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I

(Acts whose publication is obligatory)

COMMISSION DECISION No 3746/86/ECSC

of 5 December 1986

amending Decision No 3485/85/ECSC on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 47 and 58 thereof,

Whereas :

In Article 19 of Decision No 3485/85/ECSC⁽¹⁾, the Commission announced its intention to exclude further categories of products as from 1 January 1987;

The galvanized sheet sector (category Ic) faces competition from other coated products in category Id, which have been liberalized since 1 January 1986, thus leading the Commission, to avoid distortion of competition, to incorporate a large measure of flexibility into its Decision No 3485/85/ECSC. It has since emerged that there is very little excess production capacity in this sector. This category of products should therefore be excluded from the system of quotas;

The inclusion of Article 15 B became necessary at the height of the crisis in the steel industry. At the present time there is no justification for maintaining this provision. It should therefore be deleted;

After consulting the Consultative Committee and with the assent of the Council,

HAS ADOPTED THIS DECISION:

Article 1

Decision No 3485/85/ECSC is hereby amended as follows:

1. Paragraphs 1 and 2 of Article 4 are replaced by the following:

'1. A system of production quotas is hereby established in respect of categories Ia, Ib, II, III, IV and VI, irrespective of quality or choice.

2. In the case of categories Ia, Ib, II and III, the following products shall be excluded:

- special alloy steels, except for special fine-grained weldable structural alloy steels with a high yield point (Sonderbaustahl),
- permanent way material,
- sheet piling,
- colliery arches, and
- subject to proof being furnished that this material has in fact been processed in the Community, material intended for the production, in the Community, of:
 - welded tubes more than 406,4 mm in diameter,
 - tinplate (including blackplate and TFS),
 - electrical sheet with a minimum silicon content of 1 %,
 - derived products, falling within categories Ic and Id.'

2. Paragraph 4 of Article 8 is replaced by the following:

'4. Where a plant — a works or an undertaking — undergoes a change of ownership, the new owner shall receive the plant's reference production and quantities and the relevant quotas.

It is forbidden to circumvent such a transfer of references by selling, exchanging or transferring them.

In the case of a plant producing category Ia or Ib products, the Commission shall take the necessary measures to ensure that the total production of each of categories Ia or Ib placed on the market remains unchanged.'

3. Paragraph 3 of Article 10 is deleted.

4. Article 15B is deleted.

5. Annexes I and II are replaced by Annexes I and II to this Decision.

Article 2

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

It shall apply from 1 January 1987.

⁽¹⁾ OJ No L 340, 18. 12. 1985, p. 5.

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

Done at Brussels, 5 December 1986.

For the Commission

Karl-Heinz NARJES

Vice-President

<u>DEFINITION OF THE CATEGORIES OF ROLLED PRODUCTS</u> FOR THE DEFINITION AND NOMENCLATURE OF THE PRODUCTS REFERENCE SHOULD BE MADE TO EUROSTAT QUESTIONNAIRE 2-13. THE PRODUCTS INCLUDE ALL QUALITIES AND PRIME AND SECONDARY MATERIAL.		ANNEX I	
		QUESTIONNAIRE EUROSTAT 2.13 1987	
		1.	
<u>LIST OF PRODUCTS</u> <u>CATEGORY I:</u> - PRODUCTION OF HOT WIDE STRIP MILLS (COILS) - HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP - HOT ROLLED STRIP OBTAINED FROM SLITTING WIDE STRIP	Line	Column	
	280	02	
	150	-	
	291	02	
TOTAL (280-02) + 150 LESS (291-02) * CATEGORY I			
* OF WHICH INTENDED (**) FOR PRODUCTION IN THE COMMUNITY OF: 1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM 2. TINPLATE (INCLUDING BLACK PLATE AND TFS) 3. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE 4. DERIVED PRODUCTS, OF CATEGORY IC AND/OR ID (***)			
TOTAL - EXCLUDED PRODUCTS (1 + 2 + 3 + 4)			
TOTAL - CATEGORY I (AFTER DEDUCTION OF EXCLUDED PRODUCTS)			
(**) "INTENDED FOR" MEANS ACTUALLY USED FOR THE PRODUCTION IN QUESTION (***) THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY I PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE SAME UNDERTAKING OR IN THE RECIPIENT UNDERTAKING			

LIST OF PRODUCTS	2. QUESTIONNAIRE EUROSTAT 2.13 1987
CATEGORY IA: - HOT ROLLED WIDE STRIP FOR DIRECT USE AND EXPORT - HOT ROLLED WIDE STRIP FOR REROLLING OR OTHER TYPES OF PROCESSING BY OTHER COMMUNITY UNDERTAKINGS - MEDIUM (OR LIGHT) PLATE AND HEAVY PLATE (OF 3 MM AND OVER) OBTAINED BY CUTTING HOT ROLLED WIDE STRIP - HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP	Lines 171 + 172 + 173 EX 161 + 162 150
TOTAL CATEGORY IA *	
* OF WHICH INTENDED (**) FOR PRODUCTION IN THE COMMUNITY OF: 1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM 2. TINPLATE (INCLUDING BLACKPLATE AND TFS) 3. ELECTRICAL SHEET WITH SILICON CONTENT OF 1 % OR MORE 4. DERIVED PRODUCTS, OF CATEGORY IC AND/OR ID (***)	
TOTAL - EXCLUDED PRODUCTS (1 + 2 + 3 + 4)	
TOTAL - CATEGORY IA (AFTER DEDUCTION OF EXCLUDED PRODUCTS)	
(**) "INTENDED FOR" MEANS ACTUALLY USED FOR THE PRODUCTION IN QUESTION (***) THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY IA PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE RECIPIENT UNDERTAKING	

LIST OF PRODUCTS	3. QUESTIONNAIRE EUROSTAT 2.13 1987
CATEGORY IB: - COLD REDUCED SHEET OF LESS THAN 3 MM IN CUT LENGTH OR COILS - COLD REDUCED SHEET OF 3 MM OR MORE IN CUT LENGTH OR COILS - HOT ROLLED SHEET OF LESS THAN 3 MM, IN CUT LENGTHS OF WHICH HOT OR COLD ROLLED SHEET FOR MAKING PRODUCTS OF CATEGORIES IC AND/OR ID IN OTHER COMMUNITY UNDERTAKINGS	Lines 168 167 163
TOTAL CATEGORY IB *	
* OF WHICH INTENDED (**) FOR PRODUCTION IN THE COMMUNITY OF: 1. TINPLATE (INCLUDING BLACK PLATE AND TFS) 2. ELECTRICAL SHEET WITH SILICON CONTENT OF 1 % OR MORE 3. MATERIAL INTENDED FOR PRODUCTION IN THE SAME UNDERTAKING OF COATED PRODUCTS (EXCLUDING TINPLATE, BLACKPLATE, TFS) 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN OTHER COMMUNITY UNDERTAKINGS	
TOTAL - EXCLUDED PRODUCTS (1 + 2 + 3 + 4)	
TOTAL CATEGORY IB (AFTER DEDUCTION OF PRODUCTS 1 + 2 + 3 + 4)	
** "INTENDED FOR " MEANS ACTUALLY USED FOR THE PRODUCTION IN QUESTION	

LIST OF PRODUCTS	4. QUESTIONNAIRE EUROSTAT 2.13 1987
CATEGORY IC: HOT DIPPED GALVANIZED SHEET IN CUT LENGTHS OR COILS OF WHICH: 1. THOSE SUBSEQUENTLY COATED BY THE SAME UNDERTAKING 2. GALVANIZED SHEET FOR MAKING PRODUCTS IN CATEGORY ID IN OTHER UNDERTAKINGS OF THE COMMUNITY	Lines 241
TOTAL CATEGORY IC (AFTER DEDUCTION OF PRODUCTS 1 + 2)	
CATEGORY ID: ELECTROGALVANIZED SHEET IN CUT LENGTHS OR COILS OF WHICH: 1. THOSE COATED SUBSEQUENTLY BY THE SAME UNDERTAKING 2. ELECTROGALVANIZED SHEET COATED SUBSEQUENTLY BY OTHER UNDERTAKINGS IN THE COMMUNITY SHEET COATED ORGANICALLY IN CUT LENGTHS OR COILS OTHER METALLIC COATINGS IN CUT LENGTHS OR COILS	242 262 250 + 261 + 263
TOTAL - CATEGORY ID	
CATEGORY II: REVERSING MILL PLATE (HOT ROLLED PLATE AND SHEET EX MILLS OTHER THAN WIDE STRIP MILLS) WIDE FLATS	164 + 165 + 166 140
TOTAL - CATEGORY II *	
* INCLUDING THOSE INTENDED (**) FOR COMMUNITY PRODUCTION OF WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM	
TOTAL CATEGORY II (AFTER DEDUCTION OF MATERIAL INTENDED FOR TUBE PRODUCTION)	
(**) "INTENDED FOR" MEANS ACTUALLY USED FOR THE PRODUCTION IN QUESTION	

LIST OF PRODUCTS	5. QUESTIONNAIRE EUROSTAT 2.13 1987
<u>CATEGORY III:</u> WIDE FLANGED BEAMS OTHER BEAMS, SECTIONS AND CHANNELS OF I, U, H PROFILE OF 80 MM OR MORE AND MINE FRAME SECTIONS	Lines 122
TOTAL CATEGORY III *	
* OF WHICH MINE FRAME SECTIONS	
TOTAL CATEGORY III (AFTER DEDUCTION OF MINE FRAME SECTIONS)	
<u>CATEGORY IV:</u> WIRE ROD IN COILS (INCLUDING REINFORCING AND MERCHANT BARS IN COILS)	132
<u>CATEGORY V:</u> REINFORCING BARS (EXCLUDING REINFORCING BARS IN COILS)	133
<u>CATEGORY VI:</u> MERCHANT BARS (EXCLUDING MERCHANT BARS IN COILS)	134

QUESTIONNAIRE 313 1987	ANNEX II	
	PRODUCTION OF CERTAIN ROLLED PRODUCTS IN ORDINARY STEEL, QUALITY AND NON-ALLOY SPECIAL STEELS AND LOW ALLOY SPECIAL STRUCTURAL STEELS, WELDABLE "SONDERBAUSTÄHLE". - PRIME PLUS NON PRIME -	
MONTHLY STATISTICS TO BE SENT TO C.C.E., TELEX 3252 ACIER LU, NOT LATER THAN 10 WORKING DAYS AFTER THE END OF THE MONTH. A COPY SHOULD ALSO BE SENT (RECORDED DELIVERY) TO THE COMMISSION OF THE EUROPEAN COMMUNITIES, TASK FORCE STEEL (DG III), BLDG. JEAN MONNET, BUREAU C 3/100, L-1019 LUXEMBOURG-KIRCHBERG (SAME DEADLINE).		
NAME OF COMPANY	CODE	PRODUCTION FOR THE MONTH OF
PRODUCTS	CODE	TONNES
<u>CATEGORY I</u> PRODUCTION OF HOT WIDE STRIP MILLS HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP	11001 11002	
TOTAL *	11000	
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF: 1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM 2. TINPLATE (INCLUDING BLACKPLATE AND TFS) 3. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1% OR MORE 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***	12001 12002 12003 12004	
TOTAL EXCLUDED PRODUCTS (12001 TO 12004)	12000	
TOTAL CATEGORY I (11000 - 12000) **	13000	
** OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF WELDED TUBES WITH A DIAMETER EQUAL TO OR LESS THAN 406.4 MM (EX HOT ROLLED)	13001	
*** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY I, PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE SAME UNDERTAKING OR IN THE RECIPIENT UNDERTAKING		

PRODUCTS	CODE	TONNES
<u>CATEGORY IA:</u>		
HOT ROLLED WIDE STRIP FOR DIRECT USE AND EXPORT	11101	
HOT ROLLED WIDE STRIP FOR REROLLING OR OTHER TYPES OF PROCESSING BY OTHER COMMUNITY UNDERTAKINGS	13102	
HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP	11102	
PLATE OF THICKNESS 3 MM OR MORE OBTAINED BY CUTTING HOT ROLLED WIDE STRIP	11103	
TOTAL *	11100	
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF:		
1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM	12101	
2. TINPLATE (INCLUDING BLACKPLATE AND TFS)	13103	
3. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE	13104	
4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***	13106	
TOTAL (12101 + 13103 + 13104 + 13106)	13105	
TOTAL CATEGORY IA (11100 - 13105) **	13100	
** OF WHICH INTENDED FOR THE PRODUCTION IN THE COMMUNITY OF WELDED TUBES WITH A DIAMETER EQUAL TO OR LESS THAN 406.4 MM (EX HOT ROLLED)	13101	
*** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY IA, PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE RECIPIENT UNDERTAKING		

PRODUCTS	CODE	TONNES
<u>CATEGORY IB:</u> COLD REDUCED SHEET OF LESS THAN 3 MM, IN CUT LENGTHS OR COILS AND HOT ROLLED SHEET OF LESS THAN 3 MM IN CUT LENGTHS COLD REDUCED SHEET OF 3 MM OR MORE (IN CUT LENGTHS OR COILS) OF WHICH: HOT OR COLD ROLLED SHEET IN CUT LENGTHS OR COILS FOR MAKING PRODUCTS OF CATEGORIES IC AND/OR ID IN OTHER COMMUNITY UNDERTAKINGS	11200 11202 12204	
TOTAL * (11200 + 11202)	11201	
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF: 1. TINPLATE (INCLUDING BLACKPLATE AND TFS) 2. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE 3. OTHER COATED PRODUCTS IN THE SAME UNDERTAKING (EXCLUDING TINPLATE, BLACKPLATE AND TFS) 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID IN OTHER COMMUNITY UNDERTAKINGS	12201 12202 12203 12205	
TOTAL (12201 + 12202 + 12203 + 12205)	12200	
TOTAL CATEGORY IB (11201 - 12200)	13200	
<u>CATEGORY IC:</u> HOT DIPPED GALVANISED SHEET - IN CUT LENGTHS OR COILS, OF WHICH HOT DIPPED GALVANISED SHEET FOR MAKING PRODUCTS IN CATEGORY ID IN THE SAME UNDERTAKING HOT DIPPED GALVANISED SHEET FOR MAKING PRODUCTS IN CATEGORY ID IN OTHER UNDERTAKINGS OF THE COMMUNITY	11301 11302 11303	
TOTAL CATEGORY IC (11301 - 11302 - 11303)	11300	

PRODUCTS	CODE	TONNES
<u>CATEGORY ID:</u> ELECTROGALVANISED SHEET IN CUT LENGTHS OR COILS OF WHICH COATED SUBSEQUENTLY IN THE SAME UNDERTAKING OF WHICH COATED SUBSEQUENTLY IN OTHER UNDERTAKINGS OF THE COMMUNITY ORGANIC COATED SHEETS IN CUT LENGTHS OR COILS OTHER METALLIC COATING IN CUT LENGTHS OR COILS	11401 11402 11403 11404 11405	
TOTAL OTHER COATED SHEETS (11401 + 11404 + 11405)	11400	
<u>CATEGORY II:</u> REVERSING MILL PLATE (HOT ROLLED PLATE AND SHEET EX MILLS OTHER THAN WIDE STRIP MILLS) WIDE FLATS	21001 21002	
TOTAL (21001 + 21002) *	21000	
* OF WHICH INTENDED FOR COMMUNITY PRODUCTION OF WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM	22001	
TOTAL CATEGORY II (21000 - 22001)	23000	

PRODUCTS	CODE	TONNES
<u>CATEGORY III:</u> WIDE FLANGED BEAMS, OTHER BEAMS, SECTIONS AND CHANNELS OF I,U,H PROFILE OF 80 MM OR MORE AND MINE FRAME SECTIONS *	31000	
* OF WHICH MINE FRAME SECTIONS	32001	
TOTAL CATEGORY III (31000 - 32001)	33000	
<u>CATEGORY IV:</u> WIRE ROD IN COILS (INCLUDING REINFORCING AND MERCHANT BARS IN COILS) **	41000	
** OF WHICH INTENDED FOR COMMUNITY PRODUCTION OF: 1. REINFORCING BARS 2. WELDED MESH	41002 41003	
<u>CATEGORY V:</u> REINFORCING BARS (EXCLUDING REINFORCING BARS IN COILS)	52000	
<u>CATEGORY VI:</u> MERCHANT BARS (EXCLUDING MERCHANT BARS IN COILS)	63000	

WHEN COMPLETING THIS QUESTIONNAIRE, PARTICULAR REFERENCE SHOULD BE MADE TO EUROSTAT QUESTIONNAIRES 2.13 - 2.16 - 2.16 ANNEX, BOTH TO THE EXPLANATORY NOTES AND TO THE PRODUCT DEFINITIONS AND NOMENCLATURES.

QUESTIONNAIRE 314 1987		ANNEX II	
PRODUCTION OF CERTAIN ROLLED PRODUCTS IN ALLOY SPECIAL STEELS (EXCLUDING "SONDERBAUSTÄHLE") PRIME PLUS NON PRIME			1.
MONTHLY STATISTICS TO BE SENT TO C.C.E. (TELEX 3252 ACIER LU) NOT LATER THAN 10 WORKING DAYS AFTER THE END OF THE MONTH. A COPY SHOULD ALSO BE SENT (RECORDED DELIVERY) TO THE COMMISSION OF THE EUROPEAN COMMUNITIES, TASK FORCE STEEL (DG III), BLDG. JEAN MONNET, BUREAU C 3/100, L-1019 LUXEMBOURG-KIRCHBERG (SAME DEADLINE).			
NAME OF COMPANY		CODE	PRODUCTION FOR THE MONTH OF
PRODUCTS		CODE	TONNES
<u>CATEGORY I:</u> PRODUCTION OF HOT WIDE STRIP MILLS HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP		11001 11002	
TOTAL *		11000	
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF: 1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM 2. TINPLATE (INCLUDING BLACKPLATE AND TFS) 3. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***		12001 12002 12003 12004	
TOTAL EXCLUDED PRODUCTS (12001 TO 12004)		12000	
TOTAL CATEGORY I (11000 - 12000) **		13000	
** OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF WELDED TUBES WITH A DIAMETER EQUAL TO OR LESS THAN 406.4 MM EX HOT ROLLED		13001	
*** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY I PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE SAME UNDERTAKING OR IN THE RECIPIENT UNDERTAKING			

QUESTIONNAIRE 314		1987	2.
PRODUCTS	CODE	TONNES	
CATEGORY IA: HOT ROLLED WIDE STRIP FOR DIRECT USE AND EXPORT HOT ROLLED WIDE STRIP FOR REROLLING OR OTHER TYPES OF PROCESSING BY OTHER COMMUNITY UNDERTAKINGS HOT ROLLED NARROW STRIP LESS THAN 600 MM INCLUDING TUBE STRIP PLATE OF THICKNESS 3 MM OR MORE OBTAINED BY CUTTING HOT ROLLED WIDE STRIP	11101 13102 11102 11103		
TOTAL *	11100		
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF: 1. WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM 2. TINPLATE (INCLUDING BLACKPLATE AND TFS) 3. ELECTRICAL SHEET WITH SILICON CONTENT OF 1 % OR MORE 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***	12101 13103 13104 13106		
TOTAL (12101 + 13103 + 13104 + 13106)	13105		
TOTAL CATEGORY IA (11100 - 13105) **	13100		
** OF WHICH INTENDED FOR THE PRODUCTION IN THE COMMUNITY OF WELDED TUBES WITH A DIAMETER EQUAL TO OR LESS THAN 406.4 MM EX HOT ROLLED	13101		
*** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY IA PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE RECIPIENT UNDERTAKING.			

PRODUCTS	CODE	TONNES
<u>CATEGORY IB:</u> COLD REDUCED SHEET LESS THAN 3 MM, IN CUT LENGTHS OR COILS, AND HOT ROLLED SHEET LESS THAN 3 MM IN CUT LENGTHS COLD REDUCED SHEET OF 3 MM OR MORE (IN CUT LENGTHS OR COILS) OF WHICH: HOT OR COLD ROLLED SHEET IN CUT LENGTHS OR COILS FOR MAKING PRODUCTS OF CATEGORIES IC AND/OR ID IN OTHER COMMUNITY UNDER- TAKING	11200 11202 12204	
TOTAL * (11200 + 11202)	11201	
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF: 1. TINPLATE (INCLUDING BLACKPLATE AND TFS) 2. ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE 3. OTHER COATED PRODUCTS IN THE SAME UNDERTAKING (EXCLUDING TINPLATE, BLACKPLATE AND TFS) 4. DERIVED PRODUCTS OF CATEGORY IC AND/OR ID IN OTHER COMMUNITY UNDERTAKINGS	12201 12202 12203 12205	
TOTAL (12201 + 12202 + 12203 + 12205)	12200	
TOTAL CATEGORY IB (11201 - 12200)	13200	
<u>CATEGORY IC:</u> HOT DIPPED GALVANIZED SHEET - IN CUT LENGTHS OR COILS, OF WHICH: HOT DIPPED GALVANIZED SHEET FOR MAKING PRODUCTS IN CATEGORY ID IN THE SAME UNDERTAKING HOT DIPPED GALVANIZED SHEET FOR MAKING PRODUCTS IN CATEGORY ID IN OTHER UNDERTAKINGS OF THE COMMUNITY	11301 11302 11303	
TOTAL CATEGORY IC (11301 - 11302 - 11303)	11300	

PRODUCTS	CODE	TONNES
<u>CATEGORY ID:</u> ELECTROGALVANIZED SHEET IN CUT LENGTHS OR COILS OF WHICH: COATED SUBSEQUENTLY IN THE SAME UNDERTAKING COATED SUBSEQUENTLY IN OTHER UNDERTAKINGS OF THE COMMUNITY ORGANIC COATED SHEETS IN CUT LENGTHS OR COILS OTHER METALLIC COATING IN CUT LENGTHS OR COILS	11401 11402 11403 11404 11405	
TOTAL OTHER COATED SHEETS (11401 + 11404 + 11405)	11400	
<u>CATEGORY II:</u> REVERSING MILL PLATE (HOT ROLLED PLATE AND SHEET EX MILLS OTHER THAN WIDE STRIP MILLS) WIDE FLATS	21001 21002	
TOTAL (21001 + 21002) *	21000	
* OF WHICH INTENDED FOR COMMUNITY PRODUCTION OF WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM	22001	
TOTAL CATEGORY II (21000 - 22001)	23000	

PRODUCTS	CODE	TONNES
<u>CATEGORY III:</u> WIDE FLANGED BEAMS, OTHER BEAMS, SECTIONS AND CHANNELS OF I, U, H PROFILE OF 80 MM OR MORE AND MINE FRAME SECTIONS *	31000	
* OF WHICH MINE FRAME SECTIONS	32001	
TOTAL CATEGORY III (31000 - 32001)	33000	
<u>CATEGORY IV: **</u> WIRE ROD IN COILS (INCLUDING REINFORCING AND MERCHANT BARS IN COILS) ***	41000	
*** INTENDED FOR COMMUNITY PRODUCTION OF: 1) REINFORCING BARS 2) WELDED MESH	41002 41003	
<u>CATEGORY V:</u> REINFORCING BARS (EXCLUDING REINFORCING BARS IN COILS)	52000	
<u>CATEGORY VI: **</u> MERCHANT BARS (EXCLUDING MERCHANT BARS IN COILS)	63000	
** OF WHICH ALLOY STEELS WITH AN ALLOY CONTENT OF AT LEAST 5 % - WITH THE EXCEPTION OF STEELS CONTAINING LESS THAN 1 % CARBON AND MORE THAN 12 % CHROMIUM - WHOSE ACTUAL INVOICED PRICE IS NOT LESS THAN 30 % HIGHER THAN THE LIST PRICE OF THE CORRESPONDING ORDINARY STEEL PRODUCT		
WIRE ROD IN COILS (INCLUDING REINFORCING BARS IN COILS)	41001	
MERCHANT BARS	63001	

WHEN COMPLETING THIS QUESTIONNAIRE, PARTICULAR REFERENCE SHOULD BE MADE TO EUROSTAT
QUESTIONNAIRES 2.13 - 2.16 - 2.16 ANNEX, BOTH TO THE EXPLANATORY NOTES AND TO THE
PRODUCT DEFINITIONS AND NOMENCLATURES.

QUESTIONNAIRE 371 1987		DELIVERIES OF CERTAIN ROLLED PRODUCTS IN ORDINARY STEEL, QUALITY, AND NON ALLOY SPECIAL STEELS AND LOW ALLOY SPECIAL STRUCTURAL STEELS, WELDABLE "SONDERBAUSTÄHLE" - PRIME PLUS NON PRIME -		ANNEX II	
TO BE COMPLETED AND SENT IN THE SAME TIME SCALE AND IN THE SAME WAY AS QUESTIONNAIRES 313 AND 314					
COMPANY		DELIVERIES FOR THE MONTH OF			
CODE		TEN MEMBER STATES		SPAIN AND PORTUGAL	
		TO THIRD COUNTRIES		TOTAL	
PRODUCTS		CODE	TONNES	CODE	TONNES
CATEGORY IA:					
1.	HOT ROLLED WIDE STRIP FOR DIRECT USE AND EXPORT	11101		41101	21101
2.	HOT ROLLED WIDE STRIP FOR REROLLING OR OTHER TYPES OF PROCESSING BY OTHER COMMUNITY UNDERTAKINGS	11302		-	-
3.	HOT ROLLED NARROW STRIP LESS THAN 600 MM INCL. TUBE STRIP	11102		41102	21102
4.	PLATE OF THICKNESS 3 MM OR MORE OBTAINED BY CUTTING HOT ROLLED WIDE STRIP	11103		41103	21103
5.	TOTAL (1 + 2 + 3 + 4) *	11100		41100	21100
* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF:					
6.	WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM	11200		-	-
7.	TINPLATE (INCL. BLACKPLATE AND TFS)	11403		-	-
8.	ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE	11404		-	-
8(a)	DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***	11406		-	-
** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY IA PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE RECIPIENT UNDERTAKING					

N.B. IN QUESTIONNAIRES 313, 314, 371 AND 375 THE LINES INCLUDING THE REFERENCE "COMMUNITY" SHOULD BE COMPLETED ONLY BY UNDERTAKINGS SUBJECT TO QUOTA, INsofar AS THEIR DEALINGS WITH THE COMMUNITY - WITH THE EXCEPTION OF SPAIN AND PORTUGAL - ARE CONCERNED.

[illegible]

QUESTIONNAIRE 371 1987		TOTAL	
PRODUCTS		TO THIRD COUNTRIES	
		SPAIN AND PORTUGAL	
		TEN MEMBER STATES	
		CODE	TONNES
		CODE	TONNES
		CODE	TONNES
38	CATEGORY IV: WIRE ROD IN COILS (INCLUDING REINFORCING AND MERCHANT BARS IN COILS) *	17100	47100
38(a)	* OF WHICH INTENDED FOR COMMUNITY PRODUCTION OF: 1) REINFORCING BARS 2) WELDED MESH	17102	-
38(b)		17103	-
39	CATEGORY V: REINFORCING BARS (EXCLUDING REINFORCING BARS IN COILS)	18100	48100
40	CATEGORY VI: MERCHANT BARS (EXCLUDING MERCHANT BARS IN COILS)	19100	49100
		37100	27100
		37102	-
		37103	-
		38100	28100
		39100	29100

WHEN COMPLETING THIS QUESTIONNAIRE, PARTICULAR REFERENCE SHOULD BE MADE TO EUROSTAT QUESTIONNAIRES 2.71 - 2.74 - 2.74 ANNEX, BOTH TO THE EXPLANATORY NOTES AND TO THE PRODUCT DEFINITIONS AND NOMENCLATURES

N.B. IN QUESTIONNAIRES 313, 314, 371 AND 375 THE LINES INCLUDING THE REFERENCE "COMMUNITY" SHOULD BE COMPLETED ONLY BY UNDERTAKINGS SUBJECT TO QUOTA, INsofar AS THEIR DEALINGS WITH THE COMMUNITY - WITH THE EXCEPTION OF SPAIN AND PORTUGAL - ARE CONCERNED.

QUESTIONNAIRE 375 1987		DELIVERIES OF CERTAIN ROLLED PRODUCTS IN ALLOY SPECIAL STEEL (EXCLUDING "SONDERBAUSTÄHLE")										ANNEX II	
		- PRIME PLUS NON PRIME -										1.	
		TO BE COMPLETED AND SENT IN THE SAME TIME SCALE AND IN THE SAME WAY AS QUESTIONNAIRES 313 AND 314											
COMPANY		CODE		DELIVERIES FOR THE MONTH OF									
				TEN MEMBER STATES		SPAIN AND PORTUGAL		TO THIRD COUNTRIES		TOTAL			
				CODE	TONNES	CODE	TONNES	CODE	TONNES	CODE	TONNES		
CATEGORY IA:.													
1.	HOT ROLLED WIDE STRIP FOR DIRECT USE AND EXPORT			11101		41101		21101		31101			
2.	HOT ROLLED WIDE STRIP FOR REROLLING OR OTHER TYPES OF PROCESSING BY OTHER COMMUNITY UNDERTAKINGS			11302		-		-		31302			
3.	HOT ROLLED NARROW STRIP LESS THAN 600 MM INCL. TUBE STRIP			11102		41102		21102		31102			
4.	PLATE OF THICKNESS 3 MM OR MORE OBTAINED BY CUTTING HOT ROLLED WIDE STRIP			11103		41103		21103		31103			
5.	TOTAL (1 + 2 + 3 + 4) *			11100		41100		21100		31100			
6.	* OF WHICH INTENDED FOR PRODUCTION IN THE COMMUNITY OF:			11200		-		-		31200			
7.	WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM			11403		-		-		31403			
8.	TINPLATE (INCL. BLACKPLATE AND TFS)			11404		-		-		31404			
8 (a)	ELECTRICAL SHEET WITH A SILICON CONTENT OF 1 % OR MORE			11406		-		-		31406			
DERIVED PRODUCTS OF CATEGORY IC AND/OR ID ***													
*** THIS REFERS TO HOT ROLLED PRODUCTS OF CATEGORY IA PROCESSED INTO DERIVED PRODUCTS OF CATEGORY IC AND/OR ID, IN THE RECIPIENT UNDERTAKING													

QUESTIONNAIRE 375 1987		PRODUCTS		TEN MEMBER STATES		SPAIN AND PORTUGAL		TO THIRD COUNTRIES		TOTAL	
				CODE	TONNES	CODE	TONNES	CODE	TONNES	CODE	TONNES
28		CATEGORY II: REVERSING MILL PLATE (HOT ROLLED PLATE AND SHEET EX MILLS OTHER THAN WIDE STRIP MILLS) WIDE FLATS		15101		45101		25101		35101	
29				15103		45103		25103		35103	
30		TOTAL (28 + 29) *		15104		45104		25104		35104	
31		* OF WHICH INTENDED FOR COMMUNITY PRODUCTION OF WELDED TUBES WITH A DIAMETER GREATER THAN 406.4 MM		15201		-		-		35201	
32		TOTAL CATEGORY II (30 - 31)		15100		45100		25100		35100	
33		CATEGORY III: WIDE FLANGED BEAMS OTHER BEAMS SECTIONS AND CHANNELS OF I, U, H PROFILE OF 80 MM OR MORE AND MINE FRAME SECTIONS		16101		46101		26101		36101	
34				16102		46102		26102		36102	
35		TOTAL (33 + 34) *		16103		46103		26103		36103	
36		* OF WHICH MINE FRAME SECTIONS		16104		46104		26104		36104	
37		TOTAL CATEGORY III (35 - 36)		16100		46100		26100		36100	

COMMISSION REGULATION (EEC) No 3747/86

of 9 December 1986

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 the Act of Accession of Spain and Portugal,

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 1579/86 ⁽²⁾, and in particular Article 13 (5) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, 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 Commission Regulation (EEC) No 2010/86 ⁽⁴⁾ 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 central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 8 December 1986;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2010/86 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 10 December 1986.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 173, 1. 7. 1986, p. 1.

ANNEX

to the Commission Regulation of 9 December 1986 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CCT heading No	Description	(ECU/tonne)	
		Portugal	Third country
10.01 B I	Common wheat, and meslin	16,02	184,78
10.01 B II	Durum wheat	43,02	239,22 ⁽¹⁾ ⁽²⁾
10.02	Rye	51,66	158,04 ⁽³⁾
10.03	Barley	22,22	176,90
10.04	Oats	83,64	145,45
10.05 B	Maize, other than hybrid maize for sowing	—	165,73 ⁽²⁾ ⁽³⁾ ⁽⁴⁾
10.07 A	Buckwheat	0	0
10.07 B	Millet	22,22	107,67 ⁽⁴⁾
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	7,46	167,84 ⁽⁴⁾ ⁽⁵⁾
10.07 D I	Triticale	⁽⁷⁾	⁽⁷⁾
10.07 D II	Canary seed; other cereals	22,22	30,61 ⁽⁵⁾
11.01 A	Wheat or meslin flour	36,77	273,04
11.01 B	Rye flour	86,67	235,60
11.02 A I a)	Durum wheat groats and meal	80,10	383,12
11.02 A I b)	Common wheat groats and meal	38,23	292,65

⁽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 486/85 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.

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within subheading 10.07 D I (triticale).

⁽⁸⁾ The levy referred to in Article 1 of Council Regulation (EEC) No 2913/86 shall be fixed on the basis of an invitation to tender in accordance with Commission Regulation (EEC) No 3140/86.

COMMISSION REGULATION (EEC) No 3748/86

of 9 December 1986

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 the Act of Accession of Spain and Portugal,

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 1579/86 ⁽²⁾, and in particular Article 15 (6) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, 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 Commission Regulation (EEC) No 2011/86 ⁽⁴⁾ 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 central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of

these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 8 December 1986;

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

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 originating in Portugal shall be zero.

2. 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 originating in third countries shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 December 1986.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 173, 1. 7. 1986, p. 4.

ANNEX

to the Commission Regulation of 9 December 1986 fixing the premiums to be added to the import levies on cereals, flour and malt from third countries

A. Cereals and flour

CCT heading No	Description	(ECU/tonne)			
		Current 12	1st period 1	2nd period 2	3rd period 3
10.01 B I	Common wheat, and meslin	0	9,32	9,32	8,71
10.01 B II	Durum wheat	0	0	0	0
10.02	Rye	0	0	0	0
10.03	Barley	0	0	0	1,75
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0,88
10.07 A	Buckwheat	0	0	0	105,07
10.07 B	Millet	0	0	0	0
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	0	0	0	0
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	13,05	13,05	12,19

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	16,59	16,59	15,50	15,50
11.07 A I b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	12,40	12,40	11,58	11,58
11.07 A II a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	0	0	3,12	3,12
11.07 A II b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0	0	2,33	2,33
11.07 B	Roasted malt	0	0	0	2,71	2,71

COMMISSION REGULATION (EEC) No 3749/86

of 9 December 1986

determining the operative event for calculating levies and refunds in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽¹⁾, and in particular Article 5 (3) thereof,

Whereas, in accordance with Commission Regulation (EEC) No 3294/86⁽²⁾, the conversion rate is to be determined using a monetary coefficient which is calculated and applied in a way similar to the way the monetary compensatory amounts are calculated;

Whereas, in accordance with Article 4 of Regulation (EEC) No 1676/85, if an agricultural conversion rate is altered, the alteration is to apply to the amounts in respect of which the operative event occurs after the alteration has taken effect; whereas, in accordance with Article 5 (1) (a) of that Regulation, 'operative event' means, as regards the amounts charged or granted in trade, the completion of customs import or export formalities;

Whereas, as a result, amounts of levies and refunds fixed in advance may vary in national currency; whereas the advance fixing of levies and refunds therefore constitutes an risk for operators; whereas, as a consequence, the operative event should be defined as the date of

acceptance of the application for the advance fixing of levies or refunds for the purposes of applying the conversion rate for calculating those amounts in national currency;

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

HAS ADOPTED THIS REGULATION:

Article 1

The operative event for the conversion into national currency of the amounts of levies and refunds applicable in the rice sector shall be:

- in the case of advance fixing of those amounts, the day on which the application for advance fixing is lodged,
- in the case of advance fixing by tendering procedure, the closing date for the submission of tenders.

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, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽²⁾ OJ No L 304, 30. 10. 1986, p. 25.

COMMISSION REGULATION (EEC) No 3750/86**of 9 December 1986****fixing, for the month of December 1986, the compensatory amount applicable to processed oil products in Spain**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Commission Regulation (EEC) No 3431/86 of 11 November 1986 laying down detailed rules for appropriate measures for trade in processed oil products with Spain ⁽¹⁾,

Whereas Regulation (EEC) No 3431/86 lays down in Article 2 that the compensatory amount to be charged or granted per tonne of oil shall be fixed each month by the Commission on the basis of the difference between the average price for soya oil applied in Spain during the 1984/85 marketing year on the one hand and the price of the same oil on the world market on the other, increased by the duties charged in Spain on imports from third countries;

Whereas the compensatory amount should be fixed at the level set out below,

HAS ADOPTED THIS REGULATION:

Article 1

The compensatory amount referred to in Article 2 of Regulation (EEC) No 3431/86 is hereby fixed for the month of December 1986 at 484,6 ECU per tonne of oil.

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, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 317, 12. 11. 1986, p. 7.

COMMISSION REGULATION (EEC) No 3751/86

of 9 December 1986

making the importation into certain Member States of certain textile products
originating in Taiwan subject to quantitative limits

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No 3587/82
of 31 December 1982 on the arrangements for imports of
certain textile products originating in Taiwan⁽¹⁾, and in
particular Article 3 thereof,

Whereas Commission Regulation (EEC) No 3587/82
established autonomous arrangements for imports of
textiles originating in Taiwan; whereas Article 3 of that
Regulation lays down the conditions for the establishment
of further quantitative limits;

Whereas imports into certain Member States of synthetic
filament fabric (category 35), originating in Taiwan, have
considerably exceeded the threshold indicated in that
Article;

Whereas it is necessary therefore to establish quantitative
limits on imports of products of category 35, originating
in Taiwan, from 8 to 31 December 1986;

Whereas the measures provided for in this Regulation are
in accordance with the opinion of the Quota Administra-

tion Committee set up under Article 10 of (EEC) No
1023/70⁽²⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The importation into certain Member States of synthetic
filament fabric (category 35), originating in Taiwan, shall
be subject to the quantitative limits indicated in the
Annex.

Article 2

The provisions of Regulation (EEC) No 3587/82, and in
particular those concerning the administration of quanti-
tative limits, shall apply to the quantitative limits esta-
blished by this Regulation.

Article 3

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

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

Done at Brussels, 9 December 1986.

For the Commission

Willy DE CLERCQ

Member of the Commission

⁽¹⁾ OJ No L 374, 31. 12. 1982, p. 1.

⁽²⁾ OJ No L 124, 8. 6. 1970, p. 1.

ANNEX

Category	CCT heading No	NIMEXE code (1986)	Description	Third countries	Member States	Units	Quantitative limits from 8 to 31 December 1986
35	51.04 A IV	51.04-10, 11, 13, 15, 17, 18, 21, 23, 25, 27, 28, 32, 34, 36, 41, 48	Woven fabrics of man-made fibres (continuous), including woven fabrics of monofil or strip falling within heading No 51.01 or 51.02 : A. Woven fabrics of synthetic textile fibres : Woven fabrics of synthetic textile fibres (continuous) other than those for tyres and those containing elastomeric yarn	Taiwan	D F BNL IRL DK GR ES PT	Tonnes	150 40 250 20 5 10 20 1

COMMISSION REGULATION (EEC) No 3752/86

of 9 December 1986

on a special intervention measure for bread-making wheat in Germany

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 1579/86 ⁽²⁾, and in particular Article 8 (4) thereof,

Whereas production of bread-making wheat in Germany exceeds that country's requirements;

Whereas the possibility of that surplus being absorbed by the Community market is slight because of the quality of the summer 1986 crop;

Whereas the German market can be relieved by the export of part of this surplus quantity of bread-making wheat to non-member countries; whereas, in view of world market prices for bread-making wheat, export is possible only with the aid of a refund;

Whereas, however, the refund arrangements laid down in Article 16 of Regulation (EEC) No 2727/75 apply to export from any Member State; whereas such arrangements, therefore, are not only unsuitable for solving the problem in question but may also favour the export of bread-making wheat from Member States where the market situation is different from that in Germany;

Whereas, in the absence of adequate measures, massive quantities of bread-making wheat may be expected to enter intervention storage in Germany in accordance with Article 7 of Regulation (EEC) No 2727/75, the only possibility of disposal being in any case export to non-member countries; whereas, to avoid the abovementioned intervention, a special intervention measure intended to relieve the German market should be taken under Article 8 of the said Regulation; whereas, furthermore, such a measure should take the form of a direct export incentive, which would avoid the high cost to the Community budget of buying in and storing products which would in any case then have to be exported; whereas the granting of a refund, the amount of which would be determined by tendering and which would apply only to products exported from Germany would be an appropriate measure for this purpose;

Whereas the purpose of the measure is such that refunds should be granted only on wheat of the quality required

for acceptance for intervention, as defined in Commission Regulation (EEC) No 1570/77 ⁽³⁾, as last amended by Regulation (EEC) No 2135/86 ⁽⁴⁾; whereas the competent agency must make certain that wheat exported is of this standard;

Whereas the nature and objectives of the said measures make it appropriate to apply in respect of it *mutatis mutandis* Article 16 of Regulation (EEC) No 2727/75 and the Regulations adopted for the application thereof, in particular Council Regulation (EEC) No 2746/75 of 29 October 1975 laying down general rules for granting export refunds on cereals and criteria for fixing the amount of such refunds ⁽⁵⁾ and Commission Regulation (EEC) No 279/75 of 4 February 1975 laying down detailed rules for the application of the system of tendering for export refunds on cereals ⁽⁶⁾, as last amended by Regulation (EEC) No 2944/78 ⁽⁷⁾;

Whereas, since the interested parties are already aware of the terms of the invitation, a derogation may be made from the provisions of Regulation (EEC) No 279/75 on the period that must elapse between the date of publication and the first closing date for the submission of tenders;

Whereas, under the abovementioned Regulation (EEC) No 279/75, the commitments on the part of the tenderer include the obligation to lodge an application for an export licence; whereas compliance with this obligation may be ensured by requiring tenderers to lodge a tendering security of 12 ECU per tonne when they submit their tenders;

Whereas, in order to ensure equal treatment of all concerned, it is necessary to make provision for the licences issued to have an identical period of validity;

Whereas, in order to ensure the smooth operation of the export tendering procedure, it is appropriate to prescribe a minimum quantity to be tendered for and a time limit and form for the communication of tenders submitted to the competent authorities;

Whereas the Management Committee for Cereals has not delivered an opinion within the time-limit set by its Chairman,

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 7.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 174, 14. 7. 1977, p. 18.

⁽⁴⁾ OJ No L 187, 9. 7. 1986, p. 26.

⁽⁵⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁶⁾ OJ No L 31, 5. 2. 1975, p. 8.

⁽⁷⁾ OJ No L 351, 15. 12. 1978, p. 16.

HAS ADOPTED THIS REGULATION:

Article 1

1. A special intervention measure in the form of an export refund shall be applied in respect of 500 000 tonnes of bread-making wheat exported from Germany.

Article 16 of Regulation (EEC) No 2727/75 and the provisions adopted for the application of that Article shall apply *mutatis mutandis* to the said refund.

2. The German intervention agency shall be responsible for implementing the measure referred to in paragraph 1.

Article 2

1. Tenders shall be invited in order to determine the amount of the refund referred to in Article 1.

2. The invitation to tender shall relate to the quantity of bread-making wheat referred to in Article 1 (1) for export to the countries in zones I, II, III, IV, V, VI and VII listed in Annex I to Commission Regulation (EEC) No 1124/77⁽¹⁾

3. The invitation shall remain open until 27 March 1987. During the period of its validity weekly awards shall be made, for which the time limits for the submission of tenders shall be as prescribed in the notice of invitation to tender.

By way of derogation from Article 1 (2) of Regulation (EEC) No 279/75, the time limit for submission of tenders under the first partial invitation to tender shall expire on 11 December 1986;

4. Tenders must be submitted to the German intervention agency named in the notice of invitation.

5. The tendering procedure shall take place in accordance with this Regulation and Regulation (EEC) No 279/75.

Article 3

A tender shall be valid only if:

- it relates to not less than 1 000 tonnes,
- it is accompanied by:
 - advance fixing of the German monetary compensatory amount valid on each closing date for the submission of tenders,
 - the undertaking provided for in Article 2 (3) (b) of Regulation (EEC) No 279/75 that the export licence will be applied for in Germany.

Article 4

The security referred to in Article 3 of Regulation (EEC) No 279/75 shall be 12 ECU per tonne.

Article 5

1. By way of derogation from Article 21 (1) of Commission Regulation (EEC) No 3183/80⁽²⁾, export licences issued in accordance with Article 8 (1) of Regulation (EEC) No 279/75 shall, for the purpose of determining their period of validity, be deemed to have been issued on the day on which the tender was submitted.

2. Export licences issued in connection with the invitation to tender pursuant to this Regulation shall be valid from their date of issue, as defined in paragraph 1, until the end of the second month following that of issue.

Article 6

1. The Commission shall decide, under the procedure laid down in Article 26 of Regulation (EEC) No 2727/75, either:

- to fix a maximum export refund, taking account in particular of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2746/75, or
- to make no award.

2. Where a maximum export refund is fixed, a contract shall be awarded to any tenderer whose tender indicates a rate of refund equal to or less than such maximum export refund.

3. A refund awarded shall not be paid unless the bread-making wheat exported is of at least intervention quality as defined in Article 4 *bis*, paragraph 1, subparagraph 2 of Regulation (EEC) No 1570/77. However the protein content is of at least 12,6 %. The competent agency shall have an analysis made, by an approved body or company, of the landed goods and shall hold at the Commission's disposal an additional sample from each consignment taken and sealed in the presence of the tenderer or his representative.

Sampling and analysis costs shall be met by the tenderer.

Article 7

Tenders submitted must reach the Commission through the intermediary of the German intervention agency at the latest one and a half hours after expiry of the period for the weekly submission of tenders as specified in the notice of invitation to tender. They must be communicated in the form indicated in the Annex.

⁽¹⁾ OJ No L 134, 28. 5. 1977, p. 53.

⁽²⁾ OJ No L 338, 13. 12. 1980, p. 1.

If no tenders are received, the German intervention agency shall inform the Commission of this within the period indicated in the first paragraph.

The times fixed for the submission of tenders shall correspond to Belgian time.

Article 8

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, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

Weekly tender for the refund for the export of breadmaking wheat to countries in zones I, II, III, IV, V, VI and VII

(Closing date for the submission of tenders (date/time))

1	2	3
Number of tenderer	Quantity in tonnes	Amount of export refund in ECU per tonne
1		
2		
3		
etc.		

COMMISSION REGULATION (EEC) No 3753/86

of 9 December 1986

revoking Regulation (EEC) No 3337/86 concerning the stopping of fishing for blue ling and ling by vessels flying the flag of France

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States ⁽¹⁾, as last amended by Regulation (EEC) No 3723/85 ⁽²⁾, and in particular Article 10 (3) thereof,

Whereas Commission Regulation (EEC) No 3337/86 ⁽³⁾ stopped fishing for blue ling and ling in Faroese waters by vessels flying the flag of France or registered in France as from 1 November 1986;

Whereas Germany has transferred on 14 November 1986 to France 600 tonnes of blue ling and ling in Faroese waters; that fishing for blue ling and ling in Faroese

waters by vessels flying the flag of France or registered in France should therefore be permitted; that consequently it is necessary to revoke Regulation (EEC) No 3337/86,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3337/86 is hereby revoked.

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, 9 December 1986.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

⁽¹⁾ OJ No L 220, 29. 7. 1982, p. 1.

⁽²⁾ OJ No L 361, 31. 12. 1985, p. 42.

⁽³⁾ OJ No L 306, 1. 11. 1986, p. 45.

COMMISSION REGULATION (EEC) No 3754/86**of 9 December 1986****revoking Regulation (EEC) No 3419/86 concerning the stopping of fishing for hake by vessels flying the flag of Germany**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States ⁽¹⁾, as last amended by Regulation (EEC) No 3723/85 ⁽²⁾, and in particular Article 10 (3) thereof,

Whereas Commission Regulation (EEC) No 3419/86 ⁽³⁾ stopped fishing for hake in ICES division II a (EC zone), IV (EC zone) by vessels flying the flag of Germany or registered in Germany as from 7 November 1986;

Whereas a Member State has corrected the catch figures which it provided to the Commission and the corrected figures show the quota has not in fact been exhausted; that fishing for hake in ICES division II a (EC zone), IV

(EC zone) by vessels flying the flag of Germany or registered in Germany should therefore be permitted; that consequently it is necessary to revoke Regulation (EEC) No 3419/86,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3419/86 is hereby revoked.

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, 9 December 1986.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

⁽¹⁾ OJ No L 220, 29. 7. 1982, p. 1.

⁽²⁾ OJ No L 361, 31. 12. 1985, p. 42.

⁽³⁾ OJ No L 313, 8. 11. 1986, p. 9.

COMMISSION REGULATION (EEC) No 3755/86

of 9 December 1986

re-establishing the levying of customs duties applicable to stearic acid, falling within subheading 15.10 A, originating in Malaysia, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3601/85 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3601/85 of 17 December 1985 applying generalized tariff preferences to certain agricultural products originating in developing countries⁽¹⁾, and in particular Article 33 thereof,

Whereas, pursuant to Article 1 of Regulation (EEC) No 3601/85, stearic acid, with a tariff subheading of 15.10 A, originating in Malaysia, is permitted to be imported into the Community exempt from duty; whereas, by the terms of Article 32 of the said Regulation, the customs duties applied in the Community can be re-established if the imports of the abovementioned products are made into the Community in such quantities or at such prices that they bring or threaten to bring a serious prejudice against producers in the Community of similar or directly competitive products;

Whereas the preferential imports of stearic acid from Malaysia into the Community have gone from 494 tonnes in 1984 to 2 143 tonnes in 1985 and have reached 2 394 tonnes as at 30 October 1986; the production capacity utilization of the product in question in the Community is about 60 %;

Whereas stearic acid from Malaysia is sold in the Community at a price of less than 30 % of that of Community production, that the low price of the Malay-

sian product keeps to a system of export taxes practised by that country, by which the basic material (palm oil) is subject to a tax of 25 % while the final product (stearic acid) is exempted from it;

Whereas, by this fact, the Malaysian producers get their materials at a price much lower than that of Community producers for the manufacture of stearic acid;

Whereas this situation carries a serious prejudice against Community producers,

HAS ADOPTED THIS REGULATION:

Article 1

From 11 December 1986, the levying of customs duties suspended in pursuance of Regulation (EEC) No 3601/85 shall be re-established for the imports into the Community of the following product originating in Malaysia:

CCT heading No	Description
15.10 A	Stearic acid

Article 2

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

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

Done at Brussels, 9 December 1986.

For the Commission

COCKFIELD

Vice-President

⁽¹⁾ OJ No L 352, 30. 12. 1985, p. 192.

COMMISSION REGULATION (EEC) No 3756/86

of 9 December 1986

abolishing the countervailing charge on clementines originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1351/86⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Commission Regulation (EEC) No 3702/86⁽³⁾, introduced a countervailing charge on clementines originating in Morocco;

Whereas the present trend of prices for products originating in Morocco on the representative markets referred to in Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by Regulation (EEC) No 3811/85⁽⁵⁾, recorded or calculated

in accordance with the provisions of Article 5 of that Regulation, indicated that entry prices have been at least equal to the reference price for two consecutive market days; whereas the conditions specified in the second indent of Article 26 (1) of Regulation (EEC) No 1035/72 are therefore fulfilled and the countervailing charge on imports of these products originating in Morocco can be abolished,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3702/86 is hereby repealed.

Article 2

This Regulation shall enter into force on 10 December 1986.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 119, 8. 5. 1986, p. 46.

⁽³⁾ OJ No L 341, 4. 12. 1986, p. 22.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

COMMISSION REGULATION (EEC) No 3757/86

of 9 December 1986

introducing a countervailing charge on clementines originating in Cyprus

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 1351/86⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least 0,6 ECU below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 3208/86 of 22 October 1986 fixing for the 1986/87 marketing year the reference prices for clementines⁽³⁾ fixed the reference price for products of class I for the period from 1 November 1986 to 28 February 1987 at 59,57 ECU per 100 kilograms net;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by

Regulation (EEC) No 3811/85⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas, for clementines originating in Cyprus the entry price calculated in this way has remained at least 0,6 ECU below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these clementines;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁶⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of 22,03 ECU per 100 kilograms net is applied to clementines (subheading 08.02 B I of the Common Customs Tariff) originating in Cyprus.

Article 2

This Regulation shall enter into force on 11 December 1986.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 119, 8. 5. 1986, p. 46.

⁽³⁾ OJ No L 299, 23. 10. 1986, p. 14.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3758/86

of 9 December 1986

altering the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

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 1579/86 ⁽²⁾, and in particular the fourth sentence of the second subparagraph of Article 16(4) thereof,

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

Whereas the corrective amount applicable to the refund on cereals was fixed by Commission Regulation (EEC) No 3542/86 ⁽⁴⁾, as last amended by Regulation (EEC) No 3706/86 ⁽⁵⁾;

Whereas, the basis of today's cif prices and cif forward delivery prices, taking foreseeable developments on the

market into account, the corrective amount at present applicable to the refund on cereals should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 16(4) of Regulation (EEC) No 2727/75, fixed in the Annex to amended Regulation (EEC) No 3542/86 which is applicable to the export refunds fixed in advance in respect of cereals, is hereby altered to the amounts set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 December 1986.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 139, 24. 5. 1986, p. 29.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 326, 21. 11. 1986, p. 33.

⁽⁵⁾ OJ No L 341, 4. 12. 1986, p. 31.

ANNEX

to the Commission Regulation of 9 December 1986 altering the corrective amount applicable to the refund on cereals

(ECU/tonne)

CCT heading No	Description	Current 12	1st period 1	2nd period 2	3rd period 3	4th period 4	5th period 5	6th period 6
10.01 B I	Common wheat and meslin for exports to :							
	— China	0	+ 6,00	+ 6,00	+ 6,00	+ 6,00	+ 6,00	+ 6,00
	— other third countries	0	0	0	0	0	0	0
10.01 B II	Durum wheat	0	0	0	0	0	—	—
10.02	Rye	0	0	0	0	0	—	—
10.03	Barley	0	0	— 2,00	— 4,00	— 4,00	— 4,00	— 4,00
10.04	Oats	—	—	—	—	—	—	—
10.05 B	Maize other than hybrid maize for sowing	0	0	0	—	—	—	—
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	—	—	—	—	—	—	—
11.01 A	Common wheat flour	0	0	0	0	0	—	—
11.01 B	Rye flour	0	0	0	0	0	—	—
11.02 A I a)	Durum wheat groats and meal	0	0	0	0	0	0	0
11.02 A I b)	Common wheat groats and meal	0	0	0	0	0	—	—

N.B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977), as last amended by Regulation (EEC) No 3817/85 (OJ No L 368, 31. 12. 1985).

COMMISSION REGULATION (EEC) No 3759/86

of 9 December 1986

altering the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

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 1579/86 ⁽²⁾, and in particular the fifth subparagraph of Article 16 (2) thereof,Whereas the export refunds on cereals and on wheat or rye flour, groats and meal were fixed by Regulation (EEC) No 3718/86 ⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3718/86 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 (a), (b) and (c) of Regulation (EEC) No 2727/75, exported in the natural state, as fixed in the Annex to Regulation (EEC) No 3718/86 are hereby altered as shown in the Annex to this Regulation in respect of the products set out therein.

Article 2

This Regulation shall enter into force on 10 December 1986.

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

Done at Brussels, 9 December 1986.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 118, 7. 5. 1986, p. 1.

⁽³⁾ OJ No L 342, 5. 12. 1986, p. 26.

ANNEX

to the Commission Regulation of 9 December 1986 altering the export refunds on cereals
and on wheat or rye flour, groats and meal

CCT heading No	Description	(ECU/tonne) Refund
10.01 B I	Common wheat and meslin for exports to: — Switzerland, Austria, Liechtenstein, Ceuta and Melilla — zone II b) — Tunisia — other third countries	122,00 128,00 32,00 15,00
10.01 B II	Durum wheat for exports to: — Switzerland, Austria and Liechtenstein — other third countries	5,00 (?) 10,00 (?)
10.02	Rye for exports to: — Switzerland, Austria and Liechtenstein — other third countries	5,00 10,00
10.03	Barley for exports to: — Switzerland, Austria, Liechtenstein, Ceuta and Melilla — zone II b) — other third countries	120,00 126,00 20,00
10.04	Oats for exports to: — Switzerland, Austria and Liechtenstein — zone I — other third countries	— 95,00 —
10.05 B	Maize, other than hybrid maize for sowing for exports to: — Switzerland, Austria and Liechtenstein — zone I, zone V, the German Democratic Republic and the Canary Islands — other third countries	10,00 20,00 —
10.07 B	Millet	—
10.07 C II	Grain sorghum, other than hybrid sorghum for sowing	—
ex 11.01 A	Wheat flour: — of an ash content of 0 to 520 — of an ash content of 521 to 600 — of an ash content of 601 to 900 — of an ash content of 901 to 1 100 — of an ash content of 1 101 to 1 650 — of an ash content of 1 651 to 1 900	175,00 175,00 154,00 142,00 133,00 118,00

(ECU / tonne)		
CCT heading No	Description	Refund
ex 11.01 B	Rye flour : — of an ash content of 0 to 700 — of an ash content of 701 to 1 150 — of an ash content of 1 151 to 1 600 — of an ash content of 1 601 to 2 000	175,00 175,00 175,00 175,00
11.02 A I a)	Durum wheat groats and meal : — of an ash content of 0 to 1 300 ⁽¹⁾ — of an ash content of 0 to 1 300 ⁽²⁾ — of an ash content of 0 to 1 300 — of an ash content of more than 1 300	306,00 ⁽³⁾ 290,00 ⁽³⁾ 259,00 ⁽³⁾ 244,00 ⁽³⁾
11.02 A I b)	Common wheat groats and meal : — of an ash content of 0 to 520	175,00

⁽¹⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,250 mm mesh.

⁽²⁾ Meal of which less than 10 % by weight is capable of passing through a sieve of 0,160 mm mesh.

⁽³⁾ With the exception of the quantities referred to in the Commission's Decision of 19 March 1986.

N.B. The zones are those defined in Regulation (EEC) No 1124/77 (OJ No L 134, 28. 5. 1977), as last amended by Regulation (EEC) No 3817/85 (OJ No L 368, 31. 12. 1985).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 November 1986

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.204 — MELDOC)

(Only the Dutch text is authentic)

(86/596/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 3 and 4 thereof,

Having regard to Council Regulation No 26 of 4 April 1962 applying certain rules on competition to production of and trade in agricultural products ⁽²⁾, as amended by Regulation No 49 ⁽³⁾, and in particular Articles 1 and 2 thereof,

Having regard to the Commission Decision of 25 September 1985 to initiate proceedings in this case,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission, pursuant to Article 19 (1) of Regulation No 17 and to Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 ⁽⁴⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

I. THE FACTS

A. The parties

- (1) The parties in this case are :
 - Melkunie Holland BV ('MU'),
 - Coöperatieve Melkproduktenbedrijven 'DOMO-Bedum' GA ('DOMO'),
 - Verenigde Coöperatieve Melkindustrie 'Coberco' BA ('Coberco'),
 - DMV Campina BV ('Campina'),
 - Menken Landbouw BV ('ML').
- (2) The parties belong all to the Netherlands dairy industry. They have each an individual product range which has been formed under the influence of geographical position, organizational structure and corporate strategy. The first four companies are cooperatives whereas the fifth, ML, is a private company. In degrees, all the parties are involved in the export of their products.

B. The products and the market

- (3) The products in question are liquid milk and liquid dairy products, both fresh and long-life, as defined in the 1958 Dairy Board (Produktschap voor Zuivel) Terminology Regulations. This definition excludes condensed milk, but includes cream and yoghurt. In this Decision, all market shares refer to the definition given in this paragraph.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 30, 20. 4. 1962, p. 993/62.

⁽³⁾ OJ No 53, 1. 7. 1962, p. 1571/62.

⁽⁴⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

- (4) The market structure for dairy products in the Netherlands has, as is the case in other Member States, undergone dramatic changes in the last two decades. These changes relate both to the supply and demand sides of the market. As in other countries, the dairy industry in the Netherlands is highly organized and represented in numerous public institutions.
- (5) Traditionally, supplies comprised a large number of regional companies. The common market organization established by Council Regulation (EEC) No 804/68⁽¹⁾, innovation, concentration in the retail business led to take-overs and mergers on a regional level between both cooperatives and privately owned companies.
- (6) In 1960 there were 247 liquid-milk processing plants in the Netherlands. Over the years this number steadily decreased to 39 plants in 1984. The number of dairies — some dairies own more than one processing plant — in 1984 processing less than 60 000 tonnes of milk was 14, representing a market-share of 10,95 %. Their total production amounted to 184 000 tonnes in 1984. The remaining 89,05 % is produced by five dairies, having a total production of 1 496 000 tonnes in 1984. There are four main cooperatives left. In addition, there are a few small cooperatives and

private companies. The four main cooperatives are MU, Campina, Coberco and Noord Nederland (of which DOMO forms a part).

- (7) Door-step deliveries of milk and milk products used to have the largest share of distribution but have now shrunk to approximately 20 %. Since 1970 one notes the growth of large supermarket chains which account for roughly 75 % of the distribution. An important factor which has contributed to this development is the acceptance by law of sales of milk in supermarkets. These big retailers normally have national and international ramifications which is particularly important with respect to long-life milk, which by its nature can be transported over large distances. The concentration of market power on this side of the market is underlined by the fact that two supermarket chains hold more than 50 % of the Netherlands market.
- (8) Although the Netherlands population has grown markedly in the last 20 years, total consumption of milk has hardly increased. The composition of the product range has undergone important changes: consumers have turned more to milk products and long-life milk whereas in the Netherlands the consumer has traditionally been mainly interested in fresh milk.
- (9) The development of the production-pattern since 1960 is as follows:

(x 1 000 tonnes)

Products	1961	1970	1975	1980	1981	1982	1983	1984
Fresh products	1 363	1 357	1 346	1 340	1 351	1 370	1 373	1 381
Long-life milk and milk products	247	283	360	420	439	459	467	458
Farm milk	334	260	225	150	140	140	140	140
	1 944	1 890	1 931	1 910	1 930	1 969	1 980	1 979

The development since 1950 of the consumption of milk per head of the Netherlands population per day and in grams is as follows:

(grams)

Year	Consumption milk	Milk products	Total
1950	517	56	573
1955	477	76	553
1960	397	84	481
1965	330	93	423
1970	280	112	392
1975	254	124	378
1980	236	126	362
1983	229	138	367
1984	230	134	364

- (10) The developments as set out above have led to a shift of market power in favour of the demand side, i.e. the large distribution companies, which operate both nationally and internationally. High costs involved in reorganization, concentration and investments in new technologies led to overcapacity in a market of strong competition between the milk producers to gain the favours of the large supermarkets.

Imports

- (11) Already in 1970 Belgian imports to the Netherlands occurred. Imports from Germany began a few

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

years later. The tables below show the development with respect to imports from Belgium and Germany as from 1971 to 1983.

TABLE 1

Belgium

(x 1 000 kg)

Year	NIMEXE 1983			Total
	04.01-11 ⁽¹⁾	04.01-21 ⁽²⁾	04.01-25 ⁽³⁾	
1971				4 861
1972				26 247
1973	6 612	23 234	26 230	57 076
1974	2 982	14 994	26 649	44 625
1975	5 759	17 710	42 810	66 279
1976	7 217	27 887	57 174	92 278
1977	7 019	33 355	60 582	100 956
1978	4 632	31 924	56 932	93 488
1979	6 487	23 675	77 310	107 472
1980	7 468	20 856	91 833	120 157
1981	7 484	24 022	106 065	137 571
1982	11 816	16 737	105 951	134 504
1983	9 816	15 636	106 075	131 527

TABLE 2

Germany

(x 1 000 kg)

Year	NIMEXE 1983			Total
	04.01-11 ⁽¹⁾	04.01-21 ⁽²⁾	04.01-25 ⁽³⁾	
1976	339	53	1 048	1 440
1977	246	26	697	969
1978	331	27	973	1 364
1979	12 698	68	451	13 217
1980	10 158	38	514	10 647
1981	13 114	1 530	9 174	23 818
1982	16 519	6 452	23 322	46 293
1983	24 560	2 774	20 949	48 283

⁽¹⁾ 04.01-11 : yoghurt, buttermilk, curdled milk, acidified milk.

⁽²⁾ 04.01-21 : skimmed milk.

⁽³⁾ 04.01-25 : full milk and semi-skimmed milk.

Minimum-price rules

- (12) Liquid milk is one of the products which are subject to minimum prices in the Netherlands. The responsibility for setting the minimum prices is delegated by a Royal Decree of 2 March 1973 ⁽¹⁾ to the Dairy Board, a semi-public body.

⁽¹⁾ Staatsblad 52.

The minimum price applies to the end-consumer level; whole and semi-skimmed milk, pasteurized and packaged in a Netherlands dairy may not be sold to the end-consumer at a price below the minimum price. This price was set at such a high level that imports became attractive. A different price system applies to milk other than the pasteurized milk just described. Whole and semi-skimmed sterilized milk and imported milk may not be sold to the final consumer at a price which is lower than the purchase price per litre plus a margin of FL 0,08 plus VAT on the total of the two.

- (13) The minimum prices are adjusted two or three times a year in line with changes in raw material prices and other costs. The minimum price for packaged standardized whole fresh milk with a fat content of 3,2 % applicable from 13 March 1973 was set at Fl 0,69 per litre. The subsequent price adjustments were the results of various factors such as increases in price for raw materials and intervention prices by the EEC authorities and increase in VAT. The development of the minimum price shows that this price has increased slower than the general cost of living. The two occasions on which the minimum price was reduced, on 13 September and 18 October 1983, were a result of decisions by the dairy industry itself.

Lesser Meldoc organization

- (14) Against that background three companies took the initiative in 1974 to cooperate. They formed the so-called lesser Meldoc cartel. The agreement was entered into on 24 September 1974 by MU, DOMO and Coberco. Their cooperation was limited to the national level. Under the agreement, which was notified to and approved by the Netherlands authorities, sales of liquid milk and dairy products were regulated by means of a quota system. The quotas were to be periodically adjusted and rules were laid down for dealing with cases where actual sales diverged from the allotted quotas. The second major element of the agreement was a system for pooling revenue from deliveries to small retailers. Two three-member boards were set up, an administrative board to administer the agreement and a commercial board to lay down rules for coordinating sales.
- (15) The three partners represented in 1974 approximately 45 % of the Netherlands consumption milk industry which was equal to 39 % of the sales on the Netherlands market.

- (16) Imports to the Netherlands of Belgian plastic-bottled long-life milk already started around 1970. None of the members of Meldoc had facilities for manufacturing such milk. They nevertheless closely watched the developments with respect to plastic-bottled long-life milk, including Belgian imports which undercut the price of fresh milk of

Netherlands origin. In order to gain control of the Netherlands plastic-bottled long-life milk market the three partners in Meldoc on 15 January 1975 concluded an agreement in Deventer with De Volharding WA, Nijkerk (Volnij), granting it the exclusive right to produce their milk in plastic bottles for the Netherlands market. In return, the members of Meldoc were given a say in all Volnij's management decisions and their implementation and the business was to be run for the joint account of the members. Meldoc undertook to supply Volnij with whole milk at reasonable prices. The agreement was amended in December 1977 whereby Volnij's exclusive manufacturing rights were limited. Above this limit the members of Meldoc were free to produce plastic-bottled milk themselves or to buy in supplies from third parties. In 1981 Volnij merged with Coberco.

Greater Meldoc organization

(17) The enlargement of the lesser Meldoc organization to the greater Meldoc organization by the inclusion of Campina and ML was thoroughly prepared in a memorandum dated 27 January 1978 entitled 'Discussion paper on cooperation between Meldoc, Campina and Menken Landbouw on the sale of liquid milk in the Netherlands'. The memorandum listed a number of the features of the Netherlands liquid milk market, such as the continuing price competition and the increase in the size of discounts, the increasing concentration in the retail trade and the changing distribution patterns, the stagnation of liquid milk sales and the increasingly strong position of Belgian suppliers.

(18) The discussion paper pinpointed a number of advantages of cooperation, such as the ability to take joint action including mounting 'massed attacks on the remaining competition, joint infiltration over the borders'. It also saw the advantage of weakening the buying power of their customers, who would no longer be able to play the suppliers off against one another by shopping around for better prices. Another virtue of cooperation mentioned in the paper was the fact that domestic and foreign competitors would be less able to acquire, maintain or extend market positions.

Page 13 contains a passage in which the power aspect in relation to customers was identified as the most critical aspect of the cooperation. To retailers

and final consumers the cooperation should remain as inconspicuous as possible. However, penetration from abroad into the domestic fresh milk market could give rise to the need to change that strategy.

The document went on: 'It is already clear that the increasing concentration of retailers and the further penetration of our domestic market from abroad will increase the need for further tie-ups within the dairy industry.'

(19) The features of the market situation as described in the abovementioned discussion paper were presented as reasons for entering into a 'cartel agreement'. The fact that the future partners were aware that their cooperation could give rise to objections from an EEC point of view is shown by the separate chapter in the discussion paper on advantages and disadvantages of cooperation with a view to the Government and the EEC. At a meeting held on 27 February 1978 the subject of foreign imports was discussed and it was agreed that attempts should be made to arrange talks on the subject with Belgian producers. A memo written sometime in May-June 1979 notes: 'On 19 December 1978 the policy group decided, after discussion lasting a year, to accept the fourth draft of the cooperation agreement as binding'. (The actual name of this agreement is the 'Dairy Industry Basic Cooperation Agreement'; the quota arrangement had retroactive effect to 25 December 1977.)

(20) The arrangements for cooperation between the lesser Meldoc organization and Campina and ML to form the greater Meldoc organization were set out in the 'Dairy Industry Basic Cooperation Agreement' (hereinafter referred to as 'Basic Agreement').

(21) The Basic Agreement provided for the parties to pursue a joint commercial policy, under which they would collectively determine their policy on prices and conditions of sale for liquid milk and dairy products. In order to remain competitive, the parties must also aim, the Basic Agreement said, to keep their cost prices as low as possible. For this purpose they were to pursue a joint production and distribution policy, under which production-sharing would be encouraged, coordination and concentration of buying would take place and standardization and exchange of products would be promoted. The members shared the costs of the Meldoc bureau which operates as the hub of the cartel's operations.

The parties would endeavour to concentrate their sales on a territory allotted to each one. The sales territories, which roughly followed provincial boundaries, were marked on a map appended to the Agreement. It was explicitly stated that each party was obliged as against the other parties to protect its sales volume against outsiders.

The Basic Agreement also provided for quotas, which were based on the parties' 1977 sales levels. The quotas could be adjusted from time to time in line with actual sales. Quotas or part of them could be transferred to another party but must be offered to all the parties collectively first. A party exceeding or failing to reach its quota paid or received compensation. These quota arrangements were laid down in an ancillary agreement appended to the Basic Agreement. The quota agreement was signed for six years from 25 December 1977 until the end of 1983 or thereabouts, with the possibility of one-year extensions. Parties could withdraw upon one year's notice.

The proportion of the Netherlands market supplied by the Meldoc organization rose from approximately 68 % in 1978 to over 90 % in 1983. The increase in market share is primarily due to further take-overs and mergers.

A Board was set up on which each party was represented by the member of its staff with ultimate responsibility for liquid milk policy. The Board was responsible under the Basic Agreement for implementing and enforcing the Basic Agreement, and could make new additional agreements. The internal regulations of the Board were contained in an ancillary agreement appended to the Basic Agreement. The Basic Agreement was never signed by the five Meldoc partners and for that reason it did not need to be notified to the Netherlands authorities under the Competition Act (*Wet Economische Mededinging*, artikel 2). When the Agreement was concluded the five Parties accounted for 68 % of the market; by 1983 that share had grown to 90 %.

- (22) Both Campina and ML have stated that there was no alternative but to join Meldoc. Referring to the developments in the market, ML has argued that its existence would have been endangered if it had not used the opportunity to accept the cooperation within Meldoc. Campina has argued that one of the main reasons for joining Meldoc was its inability to resist the competition from the lesser Meldoc acting together with Volnij which was, together with Campina, finally the only remaining Netherlands supplier of plastic-bottled long-life milk. This

type of milk was far more important in the south where it had a share of 35 % of the total market of consumption milk, whereas this share was 8 % in the remaining parts of the Netherlands. It was particularly difficult to resist competition from Volnij since this company was supported by Meldoc. Campina also faced a large market share (about 20 %) of Belgian milk-suppliers which share was roughly 3 % in the rest of the Netherlands. These circumstances, taken together with internal company problems of a more structural nature, compelled Campina to join Meldoc rather than staying alone. Campina has stated it was not aware when it joined Meldoc that this form of cooperation could give rise to problems under the EEC competition rules. However, the Commission's copy of the discussion paper referred to above, and obtained during the inspection at Campina's premises, suggests otherwise. On page 7, where mention is made of legal advice on competition law questions, there is a handwritten note reading: 'quota is dangerous subject. destroy everything. keep one copy. make a thorough search. keep one secret file per firm'.

The operation of the Basic Agreement

- (23) The agreement must be analyzed in the context of the market developments described above and in the light of the parties' overall objectives. As has been shown above, the Netherlands milk producers in Meldoc agreed to a coordinated response to the threat posed to their market position by imports from other Member States. Accordingly, the agreement must be read in conjunction with the discussion paper (see paragraph 17 to 19) and other documentary evidence such as the memorandum quoted in paragraph 27 which states that the protection of the Netherlands market against inroads of milk from abroad was one of the original policy objectives of the cartel.
- (24) Many committees and working parties operated within the greater Meldoc. From 1978 to the end of July 1984 some 175 meetings took place, the majority being accounted for by the commercial working party on fresh milk and the Liquid Milk Steering Committee. The agendas covered a wide range of issues relating to the agreed areas of cooperation.
- (25) Imports of long-life milk from Belgium were extensively discussed in Meldoc. In a memorandum written on 18 February 1980, a series of possible countermeasures was put forward to hold down Belgian imports, such as using threats of incursions into the Belgian market to secure price agreements,

which would mainly benefit Volnij and Campina (at the time the only Netherlands producers of long-life milk in plastic bottles). Other ideas were to undermine the margins on plastic-bottled milk in Belgium by quoting lower prices from the Netherlands, to capture a share of the Belgian long-life milk market with Netherlands long-life milk in cartons (although losses might have to be sustained), to approach Netherlands purchasers of Belgian milk, to try to build up sales of pasteurized milk and dairy products (the market share of fresh milk and dairy products in Belgium was at the time under 10 %), or to take a stake in a Belgian dairy and 'use it to disrupt the market (both negatively and positively)'.

The minutes of the meeting of the Liquid Milk Steering Committee of 22 February 1980 reported under point 6, 'Belgian plastic-bottled imports', that the best approach was to 'further undermine the margins on plastic-bottled milk in Belgium by lower offers from the Netherlands' and went on, 'A common fund should be established and an independent marketing man put in charge to get the Belgians into such a mess that they come and talk'.

- (26) The feeling of the members of Meldoc that it was in their common interest to do something to force back the Belgians' share of the Netherlands market was also expressed in a memorandum of 2 May 1980 entitled 'Some "headlines" about sales of plastic-bottled'. The memo of 2 June 1980 referred to above stated that any costs arising from the expansion of Netherlands production of long-life milk in plastic bottles should be pooled.

The discussion was concluded at the meeting of the Liquid Milk Steering Committee on 6 June 1980, where it was decided to attempt to freeze Belgian sales in the Netherlands. Meldoc would try to capture the growth in that segment themselves. It was agreed to act together to attract the anticipated growth of 10 to 15 million litres a year by either sales commitments or loss pooling.

- (27) In 1981 the first imports of UHT long-life milk from Germany appeared. It was thought that, in the long run, UHT milk would oust plastic-bottled long-life milk and that foreign suppliers would capture an increasing share of the long-life market. The Meldoc group feared that this trend would in the long run harm their own market position for

fresh milk and dairy products. It was therefore agreed to make special deliveries of UHT milk themselves. The discussions on the arrangements to be made were based on the starting point that the policy objectives originally agreed by the partners would be maintained. These objectives were formulated in a document of 29 December 1982 as follows:

- a. defence of the margins on pasteurized milk
- b. protection against further inroads by long-life milk from abroad
- c. in the long run (when a substantial sales volume has been built up) to arrive at a balanced distribution of production so that financial compensation can be dispensed with.'

- (28) The agreement provided for the suppliers of the UHT milk to be compensated for their losses by the other members. The difference between the selling price ex warehouse and an agreed 'Meldoc cost price' was pooled and the total shared between the members in the following proportions: MU 26 %, DOMO 16 %, Coberco 22 %, Campina 29 % and ML 7 %.

It was agreed that MU should advance the money to compensate the other suppliers until accounts had been settled. The scheme covered UHT whole milk and skimmed cocoa milk (memo of 1 February 1982).

- (29) The 'share-out of the losses sustained on Campina's UHT deliveries to Aldi (a large German supermarket chain which also operates in the Netherlands) in 1982 totalled Fl 947 858. For 1983 the figures for the UHT deliveries from Campina and Coberco to Aldi and ML to Edah (a supermarket chain) were:

(guilders)

	Campina to Aldi	Coberco to Aldi	ML to Edah
MU	16 490	261 426	172 509
DOMO	4 639	160 828	106 160
Coberco	6 451	221 207	145 970
Campina	7 080	291 590	192 414
ML	4 028	70 384	46 445
Total	38 688	1 005 435	663 498

- (30) The results of Meldoc's policy of protecting its sales volume against foreign suppliers is described with respect to the years 1980 to 1982 in a note dated 24 October 1983 in the following terms:

'In these years we pursued a policy of replacing imports of plastic-bottled with UHT milk in cartons. A policy not without results, though achieved only by fierce price-cutting. One of the most important motives for the policy was to give Belgium, and Germany, as little scope as possible to make inroads into the fresh milk market where we were vulnerable because of high prices.'

At a meeting of Meldoc's long-life working party on 5 May 1983 the results of the joint policy on long-life milk were summarized as follows:

'We can say that the Belgians especially have lost a lot of ground. If the increase in sales to Aldi are included, then the Germans too have not been left unscathed. The conclusion — after discussion — is in the coming years capacity is needed for about 100 to 25 million litres of UHT milk in cartons.'

- (31) Intensive consultations between the members of Meldoc also took place in the commercial working parties. The information exchanged did not only relate to long-life but also to fresh milk and milk products. A document dated 24 May 1982 states in respect of Meldoc's general policy that, in deciding on price levels, the partners should have respect for each other's position. Proposed price quotations were in fact discussed in detail by the working parties. The report on the 11th meeting of the Liquid Milk Steering Committee states under point 3 concerning list No 55 of the conclusions of the commercial working party 'There have traditionally been proper consultations about quoting to one another's customers.' A final example of the detailed exchanges of views that took place about price quotations is list No 15 of the conclusions of the meeting of the long-life and fresh milk working parties on 17 January 1984. Several large customers are taken in turn and the trend regarding prices quoted to them discussed.
- (32) In 1983 the development the Meldoc group had been dreading for many years came to pass: imports of fresh milk. On 29 July a special meeting of the Policy Committee was called to discuss the problem of fresh milk imports. The

report on the meeting summarized the Chairman's presentation of the situation as follows:

'the high margin on liquid milk in the Netherlands makes it attractive for foreign competition (especially from Belgium and Germany) to enter that market.'

A couple of examples of Belgian and German imports are mentioned. The imported milk is of acceptable quality for the consumer and is sold below the minimum Netherlands consumer price.

- (33) Before and after the meeting on 29 July 1983 a number of specific measures were taken to stem the tide of fresh milk imports. These measures are discussed below, where reference will be made to a memorandum of the Meldoc Bureau dated 24 October 1983 entitled 'Some facts and background concerning the price reductions of 12 September and 17 October 1983', which described the situation and the measures taken to deal with it. As far as the Commission has been able to establish, these measures consisted in persuading Ziko⁽¹⁾ not to import fresh milk from West Germany, approaches to Belgian suppliers to induce them to stop supplying Netherlands customers, and the 'dumping' of milk on the Belgian market.
- (34) Dissatisfied as it was with the discounts it received from MU, Ziko started to prepare for trials of whole and semi-skimmed milk from Germany. A note on the 151st meeting of MU's sales staff on 28 March 1983 recognized the danger of other customers looking for imports from Germany as well. The prospective German supplier was approached several times and it was made clear to him by MU that deliveries of whole and semi-skimmed milk to the Netherlands market would put pressure on the margins of large Netherlands dairies.
- (35) The Ziko case was discussed at several Meldoc meetings, such as those of the Liquid Milk Steering Committee on 6 May and 3 June 1983. The minutes of the various meetings make it clear that, within Meldoc, agreement existed to try to prevent Ziko starting importing from Germany.

⁽¹⁾ Ziko is a trading company, based in Eindhoven, which acts as a central purchasing organization for milk and products of its members.

- (36) MU concluded a multi-annual contract with Ziko for fresh milk and dairy products. Clause 1 of this contract reads:

'All the Ziko members listed agree to purchase the basic range of fresh milk and dairy products from Melkunie Holland for all their outlets.'

That the express purpose of the contract with Ziko was to prevent imports is underlined by the following passage from the Meldoc Bureau memorandum of 24 October 1983: 'Meanwhile the Ziko group was threatening to import from Germany. By giving an extra discount we were able to get it to sign a multi-annual purchase contract.'

- (37) Ziko's prospective German supplier, Naarmann, had received packaging material for the deliveries to Ziko. MU explained in a letter to the Commission that, after Ziko had decided not to take fresh semi-skimmed or whole milk from Naarmann, MU reimbursed Ziko for the sums it had paid to Naarmann for the packaging. These costs were shared between the members of Meldoc. The accounts for 1983 contain an item of Fl 26 289 for 'paper reimbursement Germany', which was split between them.

'Dumping' (1) in Belgium

- (38) Towards the end of May 1983, Edah started to sell imported fresh whole and semi-skimmed milk in a large number of its branches in the south of the Netherlands. The whole milk from Belgium was sold at Fl 0,10 per litre less than Netherlands whole milk. Meldoc thereupon three times attempted unsuccessfully to get the Belgian suppliers to stop their deliveries. The memorandum of 24 October 1983 stated that the Belgian suppliers initially showed some interest, but later because of differences of opinion it was decided that there was no point in continuing the attempts.
- (39) During the summer imports of Belgian milk continued to rise. An interim report written at MU on 27 September 1983 observed that imports of fresh milk and any loss of market share was unacceptable. Two days later, on 29 September, an interim meeting of the Steering Committee was

held about the increase in imports. Various measures to curb the imports were discussed. It was decided, among other things, that Campina could buy 10 million kg of milk in Belgium with the intention of getting the Belgian suppliers round the table.

- (40) A written internal MU note dated 29 September 1983 said that a number of agreements were made concerning Belgian imports, one of which was to begin a campaign of 'dumping' long-life milk in Belgium. The partners set aside 10 million litres of plastic-bottled and 5 million litres of cartons for this purpose.

The aim of all this was to put severe pressure on Belgian margins on long-life milk.

- (41) An internal memo from Campina dated 18 October 1983 stated that the cost price of the products to be 'dumped' on the Belgian market would be reimbursed in consultation with Meldoc.

A second memo, dated 24 October 1983, says that it was decided to try to sell as small a quantity of long-life milk as possible in Belgium at as many addresses as possible, 'i.e. spread out so as to cause the maximum fall in prices.' It also said that the impression should not be given that the Netherlands dairy industry was acting together.

- (42) The milk was invoiced to the Belgian customers (Delhaize, Dial and CFC) by Mona-Belgium, a subsidiary of Melkunie Holland. Mona purchased the milk from Melkunie, which in turn obtained most of it from Coberco and Campina, Coberco and Campina delivered the milk direct to the Belgian customers but invoiced it to Melkunie. The Commission has documentary evidence of all these transactions between Melkunie and Mona and then Delhaize, Dial or CFC.
- (43) The Commission has obtained a fairly complete list of prices charged for the milk delivered to the Belgian retailers in 1983 at each stage. The deliveries of plastic-bottled whole milk to Melkunie by Volnij can serve as an example. Melkunie paid Fl 103/100 litre for this milk. Melkunie charged Mona Fl 80,93/100 litre, i.e. Fl 22,07 less than it had paid Volnij. Mona sold the milk to Dial and Delhaize for Fl 82,45 and Fl 83,22/100 litre, i.e. Fl 20,55 or Fl 19,78 less than the price invoiced by Volnij at the beginning of the transaction.
- (44) These deliveries were still going on at the time of the Commission's inspection visits to the firms. A

(1) 'Dumping' is used here in a different sense from its meaning in Council Regulation (EEC) No 2176/84. It is used because it was used by the members of the cartel themselves. To avoid misunderstanding, it will be placed in quotation marks.

Melkunie memorandum dated 13 June 1984 shows that the loss-making sales of Netherlands milk on the Belgian market were continuing. After Coberco/Volnij had stopped producing plastic-bottled milk from 1 June 1984, deliveries were kept up by Campina and Melkunie on their own.

- (45) A document made up to the 135th Committee meeting 2 March 1984 states with respect to the long-life milk deliveries to Delhaize that:

- Volnij and Campina delivered approximately 100 000 and 50 000 litres of plastic-bottled whole milk per week, respectively,
- the invoice was drawn up by Mona-Belgium under the responsibility of MU's liquid milk division, and
- that the supply contract ran from 1 December 1983 until around 1 June 1984.

The minutes of the meeting reported that it had been decided to present a proposal on the allocation of these costs at the next meeting. The costs involved were approximately Fl 687 500.-.

- (46) A document of 4 April 1984 entitled 'Additional decisions on settlement of accounts 1983' contains the following passage:

Deliveries to Belgian customers

The following agreements have been made concerning deliveries by Coberco (Volnij), Campina and Melkunie to Belgian customers:

- (a) Plastic-bottled long-life milk and UHT milk is covered.
- (b) The delivery period is from November 1983 until the beginning of June 1984.
- (c) The maximum quantities are limited to 10 million litres plastic-bottled and 5 million litres UHT.
- (d) The suppliers will be compensated for the difference between cost and selling prices (average about 15 cents/litre).

For 1983 accounts must be settled for November/December deliveries.'

- (47) The accounts for Meldoc's activities were held and processed on MU's computer. During the investigation at MU, an entry for Fl 117 577,79, under reference 'memo 4.01.02' and labelled 'Meldoc sterile milk Belgium', was found on page 6 of the ledger for processing carried out on 12 March 1984 concerning accounts ending 31 December 1983. This sum represented the loss made on 'dumping' Netherlands long-life milk on the Belgian market. MU's financial controller, who was responsible to the Director Liquid Milk Operations and represented MU on many Meldoc working parties, had already charged a percentage of this sum to Melkunie's accounts.

- (48) In their replies to the Commission's letter of 6 June 1984, the Meldoc partners denied that they had intended to share out the cost of the loss-making operations on the Belgian market, though they admitted that such an allocation had been discussed at meetings. The minutes of the 139th Steering Committee meeting on 2 June 1984, which also discussed the Commission's inspections, reported that in view of the foreseeable commercial developments and the inspections by the European Commission, all parties felt that caution was generally called for in sharing costs and that: 'the proposal made at the time by the Chairman for collective contributions to possible losses on sales by Melkunie to Belgian customers was finally dropped.'

- (49) In their written defence, as well as during the hearing, the Meldoc partners stated that their action on the Belgian market as described in the preceding paragraph was a reaction to alleged anti-competitive practices which occurred on the Belgian market. Although they admitted that their reaction to Belgian imports might possibly be covered by Article 85 (1) of the Treaty, the Meldoc partners agreed that in these circumstances the imposition of fines would be inappropriate.

- (50) Working paper No 3 of 21 March 1983 for a meeting of the Policy Group on 30 March 1983 dealt with the policy for cooperation for the period 1984 to 1985. The members of the Liquid Milk Steering Committee attended the meeting. The working paper said it was 'necessary to strengthen and expand the members' reasonable competitive

position in relation to abroad'. To do so, the Members should make efforts to reduce their cost prices, renew their range and improve relations with large customers. About Belgian imports, which the memo said were then running at 5 million litres of dairy products on an annual basis, it observed: 'Our countermeasures in Belgium consist in putting pressure on prices there, which are already generally at low levels, by fiercely price-cutting quotes and supplying about 200 000 litres of long-life milk a week until 1 June next. Continuation of this and the means of doing so (cost about 15 cents/litre) are under discussion.' Referring to imports from Germany by Pollfood, which supplied only large customers, the paper said that 'irresponsibly' intense price pressure had built up in that market segment and that the 'tactics we have used so far of giving them as little scope as possible' should be refined. It went on: 'Reactions to competition must, as has been the case so far, continue to be jointly discussed, decided and if necessary financially pooled. They must be implemented as far as possible under the direct responsibility of one or more members.'

- (51) The working paper recommended that the drive to win back sales of long-life milk and dairy products lost mainly to Belgian suppliers (about 130 million litres of plastic-bottled) must be continued. Foreign imports were estimated in the paper at about 100 million litres a year, with price competition with German suppliers of UHT milk extremely fierce. The members should endeavour to see that each other's capacity was utilized as fully as possible and to decide to expand only after joint consultation.

II. LEGAL ASSESSMENT

A. Article 2 of Regulation No 26

- (52) The activities of the greater Meldoc relate to the production and trade of agricultural products cited in Annex II to the Treaty⁽¹⁾. These products fall under Articles 1 and 2 of Regulation No 26, Article 1 of which provides that Articles 85 to 90 of the Treaty apply to agreements relating to such products, whilst Article 2 provides for exceptions to the application of Article 85 to agreements relating to such products. The first sentence of Article 2 (1) states that Article 85 (1) of the Treaty does not apply to agreements, decisions and practices relating to trade in the products which form an integral part of a national market organization or are necessary for attainment of the objectives set out in Article 39 of the Treaty. The second

sentence of Article 2 (1) provides that, in particular, Article 85 (1) shall not apply to agreements, decisions and practices of farmers, farmers' associations or associations of such associations from a single Member State which concern the production or sale of agricultural products or the use of joint facilities for the storage, treatment or processing of agricultural products and under which there is no obligation to charge identical prices, unless the Commission finds that competition is thereby excluded or that the objectives of Article 39 of the Treaty are jeopardized.

- (53) The national market organizations in the dairy industry have been replaced by the common organization of the market, the rules for which are laid down in Council Regulation (EEC) No 804/68⁽²⁾. Accordingly, the agreement by which the greater Meldoc was set up cannot be covered by the first exception contained in the first sentence of Article 2 (1) of Regulation No 26.
- (54) Nor is the agreement by which the greater Meldoc was set up necessary for the attainment of objectives set out in Article 39 of the EEC Treaty. The third paragraph of the preamble to Regulation No 26 shows that this exception is applicable only in so far as application of Article 85 (1) of the Treaty would jeopardize attainment of the objectives of the common agricultural policy in the sector concerned. Secondly, the means which may be employed in the dairy sector in order to attain the objectives of the common agricultural policy set out in Article 39 of the Treaty are stated in Regulation (EEC) No 804/68. This applies especially in the field of price-support measures. Even if some scope remains for private initiatives within the framework of Regulation (EEC) No 804/68's statement of the means to attain the objectives of Article 39 of the Treaty, the Meldoc partners' activities in this case (involving a quota system, a compensation scheme, consultations on sales and prices and specific acts designed to inhibit imports from other Member States) amount to an attempt to set up a private intervention mechanism, very different from the intervention for which Regulation (EEC) No 804/68 provides and which must be standardized 'so as not to impede the free movement of the goods in question within the Community' (fourth recital). The greater Meldoc agreement sought to protect the parties' market positions from competition, particularly from other Member States. It cannot therefore be said to be necessary for the attainment of the objectives set out in Article 39 of the Treaty, the means for which are laid down in this sector by Regulation (EEC) No 804/68.

⁽¹⁾ List referred to in Article 38 of the Treaty, Chapter 4.

⁽²⁾ OJ No 148, 28. 6. 1968, p. 13.

- (55) Since the two conditions for the exception provided for in the first sentence of Article 2 (1) of Regulation No 26 are not satisfied, the exception provided for in the second sentence is not applicable, since it refers to one particular form of the arrangements covered by the first sentence and requires that the case satisfy one of the two conditions for the exception in the first sentence as well as having the features described in the second sentence⁽¹⁾.

However, even if the special circumstances described in the second sentence were intended to constitute a separate exception, this additional independent test would still not be met. Since ML is a private company and not an association of farmers, it cannot be maintained that the Meldoc agreement is covered by the exception provided for in the second sentence of Article 2 (1).

- (56) Hence the exceptions provided for in Article 2 of Regulation No 26 are not applicable in the present case and do not, therefore, preclude the application of Article 85 of the Treaty.

B. Article 85 (1)

- (57) Article 85 (1) prohibits as incompatible with the common market 'all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object and effect the prevention, restriction or distortion of competition within the common market, and in particular those which :

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions ;
- (b) limit or control production, markets, technical development or investment ;
- (c) share markets or sources of supply ;

...

Basic Agreement

- (58) The agreement covering the cooperation of the five-member 'greater Meldoc group' in the field of liquid milk and dairy products, the Dairy Industry Basic Cooperation Agreement, was adopted by

Meldoc's Policy Group on 19 December 1978 in its fourth draft and constitutes an agreement within the meaning of Article 85 (1). The Policy Group was composed of senior officers and executives of the five companies.

- (59) The Basic Agreement contains a large number of provisions which restrict competition, especially in the fields of sales, prices, production, distribution and markets. The closeness of the cooperation is further demonstrated by the great number of meetings that took place within the Meldoc organization.

The documentary evidence gathered by the Commission, some of which has been discussed above (including the minutes of meetings of the Milk Steering Committee, the Policy Group and the various working parties) prove that regular consultations took place on all the abovementioned forms of cooperation.

- (60) Full consultations were traditionally held about quoting to each other's customers. The meetings of the various working parties (long-life and fresh) were essentially devoted to coordination of sales and prices, thereby implementing the objective of a joint commercial policy.

Apart from the general impact of the quota arrangements on the members' freedom to decide reductions or increases in output, actual output restrictions concerned especially the long-life milk sector. The growing imports of long-life (plastic-bottled) milk from Belgium and later of UHT milk from Belgium and Germany led to agreements to increase production.

The quota arrangements shared out the market between the members in quantitative terms. The Basic Agreement also involved geographical market-sharing. The bulk of each member's sales was subject to quotas. The rise in the proportion of the Netherlands market supplied by the Meldoc organization (from 70,2 % in 1978 to 91,4 % in 1983) and the proportion of the market accounted for by Meldoc sales subject to quotas (from 65,2 % in 1978 to 78 % in 1983) show that the Meldoc cooperation excluded or restricted competition on a nation-wide scale. Competition was restricted not only because of the allocation of quotas but also because of the financial transfers between the parties if they fell short of or exceeded the agreed quotas and because of the consultation on quoting to each other's customers and agreements concerning production levels.

⁽¹⁾ Second Report on Competition Policy, point 75, and Case 71/74 Frubo, (1975) ECR 563, where only the conditions referred to in the first sentence are mentioned as the tests for the exception provided for in Regulation No 26.

Actions against imports

- (61) In assessing the Meldoc partners' market behaviour it becomes clear that the Basic Agreement cannot be isolated from earlier and later documentary evidence. Even though the text of the Basic Agreement contains no references to imports or exports it does provide for the specific obligation of the parties to protect their sales volumes against third parties. The discussion paper, which served as a contribution to the discussion on the Basic Agreement, had already recognized the 'increasing concentration of retailers' and the 'further penetration of our domestic market from abroad' as developments which would urge closer cooperation. The advantages of cooperation were, amongst other things, the ability to take joint action including mounting 'massed attacks' on the remaining competition, joint infiltration over the borders'. As is shown by the facts the Meldoc partners protected their sales volumes against third parties by taking joint action to curb imports. One of the documents of a later date than the Basic Agreement also confirms that this agreement cannot be viewed separately from the later evidence such as the memorandum of 29 December 1982 which stated that the protection of the home market against 'further inroads by long-life milk from abroad' was among the original policy objectives of the cartel. This document was drawn up in relation to a discussion on joint actions by the Meldoc partners against imports of UHT milk.

Imports of long-life milk

- (62) The Meldoc partners wanted to stop the competition from Belgian milk on the Netherlands market because of the pressure on their prices caused by lower-priced Belgian milk and because they feared an erosion of their shares of the fresh milk market. In order to achieve this aim, different joint actions were carried out. As is shown in paragraph 31 the Meldoc partners regularly exchanged information on quotations in connection with imported milk and in other contexts. This not only distorted competition between the members of the cartel, because information on prices and customers was shared and because they respected each other's positions, but also distorted competition between Netherlands and foreign milk.

- (63) The decision referred to in paragraph 26 to freeze Belgian sales of long-life milk in the Netherlands and to capture the anticipated growth in this segment is another example of a decision which distorted competition. The scheme of special UHT

deliveries was also a Meldoc operation to distort competition within the Netherlands and eliminate competition from Germany and Belgium. The scheme involved selective low offers to the Netherlands customers concerned to make it worth their while not to import the cheaper UHT milk. The losses were shared between the members. The quotations given in paragraph 30 show that the Meldoc group thought their action a success.

Imports of fresh milk

- (64) The multi-annual contracts which MU concluded with Ziko was clearly intended to prevent loss of business to German suppliers. This emerges most clearly from the second quotation in paragraph 36 stating that MU reacted to Ziko's intention of buying milk from Germany by offering an extra discount. In return for this extra discount Ziko was prepared to sign a multi-annual contract, which, as the first quotation in paragraph 36 shows, prevented Ziko outlets from purchasing from any other supplier than MU 'basic' range of fresh milk and dairy products for the duration of the contract, thus shutting out other, particularly German, suppliers. MU's contract with Ziko fitted into the general policy of the Meldoc group to keep imports of long-life and fresh milk out of the Netherlands market. The evidence presented in paragraphs 35 and 36 also proves that the Meldoc group regarded it as a matter of common interest that MU should secure the Ziko contract. Not only was the Ziko case discussed at several Meldoc meetings but the cost of reimbursing Ziko for packaging it had ordered from the German supplier, which was part of the price MU paid to gain the contract, was shared between the partners.

It is concluded that MU's contract with Ziko followed from the Basic Agreement which, amongst other things, aimed at protecting the Meldoc partners' share of the Netherlands market against inroads by foreign milk suppliers.

Action on the Belgian market

- (65) Imports of Belgian milk and possible measures to prevent them from increasing or to recapture business the members had lost to Belgian suppliers were regular topics of discussion in Meldoc. Apart from the Meldoc members' action against Belgian imports of long-life milk and dairy products in the Netherlands, in 1983 they also undertook joint action on the Belgian market to induce Belgian suppliers to stop their deliveries of fresh milk to Netherlands customers. In 1983, Edah began importing Belgian fresh milk and several other

customers followed Edah's example. To force the Belgian suppliers to stop these exports and avoid losing sales on the important fresh-milk market, the members of Meldoc decided to mount a 'dumping' operation on the Belgian market. Initial attempts to stop the imports by talking to the Belgian suppliers had failed. That the 'dumping' operation was, explicitly directed against the Belgian imports is proved by several documents, including those mentioned in paragraphs 39 and 40. These documents also show that it was a joint action by the members of Meldoc. The margin of loss on the 'dumped' milk was considerable, as is shown by the figures given in paragraph 43, and this was openly admitted in the memorandum quoted in paragraph 44, which spoke of loss-making sales. The considerable scale of these sales is shown by the figures given in paragraph 45. The aggressiveness and covert nature of the operation emerge from the quotations given in paragraph 41. The aim was the 'maximum fall in prices' and, to avoid giving the impression that 'the Netherlands dairy industry is acting together', Volnij channelled its deliveries to Dial under one of Mekunie's brand names.

- (66) The denial by the members of Meldoc in reply to the Commission's questions that any decision was ever taken to share out the cost of the cooperation on the Belgian market is contradicted by the evidence. First, an intention to split the cost of joint operations is expressed in a number of documents where such operations are discussed. The evidence reveals that this intention was also realized in some particular cases (such as the special UHT deliveries and the Ziko case). The intention to share the cost of the action against Belgian fresh milk imports is proved by:

- (a) the estimates of the deficit to be borne by Meldoc in respect of the deliveries to Belgian customers given in the document referred to in paragraph 45;
- (b) the reference to a decision to compensate suppliers in the document entitled 'additional decisions' referred to in paragraph 46;
- (c) the fact that Melkunie had already charged to itself a percentage of the Fl 117 577,79 entry, for Meldoc sterile milk in Belgium, found in its computer records.

- (67) It can be concluded that the 'dumping' operation was mounted by Meldoc to curb imports of fresh milk from Belgium with the aim of sharing the costs of the operation in agreed proportions. The fact that, in the event, the costs of the operation were not shared, or at least the Commission's lack of evidence that they were actually shared, does not lessen the seriousness of this operation. If the costs were indeed not shared out, this might be due to the fact that the Commission had commenced investigations into the companies. Although the operation was jointly decided by all the members of Meldoc, it must be pointed out that the ring-leaders were MU, Coberco and Campina; MU because it played the key role in organizing the operation and Coberco and Campina because they, as well as MU, supplied the milk that was 'dumped' on the Belgian market.

- (68) The actions by Meldoc against imports as described above cannot be seen as merely incidental behaviour. The policy of taking a common stand against any competition, including from abroad, is manifestly confirmed by the evidence discussed in paragraph 50 where not only is it said that reactions to competition were to be discussed and decided jointly, and if necessary pooled, but also that such a policy should be continued during the years 1984 and 1985

- (69) Finally, the argument raised by the defence concerning alleged anti-competitive practices on the Belgian market cannot be accepted by the Commission. Even if it is true that the Belgian imports to the Netherlands had been brought unfairly, because based on those alleged anti-competitive practices, this circumstance could still not constitute a mitigating factor in the decision-making process on the imposition of fines. If this were otherwise, undertakings could be encouraged to determine for themselves how to react to behaviour which infringes the EEC competition rules and disregards the rules which have specifically been adopted to remedy such behaviour. The Meldoc partners should have filed a complaint to the Commission under Article 3 of Regulation No 17. They have never done so. It was only at the instance of the defence against the Statement of Objections that this point concerning alleged anti-competitive practices on the Belgian market was raised.

Effect on trade between Member States

(70) It has been established by the Court of Justice that an agreement which covers the whole territory of a Member State 'has by its nature the effect of reinforcing the compartmentalization of markets on a national basis, thereby holding up the economic interpenetration which the Treaty is designed to bring about and protecting domestic production' (VCH judgment of 17 October 1972 in Case 8/72 (¹)).

(71) In the defence to the Statement of Objections, the point is raised that the VCH judgment concerned a cartel between traders which is different from the present case which concerns a cartel between manufacturers. According to the defence, the principle laid down in the Court's judgment is based on the understanding that foreign suppliers depend normally on local distributors when they try to penetrate a foreign market. A situation in which most distributors are deprived of their freedom to take commercial decisions independently would almost inevitably have an impact on other parties (especially manufacturers) from abroad, since they would suffer from the lack of independence among distributors. The defence states that this reasoning cannot be applied to an agreement between manufacturers which has a strictly national character, particularly when the manufacturers in question have no exclusive relationships with their buyers.

(72) The rationale of the VCH judgment, which concerned a cartel between traders, is equally applicable in this case. The present agreement which covers — practically — the whole of the territory of the Netherlands is indeed able to render the penetration of the Netherlands market more difficult than would have been the case otherwise. The size of the cartel, together with the obligation to defend sales against third parties and the intensive cooperation in terms of sales and prices, have an inherently adverse effect on the possibilities for foreign suppliers to penetrate the Netherlands market. These suppliers are confronted with a market which is divided between members of a cartel which ultimately covered more than 90 % of the relevant product market and who acted together to defend their sales volume. Furthermore, the cooperation in quoting prices has a distorting effect on the competition from any third supplier, including foreign suppliers.

(73) A principal element of Meldoc's defence was the distinction between the agreement establishing the

greater Meldoc as an agreement of a strictly national nature and what were called 'the incidents' thereby referring primarily to the action on the Belgian market between December 1983 and June 1984. The argument that the Meldoc cartel was of a strictly national nature cannot be supported in view of what has been stated in the foregoing paragraph. Furthermore, the evidence clearly shows that the distinction between the Meldoc agreement and the so-called incidents is artificial. The discussion paper shows that part of the purpose of the greater Meldoc agreement was explicitly to influence inter-State trade. The paper shows the cooperation was in part deliberately intended to obstruct the entry of foreign milk. By referring also to what has been said in paragraph 61 above, it can be concluded that the contractual objective and the subsequent course of conduct show a constant commitment to the distortion and restriction of competition from foreign imports into the Netherlands.

Article 4 (2) of Regulation 17

(74) In their defence to the Statement of Objections the Meldoc partners argued that Article 4 (2) of Regulation 17 applied to the agreement by which the greater Meldoc was established. This provision exempts agreements, etc., from the obligation to notify in order to obtain an exemption under Article 85 (3) where the only parties thereto are undertakings from one Member State and where the agreements, etc., do not relate to imports or to exports between Member States. It is however clear from what is said in paragraph 61 that the protection of the Netherlands market against imports was one of the original purposes of Meldoc. In implementing the agreement, the Meldoc partners have taken several steps directly aimed at curbing imports. The agreement therefore relates to imports. The second subparagraph of paragraph 2 obviously does not apply because the Meldoc cartel concerns an agreement between more than two undertakings. Accordingly, the application of Article 4 (2) of Regulation 17 to this case has to be rejected.

Article 85 (3)

(75) It follows from the preceding paragraph that the agreement establishing the greater Meldoc was not exempted from the obligation to notify. Since no notification has been made the agreement is not eligible for exemption.

(¹) ECR 977 (1972).

Article 15 (2) of Regulation No 17

- (76) Under Article 15 (2) of Regulation No 17, the Commission may impose fines on undertakings where they intentionally or negligently infringe Article 85 (1) of the Treaty. In deciding the size of the fines, regard shall be had both to the gravity and to the duration of the infringement. In its judgment in the Pioneer case on 7 June 1983 (Joined Cases 100 to 103/80⁽¹⁾), the Court of Justice held that, in assessing the gravity of an infringement, a large number of factors have to be taken into account, the nature and importance of which may vary according to the type of infringement in question and the particular circumstances of the case. Those factors may include the volume and value of the goods in respect of which the infringement was committed and the size and economic power of the undertakings and the influence the undertakings were able to exert on the market. It is important to have regard to the context in which the infringements occurred. In that respect the structure of the market should also be considered.
- (77) The special position of agriculture with respect to the application of the EEC competition rules is reflected by the adoption of Council Regulation No 26. Furthermore, the structure of the agricultural market, including the role competition plays in that market, is influenced by numerous Community and national regulations. This applies in particular to the dairy sector.
- (78) The fact that four of the five companies forming Meldoc are cooperatives deserves special consideration. A characteristic feature of cooperatives is that they are owned by farmers who in terms of their income depend directly on the business results of their cooperative.
- (79) A further element which has to be recognized is the difficult market situation that the Meldoc partners had to deal with. The concentration of market power on the side of the big retailers, consolidation by way of take-overs and mergers, the important changes in the composition of the product range and the vulnerability to imports urged the Meldoc partners to cooperate. However, in their choice to cooperate and not to notify their cooperation to the Commission, the Meldoc partners assumed the right to regulate the Netherlands market for milk and milk products themselves. In as far as such regulation infringes Article 85 (1), such behaviour can of course never be accepted by the Commission. In this particular case the Commission is, moreover, confronted with serious violations of the EEC competition rules. Market-sharing through a

quota system in combination with cooperation on sales and prices on a nation-wide scale and the protection of markets against imports are well-established infringements. Further factors to be taken into consideration are the long duration of the cartel (since 25 December 1977), the adverse effect it had on inter-State trade at least from 1980 onwards, as well as the knowledge of the members of the cartel that their cooperation could be in violation of EEC competition rules (see paragraphs 19 and 22).

- (80) As to the relative contribution of each of the members of the cartel to the infringements committed, it is clear that Melkunie has primary responsibility. Not only was this undertaking one of the three which originated the cartel, it was also the largest partner in the Meldoc organization. Having regard to its market share in fresh milk compared to the other members of Meldoc, Melkunie had the largest interest in sealing off the Netherlands market for fresh milk. Furthermore, Melkunie played the leading role in carrying out the 'dumping' operation on the Belgian market. Melkunie was also primarily responsible for the agreement with Ziko.
- (81) The fact that DOMO and Coberco were, with Melkunie, the founding members of the Meldoc cartel also deserves special consideration in determining the level of the fines. Coberco, together with Campina, bears additional responsibility for carrying out the 'dumping' operation on the Belgian market in cooperation with Melkunie. The evidence shows that ML took an active part in the cartel but in a less central role than the other members.
- (82) Finally, an important consideration in the determination of the fines must be the wilful obstruction of the achievement of one of the most fundamental objectives of the Treaty, the integration of the economies of the Member States. By blocking imports of cheaper milk from Belgium and Germany, the cartel has a clear adverse effect on consumer interests,

HAS ADOPTED THIS DECISION:

Article 1

The agreement establishing the greater Meldoc organization in so far as it gave rise to the combination of consultation on sales and prices, a quota system with a compensation scheme and actions against imports constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

⁽¹⁾ ECR 1825 (1983).

Article 2

The companies forming part of the greater Meldoc organization shall refrain from the behaviour as described in Article 1.

Article 3

The following fines are hereby imposed on the undertakings named herein in respect of the infringement set out in Article 1:

- | | |
|--|----------------|
| (1) Verenigde Cooperatieve Melk-industrie 'Coberco': | 1 360 000 ECU, |
| (2) DMV 'Campina' BV: | 1 020 000 ECU, |
| (3) Menken-Landbouw BV: | 425 000 ECU, |
| (4) Melkunie Holland BV | 3 150 000 ECU, |
| (5) Cooperatieve Melkproduktie Bedrijven 'DOMO-Bedum': | 600 000 ECU. |

These fines shall be paid into the Commission's accounts Nos:

- (a) Account No 54.16.99.369 — Commissie van de Europese Gemeenschappen Brussel — ECU (for payment in ECU),

Algemene Bank Nederland NV,
 attentie de Heer F. Maane,
 Vijzelstraat, 32,
 Amsterdam,

- (b) Account No 41.60.95.518 (for payment in Fl),
 Amrobank,
 Rembrandtplein 47,
 Postbus 1220,
 Amsterdam 1000,

within three months from the date of notification of this Decision. After three months interest shall automatically be payable at the rate charged by the European Monetary

Coöperation Fund on its ECU operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, i.e. 10,5 %.

Should payment be made in the national currency of the addressees, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 4

This Decision is addressed to:

- (1) Melkunie Holland BV
 De Bleek 1,
 NL — 3440 AE Woerden,
- (2) Coöperatieve Melkproduktie Bedrijven 'DOMO-Bedum',
 De Perk 30,
 NL — 9411 PZ Beilen,
- (3) Verenigde Coöperatieve Melkindustrie 'Coberco',
 Stationsplein 37,
 NL — 7200 AB Zutphen,
- (4) DMV 'Campina' BV,
 Dirk Boutslaan 2,
 NL — 5600 AN Eindhoven,
- (5) Menken-Landbouw BV,
 Rijksstraatweg 500,
 NL — 2240 Wassenaar.

This Decision is enforceable pursuant to Article 192 of the EEC Treaty,

Done at Brussels, 26 November 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION OPINION**of 26 November 1986****to the Portuguese Government on implementation of Council Directive 79/115/EEC⁽¹⁾, concerning pilotage of vessels by deep-sea pilots in the North Sea and English Channel****(86/597/EEC)**

1. In a letter dated 24 July 1986, the Office of the Permanent Representative of Portugal to the European Communities informed the Commission, as required by Article 2 of the abovementioned Directive, of an administrative measure published by the Portuguese Directorate-General for Merchant Shipping on 7 March 1986 on pilotage of vessels flying the Portuguese flag by deep-sea pilots operating in the North Sea and in the English Channel.
2. Examination of this administrative measure has assured the Commission that the Portuguese Government has fully implemented the provisions of the Directive applicable to it.

Done at Brussels, 26 November 1986.*For the Commission***Stanley CLINTON DAVIS***Member of the Commission*

⁽¹⁾ OJ No L 33, 8. 2. 1979, p. 32.

COMMISSION OPINION**of 26 November 1986****addressed to the French Government on the draft Decree concerning the implementation of Council Directive 82/714/EEC laying down technical requirements for inland waterway vessels****(86/598/EEC)**

In a letter dated 25 April 1986, the Permanent Representative of the French Republic to the European Communities sent the Commission, for the purpose of consultation, the text of a draft Decree concerning the implementation of Council Directive 82/714/EEC⁽¹⁾ of 4 October 1982 laying down technical requirements for inland waterway vessels.

The communication was made pursuant to Article 22 of the above Directive, which lays down that Member States, after consulting the Commission, shall take whatever steps are necessary to comply with this Directive.

The Commission issues the following opinion on the abovementioned decree:

1. The Commission considers that the draft Decree transposes the administrative provisions of Council Directive 82/714/EEC into national law.
2. The Commission calls on the French Government to confirm that the classification of inland waterways, and

the technical requirements laid down in the Ministerial Decisions to which Articles 2 and 3 of the Decree refer, comply with the classification of inland waterways given in Annex I and the technical requirements listed in Annex II of the Directive.

3. The Commission calls on the French Government to confirm that the timetable of technical inspections laid down by the Decisions referred to in Article 8 of the Decree complies with Article 8 of the Directive.

Done at Brussels, 26 November 1986.

For the Commission

Stanley CLINTON DAVIS

Member of the Commission

⁽¹⁾ OJ No L 301, 28. 10. 1982, p. 1.

SINGLE EUROPEAN ACT AND FINAL ACT

The Single European Act is an expression of the political resolve voiced by the Heads of State or Government, notably at Fontainebleau in June 1984, then at Brussels in March 1985 and at Milan in June 1985, to transform the whole complex of relations between their States into a European Union, in line with the Stuttgart solemn Declaration of 19 June 1983.

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