⁾	163.56	158.56
11.02 F V ⁽²⁾	151.34	146.34
11.02 F VI ⁽²⁾	69.75	67.25
11.02 F VII ⁽²⁾	86.94	84.44
11.02 G I	70.18	65.18
11.02 G II	65.98	60.98
11.04 C I	19.17	13.67 ⁽⁵⁾
11.04 C II a)	120.52	100.52 ⁽⁵⁾
11.04 C II b)	147.89	127.89 ⁽⁵⁾
11.07 A I a)	163.68	154.68
11.07 A I b)	124.58	115.58
11.07 A II a)	173.86 ⁽⁴⁾	164.86
11.07 A II b)	132.18	123.18
11.07 B	152.56 ⁽⁴⁾	143.56
11.08 A I	120.52	103.52
11.08 A II	90.18	64.68
11.08 A III	154.74	137.74
11.08 A IV	120.52	103.52
11.08 A V	120.52	51.76 ⁽⁵⁾
11.09	400.44	250.44
17.02 B II a) ⁽³⁾	215.03	135.03
17.02 B II b) ⁽³⁾	158.52	103.52
21.07 F II	158.52	103.52
23.02 A I a)	26.08	26.08
23.02 A I b)	83.47	83.47
23.02 A II a)	20.86	20.86
23.02 A II b)	83.47	83.47
23.03 A I	278.60	128.60

⁽¹⁾ This levy is limited to 6 % of the value for customs purposes.

⁽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 polarimetric 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.

⁽³⁾ Pursuant to Regulation (EEC) No 2730/75 the product falling within subheading 17.02 B I is subject to the same levy as products falling within subheading 17.02 B II.

⁽⁴⁾ In accordance with Regulation (EEC) No 1180/77 this levy is reduced by 0.45 u.a./100 kg for products originating in Turkey.

⁽⁵⁾ In accordance with Regulation (EEC) No 706/76 the levy shall not be charged on the following products originating in the countries and territories:

- arrowroot falling within subheading ex 07.06 A,
- flours and meal of arrowroot falling within subheadings ex 11.04 C I, ex 11.04 C II a) e b),
- arrowroot starch falling within subheading ex 11.08 A V.

COMMISSION REGULATION (EEC) No 155/79
of 29 January 1979
fixing the import levies on compound feedingstuffs

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 the opinion of the Monetary
Committee,

Whereas the rules to be applied in calculating the vari-
able component of the import levy on compound
feedingstuffs are laid down in Article 14 (1) (A) of
Regulation (EEC) No 2727/75; whereas the incidence
of the levies applicable to the basic products of
compound feedingstuffs on their prime costs should
be determined, in pursuance of Article 4 of Council
Regulation (EEC) No 2743/75 of 29 October 1975 on
the system to be applied to cereal-based compound
feedingstuffs⁽³⁾, as amended by Regulation (EEC) No
2560/77⁽⁴⁾, on the basis of the average of the levies
applicable during the first 25 days of the month
preceding the month of importation to the quantities
of basic products considered to have been used in the
manufacture of such compound feedingstuffs, this
average being adjusted on the basis of the threshold
price for the basic products in question ruling during
the month of importation;

Whereas the levy thus determined, increased by the
fixed component, is valid for one month; whereas the
amount of the fixed component of the levy is speci-
fied in Article 6 of Regulation (EEC) No 2743/75;

Whereas, in order that account may be taken of the
interests of the African, Caribbean and Pacific States
or in the 'overseas countries and territories', the levy
relating to them in respect of certain products
processed from cereals must be reduced by the

amount of the fixed component and, in respect of
some of these products, by part of the variable compo-
nent; whereas this reduction must be made in accor-
dance with Article 12 of Council Regulation (EEC)
No 706/76 of 30 March 1976 on the arrangements
applicable to agricultural products and certain goods
resulting from the processing of agricultural products
originating in the African, Caribbean and Pacific
States or in the 'overseas countries and territories'⁽⁵⁾;
as last amended by Regulation (EEC) No 1198/78⁽⁶⁾;

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

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

Whereas, in accordance with Article 18 (1) of Regula-
tion (EEC) No 2727/75, the nomenclature provided
for in this Regulation is incorporated in the Common
Customs Tariff,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on the compound
feedingstuffs covered by Regulation (EEC) No
2727/75 and subject to Regulation (EEC) No 2743/75
are fixed hereby as shown in the Annex to this Regula-
tion.

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. 60.

⁽⁴⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽⁵⁾ OJ No L 85, 31. 3. 1976, p. 2.

⁽⁶⁾ OJ No L 147, 3. 6. 1978, p. 1.

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

Done at Brussels, 29 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 29 January 1979 fixing the import levies on compound feedingstuffs

(u.a./tonne)

CCT heading No	Nomenclature in simplified wording	Levies	
		Third countries (other than ACP and OCT)	ACP and OCT
	Preparations of a kind used in animal feeding, covered by Regulation (EEC) No 968/68, containing starch, glucose or glucose syrup falling within subheadings 17.02 B and 21.07 F II, or milk products (falling within heading Nos 04.01, 04.02, 04.03 and 04.04, and subheadings 17.02 A and 21.07 F I) containing starch, glucose or glucose syrup :		
	Containing no starch or containing 10 % or less by weight of starch :		
23.07 B I a) 1	— Containing no milk products or containing less than 10 % by weight of such products	22.01	13.01
23.07 B I a) 2	— Containing 10 % or more but less than 50 % by weight of milk products	467.17	458.17
	Containing more than 10 % but not more than 30 % by weight of starch :		
23.07 B I b) 1	— Containing no milk products or containing less than 10 % by weight of such products	49.65	40.65
23.07 B I b) 2	— Containing 10 % or more but less than 50 % by weight of milk products	494.81	485.81
	Containing more than 30 % by weight of starch :		
23.07 B I c) 1	— Containing no milk products or containing less than 10 % by weight of such products	90.30	81.30
23.07 B I c) 2	— Containing 10 % or more but less than 50 % by weight of milk products	535.46	526.46

COMMISSION REGULATION (EEC) No 156/79

of 29 January 1979

amending the Annex to Regulation (EEC) No 1799/76 as regards the coefficients of equivalence for linseed

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 569/76 of 15 March 1976 laying down special measures for linseed⁽¹⁾, and in particular Article 2 (4) thereof,

Whereas, in accordance with Article 2 of Council Regulation (EEC) No 1774/76 of 20 July 1976 on special measures for linseed⁽²⁾, coefficients of equivalence for linseed were fixed in the Annex to Commission Regulation (EEC) No 1799/76 of 22 July 1976 laying down detailed rules for the application of special measures in respect of linseed⁽³⁾, as last amended by Regulation (EEC) No 2742/78⁽⁴⁾;

Whereas the quality of linseed delivered by the major producing third countries as well as the prices for

both linseed and linseed oil, which served as the basis for fixing the current coefficients of equivalence, have changed considerably since the beginning of the 1978/79 marketing year; whereas new coefficients of equivalence for linseed should therefore be fixed which take the new situation into account;

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

HAS ADOPTED THIS REGULATION:

Article 1

For purposes of fixing the average world market price for linseed for the 1978/79 and subsequent marketing years, the Annex to Regulation (EEC) No 1799/76 is hereby amended to read as follows:

(unit/100 kg)

	Coefficients of equivalence	
	Amount to be deducted from the price	Amount to be added to the price
Linseed from		
— the United States	0.895	—
— Canada	0.637	—
— Argentina	0.377	—

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, 29 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 67, 15. 3. 1976, p. 29.

⁽²⁾ OJ No L 199, 24. 7. 1976, p. 1.

⁽³⁾ OJ No L 201, 27. 7. 1976, p. 14.

⁽⁴⁾ OJ No L 330, 25. 11. 1978, p. 18.

COMMISSION REGULATION (EEC) No 157/79

of 29 January 1979

fixing the average world market price and the indicative yield for linseed for the 1978/79 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 569/76 of 15 March 1976 laying down special measures for linseed ⁽¹⁾, and in particular Article 2 (4) thereof,

Whereas an average world market price for linseed must be determined each year according to the criteria laid down in Council Regulation (EEC) No 1774/76 of 20 July 1976 on special measures for linseed ⁽²⁾;

Whereas Article 4 of Commission Regulation (EEC) No 1799/76 of 22 July 1976 laying down detailed rules for the application of special measures in respect of linseed ⁽³⁾, as last amended by Regulation (EEC) No 2742/78 ⁽⁴⁾, provides that this average price is to be the arithmetic mean of the world market prices as referred to in that Article recorded each week over a representative period;

Whereas the most representative period for the marketing of Community linseed may be taken to be that from 25 September 1978 to 10 January 1979; whereas this is therefore the period to be taken into account;

Whereas the application of all these provisions produces the average world market price for linseed specified below;

Whereas Article 2 (2) of Regulation (EEC) No 569/76 provides that the subsidy is to be granted for a production figure obtained by applying an indicative yield to the areas sown and harvested; whereas that yield must be determined by applying the criteria laid down in Regulations (EEC) No 569/76 and (EEC) No 1774/76;

Whereas, in accordance with Article 17 (1) of Regulation (EEC) No 1799/76, the producer Member States have supplied the Commission with the results of the sampling, referred to in Article 2a (2) of that Regulation, regarding the yields per hectare of seed harvested from each of the types of flax referred to in Articles 7a and 10a of the said Regulation in the homogeneous production areas; whereas, on the basis of those

results, the indicative yield for linseed should be that specified below;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 1978/79 marketing year, the average world market price for linseed shall be 16.080 units of account per 100 kilograms.

Article 2

For the 1978/79 marketing year the indicative yields for linseed shall be:

(a) for seed flax:

- 1 850 kilograms per hectare for flax produced in the United Kingdom, the Netherlands and in the following French departments: Aisne, Ardennes, Eure, Eure-et-Loir, Loir-et-Cher, Loiret, Marne, Haute-Marne, Oise, Seine-et-Marne, Yvelines, Deux-Sèvres, Essonne, Val d'Oise,
- 1 400 kilograms per hectare for flax produced in Denmark,
- 1 200 kilograms per hectare for flax produced in the following French departments: Allier, Aube, Cher, Côte d'Or, Indre, Meuse, Nièvre, Haute-Saône, Sarthe, Yonne,
- 1 000 kilograms per hectare for flax produced in Italy,
- 700 kilograms per hectare for flax produced in the other areas of the Community;

(b) for fibre flax:

1. harvested, retted but not de-seeded:

- 1 025 kilograms per hectare for flax produced in the Netherlands, in Belgium and in the following French arrondissements: Dunkerque, Lille, Valenciennes, Douai, Béthune, Calais, St Omer, and the canton of Marquise in the arrondissement of Boulogne-sur-Mer,

⁽¹⁾ OJ No L 67, 15. 3. 1976, p. 29.

⁽²⁾ OJ No L 199, 24. 7. 1976, p. 1.

⁽³⁾ OJ No L 201, 27. 7. 1976, p. 14.

⁽⁴⁾ OJ No L 330, 25. 11. 1978, p. 18.

- 950 kilograms per hectare for flax produced in the other areas of the Community;
- 2. harvested otherwise than retted but not de-seeded :
 - 1 400 kilograms per hectare for flax produced in the Netherlands and in the following Belgian provinces : West-Vlaanderen, Oost-Vlaanderen and Antwerpen,
 - 1 270 kilograms per hectare for flax produced in the other Belgian areas,

- 1 150 kilograms per hectare for flax produced in the other areas of the Community.

Article 3

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

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

Done at Brussels, 29 January 1979.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION RECOMMENDATION No 158/79/ECSC

of 29 January 1979

amending recommendations 77/329/ECSC on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Coal and Steel Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 74 and 86 thereof,

Whereas the Community has adopted common rules on protection against dumping or the granting of bounties or subsidies by countries which are not members of the Community and whereas, for products to which the Treaty establishing the European Coal and Steel Community relates, these rules are contained in Commission recommendation 77/329/ECSC⁽¹⁾ as amended by recommendation No 3004/77/ECSC⁽²⁾;

Whereas these Community rules are, in large measure, transposed from the Agreement on implementation of Article VI of the General Agreement on Tariffs and Trade, known as the Anti-dumping Code;

Whereas the experience acquired in the application of certain of these rules demonstrates that it is expedient to clarify certain concepts which are contained in the said rules, taking account *inter alia* of the established practice of the Community's major trading partners;

Whereas, in particular, it is necessary to define more precisely the method of calculation of constructed value to be used in situations when, because of the particular market situation, the price of the like product on the domestic market does not permit a proper comparison;

Whereas it is necessary to clarify that, in the case of imports from State-trading countries, normal value is determined on the basis of prices or costs of a like product in a market economy country or, if necessary, from such prices or costs in the Community;

Whereas, with regard to injury, it is necessary to clarify the rules regarding the determination of injury and in particular to ensure that injuries caused by other factors may not be attributed to dumping but must be isolated therefrom;

Whereas it is necessary for practical reasons to modify certain of the rules governing the extension of provisional anti-dumping measures,

FORMULATES THE FOLLOWING RECOMMENDATION:

Article 1

Recommendation 77/329/ECSC is amended as follows:

1. The second indent of Article 3 (2) shall read as follows:

— the constructed value, that is to say the cost of production in the country of origin plus a reasonable amount for general expenses and for profits; as a general rule the addition for profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin. If no such profit is realized the Commission shall determine the addition on any reasonable basis using the best evidence available.'

2. Article 3 (6) shall read as follows:

'6. In the case of imports from countries where trade is on a basis of near or total monopoly and where domestic prices are fixed by the State, account may be taken of the fact that an exact comparison between the export price of a product to the Community and the domestic price in that country is not normally appropriate. In such cases normal value shall be determined on the basis of either:

- (a) the prices at which a like product of a market-economy country or countries is sold either (i) for consumption in the domestic market of that country or countries or (ii) to other countries, including the Community; or
- (b) the constructed value of a like product in a market-economy country or countries.

⁽¹⁾ OJ No L 114, 5. 5. 1977, p. 6.

⁽²⁾ OJ No L 352, 31. 12. 1977, p. 13.

If neither prices nor constructed value as established under (a) or (b) above provide an adequate basis for determination of normal value, then the prices or constructed value as determined from the sales or production costs in the Community shall be used.'

3. Paragraphs 1, 2 and 3 of Article 4 shall read as follows :

'1. The evaluation of the effects of the dumped imports on the industry in question shall be based on examination of all factors having a bearing on the state of the industry in question, such as developments and prospects with regard to turnover, market share, profits, prices (including the extent to which the delivered, duty-paid price is lower or higher than the most representative comparable price of the like product prevailing in the ordinary course of trade within the Community), employment, volume of dumped and other imports, utilization of capacity of Community industry, productivity, and restrictive trade practices. No one or more of these factors can necessarily give decisive guidance.

2. In order to establish whether dumped imports are causing injury, all other factors which individually or in combination may be adversely affecting the Community industry shall be examined. The factors to be considered are, among others, the volume and prices of undumped imports of the product in question, competition between the Community producers themselves, contraction in demand due to substitution of other products or to changes in consumer tastes and export performance.

3. (a) No injury can be attributed to dumping unless the dumped imports are demonstrably the principal cause of such injury. For the purpose of such demonstration the consequences of the dumping positively found to be such shall be weighed against

each of the other known factors which at the same time may be injuring the industry. The injuries caused by such other factors must not be attributed to the dumped imports.

(b) A determination of injury shall in all cases be based on positive findings and not merely on allegation, conjecture or remote possibility. In the case of threat of injury the change in circumstances which would create a situation in which dumping would cause injury must be clearly foreseen and imminent.'

4. Article 16 (1) shall read as follows :

'1. Without prejudice to the provisions of Article 18, provisional measures shall continue to operate for a period of three months. Before this period expires, the Commission shall either decide on Community intervention within the meaning of Article 17 or, if exporters and importers representing a significant proportion of the trade involved so request or do not object and if the examination is still not terminated, decide on the extension of the provisional measures for a maximum of three months.'

Article 2

This recommendation shall be notified to the Member States and published in the *Official Journal of the European Communities*.

It shall enter into force on 30 January 1979.

Done at Brussels, 29 January 1979.

For the Commission

Wilhelm HAERKAMP

Vice-President

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 December 1978

on a proceeding under Article 85 of the EEC Treaty (IV/29.535 — white lead)

(Only the Dutch, English and German texts are authentic)

(79/90/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

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

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

Having regard to the proceedings which the Commis-
sion opened on its own initiative on 3 February 1978
in respect of the cooperation in the white lead
industry between Associated Lead Manufacturers Ltd,
London, UK, Hondorff, Block & Braet, Schoonhoven,
Netherlands, and Lindgens & Söhne, Cologne,
Germany,

Having heard the undertakings concerned in accor-
dance 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 pursuant to Article 10 of Regula-
tion No 17 on 24 October 1978,

Whereas :

I. THE FACTS

(a) The subject matter of the proceeding

- 1 The proceeding concerns cooperation in the
white lead industry since 1971 between Associ-

ated Lead Manufacturers Ltd (ALM), London,
Lindgens & Söhne GmbH & Co. (Lindgens),
Cologne, and BV Chemische Industrie en
Handelsmaatschappij Wed. Hondorff Block &
Braet (Hondorff), Schoonhoven, Netherlands.

(b) The product

- 2 White lead (lead carbonate) is produced by
directly dissolving metallic lead or dissolving
lead oxide by the addition of acids. It is a white
powder used as a white pigment in the manu-
facture of paints for outdoor use or as a stabi-
lizing agent in the plastics industry. It is
supplied either as a powder (dry white lead) or
as a paste (white lead ground).
- 3 In the paint industry, white lead is used mainly
in the manufacture of anti-rust and wood
protection paints. Its use has been declining
since the fifties, partly because less wood is
being used in the building industry, or else the
wood that is used does not require the same
protection, and partly because of the increasing
use of substitute products, particularly titanium
oxide, zine oxide, calcium oxide and barium
compounds. The disadvantage of paints incorpo-
rating white lead is the dangerous vapour given
off as the paint is laid on. The substitutes offer
the advantage that the paint is both easier to
handle and cheaper. But white lead mixed with
minium provides the best protection against
rust. The use of white lead is consequently

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

imposed in, for instance, public contracts awarded by the railway authorities. White lead is also still being used to protect wood against weathering, particularly the wooden components of ships.

Over the last 15 years white lead has been used as a stabilizing agent in the manufacture of plastics (PVC). But here again it has been supplanted by other inorganic substances, in

particular lead-based products like lead sulphate, lead phosphite and lead phthalate and zinc, barium and calcium compounds. The plastics industry now uses white lead almost exclusively (95 % of use) as a stabilizer in the manufacture of cables.

- 4 White lead is sold to the plastics industry (35 %) and the paint industry (65 %). As can be seen from the table below, sales declined sharply from 1971 to 1977.

White lead deliveries by EC manufacturers ⁽¹⁾

	(tonnes)						
	1971	1972	1973	1974	1975	1976	1977
Dry white lead and white lead	5 827	5 275	4 788	4 193	2 985	3 252	2 516
Dry white lead	4 632	3 934	3 907	3 381	2 154	2 497	1 958
Of which EC :	2 088	1 981	1 870	1 492	997	1 125	1 045
Non-member countries	2 544	1 953	2 037	1 889	1 157	1 372	913

Source : figures supplied by the undertakings concerned.

⁽¹⁾ Including the British manufacturers for years prior to 1973.

Here it should be noted that 1977 was a bad year, not only for the white lead industry in particular but for the paint industry as a whole, and that even sales of substitute products such as titanium oxide, which had earlier experienced a high rate of growth and are now reverting to that trend, fell by 5 %. The table also fails to reflect the fact that the decline in white lead sales is to be attributed not only to increased sales of substitute products by the white lead manufacturers' competitors, but also to the increase in the volume of such products manufactured by the white lead manufacturers themselves.

- 5 No detailed statistics are available for sales of substitute products. The table below gives figures for the most important substitute — titanium dioxide — which is manufactured by National Lead, Du Pont, Tioxide, American Cyanamid, Bayer, Montedison, Laporte and Thann & Mulhouse, to name but a few. Only 67 % of this titanium oxide is used in the paint industry as a whole. However, the purposes for which titanium oxide is used equally well as white lead are more limited. For example, titanium oxide, but not white lead is used for interior paints. The uses in which both are employed are estimated to represent only 7 % of all titanium oxide applications in the paint industry. The use of calcium oxide and barium

compounds is limited enough to be taken as negligible.

Use of titanium dioxide, zinc oxide and white lead

	('000 tonnes)		
	1971	1973	1976
Use of titanium oxide in western Europe ⁽¹⁾	540	640	610
Titanium oxide manufacture ⁽²⁾	700	830	800
Use of titanium oxide in the paint industry (67 %) ⁽¹⁾	469	556	536
Use of titanium oxide in the white lead industry (7 %) ⁽³⁾	32.7	38.9	37.5
Use of zinc oxide ⁽³⁾	8	4.5	3
White lead sales of the undertakings concerned to the paint industry ⁽⁴⁾	3.9	2.7	2.1
Total substitute market :	44.6	46.1	42.6

⁽¹⁾ Source : AIA Pywell (Laporte), Industrie Journaal (1978).

⁽²⁾ Estimate on the basis of the above source.

⁽³⁾ Estimate from figures supplied by the undertakings concerned.

⁽⁴⁾ Figures supplied by the undertakings concerned on 11 August 1978, though the breakdown of total sales according to the two fields of use (paints and plastics) is a little dubious.

This summary table shows that in the sub-sector where titanium oxide can be used alongside zinc oxide and white lead, white lead accounted for 8.7 % in 1971, 5.9 % in 1973 and 4.9 % in 1976.

- 6 Western Europe consumption of PVC stabilizers in 1976 was 66 560 tonnes. Of these 39 960 tonnes (=55.5 %) were accounted for by lead compounds. Only a small proportion was for the manufacture of cables, which is the main field of application of white lead. Consumption has not changed substantially since 1971 (61 050) or 1973 (69 000).

(c) Prices

- 7 The price of white lead is determined by the high proportion (70 %) of the cost accounted for by the lead itself. The price of lead depends on the quotations on the London Metal Exchange. The current price is higher than the price of titanium oxide, as will be seen from the table below, which shows the trend of prices on the Dutch market. These figures do not take account of the fact that different applications require different quantities of the individual products. Thus, compared with white lead, less titanium oxide is required. The difference in price between white lead and titanium oxide is therefore at the moment wider than the figures in the table indicate; it may be as much as 40 %.

Trend of prices for titanium oxide, zinc oxide and white lead

(Fl per 100 kg)

Year	Titanium oxide		Zinc oxide		White lead	
	Price	Index	Price	Index	Price	Index
1964	170	102	135	82	173	101
1965	172	104	135	82	184	107
1966	179	108	135	82	177	103
1967	175	105	132	80	167	97
1968	170	102	158	96	177	103
1969	162	98	155	95	168	98
1970	166	100	164	100	172	100
1971	175	105	175	107	175	102
1972	174	105	187	114	189	109
1973	186	112	201	123	215	125
1974	237	143	270	165	261	152
1975	235	142	283	173	239	140
1976	249	150	289	176	238	138
1977	246	148	292	178	284	165

(d) The manufacturers

- 8 In the fifties, there were 32 white lead manufacturers in the Community. Today the parties involved in these proceedings are the only manufacturers in the Community:

- ALM produces lead and lead, zinc and calcium products. Its white lead business accounts for 1 % of its total turnover;
- Mersey White Lead Company Ltd formerly also manufactured white lead, but on 1 January 1976 it was taken over by ALM, which is now the only manufacturer left in the UK; a third UK manufacturer, Novadel, ceased production in 1971;
- Lindgens makes lead and zinc products, paints and plastics products. Its white lead business accounts for about 5 % of its total turnover;
- Hondorff is the only white lead manufacturer in the Netherlands. Its white lead business accounts for about 40 % of its total turnover.

In 1976 the above three undertakings sold 2 089 tonnes of white lead as white pigment and 1 117 tonnes as a stabilizer. But they also manufactured large volumes of products that replace white lead as a white pigment. Their output of products that can be used as substitutes for white lead as stabilizers is equivalent to a substantial proportion of their white lead output.

- 9 The white lead sold in the Community is produced by these three firms. There are only occasional imports from outside the Community. There are a few manufacturers in other countries, but they are all small and supply only their home markets. They include:

- Switzerland: Schock & Co., Burgdorf;
- Portugal: Metal Portuguesa SARL, Lisbon;
- GDR: VEB Ohrdruf

and some fairly small producers in the USA and Japan.

10 (e) Demand

A large number of processing firms of differing size are the manufacturers' customers. Demand is not transparent. The manufacturers often do not know which quantities sold by them are to be used as paint pigment or as stabilizers.

11 (f) **The agreement of 1 January 1971 and the background to it**

In 1970 the Community white lead manufacturers got together to try to reach an accommodation in order to prevent prices falling still further. The objectives of this understanding were protection of home markets, regulation and allotment of export markets by quotas, exchange of information on quantities delivered and observance of prices set by the appropriate price leader in accordance with an agreed scheme. 'There should be established as many monopoly markets as possible in order to avoid a competitive fight specially carried out by the representatives and local dealers being accustomed to take away business one from the other by undercutting prices mutually.'

At the meeting on 16 December 1970, a draft agreement was discussed which provided for quotas of one third each, price leaders and delivery quotas for each export market, including markets in the Community, exchange of delivery figures so that cases where quotas were exceeded or unfilled could be regulated, and the establishment of a price scheme.

The minutes stated that the EEC countries, were to be omitted from the agreement: 'For legal reasons the heading "EEC" is to be taken out of the draft text.' Legal doubts about the inclusion of the EEC countries had already been raised at the meeting of 1 June 1970, but the exchange of delivery figures was regarded as unexceptionable.

- 12 Accordingly the revised draft agreement of 20 January 1971, which was finally adopted on 15 April 1971 and took effect from 1 January 1971, contained no express reference to the designation of price leaders in the then EEC countries or to quotas for particular Member States. But the obligation to provide details of all exports, including exports to EEC countries, was not removed. All that was removed was the explicit reference to the purpose of these figures, namely to establish cases where quotas were exceeded or unfilled.

The most important provisions of the agreement were :

- the fixing of overall export quotas of one third each for Lindgens, Hondorff and the two British parties ALM and Mersey ;

- the allocation of subquotas and designation of price leaders for each export market outside the then Member States ;
- the establishment of the 'schedule price', based on the price quoted on the London Metal Exchange ;
- quota balancing arrangements : a party who had not fulfilled his one third quota was entitled to export corresponding quantities, mainly to 'regulator countries' such as Eastern bloc countries, the USA and Brazil ; to make this possible the price leader in the relevant export market would himself quote prices £ 5 higher ; where quotas were exceeded or unfilled, balances could be carried over to the following calendar year ;
- monthly notification of all export deliveries, broken down by country, the information to be distributed by a central office.

- 13 From the beginning of 1971 onwards, the parties sent exact details of their exports and in return were notified of total deliveries, stating who had exceeded or fallen short of his subquota and his overall export quota of one third.

EEC markets (except home markets) could not be omitted from these figures, 'as otherwise a proper calculation would be impossible' (letter from Lindgens dated 8 January 1971).

(g) **Parties' behaviour after their agreement**

- 14 With the entry of the three new Member States approaching, the parties decided at their 31 October 1972 meeting to end the agreement on 31 December and substitute a new one. The new agreement could be distinguished from the old one ; the preamble stated :

'The purpose of this agreement is to arrange quotas and prices for markets outside the EEC. For the avoidance of doubt it is hereby declared that this agreement does not relate to markets within the EEC.'

After discussions, the agreement was not notified to the Commission on the ground that an agreement which formally excluded the common market from its operation might appear suspicious from the anti-trust viewpoint. The agreement was not signed by the parties.

- 15 It has, however, been established that the parties continued to inform their central office of their deliveries, providing a breakdown into countries of delivery, including their own and other common market countries. The central office prepared surveys of deliveries by all the parties, also broken down into home and export markets. These statistics are much more detailed and up to date than the official statistics and have consequently been considered indispensable by the parties.

Variations from quotas were calculated on the basis of these statistics. The difference between total sales and home sales was divided by three and this figure was compared with the individual partners' export figures. At the end of each year that year's results were consolidated with those of the previous year.

- 16 This calculation of variations from quota was continued all through 1977. The disparities were considerable: within one year quotas were exceeded or unfilled by as much as 30-40 %, without, according to the Commission's findings, any recourse to compensating deliveries.

- 17 This is similar to the practice of the parties in applying the 1971 agreement. At that time actual deliveries often varied from the quotas without compensatory deliveries taking place. It should be noticed that quotas unfilled or exceeded were discussed by the parties both during and at the end of a year. When actual deliveries varied by too much from the quota the party involved was to 'take all appropriate steps to reach a balance by the end of a year' (Lindgens' letter to Hondorff of 22 July 1971).

From Hondorff's letter to the central office of 26 February 1974 it is clear that unfilled or exceeded quotas have continued to be discussed and that the repeated excesses of one party had led to consideration of the 'reallocation' of certain third countries. This has, however, not taken place.

- 18 It is also clear that, even subsequent to the application of the agreement, the large excesses of one party were reduced over a short period

by a reduction of that party's deliveries with an increase in the deliveries of the others even to the extent of their exceeding their own quotas.

19 (h) Changes proposed

Following the receipt of the Commission's statement of objections by the parties they maintained that an infringement of Article 85 (1) had not been proved, in that there was no evidence of cooperation to restrict competition and that in any case there was no appreciable restriction of competition. At the same time, they agreed to a 'slight' alteration in their practice of cooperation by limiting the exchange of information to one monthly figure for deliveries in EEC and EFTA countries and by omitting the calculation on quota variation. However, it has been established that the previous form and that figures broken down for countries in the EEC and EFTA have been sent to the still-existing central office. The calculations relating to unfilled or exceeded quotas are, on the other hand, no longer made.

II. APPLICABILITY OF ARTICLE 85 (1)

- 20 Article 85 (1) prohibits as incompatible with the common market all agreements between undertakings and concerted practices 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.

(a) Agreement and concerted practices

- 21 The cooperation between ALM, Hondorff and Lindgens is embodied in the written agreement of 1971, which, although formally terminated in 1972, continued to operate in practice. This cooperation after 1972 amounted at the very least to a concerted practice. After 1972 the system of notifying quantities delivered has continued to be jointly applied by the parties in the same way as under the 1971 agreement, that is, applied in the Community Member

States. The parties themselves had earlier recognized and admitted that a notification system which did not cover deliveries within the common market would be useless. The purpose of the cooperation was to coordinate their market conduct in order to limit the fall in returns on selling prices (the return being understood to be the difference between the sale price and the price of lead as a fixed cost component). Such parallelism could not be confined to outside markets, where they were selling about half of their production. Sales on the Community markets, which are just as important to the overall price and return situation, had to be included.

reliable statistics and the lack of knowledge of demand in the two different sectors of paints and plastic material. The information provided on deliveries during the previous month is very precise. It makes it possible to recognize another party's intentions in good time, where he plans for instance to begin supplying a market which he has hitherto supplied only occasionally if at all, or to raise the quantities sold, which on a shrinking market would sooner or later lead to price cuts and thus increase the danger of a general collapse in prices, which was exactly what cooperation was intended to prevent.

22 These notifications of sales results are used to calculate the extent to which the export quota of one third has been exceeded or unfilled. Deliveries on the home markets are excluded from the outset, since each producer has always been so strongly placed on his home market that he has no need to fear that it will be disrupted by deliveries from the others.

23 There was general agreement also on the scheme for balancing the quotas by means of compensating deliveries. The scheme comes into play, however, only when the firms involved find from the monthly delivery figures that a balance is not emerging in the normal course of things — through an increase in the deliveries of one and a reduction in those of another. The fact that compensating deliveries were not made does not, therefore, refute the existence of a concerted practice.

(b) Restriction of competition within the common market

24 The object and effect of this cooperation was the restriction of competition within the common market in various respects.

25 The parties exchange monthly statements of their deliveries of white lead, broken down by country, including EEC countries, through a central office. In this way they reduce or even remove the risks which would arise if they were not aware of each other's market policy and the amounts they delivered through the absence of

26 This exchange of information cannot be explained by appealing to the need for more exact statistics or for greater knowledge of market conditions, of which the benefit is in any case reserved to the manufacturers; the supplier is identified, so that the information would normally constitute a trade secret not to be made available to competitors. The parties have explicitly classified similar statistics on production and deliveries of substitute products as trade secrets not to be divulged to competitors. The systematic knowledge of such accurate market data restricts the scope for competition between the parties.

27 This exchange of information in itself restricts competition, but the fact that it is complemented by a system of delivery quotas produces another anti-competitive effect. To fix delivery quotas in this way is to limit or control markets in the sense of Article 85 (1) (b). This is still true even if the quotas are not always meticulously observed, for a quota agreement conflicts with this provision even if it has the limitation or control of markets merely as its object. A quota agreement cannot be judged differently under competition law depending on whether the parties have spread their deliveries in accordance with the quota by constant observation of each other's actions (made possible through the exchange of information) or whether one or other party has attempted to exceed his quota on the assumption that at any rate this will not elicit any immediate reaction from the other, particularly in the form of economic counter-measures (e.g. deliveries to the home market of the party who has exceeded the quota). An agreement does not cease to be anti-competitive simply because it is temporarily or even repeatedly circumvented by one of the parties to it.

28 The quota arrangement was intended to extend to all exports; this is quite clear from the preliminary negotiations and is implicit in the manner in which the agreement has been applied. The quota arrangement and the exchange of information on deliveries made sense only if they applied to all exports, and not merely to exports outside the Community, which make up about half of total sales. The parties' own national markets were excluded from the quota arrangement, but only because these were reserved for their respective national manufacturers. A manufacturer who finds his sales falling further and further, and therefore feels compelled to cooperate with his competitors on export markets in order to keep prices from falling, is hardly likely to ruin the prices on his own domestic market, which he has dominated for years, by engaging in an ill-advised marketing policy. On condition, therefore, that these markets are respected by the parties to the agreement, they can safely be excluded from the quota system. This consideration does not, however, apply to markets on which several parties are operating at the same time; here there is a need for coordination, and the instruments for achieving it were set out in the 1971 agreement. For this reason ALM has allowed certain continental markets to be protected as this would, according to it, entail no alteration to its commercial policy. The exchange of information allowed it to control deliveries on these markets.

29 In the present case, however, the quota system agreed by the parties had not only the object but also, to some extent at least, the effect of limiting or controlling markets. Variations from quotas were calculated from the inception of the agreement until the end of 1977 and were carried forward from one year to the next without interruption. Even if a balancing operation is not carried out every year, the fact that the amount by which each party to the agreement has exceeded or fallen short of his quota is calculated each month contains an express or implied invitation to the parties to conduct the balancing operation which is the basis of the quota system. The reduction of variations which are discussed jointly and established as too large shows the restrictive effects of the quota system. Deliveries do not have to be turned down to reduce the variation. Merely a policy of not looking for orders will reduce the quantities delivered in favour of the other parties. This, however, constitutes a restriction on competition.

(c) Effect on trade between Member States

30 Since 1 January 1973 the restrictions on competition described above have been such as to affect trade between Member States because manufacturers from different Member States are involved in them and their cooperation has made it impossible for them to bid against one another not only in non-Community countries but within the Community as well; thus cooperation has stood in the way of free movement of goods between States.

31 The form of cooperation pursued in 1971 and 1972 was such as to affect trade between Member States, because the parties were prevented from offering white lead in free competition with one another on the markets of the then six Member States. This applies not only to the market behaviour of the German and Dutch manufacturers but also to the anti-competitive protection which the British manufacturers afforded their partners in the Community.

32 Contrary to what ALM argues, Article 85 is applicable equally to its behaviour. In its judgment of 25 November 1971 in Case 22/71, *Béguelin*, the Court of Justice ruled that: 'The fact that one of the undertakings which are parties to the Agreement is situated in a third country does not prevent application of that provision since the Agreement is operative on the territory of the common market' ((1971) ECR 949, 959). The notification and quota system extended to the whole territory of the common market and ALM collaborated in setting up and operating it.

33 (d) Appreciability of the effect

Contrary to what is contended by the parties, their cooperation has appreciably restricted competition and affected trade between Member States.

34 In 1976, the parties produced 2 089 tonnes of white lead pigment for the paint industry. In the same year, Western European consumption of the principal substitute, titanium oxide, amounted, if one considers only those paints for which titanium oxide and white lead come into competition, to 37 520 tonnes. Sales of zinc white amounted to about 3 000 tonnes; the market share of white lead in 1976 was thus 4.9 %. A parallel evaluation of the market as described in paragraph 5 hereof for 1971 (the

year in which the agreement was concluded) and 1973 (the year in which it was replaced by a concerted practice), reveals higher market shares, namely 8.7 % and 5.9 %.

- 35 The foregoing calculation is, however, incomplete. In fact, it does not take account of the fact that, as the parties have stressed on several occasions, white lead has certain specialized uses, such that, despite its appreciably higher price, it remains an important product for which, indeed, substitutes in certain limited fields of application can only be found with difficulty. The calculation also takes no account of the fact that the white lead producers themselves manufacture or market considerable quantities of substitute products, both for pigment in paint and, especially, for stabilizing agents. This production must not be ignored in evaluating the economic importance of the parties and of their cooperation.
- 36 Furthermore, as the only white lead manufacturers in the Community, the parties were convinced that they could curb the decline in prices through cooperation involving only white lead and not the substitute products which they produce themselves too. Their cooperation in the white lead industry was designed to have a real impact on the market, and indeed it achieved this, though perhaps not to the desired extent.
- 37 These factors lead to a much higher estimation of the economic importance of the white lead market, despite its now smaller turnover, than the one presented by the parties, and to the conclusion that the restriction of competition sought and achieved by the parties must be regarded as appreciable. This is confirmed by the general economic importance of the three parties together, their aggregate sales being far above the threshold of 50 million units of account set by the Commission in its *de minimis* notice of 19 December 1977⁽¹⁾.
- 38 The fact that sales of white lead have been declining over a number of years and that production capacity is far from fully employed offers no reason for ignoring the effects this information and quota system had on the market. Though the cooperation was motivated by a steadily shrinking market, the fact remains that the conditions of Article 85 (1) are fulfilled.

III. INAPPLICABILITY OF ARTICLE 85 (3)

- 39 Exemption under Article 85 (3) cannot be considered, as the cooperation was not notified

to the Commission and is not within the classes of agreements exempted from notification by Article 4 (2) of Regulation No 17.

IV. APPLICABILITY OF ARTICLE 3 OF REGULATION No 17

- 40 The Commission has grounds for finding, pursuant to Article 3 of Regulation No 17, that ALM, Hondorff and Lindgens have, since the beginning of 1971, been infringing Article 85 (1) in that, on the basis of an agreement made on 1 January 1971, which continued to operate in practice after its formal termination at the end of 1972, they have exchanged monthly figures concerning deliveries of white lead, broken down by country of destination, including the Community countries, established quotas for export deliveries and, on the basis of the figures exchanged, calculated monthly variations from these quotas.
- 41 The parties have contested the existence of an infringement but have nevertheless abandoned the quota calculations and limited the exchange of information. This limitation, however, has only been partially implemented. It is therefore necessary for the Commission to adopt a Decision finding that the parties have infringed Article 85 (1) and requiring them to put an end to the infringement to the extent that this has not already been done.
- 42 Taking into account the exceptional circumstances of this case it is not appropriate to impose fines on the parties pursuant to Article 15 (2) of Regulation No 17,

HAS ADOPTED THIS DECISION :

Article 1

It is hereby found that Associated Lead Manufacturers Ltd, BV Chemische Industrie- en Handelsmaatschappij Wed. Hondorff, Block & Braet and Lindgens & Söhne GmbH & Co. have, since the beginning of 1971, been infringing Article 85 (1) in that, on the basis of an agreement made on 1 January 1971 and continuing to operate in practice after its formal termination at the end of 1972, they have exchanged monthly figures concerning deliveries of white lead, broken down by country of destination, including the Community countries, established quotas for export

⁽¹⁾ OJ No C 313, 29. 12. 1977, p. 3.

deliveries, and, on the basis of the figures exchanged, calculated monthly variations from those quotas.

Article 2

The undertakings concerned shall terminate forthwith the infringement found in Article 1.

Article 3

This Decision is addressed to :

1. Associated Lead Manufacturers Limited
Clements House
14 Gresham Street
London EC2V 7AT
United Kingdom ;

2. BV Chemische Industrie- en Handelsmaatschappij
Wed. Hondorff, Block & Braet
Schoonhoven
The Netherlands ;
3. Lindgens & Söhne GmbH & Co.
Deutz-Mülheimer Straße 173
5000 Köln 80
Germany.

Done at Brussels, 12 December 1978.

For the Commission

Raymond VOUEL

Member of the Commission

COMMISSION DECISION

of 22 December 1978

derogating from High Authority recommendation No 1-64 concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community

(97th derogation)

(79/91/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 2 to 5, 8, 71 and 74 thereof,

Having regard to High Authority recommendation No 1-64 of 15 January 1964 to the Governments of the Member States concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community ⁽¹⁾ as modified by recommendation No 1905/78/ECSC of 28 July 1978 ⁽²⁾, and in particular Article 3 thereof,

Having regard to the agreement reached on 19 December 1978 by the representatives of the Member States meeting within the Council on tariff measures to be taken for the first six months of 1979,

Whereas, for years past, the representatives of the Governments of the Member States meeting within the Council have unanimously agreed on six-monthly derogations from the harmonized Community customs duties for steel; whereas these derogations take the form either of a reduction or temporary suspension of certain customs duties or of the granting of tariff quotas at reduced or suspended rates of duty; whereas the last tariff measures of this kind were taken by representatives of the Governments of the Member States on 19 December 1978 in respect of the first six months of 1979;

Whereas such measures are justified by the fact that the products in question are not manufactured, or are manufactured in insufficient quantities, in the Community and that their importation on preferential terms is not injurious to iron and steel undertakings in the Community which produce directly competing products;

Whereas these reasons and circumstances, on which the six-monthly tariff measures taken by the Member States are based, also allow, given present conditions on the common market in steel, of their application within the framework of recommendation No 1-64 of 15 January 1964; whereas neither this suspension of duties nor these tariff quotas are likely to jeopardize the objectives of the said recommendation; whereas, furthermore, such tariff measures help to maintain existing trade flows between the Member States and third countries;

Whereas these are special cases in the commercial policy field justifying the authorization of derogation pursuant to Article 3 of recommendation No 1-64;

Whereas provision should be made to ensure that the quotas granted will be used solely to supply the needs of industries in the importing countries and that re-exportation in the unaltered state to other Member States of imported iron and steel products will be prevented;

Whereas the Governments of the Member States have been consulted on the tariff quotas set out below,

HAS ADOPTED THIS DECISION:

Article 1

The Governments of the Member States are hereby authorized to derogate from the obligations arising under Article 1 of High Authority recommendation No 1-64 to the extent necessary to suspend, in respect of imports from third countries of the iron and steel products set out below, duties or tariff quotas in respect of the quantities and at the levels indicated below:

⁽¹⁾ OJ No 8, 22. 1. 1964, p. 99/64.

⁽²⁾ OJ No L 217, 8. 9. 1978, p. 5.

CCT heading No	Description	Member State	Quota (tonnes)	Duty (%)
ex 73.15 A V b) 1	Special wire rod (of high carbon steel, not further worked than hot-rolled, between 4.5 and 13 mm in diameter) for the manufacture of springs and piano wire : — Containing by weight : — 0.60 to 1.05 % of carbon, — not more than 0.05 % of sulphur and phosphorus taken together, — 0.15 to 0.30 % silicon, — not more than 0.10 % of all other elements (with the exception of manganese and chromium) taken together (Germany and Benelux are authorized to import — within their quotas — special wire rod of alloy steels, between 4.5 and 13 mm in diameter, for valve springs, with the following characteristics : (a) Chrome-vanadium products : 0.40 to 0.65 % C ; 0.15 to 0.30 % Si ; 0.60 to 0.90 % Mn ; 0.15 to 1.10 % Cr ; 0.15 to 0.30 % Va ; not more than 0.30 % Mo ; P and S content of less than 0.035 % each (b) Chrome-silicon products : 0.50 to 0.60 % C ; 1.35 to 1.60 % Si ; 0.60 to 0.80 % Mn ; 0.55 to 0.80 % Cr ; P and S content of less than 0.035 % each)	Germany (FR) Benelux France	8 500 1 350 1 400	0 0 0

Article 2

1. The Member States accorded quotas under Article 1 of this Decision shall ensure, in liaison with the Commission, that such quotas are apportioned among third countries on a non-discriminatory basis.
2. They shall take all necessary steps to preclude the possibility of iron and steel products imported under the said tariff quotas being re-exported to other Member States in the same state as that in which they were imported.

Article 3

This Decision shall remain in force until 30 June 1979.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 22 December 1978.

For the Commission
 Wilhelm HAFERKAMP
Vice-President

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