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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 3493/81
of 3 December 1981**

**amending Regulation (EEC) No 2761/81 imposing a definitive anti-dumping
duty on *o*-xylene (orthoxylene) originating in Puerto Rico and the United States
of America**

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3017/79 of 20 December 1979 on protection against
dumped or subsidized imports from countries not
members of the European Economic Community⁽¹⁾,
and in particular Article 12 thereof,

Having regard to the Commission proposal submitted
after consultation within the Advisory Committee set
up under the said Regulation,

Whereas, by Regulation (EEC) No 1411/81⁽²⁾, the
Commission imposed a provisional anti-dumping
duty of 14.47 % on imports of *o*-xylene (orthoxylene)
originating in Puerto Rico and the United States of
America;

Whereas by Regulation (EEC) No 2761/81⁽³⁾ the
Council rendered this duty definitive;

Whereas the amounts secured by way of provisional
duty pursuant to Regulation (EEC) No 1411/81 were
to be definitively collected at rates fixed in Article 2
of Regulation (EEC) No 2761/81;

Whereas imports from the Commonwealth Oil
Refinery Co. Inc. (CORCO) were subject to a provi-
sional duty of 4.43 %, which amount should be
collected;

Whereas this was not specified in Article 2 of Regu-
lation (EEC) No 2761/81; whereas that Article should

therefore be amended to take account of the situation
of the Commonwealth Oil Refinery Co. Inc.,

HAS ADOPTED THIS REGULATION:

Article 1

Article 2 of Regulation (EEC) No 2761/81 is hereby
replaced by the following:

Article 2

The amounts secured by way of provisional duty
pursuant to Regulation (EEC) No 1411/81 shall be
definitively collected at the rate of:

- 3.40 % for imports from Exxon Chemical
International Supply SA,
- 4.43 % for imports from the Commonwealth
Oil Refinery Co. Inc.,
- 5.15 % for imports from Tenneco Oil Co.,
- 10.73 % for imports from Sun Petroleum
Products Co.,
- 14.47 % in respect of all other imports.

Article 2

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

It shall apply with effect from 25 September 1981.

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

⁽¹⁾ OJ No L 339, 31. 12. 1979, p. 1.

⁽²⁾ OJ No L 141, 27. 5. 1981, p. 29.

⁽³⁾ OJ No L 270, 25. 9. 1981, p. 1.

COUNCIL REGULATION (EEC) No 3494/81

of 3 December 1981

amending Regulation (EEC) No 1700/81 opening, allocating and providing for the administration of a Community tariff quota for rum, arrack and tafia falling within subheading 22.09 C I of the Common Customs Tariff and originating in the ACP States (1981/82)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas, by Regulation (EEC) No 1700/81 ⁽¹⁾, the Council opened a Community tariff quota for the importation into the Community of Nine of rum, arrack and tafia originating in the ACP States; whereas Regulation (EEC) No 439/81 ⁽²⁾ provides that the Hellenic Republic is required to apply this tariff measure; whereas Regulation (EEC) No 1700/81 should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1700/81 is hereby amended as follows:

1. in Article 1:

- the words 'of Nine' shall be deleted,
- '189 029' shall be replaced by '189 078';

2. in Article 2 (1), '70 204' shall be replaced by '70 253';

3. in Article 2 (2) in the table of shares, the following shall be inserted after the entry concerning Germany:

'Greece 49';

4. in Article 2 (2), the following subparagraph shall be added:

'Within the limit of its share, the Hellenic Republic shall apply customs duties calculated in accordance with the relevant provisions of the 1979 Act of Accession and of Regulation (EEC) No 439/81 ⁽²⁾.'

The following footnote shall be added:

'⁽²⁾ OJ No L 53, 27. 2. 1981, p. 19.'

Article 2

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

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

⁽¹⁾ OJ No L 172, 30. 6. 1981, p. 1.

⁽²⁾ OJ No L 53, 27. 2. 1981, p. 19.

COUNCIL REGULATION (EEC) No 3495/81
of 3 December 1981
temporarily suspending the autonomous Common Customs Tariff duties on a
number of agricultural products

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community, and in particular Article 28
thereof,

Having regard to the draft Regulation submitted by
the Commission,

Whereas production in the Community of the
products specified in this Regulation is currently
inadequate or non-existent; whereas producers thus
cannot meet the needs of user industries in the
Community;

Whereas in certain cases it is in the interest of the
Community to suspend the autonomous Common
Customs Tariff duties only partially, particularly since
the goods in question are produced in the Community
and in the other cases to suspend them totally;

Whereas, in view of the difficulty of assessing accu-
rately short-term trends in the economic situation in the
relevant sectors, suspension measures should be taken

only temporarily by fixing their period of validity by
reference to the interests of Community production,

HAS ADOPTED THIS REGULATION :

Article 1

The autonomous Common Customs Tariff duties for
the products listed in the tables annexed hereto shall
be suspended at the level indicated against each of
them.

These suspensions shall be applicable :

- from 1 January to 28 February 1982 for the
products listed in Table I,
- from 1 January to 30 June 1982 for the products
listed in Table II.

Article 2

This Regulation shall enter into force on 1 January
1982.

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

ANNEX

TABLE I

CCT heading No	Description	Rate of autonomous duty (%)
ex 03.02 A I f)	Coalfish (<i>Pollachius virens</i> or <i>Gadus virens</i>), salted or in brine, whole, headless or in pieces, intended for smoking or drying (a)	8
ex 03.02 A II d)	Fillets of coalfish (<i>Pollachius virens</i> or <i>Gadus virens</i>), salted or in brine, intended for smoking or drying (a)	9

TABLE II

CCT heading No	Description	Rate of autonomous duty (%)
ex 03.01 B I e)	Piked dog-fish (<i>squalus acanthias</i>), fresh, chilled or frozen, whole, headless or in pieces	6
ex 03.01 B I e)	Flaps of piked dog-fish (<i>squalus acanthias</i>), fresh, chilled or frozen	0
ex 03.03 A I	Crawfish heads for the processing industry (a)	10
ex 07.05 B I	Beans, white, dried, of the species ' <i>Phaseolus vulgaris</i> '	0
ex 08.01 A	Dates, fresh or dried, for packing for retail sale into immediate packings of a net capacity not exceeding 11 kg (a)	0
ex 08.10 D	Dates, frozen, in immediate packings of a net capacity of 5 kg or more, not intended for the production of alcohol (a)	0
ex 16.05 A	Crabs of the species ' <i>King</i> ' (<i>Paralithodes camchaticus</i>), ' <i>Hana-saki</i> ' (<i>Paralithodes brevipes</i>), ' <i>Kegani</i> ' (<i>Erimacrus isenbeckii</i>), and ' <i>Queen</i> ' (<i>Chionoecetes</i> spp), ' <i>Red</i> ' (<i>Geryon quinquedens</i>) and ' <i>Rough stone</i> ' (<i>Neolithodes asperrimus</i>), simply boiled in water and shelled, whether or not frozen, in immediate packings of a net capacity of 2 kg or more	0
ex 16.05 B	Lobster flesh, cooked to be used by the processing industry for the manufacture of butters based on crustaceans, pastes and pâtés or soup (a)	10
ex 16.05 B	Shrimps and prawns of the species ' <i>Pandalus borealis</i> ' boiled in water and shelled, whether or not frozen or dried, intended for the industrial processing of products falling within heading No 16.05 (a)	14

(a) Checks on their use for this special purpose shall be carried out pursuant to the relevant Community provisions.

COUNCIL REGULATION (EEC) No 3496/81

of 3 December 1981

amending Regulation (EEC) No 3035/80 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds

THE COUNCIL 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 1949/81⁽²⁾, and in particular Article 16 (5) thereof,

Having regard to the proposal from the Commission,

Whereas Article 16 (5) of Regulation (EEC) No 2727/75 provides for the grant of export refunds for cereals employed in the manufacture of certain spirituous beverages;

Whereas certain spirituous beverages, such as certain liqueurs falling within subheading 22.09 C of the Common Customs Tariff, are obtained from another spirituous beverage for which an export refund for the cereals employed in its manufacture is available; whereas for the cereals element employed in the said spirituous beverages a coefficient had to be fixed; whereas it is accordingly necessary to amend Council Regulation (EEC) No 3035/80 of 11 November 1980⁽³⁾, as last amended by Regulation (EEC) No 2803/81⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3 (1) (b) and (c) of Regulation (EEC) No 3035/80 is hereby replaced by the following:

'(b) in the case of use of a product covered by Annex II to the Treaty:

- either derived from the processing of a basic product or of a product assimilated to that basic product,
- or assimilated to a product derived from the processing of a basic product,

— or derived from the processing of a product assimilated to a product derived from the processing of a basic product,

the quantity shall be that which is actually used in the manufacture of the exported goods, reduced to a quantity of basic product by applying, as the case may be, the special rules for calculation, equivalence ratios or coefficients fixed for determining the levies on imports of the products in question.

However, for the grain spirit contained in spirituous beverages falling within subheading 22.09 C of the Common Customs Tariff, this quantity shall be: 3.4 kg of barley per % vol of alcohol derived from cereals per hectolitre of the spirituous beverage exported;

(c) in the case of use:

- either of a product not covered by Annex II to the Treaty derived from the processing of a product referred to in (a) or (b),
- or of a product derived from the mixture and/or the processing of several products referred to in (a) and/or (b), and/or products referred to in the preceding indent,

the quantity, to be determined on the basis of the quantity of the product actually used in the manufacture of the goods exported, shall be equal, for each of the basic products in question and subject to the provisions of paragraph 3, to the quantity established by the competent authorities in accordance with Article 8 (1). For the purpose of calculating this quantity the conversion rates referred to in (a) or, as the case may be, the special rules for calculation, equivalence ratios and coefficients referred to in (b) shall be applicable.

However, for the cereal-based spirituous beverages contained in the spirituous beverages

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 198, 20. 7. 1981, p. 2.

⁽³⁾ OJ No L 323, 29. 11. 1980, p. 27.

⁽⁴⁾ OJ No L 275, 29. 9. 1981, p. 31.

falling within subheading 22.09 C of the Common Customs Tariff, this quantity shall be 3.4 kg of barley per % vol of alcohol derived from cereals per hectolitre of the spirituous beverage exported.'

Article 2

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

It shall apply with effect from 1 January 1982.

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

COUNCIL REGULATION (EEC) No 3497/81**of 3 December 1981****opening, allocating and providing for the administration of a Community tariff quota for yarn of poly (*p*-phenyleneterephthalamide) for use in the manufacture of tyres or of products used in the manufacture of tyres, falling within subheading ex 51.01 A of the Common Customs Tariff**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 28 thereof,

Whereas the production of yarn of poly (*p*-phenyleneterephthalamide) is currently insufficient in the Community to meet the requirements of the user industries in the Community; whereas, consequently, Community supplies of products of this type currently depend to a considerable extent on imports from third countries; whereas it is in the Community's interest to partially suspend the Common Customs Tariff duty for the yarn in question, within the Community tariff quota, of an appropriate volume for a relatively limited period; whereas in order not to bring into question the development prospects of this production in the Community while ensuring an adequate supply to satisfy user industries, it is advisable to limit the benefits of tariff quotas solely to products for use in the manufacture of tyres to open the quota for the period 1 January to 30 June 1982, and to fix the volume of this quota at a level of 600 tonnes, corresponding to the needs for imports from third countries during that period, and to fix the quota duty at 2 % ;

Whereas equal and continuous access to the quota should be ensured for all Community importers and the rate of duty for the tariff quota should be applied consistently to all imports until the quota is exhausted; whereas in the light of these principles arrangements for the utilization of the tariff quota based on an allocation among Member States would seem to be consistent with the Community nature of the quota; whereas, to correspond as closely as possible to the actual trend in the market in the product in question, allocation of the quota should be in proportion to the requirements of the Member States as calculated by reference to statistics of imports from third countries during a representative reference period and to the economic outlook for the quota period in question;

Whereas, however, since the quota is an autonomous Community tariff quota intended to cover import needs arising in the Community, for experimental purposes, the quota volume may be allocated on the basis of the temporary import needs from third countries expressed by each of the Member States; whereas these arrangements for allocation will equally ensure the uniform application of the Common Customs Tariff;

Whereas, to take account of possible import trends for the product concerned, the quota volume should be divided into two tranches, the first being allocated between certain Member States and the second held as a reserve to meet subsequent requirements of Member States which have used up their initial shares and any additional requirements which might arise in the other Member States; whereas, to give importers of the Member States some degree of certainty, the first tranche of the tariff quota should be fixed at a relatively high level, which in this case could be 584 tonnes;

Whereas initial shares may be used up at different rates; whereas to avoid disruption of supplies on this account it should be provided that any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas each time its additional share is almost used up a Member State should draw a further share, and so on as many times as the reserve allows; whereas the initial and additional shares should be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the Commission, which latter must be in a position to keep account of the extent to which the quotas have been used up and to inform the Member States accordingly;

Whereas, if at a given date in the quota period a considerable quantity of a Member State's initial share remains unused, it is essential that that Member State should return a significant proportion to the reserve, in order to prevent a part of the Community quota remaining unused in one Member State while it could be used in others;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any measure concerning the administration of the shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January until 30 June 1982 the Common Customs Tariff duty for yarn of poly (*p*-phenyleneterephthalamide) for use in the manufacture of tyres or of products used in the manufacture of tyres, falling within subheading 51.01 A, shall be suspended at the level of 2 % within the framework of a Community tariff quota of 600 tonnes.

2. Within the limits of the tariff quota, Greece shall apply customs duties calculated in accordance with the relevant provisions in the 1979 Act of Accession.

Article 2

1. A first tranche of 584 tonnes of this Community tariff quota shall be allocated among the Member States; the shares, which subject to Article 5 shall be valid until 30 June 1982, shall be as follows:

	(tonnes)
Benelux	102
Denmark	1
Germany	105
Greece	2
France	340
Ireland	2
Italy	2
United Kingdom	30

2. The second tranche of 16 tonnes shall constitute the reserve.

Article 3

1. If a Member State has used 90 % or more of its initial share as fixed in Article 2 (1), or of that share minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10 % of its initial share rounded up as necessary to the next whole number.

2. If a Member State, after exhausting its initial share, has used 90 % or more of the second share

drawn by it, that Member State shall forthwith, in the manner and to the extent provided in paragraph 1, draw a third share equal to 5 % of its initial share rounded up as necessary to the next whole number.

3. If a Member State, after exhausting its second share, has used 90 % or more of the third share drawn by it, that Member State shall, in the manner and to the extent provided in paragraph 1, draw a fourth share equal to the third.

This process shall apply until the reserve is used up.

4. By way of derogation from paragraphs 1 to 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 30 June 1982.

Article 5

Member States shall, not later than 15 May 1982, return to the reserve the unused portion of their initial share which, on 1 May 1982, is in excess of 20 % of the initial volume. They may return a greater portion if there are grounds for believing that it may not be used in full.

Member States shall, not later than 15 May 1982, notify the Commission of the total quantities of the products in question imported up to 1 May 1982 and charged against the Community quota and of any portion of their initial shares returned to the reserve.

Article 6

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the notifications reach it, inform each State of the extent to which the reserve has been used up.

It shall, not later than 20 May 1982, inform the Member States of the amounts still in reserve following any return of shares pursuant to Article 5.

It shall ensure that the drawing which exhausts the reserve does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

Article 7

1. Member States shall take all appropriate measures to ensure that additional shares drawn pursuant to Article 3 are opened in such a way that imports may be charged without interruption against their aggregate shares of the Community tariff quota.

2. Member States shall take all appropriate measures to ensure that the products listed in Article 1 (1) benefiting from the Community tariff quota in question are indeed intended for use in the manufacture of tyres or of products used in the manufacture of tyres.

Control of the use for this special purpose shall be carried out pursuant to the relevant Community provisions.

3. Member States shall ensure that importers of the product in question, established in their territory, have free access to the shares allotted to them.

4. Member States shall charge imports of the product in question against their shares as the

products is entered with the customs authorities for free circulation.

5. The extent to which Member States have used up their shares shall be determined on the basis of imports charged against them under the conditions set out in paragraph 4.

Article 8

At the Commission's request, the Member States shall inform it of imports actually charged against their shares.

Article 9

The Member States and the Commission shall co-operate closely to ensure that this Regulation is complied with.

Article 10

This Regulation shall enter into force on 1 January 1982.

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

COUNCIL REGULATION (EEC) No 3498/81

of 3 December 1981

opening, allocating and providing for the administration of a Community tariff quota for ferro-chromium containing not more than 0.10 % by weight of carbon and more than 30 % but not more than 90 % by weight of chromium (super-refined ferro-chromium), falling within subheading ex 73.02 E I of the Common Customs Tariff (1982)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission,

Whereas, as regards ferro-chromium containing by weight not more than 0.10 % of carbon and more than 30 % but not more than 90 % of chromium (super-refined ferro-chromium), falling within subheading 73.02 E I, the European Economic Community has undertaken to open an annual duty-free tariff quota of 3 000 tonnes; whereas this should, however, be reduced to 2 950 tonnes to take account of the traditional imports from EFTA countries which have been free of customs duty under the Agreements concluded with those countries; whereas the tariff quota concerned should therefore be opened on 1 January 1982 and allocated among the Member States;

Whereas equal and continuous access to the quota should be ensured for all importers and the rate of duty for the tariff quota should be applied consistently to all imports until the quota is used up; whereas arrangements for the utilization of the Community tariff quota based on an allocation among Member States would seem to be consistent with the Community nature of the quota; whereas, to correspond as closely as possible to the actual trend of the market in the product in question, allocation of the quota should be in proportion to the requirements of the Member States as calculated by reference to statistics of imports from third countries during a representative reference period and to the economic outlook for the quota period in question;

Whereas ferro-chromium of this quite specific quality is not singled out in the Member States statistical nomenclatures; whereas their corresponding imports from third countries, not already benefiting from an equivalent preferential arrangement, could not be detailed in their entirety for the abovementioned reference period; whereas, taking into account the foreseen

able evolution of the market in such ferro-chromium for the year 1982 and in particular the forecasts made by the Member States, the initial percentage shares in the quota volume can be expressed approximately as follows:

	(tonnes)
Benelux	15.93
Denmark	0.03
Germany	27.71
Greece	0.17
France	29.10
Ireland	0.03
Italy	8.66
United Kingdom	18.37

Whereas, to take account of future import trends for the products concerned, the quota should be divided into two instalments, the first being allocated and the second held as a reserve to cover subsequently the requirements of Member States which have exhausted their initial share; whereas, to give importers some degree of certainty, the first instalment of the tariff quota should be fixed at a high level, which in this case should be approximately 98 % of the volume of the quota;

Whereas initial shares may be used up at different rates; whereas to avoid disruption of supplies on this account it should be provided that any Member State which has almost used up its initial share should draw an additional share from the reserve; whereas each time its additional share is almost used up a Member State should draw a further share, and so on as many times as the reserve allows; whereas the initial and additional shares should be valid until the end of the quota period; whereas this form of administration requires close collaboration between the Member States and the Commission, which latter must be in a position to keep account of the extent to which the quotas have been used up and to inform the Member States accordingly;

Whereas, if at a given date in the quota period a considerable quantity of a Member State's initial share remains unused, it is essential that that Member State should return a significant proportion to the reserve,

in order to prevent a part of the Community quota remaining unused in one Member State while it could be used in others ;

Whereas, since the Kingdom of Belgium, the Kingdom of the Netherlands and the Grand Duchy of Luxembourg are united within and jointly represented by the Benelux Economic Union, any measure concerning the administration of the shares allocated to that economic union may be carried out by any one of its members,

HAS ADOPTED THIS REGULATION :

Article 1

1. From 1 January to 31 December 1982 a Community tariff quota of 2 950 tonnes shall be opened in the Community for ferro-chromium containing by weight not more than 0.10 % of carbon and more than 30 % but not more than 90 % of chromium (super-refined ferro-chromium), falling within subheading 73.02 E I of the Common Customs Tariff.

2. Imports of the product in question may not be charged against this tariff quota if they are already free of customs duties under other preferential tariff arrangements.

3. Within this quota, Common Customs Tariff duty shall be totally suspended.

4. Within the limits of this tariff quota, Greece shall apply duties calculated in accordance with the relevant provisions in the Act of Accession of 1979.

Article 2

1. A first instalment of 2 887 tonnes of this Community tariff quota shall be allocated among the Member States ; the shares, which subject to Article 5 shall be valid from 1 January to 31 December 1982, shall be as follows :

	(tonnes)
Benelux	460
Denmark	1
Germany	800
Greece	5
France	840
Ireland	1
Italy	250
United Kingdom	530

2. The second instalment of 63 tonnes shall constitute the reserve.

Article 3

1. If a Member State has used 90 % or more of its initial share as fixed in Article 2 (1), or of that share

minus any portion returned to the reserve pursuant to Article 5, it shall forthwith, by notifying the Commission, draw a second share, to the extent that the reserve so permits, equal to 10 % of its initial share rounded up as necessary to the next whole number.

2. If a Member State, after exhausting its initial share, has used 90 % or more of the second share drawn by it, that Member State shall forthwith, in the manner and to the extent provided in paragraph 1, draw a third share equal to 5 % of its initial share rounded up as necessary to the next whole number.

3. If a Member State, after exhausting its second share, has used 90 % or more of the third share drawn by it, that Member State shall, in the manner and to the extent provided in paragraph 1, draw a fourth share equal to the third.

This process shall apply until the reserve is used up.

4. By way of derogation from paragraphs 1 to 3, a Member State may draw shares lower than those specified in those paragraphs if there are grounds for believing that those specified may not be used in full. Any Member State applying this paragraph shall inform the Commission of its grounds for so doing.

Article 4

Additional shares drawn pursuant to Article 3 shall be valid until 31 December 1982.

Article 5

Member States shall, not later than 1 October 1982, return to the reserve the unused portion of their initial share which, on 15 September 1982, is in excess of 20 % of the initial volume. They may return a greater portion if there are grounds for believing that it may not be used in full.

Member States shall, not later than 1 October 1982, notify the Commission of the total quantities of the product in question imported up to and including 15 September 1982, and charged against the Community quota and of any portion of their initial shares returned to the reserve.

Article 6

Member States may restrict the charging of imports against their shares to products for certain intended uses. In that case the Community provisions on the matter shall be applied for checking that the product has been used for the stipulated purpose.

Article 7

The Commission shall keep an account of the shares opened by the Member States pursuant to Articles 2 and 3 and shall, as soon as the information reaches it, inform each State of the extent to which the reserve has been used up.

It shall, not later than 5 October 1982, inform the Member States of the amount still in reserve, following any return of shares pursuant to Article 5.

It shall ensure that the drawing which exhausts the reserve does not exceed the balance available, and to this end shall notify the amount of that balance to the Member State making the last drawing.

Article 8

1. Member States shall take all appropriate measures to ensure that additional shares drawn pursuant to Article 3 are opened in such a way that imports may be charged without interruption against their aggregate share of the Community quota.

2. Member States shall ensure that importers of the product in question established in their territory have free access to the shares allocated to them.

3. The extent to which the Member States have used up their shares shall be determined on the basis of imports of the products in question entered with the customs authorities for free circulation.

Article 9

At the Commission's request, Member States shall inform it of the imports actually charged against their shares.

Article 10

The Member States and the Commission shall co-operate closely to ensure that this Regulation is complied with.

Article 11

This Regulation shall enter into force on 1 January 1982.

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

Done at Brussels, 3 December 1981.

For the Council

The President

T. KING

COMMISSION REGULATION (EEC) No 3499/81**of 8 December 1981****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 organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1949/81⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2543/73⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas, the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Regulation (EEC) No 2196/81⁽⁵⁾ and subsequent amending Regulations;

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

— in the case of currencies which are maintained in relation to each other at any given moment within

a band of 2.25 %, a rate of exchange based on their effective parity,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies in relation to the Community currencies referred to in the previous indent;

Whereas these exchange rates being those recorded on 7 December 1981;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2196/81 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

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 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSAER

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 198, 20. 7. 1981, p. 2.

⁽³⁾ OJ No 106, 30. 10. 1962, p. 2553/62.

⁽⁴⁾ OJ No L 263, 19. 9. 1973, p. 1.

⁽⁵⁾ OJ No L 214, 1. 8. 1981, p. 7.

ANNEX

to the Commission Regulation of 8 December 1981 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)		
CCT heading No	Description	Levies
10.01 A	Common wheat, and meslin	76.10
10.01 B	Durum wheat	135.54 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	44.81 ⁽⁶⁾
10.03	Barley	74.98
10.04	Oats	55.80
10.05 B	Maize, other than hybrid maize for sowing	103.19 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	73.61 ⁽⁴⁾
10.07 C	Grain sorghum	90.49 ⁽⁴⁾
10.07 D	Canary seed; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	120.50
11.01 B	Rye flour	75.73
11.02 A I a)	Durum wheat groats and meal	223.36
11.02 A I b)	Common wheat groats and meal	129.06

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0.60 ECU/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 435/80, the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1.81 ECU/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 0.60 ECU/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 3500/81

of 8 December 1981

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 organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1949/81⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 2543/73⁽⁴⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Regulation (EEC) No 2197/81⁽⁵⁾ and subsequent amending Regulations;

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

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2.25 % a rate of exchange based on their effective parity,

— for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies in relation to the Community currencies referred to in the previous indent;

Whereas these exchange rates being those recorded on 7 December 1981;

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 to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The premiums referred to in Article 15 of Regulation (EEC) No 2727/75 to be added to the import levies fixed in advance in respect of cereals and malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSGER

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 198, 20. 7. 1981, p. 2.

⁽³⁾ OJ No 106, 30. 10. 1962, p. 2553/62.

⁽⁴⁾ OJ No L 263, 19. 9. 1973, p. 1.

⁽⁵⁾ OJ No L 214, 1. 8. 1981, p. 10.

ANNEX

to the Commission Regulation of 8 December 1981 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CCT heading No	Description	(ECU/tonne)			
		Current 12	1st period 1	2nd period 2	3rd period 3
10.01 A	Common wheat, and meslin	0	0	0	0
10.01 B	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	0	0	0
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0	0	0
10.07 C	Grain sorghum	0	0	0	0
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	0

B. Malt

CCT heading No	Description	(ECU/tonne)				
		Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4
11.07 A I (a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A I (b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 A II (a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	0	0	0	0
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0	0	0	0
11.07 B	Roasted malt	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3501/81**of 8 December 1981****amending for the second time Regulation (EEC) No 1609/81 fixing the adjustments to be made to certain refunds fixed in advance for milk and milk products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Whereas Article 1 (2) of Commission Regulation (EEC) No 1609/81 of 16 June 1981 fixing the adjustments to be made to certain refunds fixed in advance for milk and milk products⁽²⁾, as amended by Regulation (EEC) No 2757/81⁽³⁾, lays down that, in order to avoid speculative movements, the adjustment is not to be made for products within heading No 04.03 and within subheadings 04.02 A II a) 1, 04.02 A II b) 1, 04.02 B I b) 1 aa) and 04.02 B I b) 2 aa) of the Common Customs Tariff unless evidence that the product was manufactured during the 1981/82 milk year is provided; whereas, however, as the said products from the previous marketing year are likely to be out of stock before 15 December in the current marketing year, products exported as from that date may be assumed to have been manufactured during

the 1981/82 marketing year; whereas it is therefore proper to lay down that the evidence of date of manufacture need no longer be required for exports of the said products as from 15 December 1981;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following sentence is hereby added after the first subparagraph of Article 1 (2) of Regulation (EEC) No 1609/81:

'This evidence shall no longer be required for exports of the said products as from 1 December 1981.'

Article 2

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

It shall apply with effect from 15 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSAER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 161, 16. 6. 1981, p. 1.

⁽³⁾ OJ No L 269, 24. 9. 1981, p. 14.

COMMISSION REGULATION (EEC) No 3502/81
of 8 December 1981
concerning the sale price of skimmed-milk powder intended as feed for calves

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 the Act of Accession of Greece, and in
particular Article 7 (2) thereof,

Whereas Commission Regulation (EEC) No
3314/80⁽²⁾, as last amended by Regulation (EEC) No
3221/81⁽³⁾, made provision for the sale of skimmed-
milk powder from public stocks intended as feed for
calves at a price equal to the buying-in price applied
by the intervention agency, less 3 ECU per 100 kilo-
grams; whereas it has been found that a quantity of
powder complying with the conditions set out in
Regulation (EEC) No 3221/81 was sold before the
entry into force of the said Regulation, without having
been taken over; whereas transitional measures should
be laid down to cover this case;

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

HAS ADOPTED THIS REGULATION:

Article 1

As regards quantities of skimmed-milk powder which
entered into stock before 1 November 1979 and
which are covered by a purchase contract concluded
during the period 5 October to 15 November 1981
and not yet taken over on the latter date, the selling
intervention agency shall, on application by the
purchaser, adapt the conditions referred to in Article 2
(1) (b) and in Article 5 (2) (b) of Regulation (EEC) No
3314/80, if such application is made within 15 days
following the date of entry into force of this Regula-
tion.

Article 2

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

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSGER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 345, 20. 12. 1980, p. 12.

⁽³⁾ OJ No L 324, 12. 11. 1981, p. 10.

COMMISSION REGULATION (EEC) No 3503/81
of 8 December 1981
fixing additional amounts for live and slaughtered poultry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

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

Whereas, pursuant to Regulation (EEC) No 565/68⁽⁵⁾, the import levies on slaughtered fowls, ducks and

geese originating in and coming from Poland are not increased by an additional amount;

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

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

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

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

HAS ADOPTED THIS REGULATION :

Article 1

The additional amounts provided for in Article 8 of Regulation (EEC) No 2777/75 shall be as set out in the Annex hereto for the products listed in Article 1 (1) of that Regulation which appear in the said Annex.

Article 2

This Regulation shall enter into force on 10 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSAGER

Member of the Commission

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 77.

⁽²⁾ OJ No L 291, 19. 11. 1979, p. 17.

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

⁽⁴⁾ OJ No L 154, 9. 6. 1973, p. 1.

⁽⁵⁾ OJ No L 107, 8. 5. 1968, p. 7.

⁽⁶⁾ OJ No L 286, 14. 11. 1969, p. 24.

⁽⁷⁾ OJ No L 265, 8. 12. 1970, p. 13.

⁽⁸⁾ OJ No L 232, 12. 10. 1972, p. 3.

ANNEX

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

CCT heading No	Description	Additional amount	Imports affected
01.05	Live poultry (that is to say, fowls, ducks, geese, turkeys and guinea fowls): B. Other: IV. Turkeys	5.00	Origin : Hungary
02.02	Dead poultry (that is to say, fowls, ducks, geese, turkeys and guinea fowls) and edible offals thereof (except liver), fresh, chilled or frozen: A. Whole poultry: I. Fowls: a) Plucked and gutted, with heads and feet, known as '83 % chickens' b) Plucked and drawn, without heads and feet, but with hearts, livers and gizzards, known as '70 % chickens' c) Plucked and drawn, without heads and feet and without hearts, livers and gizzards, known as '65 % chickens' IV. Turkeys: a) Plucked and drawn, without heads and feet but with necks, hearts, livers and gizzards, known as '80 % turkeys' b) Plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as '73 % turkeys' B. Poultry cuts (excluding offals): II. Unboned (bone-in): a) Halves or quarters: 1. Of fowls	10.00 10.00 10.00 20.00 20.00 10.00	Origin : Spain Origin : Spain Origin : Spain Origin : Yugoslavia or Spain Origin : Yugoslavia or Spain Origin : Spain

COMMISSION REGULATION (EEC) No 3504/81
of 8 December 1981
fixing additional amounts for egg products

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2771/75 of 29 October 1975 on the common
organization of the market in eggs ⁽¹⁾, as last amended
by the Act of Accession of Greece ⁽²⁾, and in particular
Article 8 (4) thereof,

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

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

Whereas, pursuant to Article 1 of Regulation (EEC)
No 990/69 ⁽⁵⁾, the levies on imports of eggs not in
shell and egg yolks originating in and coming from
Austria are not increased by an additional amount;

Whereas the regular review of the information serving
as a basis for the determination of average offer prices
for the products listed in Article 1 (1) (b) of Regulation
(EEC) No 2771/75 indicates that additional amounts
corresponding to the figures shown in the Annex
hereto should be fixed for the imports specified in that
Annex;

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

HAS ADOPTED THIS REGULATION:

Article 1

The additional amounts provided for in Article 8 of
Regulation (EEC) No 2771/75 shall be as set out in
the Annex hereto for the products listed in Article 1
(1) of that Regulation which appear in the said Annex.

Article 2

This Regulation shall enter into force on 10 December
1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSAER

Member of the Commission

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 49.

⁽²⁾ OJ No L 291, 19. 11. 1979, p. 17.

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

⁽⁴⁾ OJ No L 154, 9. 6. 1973, p. 1.

⁽⁵⁾ OJ No L 130, 31. 5. 1969, p. 4.

ANNEX

**Additional amounts applicable to certain products listed in Article 1 (1) (b) of Regulation
(EEC) No 2771/75**

(ECU/100 kg)

CCT heading No	Description	Additional amount	Imports affected
04.05	Birds' eggs and egg yolks, fresh, dried or otherwise preserved, sweetened or not : B. Eggs, not in shell ; egg yolks : I. Suitable for human consumption : a) Eggs, not in shell : 1. Dried 2. Other b) Egg yolks : 3. Dried	50.00 40.00 40.00	Origin : Canada or Switzerland Origin : Czechoslovakia, German Democratic Republic ⁽¹⁾ or Norway Origin : United States of America

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

COMMISSION REGULATION (EEC) No 3505/81
of 8 December 1981
fixing additional amounts for poultrymeat products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The additional amounts provided for in Article 8 of Regulation (EEC) No 2777/75 shall be as set out in the Annex hereto for the products listed in Article 1 (1) of that Regulation which appear in the said Annex.

Article 2

This Regulation shall enter into force on 10 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSAGER

Member of the Commission

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 77.

⁽²⁾ OJ No L 291, 19. 11. 1979, p. 17.

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

⁽⁴⁾ OJ No L 154, 9. 6. 1973, p. 1.

ANNEX

Additional amounts applicable to poultrymeat products with the exception of live and slaughtered poultry and halves or quarters*(ECU/100 kg)*

CCT heading No	Description	Additional amount	Imports affected
02.02	Dead poultry (that is to say, fowls, ducks, geese, turkeys and guinea fowls) and edible offals thereof (except liver), fresh, chilled or frozen : B. Poultry cuts (excluding offals) : II. Unboned (bone-in) : e) Legs and cuts of legs : 3. Of other poultry	20.00	Origin : United States of America

COMMISSION REGULATION (EEC) No 3506/81
of 8 December 1981

fixing the rates of the refunds applicable from 1 January 1982 to eggs and egg yolks exported in the form of goods not covered by Annex II to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs ⁽¹⁾, as last amended by the Act of Accession of Greece ⁽²⁾, and in particular the first sentence of the fifth subparagraph of Article 9 (2) thereof,

Whereas Article 9 (1) of Regulation (EEC) No 2771/75 provides that the difference between prices on the world market for the products listed in Article 1 (1) of that Regulation and prices within the Community may be covered by an export refund; whereas Council Regulation (EEC) No 3035/80 of 11 November 1980 laying down general rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and the criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EEC) No 2803/81 ⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EEC) No 2771/75;

Whereas, in accordance with the second subparagraph of Article 4 (1) of Regulation (EEC) No 3035/80, the rate of the refund per 100 kg for each of the basic products in question must be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed;

Whereas, in accordance with paragraph 2 of that Article, when that rate is being determined particular account should be taken of:

- (a) the average costs incurred by processing industries in obtaining supplies of the basic products in question on the Community market and the prices ruling on the world market;
- (b) the level of the refunds on exports of processed agricultural products covered by Annex II to the Treaty which are manufactured under similar conditions; and
- (c) the need to ensure equality of competition for the industries which use Community products and those which use third-country products under inward processing arrangements;

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

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable from 1 January 1982 to the products appearing in Annex A to Regulation (EEC) No 3035/80 and listed in Article 1 (1) of Regulation (EEC) No 2771/75, exported in the form of goods listed in the Annex to Regulation (EEC) No 2771/75, are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 January 1982.

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

Done at Brussels, 8 December 1981.

For the Commission

Karl-Heinz NARJES

Member of the Commission

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 49.
⁽²⁾ OJ No L 291, 19. 11. 1979, p. 17.
⁽³⁾ OJ No L 323, 29. 11. 1980, p. 27.
⁽⁴⁾ OJ No L 275, 29. 9. 1981, p. 31.

ANNEX

to the Commission Regulation of 8 December 1981 fixing the rates of the refunds applicable from 1 January 1982 to eggs and egg yolks exported in the form of goods not covered by Annex II to the Treaty

(ECU / 100 kg)		
CCT heading No	Description	Rate of refund
04.05	Birds' eggs and egg yolks, fresh, dried or otherwise preserved, sweetened or not :	
	A. Eggs in shell, fresh or preserved :	
	I. Poultry eggs :	
	b) Other (than eggs for hatching)	13.00
	B. Eggs, not in shell ; egg yolks :	
	I. Suitable for human consumption :	
	a) Eggs, not in shell :	
	ex 1. Dried, not sweetened	59.00
	ex 2. Other, not sweetened	15.00
	b) Egg yolks :	
	ex 1. Liquid, not sweetened	27.00
	ex 2. Frozen, not sweetened	28.00
	ex 3. Dried, not sweetened	61.00

COMMISSION REGULATION (EEC) No 3507/81**of 8 December 1981****amending Regulations (EEC) No 3222/81 and (EEC) No 3362/81 on the fourth and fifth sales at a standard price fixed in advance of frozen beef for export to Poland**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

HAS ADOPTED THIS REGULATION :

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
805/68 of 27 June 1968 on the common organization
of the market in beef and veal ⁽¹⁾, as last amended by
the Act of Accession of Greece, and in particular
Article 7 (3) thereof,

Whereas Commission Regulation (EEC) No
3222/81 ⁽²⁾ and (EEC) No 3362/81 ⁽³⁾ provided for the
sale of frozen beef held by the intervention agencies
for export to Poland ; whereas the said Regulation laid
down that export of the said meat should take place
before 1 January 1982 ;

Whereas there has been some difficulty in carrying
out all these exports within the initial time limit ;
whereas it is therefore necessary to extend the said
time limit ;

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

Article 1

1. The date '1 January 1982' in Article 1 (6) of
Regulation (EEC) No 3222/81 is hereby replaced by
the date '1 March 1982'.

2. The date '1 January 1982' in Article 1 (5) of
Regulation (EEC) No 3362/81 is hereby replaced by
the date '1 March 1982'.

Article 2

This Regulation shall enter into force on the day of 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, 8 December 1981.

For the Commission

Poul DALSAER

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 324, 12. 11. 1981, p. 11.

⁽³⁾ OJ No L 339, 26. 11. 1981, p. 26.

COMMISSION REGULATION (EEC) No 3508/81
of 8 December 1981
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 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Regulation (EEC) No 1808/81⁽²⁾, as last amended by Regulation (EEC) No 3492/81⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 1808/81 to the

information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSGER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 181, 2. 7. 1981, p. 24.

⁽³⁾ OJ No L 352, 8. 12. 1981, p. 27.

ANNEX

to the Commission Regulation of 8 December 1981 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)		
CCT heading No	Description	Levy
17.01	Beet sugar and cane sugar, in solid form:	
	A. White sugar: flavoured or coloured sugar	27.64
	B. Raw sugar	21.08 ⁽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.

COMMISSION REGULATION (EEC) No 3509/81
of 8 December 1981
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Regulation (EEC) No 3354/81⁽²⁾, as last amended by Regulation (EEC) No 3430/81⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3354/81 to the

information known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION :

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to amended Regulation (EEC) No 3354/81 are hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSGER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 339, 26. 11. 1981, p. 11.

⁽³⁾ OJ No L 345, 1. 12. 1981, p. 61.

ANNEX

to the Commission Regulation of 8 December 1981 altering the export refunds on white sugar and raw sugar exported in the natural state

CCT heading No	Description	Refund (ECU/100 kg)
17.01	Beet sugar and cane sugar, solid :	
	A. White sugar ; flavoured or coloured sugar :	
	(I) White sugar	
	(a) Candy sugar	22.66
	(b) Other	22.50
	(II) Flavoured or coloured sugar obtained from :	
	(a) White sugar	22.66
	(b) Raw sugar	20.85 ⁽¹⁾
	B. Raw sugar :	
	II. Other :	
	(a) Candy sugar	20.85 ⁽¹⁾
	(b) Other raw sugar	19.00 ⁽¹⁾

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

COMMISSION REGULATION (EEC) No 3510/81

of 8 December 1981

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 organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 1949/81⁽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 the Act of Accession of Greece⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation No 129 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽⁵⁾, as last amended by Regulation (EEC) No 2543/73⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the advice of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Regulation (EEC) No 3382/81⁽⁷⁾, as last amended by Regulation (EEC) No 3480/81⁽⁸⁾;

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 in relation to the Community currencies referred to in the previous indent;

Whereas these exchange rates being those recorded on 7 December 1981;

Whereas the levy on the basic product as last fixed differs from the average levy by more than 3.02 ECU per tonne of basic product; whereas, pursuant to Article 1 of Regulation (EEC) No 1579/74⁽⁹⁾, the levies at present in force must therefore be altered to the amounts set out in the Annex hereto,

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⁽¹⁰⁾ as last amended by Regulation (EEC) No 1783/81⁽¹¹⁾, as fixed in the Annex to amended Regulation (EEC) No 3382/81, are hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 9 December 1981.

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

Done at Brussels, 8 December 1981.

For the Commission

Poul DALSGER

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 198, 20. 7. 1981, p. 2.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 291, 19. 11. 1979, p. 17.

⁽⁵⁾ OJ No 106, 30. 10. 1962, p. 2553/62.

⁽⁶⁾ OJ No L 263, 19. 9. 1973, p. 1.

⁽⁷⁾ OJ No L 341, 28. 11. 1981, p. 5.

⁽⁸⁾ OJ No L 349, 5. 12. 1981, p. 18.

⁽⁹⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹⁰⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹¹⁾ OJ No L 176, 1. 7. 1981, p. 10.

ANNEX

to the Commission Regulation of 8 December 1981 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CCT heading No	Import levies	
	Third countries (other than ACP or OCT)	ACP or OCT
11.01 E I ⁽²⁾	190.97	184.93
11.01 E II ⁽²⁾	107.81	104.79
11.02 A V a) 1 ⁽²⁾	159.96	153.92
11.02 A V a) 2 ⁽²⁾	190.97	184.93
11.02 A V b) ⁽²⁾	107.81	104.79
11.02 B II a) ⁽²⁾	103.94	100.92
11.02 B II c) ⁽²⁾	167.40	164.38
11.02 C I ⁽²⁾	124.43	121.41
11.02 C V ⁽²⁾	167.40	164.38
11.02 D I ⁽²⁾	80.42	77.40
11.02 D V ⁽²⁾	107.81	104.79
11.02 E II a) ⁽²⁾	142.62	136.58
11.02 E II c) ⁽²⁾	190.97	184.93
11.02 F I ⁽²⁾	142.62	136.58
11.02 F V ⁽²⁾	190.97	184.93
11.02 G I	62.95	56.91
11.02 G II	83.10	77.06
11.04 C II a)	158.22	134.04 ⁽³⁾
11.04 C II b)	185.96	161.78 ⁽³⁾
11.07 A I a)	145.95	135.07
11.07 A I b)	111.80	100.92
11.08 A I	158.22	137.67
11.08 A III	133.21	112.66
11.08 A IV	158.22	137.67
11.08 A V	158.22	68.83 ⁽³⁾
11.09	386.18	204.84
17.02 B II a) ⁽³⁾	276.29	179.57
17.02 B II b) ⁽³⁾	204.16	137.67
17.02 F II a)	284.84	188.12
17.02 F II b)	197.32	130.83
21.07 F II	204.16	137.67
23.03 A I	352.36	171.02

⁽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 435/80 the levy shall not be charged on the following products originating in the African, Caribbean and Pacific States and in the overseas countries and territories:

- arrowroot falling within subheading 07.06 A,
- flours and meal of arrowroot falling within subheading 11.04 C,
- arrowroot starch falling within subheading 11.08 A V.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 October 1981

relating to a proceeding under Article 86 of the EEC Treaty (IV.29.491 —
Bandengroothandel Frieschebrug BV/NV Nederlandsche Banden-Industrie
Michelin)

(Only the Dutch text is authentic)

(81/969/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community, and in particular Article 86
thereof,

Having regard to Council Regulation No 17 of 6
February 1962⁽¹⁾, and in particular Articles 3 and 15
thereof,

Having regard to the application submitted to the
Commission on 29 July 1977 pursuant to Article 3 of
Regulation No 17 on behalf of Bandengroothandel
Frieschebrug BV, Alkmaar, the Netherlands,
requesting the Commission to find that Article 86 of
the Treaty has been infringed,

Having regard to the decision of the Commission of
19 February 1980 to initiate a proceeding in this case,

Having heard the undertakings concerned in accor-
dance with Article 19 of Regulation No 17 and with
Commission 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 19 and 20 May 1981,

Whereas :

I

THE FACTS

1. The proceeding relates to a number of aspects of
the commercial policy pursued until and including
1980 by NV Nederlandsche Banden-Industrie
Michelin (hereinafter referred to as 'NBIM') on the
Netherlands market in new replacement tyres for
trucks and buses.

A. Relevant aspects of the tyre market

2. The tyre industry comprises the manufacture of
inner tubes and tyre casings, and the renewal of the
tread on worn tyre casings. Only tyre casings are dealt
with below.

There are different sorts of tyre, designed for different
types of vehicle, including the following :

- light tyres for cars,
- tyres for delivery vans and light commercial
vehicles,

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

- heavy tyres for trucks and buses,
- tyres for agricultural tractors, road-building and earth-moving machinery, aircraft, etc.

The difference between the types of tyre is also reflected in the price per unit, which, as far as the most usual sizes are concerned, is more than five times higher for truck and bus tyres than for car tyres.

Each type of tyre includes a wide range of differing qualities, treads and sizes. The type of tyre chosen obviously depends first and foremost on the type of vehicle to which it is to be fitted and the purpose for which the vehicle is to be used.

3. The tyre market consists of two sectors which must be distinguished clearly: the original equipment market and the replacement market. Original equipment tyres are sold by the tyre manufacturer direct to the vehicle manufacturer, without any intermediary being involved. Replacement tyres, by contrast, are sold to final consumers primarily through the intermediary of a large number of specialized dealers. On the Netherlands market, 65 to 70 % of all replacement tyres for cars and vans and 85 to 87 % of all replacement tyres for trucks and buses are sold through such dealers. They generally obtain their supplies direct from the tyre manufacturers or from the official importers.

4. Tyres for trucks and buses need not necessarily be new tyres. Provided that the carcass is in sound condition, used tyres may be given a new tread, thus practically doubling their life. In certain cases, it is possible to repeat the retreading process. Retreading is carried out not only by the manufacturers of new tyres (for example, Michelin in France is the largest retreader of commercial vehicle tyres), but also by many firms specializing in this process. Such firms buy tyre carcasses which are in sound condition, retread them on their own account and sell them, or, alternatively, they carry out retreading to order for transport firms which supply their own carcasses to the retreader. The understanding is then that the carcasses supplied by each transporter will be returned to him with a new tread.

5. The total number of replacement tyres in use by transport firms established in the Netherlands consists in roughly equal parts of new tyres and retreads. As the Commission has ascertained, this does not mean that new tyres and retreads are regarded as wholly interchangeable. Many consumers regard retreads as being less reliable and are not prepared to accept the risks which they believe the use of retreads entails.

Accordingly, transporters often refuse to use such tyres on the front or driven axle, for long-distance transport or for the transport of highly perishable goods.

The way in which transport firms regard retreads is also reflected in their price, which (even though they yield comparable mileage if properly used) is 40 % or more below the price of a new tyre. However, there are built-in factors preventing this considerable price differential from inducing the majority of transport firms to rely more heavily on retreads: the number of tyres than can be retreaded is after all a function of the number of worn tyres of good residual quality that are available and is therefore limited. Consequently, the scope for marketing retreads, e.g. under the Michelin trademark 'Remix', at an attractive price as an alternative to new tyres is subject to clear limitations.

6. Furthermore, during its investigation, the Commission found that firms calculate the cost price of a heavy-duty tyre on the basis of the purchase price, the mileage obtained from the tyre and the residual value of the tyre carcass if it is to be sold. This means in practice that, in calculating the cost price of a truck or bus tyre, several phases in its life are usually taken into account, i.e. an initial phase as a new tyre, followed by a second and sometimes a third phase as a retread. Since the price of a retread is much lower than that of a new tyre, retreading reduces the total cost price per kilometre of the tyre over its whole life. One practical consequence of this is that each transporter wishes to be sure that the carcasses used in the retreads he receives back are those of the tyres which he bought new and which, in his opinion, he used competently during the first phase of their life. He therefore regards carcasses which are in good condition as continuing to belong to him and will generally not entrust them to a tyre retreading firm unless specific note is taken of the matrix number stamped on the sidewall of the tyre. This enables him to check whether it is his own tyres which he receives back in retread form and not other tyres with possible unknown defects.

In such cases, tyre retreaders appear thus to be suppliers of skilled services who are not in any way connected with the tyre sales sector. The tyre dealer may be involved, but this is not essential; if he is involved, it is merely as an intermediary between the transporter and the tyre retread firm. In the Netherlands, more than half of all retreads are done to order for transporters. Transporters represented at the hearing testified on this point that they have their own tyres retreaded to order and do not buy retreads on the open market.

7. In carrying out their activities, therefore, tyre dealers are dependent on regular supplies of new tyres. Supplies of retreads are not a substitute, or at any rate only a very unsatisfactory substitute, for supplies of new tyres. It is essential that the dealer be able to offer his customers a sufficiently extensive range of new tyres, regardless of the quantity and variety of retreads which might be available as alternatives.

8. Geographically the replacement market may be defined as the area within which supply and demand meet in terms of retailing to final consumers. In this connection, it must be noted that EEC manufacturers carry out their activities on the various domestic markets primarily through the intermediary of subsidiaries established to look after the market concerned. While trade in tyres between the various Member States and also with a number of non-member countries must not be overlooked, it consists mainly of supplies by the manufacturers themselves between their various manufacturing and sales establishments. Various circumstances, including price differentials between markets in the Member States, have accordingly resulted in parallel imports and exports of several types of tyre (in particular Michelin tyres) from other national markets. However, such parallel imports and exports involve only relatively small quantities and are moreover too random to be regarded as significant in the present state of the market. Despite the availability of certain parallel supplies, Netherlands dealers are accordingly dependent on Michelin's Netherlands subsidiary, NBIM, for their regular supplies of Michelin tyres for resale. Furthermore, for the purposes of the trade discounts granted on the numbers of Michelin tyres sold, only the quantities purchased by the retailer through the intermediary of NBIM are taken into account. The Netherlands market would therefore appear to be the geographically relevant market in the case of this undertaking.

9. One of the facts which may be stated regarding the general structure of the tyre industry is that it is marked by horizontal concentration throughout the world. The European market is dominated by four manufacturers: the Michelin-Kleber-Colombes group, the Continental-Uniroyal group, the Dunlop-Pirelli group (recently de-merged) and the American firm Goodyear. One of the most noteworthy concentrations of recent years was the takeover of the European interests of the American company Uniroyal by the German company Continental Gummi in 1979. In the same year, Michelin withdrew the Kleber-Colombes shares which it had invested in 1973 in Semkler, a joint venture formed by the Austrian tyre manufacturer Semperit and Kleber-Colombes. As a result, the joint venture which had been established in 1973 was wound up and Semperit became an independent manufacturer once again. The activities of Kleber-

Colombes, following an unsuccessful attempt at merger with Continental-Uniroyal in 1980, were reorganized within the Michelin group.

Only three manufacturers have factories in the Netherlands, namely Michelin, Vredestein and Goodyear (on a very small scale). Of these three, Michelin is the only one which manufactures lorry tyres in the Netherlands.

10. This horizontal concentration is combined with vertical integration in the form of increasing control of sales channels by the tyre manufacturers. In the Netherlands, the tyre manufacturers Vredestein, Goodyear and Firestone and the retread company UBO have, since the early 1970s, acquired ownership or control over a number of sales outlets (30, 14, 2 and 11 sales outlets respectively). In July 1977, NBIM followed suit through its linkup with NV Actor, which had been taken over by Hardinge Investment Ltd, a company belonging to the Michelin group.

Actor, under the name 'TS Sterband', at present owns 28 sales outlets selling new tyres and retreads and, until the beginning of 1980, was itself engaged in carrying out retreading through its subsidiary Tyre-soles.

11. As regards trends on the tyre market a further fact to be noted is that the replacement market has experienced a setback following a period of rapid growth up to 1973. The resulting difficulties have obviously had their effects on the specialized trade in the form of a reduction in turnover and profit margins and increased competition.

B. The position of NBIM

12. NV Nederlandsche Banden Industrie-Michelin ('NBIM'), Amsterdam (Netherlands), is a subsidiary (99 %) of the Compagnie Financière Michelin, established in 1960 in Basle (Switzerland) which is itself a subsidiary (99 %) of the Compagnie Générale des Etablissements Michelin, Clermont-Ferrand (France).

The Michelin group is one of the major tyre manufacturers, its total turnover amounting to FF 24 000 million in 1979. On the world market, only Goodyear is larger; within the European Economic Community, Michelin holds the number one position.

13. Michelin introduced the radial tyre in 1948. It is still the world's leading manufacturer of radial tyres. The tyres manufactured by Michelin are characterized by the large-scale use of steel cord. The company was also a pioneer in this respect and is the largest manufacturer in the world. Michelin is also the largest French manufacturer of wheels for cars and trucks.

Although the basic patents for the radial tyre expired a few years ago and although manufacturing rights have been granted to other firms since 1956, Michelin still has a special degree of know-how. It has a clear lead regarding the extensive specialized investments in this area, investments which it was able to carry out thanks to its large-scale financial resources. It has continued to pursue an active policy of research and innovation. This has allowed the development of a wide range of tyres under the Michelin trade name, with the result that a highly diversified product is marketed and new categories of customers are continually being reached. The Michelin range is larger than that which other manufacturers have on offer to consumers in the Netherlands.

Several competitors have managed to catch up with Michelin to some extent. They now market a product which, in quality and cost price, is comparable with the Michelin tyre. Nevertheless, it is evident that tyre users continue to show some preference for Michelin products. There are various reasons for this, including the large lead which Michelin had built up and, as regards lorry tyres, the fact that it is only after several years' experience with tyres of a given make that consumers can make up their minds on a tyre's reliability and calculate its cost price. This obviously allows well-established makes to maintain a strong position over the long term.

14. NBIM is responsible for the manufacture and sale of Michelin tyres in the Netherlands. It has a factory for the production of van and truck tyres at 's-Hertogenbosch where 450 000 to 500 000 new tyres are manufactured each year, some of the production being for export to other countries. It employs some 1 600 persons and, in 1980, had a total turnover of Fl 455 million.

15. NBIM holds by far the largest share of the Netherlands market in new replacement tyres for trucks and buses. Table I shows that 59 to 65 % of new tyres sold in the Netherlands for trucks and buses between 1975 and 1980 carried the Michelin trademark.

TABLE I

Numbers of new replacement tyres for trucks and buses sold in the Netherlands

	(a) Sales (all makes)	(b) NBIM sales	(c) (b) as % of (a)
1975			
1976			
1977			
1978			
1979			
1980			

The figures in this table were provided by manufacturers and importers and take no account of parallel tyre imports, which are difficult to establish. Reliable estimates put these at several thousands, mainly Michelin tyres, which further increases the market share of this make.

The market shares of the five principal competing makes are much smaller, between 4 and 8 % only. Three of the leading competitors, which together account for 17 to 18 %, manufacture their heavy-duty tyres in other Member States. The other firms in these countries also account for a small share of the market; in all therefore, 25 to 28 % of heavy-duty tyres which compete with Michelin tyres on the Netherlands replacement market come from other Member States.

16. As shown by Table II, NBIM's share of the market in retreads grew from 6 % in 1975 to 18 % in 1979.

TABLE II

Numbers of retreads for trucks and buses sold in the Netherlands

	(a) Sales (all makes) (*)	(b) NBIM sales	(c) (b) as % of (a)
1975			
1976			
1977			
1978			
1979			

(*) Source: VACO.

Moreover NBIM acquired, at the end of 1977, the major retreading firm Tyresoles (disposed of in April 1980). This allowed Michelin to acquire a further share of some 20 % of retreads fitted to trucks in the Netherlands, with the result that virtually one third of the heavy-duty retreads sold on the Netherlands market was then controlled directly or indirectly by Michelin.

17. NBIM also holds the number one position on the Netherlands market in new replacement tyres for cars, with a market share of about one third. Its seven main competitors have market shares ranging between 5 and 13 %.

18. Like the other manufacturers, NBIM sells its tyres on the Netherlands market at prices which are published in readily available price lists. A look at the 1977/78 tyre prices of various manufacturers shows that the gross prices for Michelin tyres were comparable with the prices charged for the tyres of its main competitors. However, information obtained from tyre retailers indicates that the situation with regard to the net prices charged to dealers is different. The average total discount with NBIM grants to dealers is substantially lower than that granted by its competitors. Consequently, dealers pay some 10 to 15 % more for Michelin tyres than for tyres of other makes. This fact does not of course have any decisive significance with regard to the price of the various tyres to the final consumer or to the relative cost per kilometre.

19. NBIM operates a substantial commercial and technical service. Its representatives (some 50 in number) regularly visit all the tyre dealers and the users of truck tyres (the major users are visited about once a month). So as to be able to carry out these visits to users, NBIM asks for details on the final destination of heavy-duty tyres ordered from it by retailers. NBIM staff regularly visit the users on their own initiative, without informing the distributor and without waiting for the dealers or the users to request the visit. The main purpose of their visit is to promote the marketing and hence the sale of Michelin tyres. Otherwise they are instructed to cooperate with the trade in this respect. During their visits the representatives give technical advice, for example on the type of tyre that must be fitted, on how it must be fitted and on tyre pressure. They carry out on-the-spot technical checks of the tyres and the state of the vehicles and also take orders — bearing net price details — which they pass on to a dealer. In checking the vehicles, they are also supposed to draw up as detailed as possible an inventory of any competing makes of tyres being used.

These visits obviously, and as a matter of policy, enable the company to obtain market knowledge which rivals that of the specialized trade and which is directly geared to the manufacturer.

In addition, NBIM operates a specialized technical service consisting of some 10 persons; each user of Michelin tyres is entitled to enlist the help of this service in solving complicated technical problems.

C. The conduct in dispute

20. The pricing and discount policy pursued by NBIM with regard to tyre dealers during the years relevant for this decision was invariably characterized by the following elements:

- a basic price which is published in price lists,
- an immediate and general discount on the invoice,
- other discounts which in part are determined individually for each dealer,
- a target figure for purchases, known as the 'target', used as a basis in establishing these discounts,
- lack of written confirmation of 'targets' and discounts.

(a) *The system of discounts*

21. The system of discounts firstly comprises a fixed component, the invoice discount, i.e. a discount which is entered directly on the invoice and which the dealer therefore benefits from immediately. The system also comprises a variable component consisting of various bonuses.

22. Up to 1977, the invoice discount amounted to 15 % for truck and bus tyres; in 1978 it was increased to 22.5 % and in 1979 to 30 %. It is announced to the dealers in writing in the form of a circular at the beginning of the calendar year and is therefore common knowledge.

The circular states that further details regarding terms and conditions will be discussed during a visit by an NBIM representative. These conditions involve various forms of bonuses which are granted over and above the invoice discount and which are communicated orally to the dealers. In the case of truck tyres, the main bonus is an annual bonus which, up to 1977, ranged between 10 and 22 %. More than three quarters of NBIM's sales of heavy tyres carried an annual bonus towards the upward end of this range, within a 3 % margin of flexibility. With the sharp increases in the invoice discount, the annual bonus was reduced to 1 to 5 % in 1978 and to 0 to 2 % in 1979. Up to 1977, as an advance on the annual bonus, dealers received a monthly 'advance bonus', varying from 5 to 18 % depending on the dealer concerned. In general, the advance bonus was some 4 to 6 % lower than the annual bonus. The advance bonus was very important for the trade in view of the low level of the invoice discount up to 1979. In 1978 an automatic

monthly bonus of 3 to 10 % was introduced instead of the advance bonus, but was discontinued in 1979 when NBIM introduced a four-monthly bonus of 0 to 3 % in addition to the annual bonus. Throughout the period, there was also a 2 % cash discount, i.e. for payment made in accordance with the term agreed.

Up to 1979, all the bonuses and the cash discount were calculated in respect of the invoice price (i.e. on the basis of the list price minus the value of the invoice discount). From 1979 onwards, the bonuses were calculated solely on the basis of the list price, while the cash discount continued to be calculated on the basis of the invoice price.

The amount of the total discount which dealers may obtain from NBIM has increased somewhat since 1975. The table below sets out the changes in the discounts and bonuses.

TABLE III
Discount system for truck tyres for the period 1975 to 1980

	<i>(in % of list price)</i>					
	1975	1976	1977	1978	1979	1980
Invoice discount	15	15	15	22.5	30	30
Monthly bonus	—	—	—	3 to 10 (*)	—	—
Four-monthly bonus	—	—	—	—	0 to 3	0 to 3
Annual bonus	10 to 22 (*)	10 to 22 (*)	10 to 22 (*)	1 to 5 (*)	0 to 2	0 to 2
Cash discount	2 (*)	2 (*)	2 (*)	2 (*)	2 (*)	2 (*)
Total (maximum)	35.4	35.4	35.4	35.675	36.2	36.2

(*) In percentage of amount invoiced.

It should be noted that during the same period the invoice discount automatically granted by the other tyre manufacturers amounted to 40 to 60 %, sometimes supplemented at the end of the year by an annual bonus amounting to a few per cent.

This annual rebate was normally known beforehand and was not used as an individualized sales target. Thus, it did not have in any way the character of a 'fidelity' rebate. This discount policy, pursued by all the other manufacturers, was in strong contrast to the system used by NBIM described below.

23. The level of the bonuses granted by NBIM was established individually for each dealer in accordance with the efforts he has made in distributing Michelin tyres, this being measured in terms of an increase (or, in a difficult economic situation, the maintenance) of his purchases from NBIM. The company works on the basis of a number of criteria, including on the one

hand the estimated sales potential of the relevant dealer and on the other hand NBIM's share in his sales. This procedure may be seen most clearly from the customer files for 1975 to 1976, in which the proportion of Michelin tyres in the total tyre sales of the tyre dealer is calculated (NBIM then called this the 'temperature Michelin'). Later, Michelin's percentage of total new tyre purchases still had to be calculated, but the term 'temperature' was avoided.

24. Payment of the annual bonus and of the four-monthly bonus introduced in 1979 is dependent on a 'target' — negotiated at the start of each year — being reached in the number of Michelin tyres purchased. This may be seen clearly from the summaries of dealers' terms and from the customer files submitted to the Commission and from the correspondence exchanged with a number of tyre dealers. The Commission has also found that on a number of occasions payment of the advance bonus and of the fixed monthly bonus was based on expected annual sales (laid down in the 'target'), of a given number of tyres.

If the relevant dealer's sales were not on course to meet the target, NBIM reserved the right to alter the bonus terms in the interim and/or to request repayment of advances already received. To what extent this happened, only NBIM can say. It was also possible for the bonus to be increased if the dealer exceeded his target. In general, the meeting between the NBIM representative and the dealer to discuss the target and the terms plays a major role here. It is the representative's job to point out to the dealer, during the last few months of the year, the benefits associated with a final order in that year and what it can cost him if that final order is not placed. It is sometimes pointed out to the dealer that, after the first six months have elapsed, he can, for instance, receive the amount of the annual bonus due for the first six months immediately if he has achieved half the annual 'target' by the end of June. The extra orders which in many cases are necessary for this purpose can then be financed out of the amount of the credit note to be received.

Until 1978, a graduated series of three 'targets' was established in most cases, with corresponding bonus figures in similar graduated order.

In general, the 'targets' were fixed in such a way that the highest 'target' set for a given year was higher than the amount of purchases made in the previous year, while the corresponding bonus figure did not in most cases show any increase. Pressure was thus put on the dealer to endeavour to sell more Michelin tyres every year so as to obtain at least the same annual bonus.

In 1978 this system was changed somewhat and only one 'target' set. In addition, a refinement was introduced in 1979 in the form of a four-monthly target, with a corresponding four-monthly bonus. This four-monthly 'target' amounted to roughly one third of the annual 'target'. The annual target in these two years was once again consistently higher than the number of purchases made in the previous year.

25. Comparison of the customer files shows that dealers purchasing very different quantities often receive the same bonuses and vice versa. It may also be seen that NBIM itself does not apply stringently the conditions for receiving the bonuses. It reserves the right to grant a bonus set for a larger purchase than that which was actually made. On the other hand, the Commission has learned of cases in which the bonus was unilaterally lowered when the 'target' was not reached. The implementation of the bonus schemes was thus flexible, but entirely at the discretion of NBIM.

A table, drawn up by NBIM at the Commission's request, detailing the numbers of tyres sold per bonus percentage in 1976 (a year prior to submission of the complaint) shows clearly the *ad hoc* manner in which the bonuses were established.

26. A discount system comparable to that pursued in the case of heavy tyres is also applied to the other categories of tyres which NBIM sells to dealers.

27. In addition to the normal discounts and bonuses forming part of the discount system described above, NBIM occasionally grants extra bonuses or discounts, usually in connection with a specific campaign. In 1977, for example, when NBIM was unable to meet the demand for heavy tyres on the European market as a result of large-scale demand elsewhere, it made use of this situation to grant dealers a once-only extra annual bonus of 0.5 % on their purchases of heavy and light tyres on condition that a special 'target' was achieved in purchases of light tyres. The actual purpose of the bonus was therefore to stimulate sales of light tyres. If the 'target' was not achieved the extra bonus was generally not paid.

(b) *Absence of written confirmation*

28. The criteria for determining the bonuses are not known to the individual dealer. The models used for determining the level of the annual bonuses (these models have in fact been discontinued since 1978) were intended only for internal use and were designed to serve only as guidelines for the representatives.

Not only were the dealers not informed about the discount system, up to 1980 they also received only very sporadic written confirmation from NBIM of the oral 'agreement' between Michelin's representative and the dealer regarding the bonuses. The Commission found that this lack of written confirmation regularly gave rise to difficulties of interpretation regarding the bonus percentage payable at the end of the year.

This situation was worsened by the fact that the elements taken into account in calculating the bonuses were such that it was very difficult for the dealer (and practically impossible for the smaller dealer) to know for certain how much was being earned on sales of Michelin tyres in a given year. Frequently, the smaller dealers did not discover what their final bonuses amounted to until they had opened the envelopes handed to them at the end of the year by a NBIM representative.

The Commission found that many dealers hesitated to complain about this lack of written confirmation, knowing that NBIM, because of its regular inspections at the premises of final consumers, could easily switch to another, more cooperative, dealer, or, following the takeover of Actor, to one of the 28 establishments of TS-Sterband.

II

APPLICABILITY OF ARTICLE 86

29. Under Article 86 of the EEC Treaty, any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it is prohibited as incompatible with the common market in so far as it may affect trade between Member States.

30. NBIM is an undertaking within the meaning of Article 86 of the Treaty.

A. The relevant market

31. The relevant product market for the purposes of this Decision, defined on the basis of the product, is the market in new replacement tyres for trucks, buses and similar vehicles. Such heavy tyres differ clearly in their technical characteristics, purpose and price from other categories of tyres. Accordingly, tyre producers and retailers always make a clear distinction in their gross prices and discount terms between car tyres and truck tyres. Hereinafter the relevant market will be examined at the level of the retailer.

32. The relevant market does not include retreads. As shown above (points 5 and 6), retreads cannot be regarded, either in qualitative or in quantitative terms, as adequate substitutes for new tyres. The open market in retreads is restricted, since most of the retreading in the Netherlands is carried out to the direct orders of transport firms for their own use.

If a tyre is retreaded once or several times the life of the new tyre is usually only prolonged within the firm which originally purchased it. The price charged for retreads available on the open market also shows that, in the view of consumers, such tyres constitute a distinct and separate product which belong to an equally distinct and separate sub-market. In order to carry on their business, dealers in truck and bus tyres must therefore have a varied range of new tyres on offer. Retreads can only supplement the range of new tyres which they have on offer and cannot replace such tyres.

33. NBIM argues that, in view of the differences in the specific nature of the requirements which the various sorts of types of tyre have to meet, several sub-markets must be distinguished within the truck and bus tyre category. This position cannot be accepted since this case does not concern the relationship between NBIM and the final consumer. Specific tyre types and sizes are of no importance to an analysis of the possibility of obtaining substitute products at dealer level or in the relationship between NBIM and dealers. The price, discount and other terms of sales applied by all tyre manufacturers in their dealings with dealers show that such a detailed breakdown is irrelevant here. NBIM also takes this clearly into account when it defines the 'targets' in terms of numbers of 'truck and bus tyres', without any further specification.

34. The relevant geographical market is the Netherlands market, which forms a substantial part of the common market. NBIM's operations are confined to this area, and it is here that the practices at issue took place. Netherlands tyre dealers cannot obtain sufficiently reliable and continuous supplies of Michelin tyres outside the Netherlands. Indeed, if they wish to obtain Michelin tyres in other Community countries, they must do so through other retailers and cannot obtain the tyres from the undertakings belonging to the Michelin group.

B. The dominant position

35. NBIM enjoys such complete freedom of action *vis-à-vis* its competitors and its customers in the relevant product market that it can, using means at its disposal only, prevent effective competition in a substantial part of the common market and thus adversely affect trade between Member States.

NBIM's dominant position is sufficiently apparent from its large market share compared with the market shares of its major competitors. The figures given above (point 15) show that, in the period 1975 to 1980, Michelin tyres had a 57 to 65 % share of the market for new truck and bus tyres. During the same period, the market shares of its major competitors ranged between some 4 and 8 % only. Consequently, Michelin heavy tyres clearly occupy a dominant position on the market. This means that a dealer who does not stock Michelin tyres suffers a loss of commercial prestige and that the survival of his business may be endangered.

Any manufacturer selling a product with such a strong market position has the ability to impose conditions on dealers that do not necessarily correspond to those which would apply on a market where competition is operating effectively. As is often the case in situations

such as that being examined here, the finding of a dominant position is supported *inter alia* by the evidence relating to the abuse of that position.

36. In assessing NBIM's dominant position, account must also be taken of the fact that the company has a much larger number of representatives — dealing above all with commercial matters, but also providing technical support — than its competitors. This enables NBIM to maintain its market position to optimum effect in the knowledge that its competitors are not able to make similar intensive efforts with final consumers.

Lastly, NBIM's dominant position is apparent from the fact that, compared with the other producers, it markets a very wide range of tyre types. In the case of many (less common) types and sizes, the only tyres available to dealers are Michelin tyres, and this gives NBIM a strong position with dealers in the case of the most common types and sizes too.

C. The abuse

37. NBIM's commercial conduct constitutes an abuse of a dominant position. It restricts dealers' freedom of choice and results in inequality of treatment as between tyre dealers. The access of other tyre producers to the market is also restricted.

Its conduct has the following characteristics:

- (a) the application of a discount system that is based on bonuses established individually and selectively for each dealer and linked to the attainment of the individual sales 'targets' established by NBIM and agreed with dealer at the start of each year;
- (b) the fact that until 1980 the 'targets' and bonus percentages applicable for each dealer were communicated and confirmed not in writing, but only orally;
- (c) in 1977, the bonuses on heavy tyres were linked to purchases of light tyres.

(a) *The discount system*

38. The discount system is clearly aimed at tying the dealers closely to NBIM and thus making it difficult for other producers to gain a foothold in the market. The various bonuses are related to a sales 'target' which is established at the beginning of each annual sales campaign for each dealer, i.e. on an individual and selective basis. Even in periods when the

economic situation is poor, the 'targets' are usually set at a level which is higher than the purchases made in the previous year. As a result, great pressure is put on the dealers to outdo themselves each year in their sales of Michelin tyres. The pressure on the dealer to buy Michelin tyres increases during the year and especially towards the end as he will try to achieve his sales 'target' and obtain the highest possible bonus.

This pressure is increased still further through the regular visits made by NBIM representatives, whose job it is to carry out systematic and direct checks on the spot that the 'targets' have been reached and to establish NBIM's resulting position in relation to its competitors (the so-called 'température Michelin'). NBIM defends itself by arguing that, due to a lack of official statistics in the Netherlands concerning sales of the various makes of tyre, it is obliged to estimate such sales through its customers, but this argument cannot be upheld. The information gathered by the Commission shows that these so-called 'estimates' are based on what amounts in fact to a survey, that is to say on questions put directly and individually to the dealers by NBIM representatives.

The fact that use of the term 'température Michelin' was discontinued in 1977 is not relevant, since the practice (which is indeed mandatory for the representatives) of expressing as a percentage the share of Michelin tyres in the relevant dealer's total sales is still observed today, and has the same effect.

39. The resultant organizational links binding the independent trade to NBIM are further strengthened by the structure of the discount system. The table given in point 22 and the related explanatory note show that, up to 1979, NBIM's client dealers, in contrast to those of suppliers of other tyres, could collect only a limited proportion of the total discount accorded to them directly in the form of an invoice discount. The advance bonus, (the remainder of) the annual bonus, the automatic monthly bonus and the four-monthly bonus would certainly follow in due course, assuming that business relations continued on a normal footing, but meanwhile were regularly used by NBIM as a means of pressure (see point 24). Admittedly, the table suggests that in 1978 and 1979 there was a progressive simplification of the system, with NBIM's freedom of action becoming more limited. However, this is true only in respect of the monthly advance bonus, which of course lost its *raison d'être* with the increase in the direct invoice discount.

As far as the other bonuses are concerned, the changes made in 1978 and 1979 were basically concerned only with form. As pointed out in point 22, the range of bonuses applied by NBIM in its discount system was far more limited than the percentages given in fact suggest. Moreover, the discount system was strengthened in 1979 by the introduction of a four-monthly bonus linked to attainment of a sales 'target'.

40. This system applied by an undertaking in a dominant position, a system which has the effect of tying, with respect to organizational and commercial matters, independent dealers closely to the undertaking, constitutes an abuse within the meaning of Article 86, since it is incompatible with the objective of Article 3 (f) of the Treaty, namely that competition in the common market should not be distorted.

41. Furthermore, NBIM's policy of granting selective bonuses results in discrimination within the terms of Article 86 (c). The Commission has found that different bonuses are granted to dealers whose positions are comparable. The discounts received by the retailers do not in any way correspond to services that, from an economic point of view, are objectively provided and ascertainable. The criteria applied are clearly subjective and essentially based on the loyalty which has been shown to NBIM. Through its policy of individually-determined discounts, NBIM applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at an unjustified competitive disadvantage or advantage. In any event, this policy gives NBIM the opportunity of practising discrimination.

42. In its reply to the Commission's statement of objections, NBIM denied that the discount system constitutes an abuse within the meaning of Article 86, arguing primarily that the discounts and the 'targets' are a variant of quantity discounts.

NBIM's discounts are indeed linked to the attainment of a sales target clearly defined in numbers and/or guilders. To that extent, the discount system comprises elements which appear to be quantitative in nature. However, the Commission has established that comparable amounts purchased almost never result in the same or comparable discounts being granted to the dealers. The bonuses are quantity discounts only within the strictly individual context of each purchaser. The bonus rates are not established on the basis of objective criteria applicable to all purchasers. They are NBIM's expression of its individual assessment of a given dealer's performance and of its expectations regarding his future performance. These bonuses are set and calculated in such a way that in

advance NBIM gains a hold upon the dealer in the efforts he makes to promote Michelin tyres, clearly detrimental to the efforts he puts in for other makes. The opportunity of discriminating between dealers which NBIM gains discourages them from obtaining supplies from other manufacturers at the expense of their purchases from NBIM. Accordingly, the discounts are not comparable to the normal quantity discounts which are customary in the trade and which constitute a reward calculated subsequently according to objective criteria fixed in advance and known to all.

43. NBIM also points out that, in the period 1975 to 1978, the difference of discount between a small dealer and a large dealer amounted to no more than 2.55 %. This difference is described as being marginal and as having a negligible effect on competition. Without going into a detailed analysis of this percentage, the Commission wishes to state that it does not share this view. In the first place, it is well known in the tyre trade that each percentage point more or less can play a crucial role for the dealer's profitability, particularly where the tyres involved are subject to such competition among dealers as Michelin tyres are. It is therefore difficult to see why NBIM should surround its discount policy with so much secrecy if the margin of manoeuvre held no significance for its sales policy — unless it must be assumed that the lack of transparency is intended to mislead the trade into thinking that the margin is much greater. Furthermore, the Commission has found that, before various rounds of visits, NBIM representatives were instructed to make it clear to the dealers how much it would cost them if they did not place a final order before the end of the year, half-year or quarter. Such instructions would be pointless if the dealers were indifferent to the amount involved, even though it is on occasion barely 1 % involved. Lastly, in explaining the 0.5 % extra annual bonus referred to above in point 27, NBIM stated that its intention was to give the dealers the opportunity of making up for the loss in income resulting from the temporary shortage of truck tyres. NBIM itself thus confirms the fact that fractions of one per cent are commercially very relevant, and 2.55 % all the more so. Furthermore, this fact relates not only to the 'penalty for not reaching the target set', but also to the discrimination as between dealers as a result of the granting of dissimilar bonuses for comparable transactions.

44. NBIM's argument that the discount system is permissible because it allows better planning of the supplier's activities is equally unacceptable. The importance of such planning, even for a firm in a dominant position, cannot override natural market uncertainty.

But the outcome of the system applied by NBIM is that to a great extent tyre dealers are deterred from taking advantage of offers made by competitors during the course of the year. In this respect, the bonuses must be regarded as a variant of loyalty rebates. Though they are not linked to an exclusive purchasing requirement involving all or a very substantial part of the purchasers' requirements, NBIM is able through the discount system to ensure that it obtains a maximum percentage (varying from customer to customer and carefully checked by NBIM) of the purchases made by dealers.

45. NBIM also argues that, in establishing bonuses, it takes account of the extent of the efforts made by the dealer in marketing the relevant products. It claims that it is not guilty of discrimination within the meaning of Article 86 (c) of the EEC Treaty, since account is taken only of the individual position of each dealer. As stated above, it is of course permissible, in the light of the competition rules laid down in the EEC Treaty, for an undertaking granting discounts, bonuses, etc. to take account of the services which the retailer performs for the undertaking in selling its products. A particular example might be the customer service which the retailer may provide for final consumers and which the manufacturer himself would otherwise have to provide. So as to avoid arbitrariness and allow checks to be carried out, the conditions which must be met to qualify for the bonus must be defined objectively and made known to the purchasers. The NBIM system must be checked against such criteria if it is to be established that it is not discriminatory. Since the key element in NBIM's discount system is not so much the services which the dealer objectively performs for the undertaking in selling Michelin tyres, but rather NBIM's subjective assessment of the dealer's efforts in marketing Michelin tyres, the above criteria cannot be applied. As a result of this approach, dealers who objectively are in similar circumstances are inevitably treated in dissimilar ways. In view of the essentially oral procedure followed in establishing the bonuses, their complicated nature, the fact that the trade is not informed of the methods used by NBIM and the resulting lack of any means of carrying out checks, it is illusory to suppose that discriminatory situations could be avoided.

(b) *The absence of written notification of 'targets' and bonuses*

46. The anti-competitive and discriminatory effects of the discount system are further reinforced by the absence of written notification and confirmation

(usually given in writing) of the different targets and bonuses applicable for each dealer.

47. Until 1980, NBIM representatives gave purely oral notification of the 'targets' and associated rebates or 'bonuses' to each dealer personally at the beginning of each year. Written confirmation of this important information was provided by NBIM only in very exceptional circumstances and never as a matter of course. This practice accordingly meant that difficulties regularly arose and that the dealers were heavily dependent on NBIM's unilateral interpretation. The uncertainty resulting from the lack of written confirmation naturally operates to the sole benefit of NBIM given its market position and the relative economic weakness of the individual dealers.

The Commission does not of course have any objections of principle to the purely oral notification of terms of sale. However, if this method is applied by an undertaking in a dominant position and if the terms which it applies are particularly complex in nature and — as demonstrated herein — lend themselves easily to misunderstandings, this combination of factors amounts to abusive conduct. In view of the complexity of the discount system, the failure to provide written confirmation of bonuses and 'targets' made it especially difficult for dealers to make a precise comparison between the net purchase price offered by the major producer and the price offered by other producers. As an element in the commercial policy of an undertaking in a dominant position, this lack of written confirmation increases the undertaking's freedom of action with regard to its direct customers and reduces any inclination on the part of dealers to obtain their supplies from competing producers. The result is to increase the anti-competitive effects of the discount system.

(c) *Combined effect of (a) and (b)*

48. The aim of NBIM's policy is clearly to bind tyre dealers to NBIM as closely as possible. The basis for achieving this is the discount system. Dealers are also aware that the frequent contacts between the representatives and tyre users give NBIM the possibility of influencing the consumer's choice of dealer. This means that the dealers will in general be all the more inclined to take account of NBIM's wishes.

This discount system is of such a nature that it can only be practised by an enterprise in a dominant position. Dealers would never accept this system being imposed by other manufacturers. Michelin's competitors do not therefore use a similar system and are in no position to engage in such practices.

49. Tying purchases to a supplier occupying a dominant position, as is the intention of NBIM's commercial policy, constitutes an abuse within the meaning of Article 86. NBIM's conduct 'is such as to influence the structure of a market where, as a result of the very presence of the undertaking (in a dominant position), the degree of competition is weakened' and, 'through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition' ⁽¹⁾.

The behaviour at issue distorts competition between tyre producers. Its aim is to restrict the inclination of dealers to obtain their supplies from competing manufacturers. Access to the Netherlands market for NBIM's competitors is therefore impeded to an extent which would not be possible under normal market conditions.

(d) *Extra bonus for light and heavy tyres in 1977*

50. NBIM introduced an extra 0.5 % bonus for 1977 for light tyres and heavy tyres and made it conditional on a set 'target' being reached in respect of purchases of light Michelin tyres. This practice also constitutes an abuse within the meaning of Article 86, since the discounts for the purchase of heavy tyres are dependent on a certain level being achieved in light tyres. Since light and heavy tyres belong to quite different markets, it is in principle not acceptable to make the granting of an extra bonus for purchases of heavy tyres subject to the conditions that a given quantity of light tyres is purchased, the relevant quantity being in many cases higher than that achieved the previous year and, in some cases, actually higher than the maximum annual 'target'. In imposing this link between the two sorts of tyres, NBIM made use of its dominant position on one market with the sole aim of strengthening still further its already considerable position on another market. Indeed, the aim and affect of this practice was to spur the dealers to achieve the 'target' set for purchases of light tyres so as to avoid financial penalties with regard to the sale of heavy tyres. The argument adduced by NBIM, namely that the dealers had to be compensated for the disadvantage they suffered as a result of a temporary shortage of lorry tyres, cannot be upheld. Such compensation could have been achieved by other means.

D. Effect on trade between Member States

51. The discount system applied by NBIM may affect trade between Member States, since, by estab-

lishing strong links between the dominant supplier and the dealers, it restricts the dealers' scope in making their purchases. NBIM's entire system is aimed at improving the dealers' performance in its own favour and thus at preventing other manufacturers from obtaining orders. Many of these manufacturers (see point 15) are established in the common market and have large plants which produce heavy tyres for sale on the Netherlands market. Their chances of penetrating the Netherlands market are diminished since, on account of the links established between manufacturers and dealers under the NBIM system, NBIM's market share is roughly fixed, and in consequence other manufacturers' penetration of the Netherlands market cannot exceed a small percentage. The conduct on the part of NBIM which is at issue and its consequent maintenance of its market share is accordingly liable to restrict freedom of trade between Member States in a way that may harm the achievement of the objective of establishing a single market between the Member States, in particular by changing the structure of competition within the common market.

The unfavourable effects of the abusive discount system on trade between Member States is appreciable. The evidence shows that even quite small rebates were considered significant by the dealers. The application of NBIM's discount system and its relation to the attainment of a sales target were uncertain. As a result, the dealers were faced with an invidious choice between making sales efforts for the other manufacturers or for Michelin and it was only natural for the dealers to try to increase their Michelin sales — inevitably at the expense of the other manufacturers because the uncertain and individualized bonus could well turn out to be better than the (known) rebate available from other manufacturers. In this way, the task of those other manufacturers, trying to sell into the Netherlands from other Community countries, was made noticeably more difficult by the action of the dominant undertaking.

52. By making the granting of an extra annual bonus for heavy and light tyres dependent on a specific 'target' in sales of light tyres being reached, NBIM made use of its dominant position on the market in new truck and bus tyres to improve its position on the market in car tyres. This practice was potentially disadvantageous to competitors as regards their scope for selling light tyres. The manufacturers of the car tyres sold on the Netherlands market are indeed also established in the common market and the light tyres sold on this market — apart from a relatively small number produced in the Netherlands — are produced by manufacturers established in other Member States. During a certain period the conduct at issue impeded their sales of light tyres in the Netherlands and could have affected trade between Member States.

⁽¹⁾ Judgment of the Court of Justice of 13 February 1979, Case 85/76 Hoffmann-La Roche v. the Commission (1979) ECR 461, 541.

E. Conclusion

53. On the basis of the considerations set out above, the Commission considers that during the period 1975 to 1980 NBIM infringed Article 86 of the Treaty establishing the European Economic Community on the market in new replacement tyres for trucks, buses and the like by:

- (a) tying tyre dealers in the Netherlands to itself through the granting of selective discounts on an individual basis conditional upon sales 'targets' and discount percentages, which were not clearly confirmed in writing, and by applying to them dissimilar conditions in respect of equivalent transactions, and
- (b) granting an extra annual bonus in 1977 on purchases of tyres for trucks, buses and the like and on purchases of car tyres, which was conditional upon attainment of a 'target' in respect of car tyre purchases.

54. By letter dated 23 March 1981 NBIM informed the Commission that it had amended its discount system with effect from 1 January 1981, so that discount percentages were henceforth linked to given sales figures without reference being made to 'individual' targets. NBIM maintains that its original discount system did not run counter to Article 86 of the Treaty.

The Commission reserves the right to check whether this new system is compatible with the Treaty. In doing so, the Commission will start from the principle that any discount system applied by NBIM to promote the sales of its new tyres for trucks, buses and the like must be designed in such a way that, with the exception of short-term measures, no discount should be granted unless directly linked to a genuine reduction in the manufacturer's costs. The compensation paid to Michelin tyre dealers must be commensurate with the tasks they perform and the services they actually provide, which reduce the manufacturer's burden. In addition, the system of discounts and bonuses agreed upon must be clearly confirmed to each dealer when the sales contract is presented and concluded.

III

Applicability of Article 15 (2) of Regulation No 17

55. Article 15 (2) of Regulation No 17 provides that, where undertakings intentionally or negligently infringe Article 86 of the Treaty, the Commission may impose fines of from 1 000 to 1 000 000 units of

account, or a sum in excess thereof but not exceeding 10 % of the turnover of the relevant undertaking in the preceding business year. In fixing the amount of the fine, regard must be had both to the gravity and to the duration of the infringement.

It is necessary to impose a fine upon NBIM.

56. The Commission has come to the conclusion that NBIM has, at least negligently, infringed Article 86 of the EEC Treaty. NBIM has pursued a commercial policy the aim and effect of which is, by means of illicit measures, to bind all its dealers to itself as closely as possible. Its policy also discriminates between the dealers.

As NBIM is no doubt aware, it has the ability, as an undertaking in a dominant position, to impede the access of other makes of heavy-duty tyres to the Netherlands market and its discount system in particular does in fact impede such access.

It may reasonably be assumed that, as an undertaking in a dominant position on the Netherlands market in new replacement tyres for trucks and buses, NBIM realizes that it is infringing Article 86 of the EEC Treaty through the practices described above. Moreover, the Decisions adopted by the Commission and the judgments given by the Court of Justice have since 1973 made it clear that a discount system under which, through financial benefits, an undertaking in a dominant position attempts to prevent supplies being obtained from competitors is in conflict with Article 86. NBIM must be aware that the system it applies, a system which may be regarded as a variant of a loyalty rebate, has in principle the same restricting effects on competition as a loyalty rebate involving an obligation on the purchaser to obtain his supplies exclusively or principally from the undertaking in a dominant position. NBIM must also have been aware of the discriminatory effects of its discount policy. It must be borne in mind here that NBIM forms part of a concern occupying a position on the European market such that it may be expected of the undertaking that it will follow developments in European law attentively and gear its policy to them.

57. The Commission also considers that NBIM has intentionally, or at any rate negligently, infringed Article 86 of the Treaty by making the grant of an extra annual bonus in 1977 for purchases of heavy and light tyres dependent on a 'target' being reached for purchase of light tyres. This scheme was obviously intended to press dealers into reaching the 'target' set for car tyres and thus to increase or at least maintain the share of Michelin tyres on that market. NBIM was aware, or at any rate should have been aware, that it was thereby linking two completely separate markets

and that it was using its dominant position on the heavy tyre market as a means of strengthening its position on the light tyre market, a practice which runs counter to Article 86.

58. With respect to the duration of the infringements, it may be noted that, as regards the infringement referred to in point 53 (a), the Commission has taken only the period 1975 to 1980 into account. Although it is possible that, even before 1975, NBIM's commercial policy was aimed at tying dealers to NBIM, it is only from that year onwards that the Commission has conclusive evidence of the nature of NBIM's commercial policy. Changes were admittedly made to the discount system in 1978 and 1979, but the principles — a system of selective discounts, fixed from year to year and conditional upon sales 'targets' being achieved — have remained the same.

59. The infringement referred to in point 53 (b) relates to purchases made from NBIM in 1977. The duration of that infringement must therefore be put at one year.

60. In assessing the gravity of the infringements, account must be taken first and foremost of the fact that the disputed discount system is aimed at tying tyre dealers in the Netherlands to NBIM. Independent dealers are forced into a position in which they cannot be said to be really free in their decision-making regarding purchasing.

Account must also be taken of the fact that the selectivity of the discount system results in discrimination between dealers. Certain dealers are treated more favourably than others, although objectively they are in the same position. Competition between them is thereby artificially influenced and NBIM's dominant position accordingly strengthened by measures which do not depend on provision of services by NBIM. This commercial policy pursued by NBIM has over a long period significantly distorted competition on the Netherlands market, both between tyre producers and between tyre dealers. The infringement should therefore be regarded as serious.

61. On the other hand, account should be taken, in NBIM's favour, of the changes made to the discount system in 1978 and 1979, which, although maintaining the fundamental features of the system, are somewhat more advantageous to the dealers.

It must also be noted that NBIM has in recent years relaxed its policy of not confirming the discounts and

'targets'. Since 1980, on request, dealers have received from NBIM written confirmation of the discounts and purchase 'targets' 'agreed' at the beginning of the year.

62. The Commission also regards as a serious infringement the fact that the extra annual bonus for purchases of heavy and light tyres was conditional upon an annual 'target' being reached in purchases of light tyres. Unable to meet the demand for tyres in respect of which it occupies a dominant position, NBIM tried in this way to stimulate its sales of a different category of tyres in which its position is not so strong. Although the 0.5 % figure seems small, it amounts to a not inconsiderable amount in money terms for the dealers, so that this extra annual bonus was certainly attractive for them. Indeed, the scheme would otherwise not have been introduced by NBIM.

63. In the light of the above considerations, the Commission considers that a fine of 680 000 ECU should be imposed in respect of the two infringements established.

In fixing the amount of the fine the Commission has decided to take into account NBIM's total turnover, as well as the gravity of the infringement in issue and the intensity with which the discount system was applied to the dealers,

HAS ADOPTED THIS DECISION :

Article 1

It is hereby declared that during the period between 1975 and 1980 NV Nederlandsche Banden-Industrie Michelin infringed Article 86 of the Treaty establishing the European Economic Community by :

- (a) tying tyre dealers in the Netherlands to itself through the granting of selective discounts on an individual basis conditional upon sales 'targets' and discount percentages, which were not clearly confirmed in writing, and by applying to them dissimilar conditions in respect of equivalent transactions ; and
- (b) granting an extra annual bonus in 1977 on purchases of tyres for trucks, buses and the like and on purchases of car tyres, which was conditional upon attainment of a 'target' in respect of car tyre purchases.

Article 2

A fine of 680 000 ECU or 1 833 184.80 guilders is hereby imposed on NV Nederlandsche Banden-Industrie Michelin.

This sum shall be paid in guilders, within three months of notification of this Decision, to the account of the Commission of the European Communities: No 41.60.95.518, with the Amro-Bank, Rembrandtplein 17, NL-1 000 Amsterdam.

Article 3

This Decision shall be enforceable in accordance with the provisions of Article 192 of the Treaty establishing the European Economic Community.

Article 4

This Decision is addressed to:

NV Nederlandsche Banden-Industrie Michelin,
De Boelelaan 30,
PB 7163,
NL-1007 JD Amsterdam.

Done at Brussels, 7 October 1981.

For the Commission

Frans ANDRIESEN

Member of the Commission
