

Official Journal

of the European Communities

Volume 17 No L 237

29 August 1974

English Edition

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II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 2 August 1974

replacing a member of the Advisory Committee of the
Euratom Supply Agency

(74/429/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

HAS DECIDED AS FOLLOWS:

Having regard to the statutes of the Euratom Supply Agency ⁽¹⁾, as amended by Council Decision No 73/45/Euratom ⁽²⁾, and in particular Article X thereof;

Having regard to the Council Decision of 21 November 1972 replacing the members of the Advisory Committee of the Euratom Supply Agency;

Having regard to the Opinion of the Commission;

Whereas a seat has become vacant on the Advisory Committee of the Euratom Supply Agency following the resignation of Mr F. Van Geertruyden, and whereas the Belgian Government has proposed that he be replaced by Mr Roger Vandamme,

Article 1

Mr Roger Vandamme is hereby appointed member of the Advisory Committee of the Euratom Supply Agency in place of Mr F. Van Geertruyden, who has resigned, for the remainder of the latter's term of office, which runs until 31 December 1974.

Article 2

This appointment shall take effect on the date on which the Council receives an acceptance of his appointment from Mr Roger Vandamme.

Done at Brussels, 2 August 1974.

For the Council
The President
B. DESTREMAU

⁽¹⁾ OJ No 27, 6. 12. 1958, p. 534/58.

⁽²⁾ OJ No L 83, 30. 3. 1973, p. 20.

COMMISSION

COMMISSION RECOMMENDATION

of 19 July 1974

to the French Republic concerning the adjustment of the State monopoly of a commercial character in matches vis-à-vis the new Member States

(74/430/EEC)

I. There exists in France a monopoly for the importation of matches which constitutes a State monopoly of a commercial character within the meaning of Article 37 of the EEC Treaty. The State alone may import matches, and has delegated its powers to the 'Service d'exploitation industrielle des tabacs et des allumettes' (SEITA). On the other hand there are no restrictions on the marketing of matches, whether at the wholesale or at the retail level. Law No 72-1069 of 4 December 1972 and Decree No 72-1253 of 29 December 1972, which lays down implementing measures, modified this monopoly as regards the original Member States of the European Communities.

II. Under Article 44 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, the new Member States are progressively to adjust their State monopolies of a commercial character within the meaning of Article 37 (1) of the EEC Treaty, so as to ensure that by 31 December 1977 no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States; moreover, the second subparagraph of Article 44 (1) imposes equivalent obligations on the original Member States in relation to the new Member States.

Under Article 44 (2) the Commission is required to address to the Member States, from the beginning of 1973, recommendations as to the manner in which and the timetable according to which the adjustment provided for in that Article must be carried out.

III. In the new Member States there are no monopolies of a commercial character relating to matches.

So far France has taken no steps to liberalize imports of matches from the new Member States. The Commission therefore feels that the adjustment provided for in Article 44 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties should consist of eliminating that form of discrimination which consists of imposing quantitative restrictions on imports of matches from the new Member States, and which derives from the fact that

SEITA has the discretionary power to grant or refuse import licences.

IV. For these reasons, and while reserving the right to take such further action as it may subsequently consider necessary in the light of the results obtained by the application of this Recommendation, the Commission recommends the French Republic, pursuant to Article 44 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties:

1. to open an import quota for matches from the new Member States of:

- 3% of 1973 national production for 1974,
- 5% of 1974 national production for 1975,
- 9% of 1975 national production for 1976,
- 15% of 1976 national production for 1977,

it being understood that by 31 December 1977 all quantitative restrictions on imports of matches from the new Member States will have been removed;

2. inform all importers of the new opportunities offered to them by these quotas to obtain supplies of matches from the new Member States, in particular by publishing a Notice to importers in the *Journal Officiel de la République Française*.

3. to abolish by 31 December 1977 at the latest SEITA's exclusive right to import matches from and export matches to the new Member States.

Done at Brussels, 19 July 1974.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 23 July 1974

relating to a proceeding under Article 85 of the EEC Treaty
(IV/426 — Papiers peints de Belgique)

(Only the French text is authentic)

(74/431/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the Euro-
6 February 1962, and in particular Articles 1, 3, 6
and 15 thereof;

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

Having regard to the notification submitted on
30 October 1962 by the Groupement des Fabricants
de Papiers peints de Belgique;

Having regard to the applications under Article 3 of
Regulation No 17 by respectively the Interessenge-
meinschaft der Deutschen Tapetenfabrikanten, Mr
Jean-Marie Pex of Brussels and G.B. Entreprises S.A.
of Antwerp;

Having regard to the Decision by the Commission
on 14 June 1973 to initiate a proceeding in this case;

Having heard the undertakings concerned, in accord-
ance with Article 19 ⁽¹⁾ of Regulation No 17 and
with Regulation No 99/63 ⁽²⁾;

Having regard to the Opinion dated 26 June 1974
obtained by the Advisory Committee on Restrictive
Practices and Monopolies pursuant to Article 10 of
Regulation No 17,

WHEREAS:

I. Facts

A. Groupement des Fabricants de Papiers peints
de Belgique

1. The Groupement des Fabricants de papiers peints
de Belgique, founded in 1922, comprises the follow-
ing four undertakings:

- S.C. Usines Peters Lacroix S.A.,
- Les Papeteries de Genval S.A.,
- Etablissements Vanderborght Frères S.A.,
- Les Papiers peints Brepols S.A.

2. The current operations of the group are governed
by the *Règlement d'ordre intérieur* of July 1971, the
relevant provisions of which are as follows:

3. Only wallpaper manufacturers established in
Belgium may be members (Point 02 of the
Règlement).

4. A trustee is appointed to supervise the implemen-
tation of the *Règlement* (Point 07 of the *Règlement*).

5. For the purpose of harmonizing the marketing
of wallpaper, the group decides every two years on
a *barème-cadre*, which lays down *inter alia* price
ranges and qualities (Point 10 of the *Règlement*).

6. To the *barème-cadre* corresponds a *barème de
prix*, which lays down the ex-factory prices for the
two types of sale — (*prix de voyage* and *prix de
carte*) and final retail prices (Point 11 of the *Règle-
ment*).

7. To ensure compliance with the *barème-cadre*, all
members are required to submit, at least five days
before the start of the marketing year, details of their
entire range of products, grouped according to price,
quality (weight of paper) and colour (Point 12 of
the *Règlement*).

8. Members undertake to standardize their General
Conditions of Sale.

These are to be based on the following principles:

- the fixing of sale and re-sale prices,
- the introduction of a rebate, known as a '*prime
de coopération*', the level of which depends on the
amount of total annual purchases from all
members (Point 20 of the *Règlement*).

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

9. The General Conditions of Sale are to regulate, *inter alia*, the following:

- terms of delivery,
- conditions for the free supply of sample books,
- terms of payment,
- refusal to accept returns,
- conditions under which purchasers' claims will be accepted,
- conditions governing the *prime de coopération*,
- length of rolls,
- obligation to comply with re-sale prices in labelling and advertising,
- fixing of clearance sale prices,
- obligation on the purchaser to impose the obligations under the General Conditions of Sale on his customers,
- penalties for infringements

(Point 210 of the *Règlement*).

10. For large-scale customers, a special circular is published, which extends the *prime de coopération* and lays down the terms on which ranges are made up for wholesalers (Point 211 of the *Règlement*).

11. No cash discounts may be granted (Point 22 of the *Règlement*).

12. The period allowed for payment is thirty days from the end of the month of sale. Depending on the size of the order, it may be extended to sixty, ninety, or one hundred and twenty days (Point 23 of the *Règlement*).

13. The reduction on sales by way of self-user is fixed at 33 $\frac{1}{3}$ %. The amount of such sales is restricted and is checked by the trustee (Point 30 of the *Règlement*).

14. Where a member provides a customer with finance, the rate of interest is fixed at a uniform 0.5% above the Banque National discount rate (Point 31 of the *Règlement*).

15. No goods may be sold, whether directly or indirectly, to joint purchasing groups, with the exception of those whose names appear on a list held by the trustee (Point 32 of the *Règlement*).

16. No sales may be made to purchasing or selling agents (Point 33 of the *Règlement*).

17. Orders at the special *vente voyage* prices must be for a minimum quantity (Point 40 of the *Règlement*).

18. The marketing year begins for all on 1 September (Point 410 of the *Règlement*). Ranges may not be delivered to customers in advance of this date (Point 411 of the *Règlement*).

19. Members exchange their ranges among themselves, at the headquarters of the *Groupeement*, on the Monday following the start of the marketing year (Point 412 of the *Règlement*).

20. The marketing year ends on the last day of February (Point 413 of the *Règlement*).

21. Sample books are supplied free in quantities depending on the size of the order. They bear the trade mark of the *Groupeement* (Point 420 of the *Règlement*). The standard price for additional sample books is Bfrs 250 per book (Point 421 of the *Règlement*).

22. Goods other than wallpaper may be accepted only if they originate from a member (Point 423 of the *Règlement*).

23. At the request of customers one member assumes sole responsibility for the manufacture of sample books (Point 424 of the *Règlement*).

24. Orders at the special *prix de voyage* must be met within the period from 2 November to the end of April (Point 44 of the *Règlement*). The *prix de voyage*, which applies in respect of larger orders only, will be fixed at the start of the marketing year.

25. All purchases which do not satisfy the conditions for the *prix de voyage* are to be effected at the *prix de carte* (Point 50 of the *Règlement*).

26. Goods are supplied only to customers whose annual purchases reach the following minimum levels:

- in the first year: Bfrs 4 000,
- in the second year: Bfrs 6 000,
- in the third year: Bfrs 10 000

(Point 52 of the *Règlement*).

27. The members undertake to make no deliveries on Saturdays. They arrange among themselves for the annual closing of their regional supply depots (Point 53 of the *Règlement*).

28. The *Groupeement* lays down the following conditions for clearance sales:

- dates (Points 63 and 64 of the *Règlement*),
- prices and other terms (Point 62 of the *Règlement*),

— products which may be sold (Points 600, 601 and 602 of the *Règlement*).

29. A wholesaler is defined as one who is recognized as such by the *Groupelement* and whose total annual purchases from all members amount to at least Bfrs 800 000 (Point 70 of the *Règlement*).

30. Recognized wholesalers are granted special advantages (Point 71 of the *Règlement*). Sample books are supplied to them at specially favourable prices. There is no charging among members. This advantage is also granted to the non-member Rath & Doodeheefver S.A. In return, the wholesalers are subject to special obligations. Thus they must comply with the prices and conditions of the *Groupelement*, are responsible for ensuring that these are applied by their customers, and may not distribute their ranges before 15 January (Point 72 of the *Règlement*).

31. The special *prix de voyage* is granted only to those wholesalers whose names have since September 1964 been on a list held by the trustee (Point 73 of the *Règlement*).

32. The *Groupelement* carries out joint advertising under the DECORGROUP trademark, *inter alia* by the following means:

- distribution of publicity brochures,
- preparation and publication of illustrated press articles,
- participation in trade fairs,
- sales promotion among trade users of wallpaper,
- sales promotion among retailers,
- publicity campaigns in technical colleges

(Point 80 of the *Règlement*).

33. It is also the task of sales promotion to create a favourable attitude among customers towards the *Groupelement* and in particular towards its policy of fixed selling prices (Point 80 of the *Règlement*).

34. Individual advertising by members is permitted only to a limited extent. At trade exhibitions it is allowed only in connection with other products produced by a member. Individual members may not take part in exhibitions which relate only to wallpaper. Any individual advertising must be under the joint DECORGROUP trade mark (Point 81 of the *Règlement*).

35. On the basis of the *Règlement d'ordre interieur* the *Groupelement* adopted its General Conditions of

Sale (Circular 619), which imposes on members' customers specific provisions as follows:

- provisions relating to the *prime de coopération*,
- an obligation to apply and display the prices fixed,
- a prohibition against displaying lower prices or announcing price reductions,
- an obligation to comply with clearance sale prices, even where the goods concerned have not been bought from members of the *Groupelement*,
- a provision prohibiting the trimming of wallpaper free of charge and fixing the price of trimming,
- an obligation to impose the obligations under the General Conditions of Sale on their customers,
- a stipulation by the *Groupelement* that a member may refuse to supply a customer without giving grounds for such refusal.

36. In addition, Circular 619 contains the following scale of rebates:

3.75% on total purchases of at least Bfrs 32 250

+ 4.75%	} on total purchases of between	Bfrs 32 251 and 43 000
+ 5.50%		Bfrs 43 001 and 64 500
+ 6.50%		Bfrs 64 501 and 86 000
+ 7.50%		Bfrs 86 001 and 107 500
+ 8.50%		Bfrs 107 501 and 129 000
+ 9.50%		Bfrs 129 001 and 150 500
+ 10.50%		Bfrs 150 501 and 172 000
+ 11.50%		Bfrs 172 001 and 193 500
+ 12.50%		Bfrs 193 501 and 215 000
+ 13.50%		Bfrs 215 001 and 236 500
+ 14.50%		Bfrs 236 501 and 258 000
+ 15.50%	}	Bfrs 258 001 and 279 500
+ 16.50%		Bfrs 279 501 and 301 000

37. Circular 620 for large-scale customers contains the following additional scale of rebates

+ 16%	} on total purchases of between	Bfrs 301 000 and 1 075 000
+ 17%		Bfrs 1 075 001 and 2 150 000

+ 18.50%	$\left\{ \begin{array}{l} \text{on total} \\ \text{purchases} \\ \text{of} \\ \text{between} \end{array} \right\}$	Bfrs 2 150 001 and 3 225 000
+ 19%		Bfrs 3 225 001 and 4 300 000
+ 20.50%		Bfrs 4 300 001 and 5 375 000
+ 21.50%		Bfrs 5 375 001 and 6 450 000

18.50% on a turnover of over Bfrs 6 450 000

and also the conditions for the purchase of sample books on special terms.

38. Circular 617 V contains a *barème cadre* of *prix de voyage* for Qualities A1 to R3, exclusive of value added tax, and also a scale of retail prices, including 18% value added tax.

39. Circular 617 C contains a *barème cadre* of *prix de carte*, likewise for Qualities A1 to R3 and graduated for purchases of up to 6, 7 or more, on 24 rolls, exclusive of value added tax, and also a scale of retail prices, including 18% value added tax.

40. An independent Brussels wallpaper dealer, Mr Jean-Marie Pex, purchased from members of the *Groupeement*, with the exception of *Establissemments Vanderborcht Freres S.A.*, wallpaper which he resold to *G.B. Entreprises S.A.* The latter displayed these goods at prices which included the discount customary in their self-service stores.

On 4 October 1971, *Papiers peints de Brepols S.A.* took individual action by sending a circular to all its customers, in which it stated that, on account of price undercutting by *G.B. Entreprises S.A.* of between 10 and 15%, it had severed business connections with a wholesaler (meaning thereby Pex). This was followed on 29 October 1971 by a circular from the *Groupeement* to all its customers, in which it reminded them in connection with the Pex case of their obligation under the general conditions of sale to impose compliance with the fixed prices on their customers.

Ever since then, the members of the Group have refused to supply Mr Pex or the Brussels-based firm *International Decor* working with him. At the hearing held on 18 December 1973 both the Group and its members stated that they intended to maintain their ban on supplies to Mr Pex as long as he refused to comply with the general conditions of sale and to settle an account outstanding with *Papiers peints Brepols S.A.*

41. In a self-service store belonging to *G.B. Entreprises S.A.* the *Groupeement* found that wall-

papers of its members were being sold at prices higher than those permitted under the price lists.

42. On 30 October 1962 the lawyers De Coninck and Laine, acting on behalf of the four members of the *Groupeement*, sent to the Commission a Form B, notifying it as follows:

(a) a copy had been sent to Rath & Doodeheefver S.A. informing them of the notification (Section 1, 2, of the Form),

(b) Section II, 1, of the Form was deleted,

(c) Section II, 2, contained the following entries:

— 'fixing of quality standards,

— fixing of prices, rebates and reductions on sale and resale,

— fixing of the number of goods to be accepted in each category,

— joint publicity'.

(d) Section II, 3 contained the following entries:

under (a), 'Basic agreement concluded in 1922';

under (b), '1922 — renewed in whole or in part from year to year';

under (c), 'Manufacture and distribution of wallpaper';

under (d), 'Improvement in the manufacture and distribution of products'.

(e) In Section III, 1, the first question was answered as follows: 'Yes — compliance with sale prices, scale of rebates, the total scale of aggregated rebates and the General Conditions of Sale'.

The other questions were answered with a clear 'No'.

(f) Copies of empowering instruments executed by the four members of the *Groupeement* accompanied the notification, but there was no copy of the *Règlement*, the General Conditions of Sale, or the price lists.

B. Arguments by the undertakings concerned in reply to the Objections of the Commission

1. The *Groupeement* points out that it sells less than 50% of the wallpapers marketed in Belgium. Imports have increased continuously since 1962, particularly from Germany; thus in 1962 imports from that country totalled 610 000 kg with a value of Bfrs 15 750 000, while in 1972 they reached 3 044 000 kg and Bfrs 155 191 000. Total imports from the eight Member States of the Community rose from 1 689 000 kg (Bfrs 42 527 000) in 1962 to 7 877 200 kg (Bfrs 424 133 000) in 1972.

2. The *Groupeement* claims that certain of the provisions referred to by the Commission in its statement of objections of 26 October 1973 were either of minor importance or else no longer applied. The *Groupeement* has, however, at no time stated that it has revoked these provisions.

3. The *Groupeement* no longer insisted on adherence to their prescribed retail prices but only forbade the display or announcement of price reductions. However this claim is at variance with the express provisions of the price list and also with a letter of 22 October 1973, in which the *Groupeement* wrote to G.B. Entreprises S.A. as follows:

'Your Company is aware that members of our *Groupeement* fix sale and resale prices, yet your company intentionally undercuts those prices ...'

4. The *Groupeement* explained that the reason that the notification was incomplete was that in 1962 it was as yet uncertain exactly what particulars were required. The *Groupeement* did not, however, take up the Commission's suggestion that one of the two lawyers responsible for preparing the notification should appear at the hearing to give an explanation of the position.

II. Consideration under Article 85 (1) of the EEC Treaty

A. The *Règlement d'ordre intérieur du Groupeement*

1. The *Règlement* is an agreement between the four members of the *Groupeement* and therefore an agreement between undertakings within the meaning of Article 85 (1).

2. The following provisions of the *Règlement* have as their object the restriction of competition in respect of the sale of wallpapers in Belgium:

- (a) restriction of membership to undertakings established in Belgium: in this way undertakings from other States which have no establishment in Belgium find difficulty of access to the Belgian market;
- (b) the fixing in the *barème-cadre* of prices, price ranges and qualities;
- (c) the fixing of *prix de voyage* and *prix de carte*;
- (d) the exchange of ranges to check compliance with the *barème-cadre*; this exchange serves as a check

and thereby to maintain and strengthen the combined restriction of competition;

- (e) the requirement that the General Conditions of Sale must be standardized;
- (f) the agreement on aggregated rebates;
- (g) the prohibition on cash discounts;
- (h) the standardization of the duration of credit;
- (i) the fixing of the reduction in respect of self-user;
- (j) the fixing of the interest rate for customer financing; By reason of the restrictions (e) to (j) the individual formation of prices and conditions by the members of the *Groupeement* is excluded.
- (k) the prohibition on supplying joint purchasing groups or purchasing or selling agents; thereby hampering undertakings with a tendency to cut prices;
- (l) the joint fixing of a minimum quantity for *prix de voyage* sales;
- (m) the agreements on the opening, other details and closing of marketing years;
- (n) the agreement on the provision of sample books, whether against payment or free of charge;
- (o) the centralization of sample book production;
- (p) the agreements on the definitions of *prix de voyage* and *prix de carte*;
- (q) the fixing of a minimum amount to be purchased by customers;
- (r) the prohibition on Saturday deliveries and the understanding on the annual closing of supply depots;
- (s) the fixing of dates, prices and conditions for clearance sales;
- (t) the definition of a wholesaler, including the agreement on the supply of sample books to such wholesalers;

Obligations (l) to (t) regulate conduct on the market other than that in respect of prices and conditions. They prevent a member of the *Groupeement* from individually offering customers better services or extra advertising material.

- (u) the carrying out of joint advertising, including joint use of the DECORGROUPE trademark, and the concomitant limitation on individual advertising by the various members.

This obligation prevents the individual members of the *Groupement* from seeking to obtain a competitive advantage through their own advertising.

B. Circular 619 on the marketing years 1971-73 (General Conditions of Sale) and Circular 620 for large-scale customers

1. The *Groupement* is an association of undertakings and Circulars 619 and 620 are decisions by associations of undertakings within the meaning of Article 85 (1).

2. As soon as the provisions of Circular 619 or 620 are included in a contract between a member of the *Groupement* and a customer, there is an agreement between undertakings within the meaning of Article 85 (1).

3. The following provisions of Circular 619 have as their object the restriction of competition in the respect of the sale of wallpapers in Belgium:

- (a) the obligation to apply and display the fixed prices;
- (b) the prohibition on displaying lower prices or announcing price reductions;
- (c) the requirement that clearance sale prices must be adhered to;
- (d) the prohibition on trimming wallpaper free of charge and the fixing of the price for trimming;
- (e) the obligation to impose compliance with the obligations under the General Conditions of Sale on all customers;

4. Moreover, the object and effect of the scale of aggregated rebates in both Circulars 619 and 620, whose percentages are calculated on the sum of all purchases from members of the *Groupement* during a given year, is to restrict competition from other wallpaper producers who are not members of the *Groupement*. The aggregated rebate system leads to a concentration of orders with members of the *Groupement*. The fact that the rate of rebate varies with quantities purchased encourages those who have already covered part of their requirements from members of the *Groupement* to buy their entire requirements from those members, in order to obtain the highest possible rebate (cf. Commission Decision of 29 December 1970, OJ No L 10, 13 January 1971).

The scale of aggregated rebates thus applies dissimilar conditions to similar transactions with other trading parties. A Belgian customer who buys a certain quantity of wallpaper from a member of the *Groupement* and they buy a further quantity of wallpaper from another member of the *Groupement* will get a higher rebate than the customer who buys the same amount and quality of wallpaper from the first manufacturer but who makes his further purchase from one not belonging to the *Groupement*. The purchase from the manufacturer not belonging to the *Groupement* is not taken into account when calculating the amount of the rebate due to the second customer.

The *Groupement's* objection that the rises in its scale of rebates are far less steep than those on which the abovementioned Commission Decision of 29 December 1970 was based is in fact valid but cannot affect the Commission's overall findings. The *Groupement's* scale of rebates must be seen in conjunction with the other restrictions on competition by the *Groupement*, which make up a comprehensive system of market controls excluding competition between the members of the *Groupement*.

The statement by the *Groupement* in a letter dated 26 April 1971 that it would be prepared to include purchases of wallpapers in Germany or in any Member State in the calculation of the aggregated rebate can likewise have no effect on the ultimate decision, since even an agreement on aggregated rebates under which all purchases, whether from members or from non-members, are taken into account is a restriction on competition contrary to Article 85 (1) and not saved by Article 85 (3) (cf. Commission Decision of 3 July 1973, OJ No L 217, 6 August 1973, p. 34).

C. Circulars 617 V and 617 C

1. Both these Circulars are also decisions by associations of undertakings and as soon as they are included in a contract between a member of the *Groupement* and a customer there is an agreement between undertakings within the meaning of Article 85 (1).

2. Circulars 617 V and 617 C have as their object the prevention of price competition between members of the *Groupement*.

3. Their object is also, by fixing resale prices, to abolish price competition between wallpaper dealers. There is no substance in the claim put forward by the *Groupement* and its members that they no longer fix their prices but only forbid the display and announcement of price reductions. And even if the

claim were valid it would not change the decision; for the mere fixing of a price, even if only as a guide, affects competition in that it gives all market participants sufficiently certain foreknowledge of their rivals' pricing policies (cf. Decision of the Court of Justice of the European Communities of 17 October 1972, Case 8/72, Reports: Volume XVIII, pp. 977 and 990).

D. *The boycott of Pex and International Decor*

1. The decision to cease supplying Pex and International Decor taken by the *Groupement* in October 1971 is a decision by an association of undertakings within the meaning of Article 85 (1).

2. This decision constitutes a restraint on Pex's and International Decor's competition since that time with other wallpaper dealers.

3. The claim by the *Groupement* and its members that they were justified in refusing to supply, because Pex would not comply with the General Conditions of Sale and charge the fixed prices, nor ensure that his customers would comply with them, is not a valid defence: the General Conditions of Sale and the collectively fixed prices are in violation of Article 85 (1). Pex is entitled to refuse to comply with them, because to do otherwise would result in his infringing Article 85 (1).

The further claim that Pex had debts outstanding with a member of the group, Papiers peints Brepols S.A., does not justify the other members of the group in refusing to supply him. Moreover, Pex's debts with Papiers peints Brepols S.A. date from a period when the latter was calling for a boycott of Pex in its circular of 4 October 1971, thus starting the process which led to the Group deciding on the boycott of 29 October 1971 (first unpaid account 29 June 1971, falling due on 30 September 1971; second unpaid account 30 August 1971, falling due on 30 November 1971).

The *Groupement's* last claim — that G.B. Entreprises S.A., which had been supplied by Pex, does not charge the prices fixed by the group or observe the prohibition on displaying price reductions — is without substance, even if in individual cases G.B. Entreprises S.A. has charged the public higher prices

than those fixed, since G.B. Entreprises S.A. is free to set its prices at will.

E. *The effect on trade between Member States*

The agreement constituted by the *Règlement d'ordre intérieur*, and the decisions based on it, may also affect trade between Member States, since wallpaper manufactured outside Belgium and sold in Belgium by the members of the *Groupement* is also included. Apart from this the aggregated rebate scheme hinders the importation of wallpaper into Belgium. The agreement and the decisions based upon it directly affect freedom of trade between Member States in a way which is detrimental to the attainment of a single market. By its very nature, an agreement extending over the whole area of a Member State has the effect of reinforcing the compartmentalization of markets at national level; it thereby prevents the economic interpenetration which the Treaty is designed to bring about and protects domestic production (see the judgment given by the Court of Justice on 17 October 1972 in Case 8/72, Rep. Vol. XVIII, p. 991).

III. Consideration under Article 85 (3)

A declaration under Article 85 (3) cannot be granted because it does not appear that the agreement and the decisions based on it contribute to improving the production and distribution of wallpaper; moreover, they are aimed at keeping the level of wallpaper prices in Belgium artificially high by collective price agreements and by the effect of the aggregated rebate scheme, which impedes imports, so that consumers not only derive no benefit from the agreement and decisions but are on the contrary harmed by them.

The *Groupement's* argument here was that its quality classification system made it easier for consumers to choose between hundreds of designs; it therefore contributed to improving distribution. The Commission does not deny that this may be so; the members of the *Groupement* are at liberty to conclude an agreement on quality classification that contains no reference to prices and may duly notify this to the Commission so as to establish whether the tests of Article 85 (3) are satisfied. But so long as the quality classification constitutes only a small part — even though possibly a positive one — of a restrictive arrangement the whole of which is prohibited under Article 85 (1), the Commission cannot see its way

to considering the quality classification in isolation without an application to this effect from the undertakings concerned; yet these undertakings insisted to the end of the hearing that their entire arrangement must be maintained intact.

IV. Application of Articles 3 and 15 (2) of Regulation No 17

1. Under Article 15 (5) of Regulation No 17 the *Groupement* and its members cannot be fined for acts which fall within the limits of the activity described in the notification.

2. The Commission leaves open the questions as to whether or not the *Groupement* acted in good faith in notifying the agreements and restrictive decisions, or attempted to conceal the full implications of their market arrangements by providing vague statements and by not disclosing the existence of agreements and written decisions. It appears to the Commission, in any event, that the collective boycott exceeds the limits of the activities described in the notification. The members of the *Groupement* will be fined in proportion to the extent of the boycott established. Moreover, in accordance with Article 3 of Regulation No 17, the agreement and decisions prohibited by Article 85 (1) must be brought to an end immediately.

3. In fixing the amount of the fine, the Commission has to have regard both to the gravity and to the duration of the infringement. The collective boycott is traditionally considered one of the most serious infringements of the rules of competition, since it is aimed at eliminating a troublesome competitor. Such a boycott constitutes an intentional infringement of Article 85 (1).

The infringement was committed in October 1971 and is continuing; it is a particularly aggravating circumstance that the undertakings concerned are persisting in their conduct despite the fact that its illegality was pointed out to them, by, in the first place, a judgment delivered by the Nivelles Tribunal de Commerce on 1 March 1973, and then by the statement of objections issued by the Commission on 26 October 1973.

In determining the amount of each fine to be imposed, the Commission has, in addition to the foregoing considerations, taken into account the market position of each separate enterprise,

HAS ADOPTED THIS DECISION:

Article 1

The *Règlement d'ordre interieur* of the *Groupement des Fabricants de Papiers peints de Belgique* of July 1971, Circulars 619, 620, 617 C and 617 V and the decision not to supply wallpaper to the dealer Pex and the undertaking International Decor constitute infringements of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

The application under Article 85 (3) for a declaration of non-applicability is refused.

Article 3

The *Groupement des Fabricants de Papiers peints de Belgique* and its member undertakings, as named in Article 5 (1) to (4) hereof, shall forthwith terminate the infringements specified in Article 1.

Article 4

1. The following fines are imposed in respect of the collective boycott:

- (a) on S.C. Usines Peters Lacroix S.A., a fine of 135 000 (one hundred and thirty five thousand) units of account, that is 6 750 000 (six million seven hundred and fifty thousand) Belgian francs;
- (b) on Les Papeteries de Genval S.A., a fine of 120 000 (one hundred and twenty thousand) units of account, that is 6 000 000 (six million) Belgian francs;
- (c) on Ets. Vanderborcht Frères S.A., a fine of 36 000 (thirty six thousand) units of account, that is 1 800 000 (one million eight hundred thousand) Belgian francs;
- (d) on Papiers peints Brepols S.A., a fine of 67 500 (sixty seven thousand five hundred) units of account, that is 3 375 000 (three million three hundred and seventy five thousand) Belgian francs.

2. This Decision is enforceable against the enterprises concerned in accordance with the provisions of Article 192 of the Treaty establishing the European Economic Community.

Article 5

This Decision is addressed to the *Groupement des Fabricants de Papiers peints de Belgique*, av. Louise, 138, 1050 Brussels, and to the following undertakings:

1. S.C. Usines Peters-Lacroix S.A.
Dobbelenberg 9
1130 Brussels.

4. Papiers peints Brepols S.A.
Lindekens 44-46
2300 Turnhout.

2. Les Papeteries de Genval S.A.
rue de Rixensart
Genval.

Done at Brussels, 23 July 1974.

3. Ets. Vanderborght Frères S.A.
rue de L'Ecuyer 52
1000 Brussels.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION DECISION

of 24 July 1974

relating to a proceeding under Article 85 of the EEC Treaty
(IV/28.374 — Advocaat Zwarte Kip)

(74/432/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the application dated 27 December 1973 made by Mr J. Soenen-Bouckaert, a wine trader of Rumbeke, Belgium, under Article 3 of Regulation No 17;

Having regard to the decision taken by the Commission on 6 February 1974 to initiate proceedings pursuant to Article 3 of Regulation No 17;

Having heard the undertakings concerned in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC ⁽²⁾;

Having regard to the Opinion dated 29 May 1974 obtained of the Advisory Committee on Restrictive Practices and Monopolies pursuant to Article 10 of Regulation No 17,

WHEREAS:

I. The facts

The facts of the case may be summarized as follows:

On 29 April 1920, a company called VN Handelsmaatschappij v/h J.A. Van Olffen of Rotterdam — now VB Van Olffen of Hattem — (hereinafter referred to as 'Van Olffen') registered different designs and trade marks embodying the words 'Advocaat Zwarte Kip';

On 17 February 1938, Van Olffen entered into an agreement with Mr A.C. Thissen of Brussels (hereinafter referred to as 'Thissen') transferring all rights

in the registered mark to Thissen, who was thereafter solely entitled to use the trade mark 'Advocaat Zwarte Kip' in the territories of Belgium and Luxembourg and to sell advocaat products manufactured by him under this trade mark, provided that nothing was done that might damage the reputation of the trade mark. This agreement also transferred to Thissen the goodwill concerned, namely the recipe for the product.

Van Olffen, which is now fully owned by the VN Heineken of Amsterdam through a holding company, and in which Heineken had in 1971 already acquired a shareholding of over 25%, produces and sells an egg-based liqueur (hereinafter referred to as 'advocaat') on the Dutch market under the trademark 'Advocaat Zwarte Kip'.

On 14 February 1947, Thissen signed an agreement with Mr C.I. Nolet de Brauwere van Steeland, of Vilverde (hereinafter referred to as 'Nolet'), whereby Nolet, with whom he had been in partnership, acquired the rights assigned to Thissen under the agreement of 17 February 1938.

On 27 July 1955, Nolet assigned his business, together with all his trademarks, to PVBA Cinoco of Vilverde, a company which he had founded and which subsequently became Cinoco Sa of Brussels (hereinafter referred to as 'Cinoco').

Cinoco is an undertaking which produces and distributes alcoholic beverages in Belgium and Luxembourg. The Stella Artois group has since 1972 had a minority shareholding in it of more than 25%.

On 25 February 1971 Van Olffen re-registered under the 'Benelux' registration arrangements as existing owner of all rights in Trade mark 'Advocaat Zwarte Kip', with the exception of the rights in 'advocaat' in Belgium and Luxembourg.

On 20 July 1971 Cinoco re-registered under the 'Benelux' arrangements as owner of the Trade mark 'Advocaat Zwarte Kip' for Belgian and Luxembourg territory, its original registration having been filed on 20 December 1966 with the register of the Brussels

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

Tribunal de Commerce. The question of existing rights is dealt with in Article 32 and 33 of the Benelux Convention on Trade Marks of 1962. Article 33 provides that where pursuant to Article 32 a Trade mark is owned in different Benelux countries by different persons, the owner of the trade mark in one of these countries cannot object to the importation from another of the Benelux countries of a product bearing this same trade mark or claim compensation on account of such importations where the trade mark was affixed by the owner thereof in such other country or with his permission and where there exists between the two owners an economic link as regards the exploitation of the product concerned.

On 8 February 1971, Mr. J. Soenen-Bouckaert, a wine trader of Rumbeke (hereinafter referred to as 'Soenen'), purchased from a dealer established in the Netherlands a quantity of advocaat bearing the trade mark 'Advocaat Zwarte Kip' which had been manufactured and put into circulation by Van Olffen. This he then imported into Belgium.

On 27 August 1971 Cinoco brought proceedings against Soenen in the Courtrai *Tribunal de commerce*, claiming an infringement of the trade mark and design 'Advocaat Zwarte Kip' and applying for an injunction forbidding him to exploit it. On 24 May 1973 the *Tribunal de Commerce* gave judgment in favour of Cinoco without taking into account the provisions of the EEC Treaty. This judgment granted an absolute territorial protection in respect of the trademark. On 30 July 1973 Soenen appealed against the judgment to the Court of Appeal at Ghent. This Court has adjourned indefinitely the hearing of the appeal.

The scope of the agreement which involved the partitioning of markets was confirmed by letters between the parties of 25 March and 13 October 1971, 8 June 1972, 1 June, 19 June and 31 July 1973; in particular the letter which Van Olffen sent on 13 October 1971 in reply to the letter of 25 March 1971 of Cinoco said: 'Wij verzekeren U echter, dat wij al het mogelijke zullen doen om te voorkomen dat onze Advocaat vanuit Nederland naar België geleverd wordt'. ⁽¹⁾

Van Olffen puts into circulation in the Netherlands advocaat of different qualities, under the same trade-mark 'Advocaat Zwarte Kip'. Since July 1973 Van Olffen has manufactured some of the advocaat which is sold by Cinoco on the Belgium and Luxembourg markets. At the request of Cinoco, this advocaat differs in composition, alcoholic content, and presentation from advocaat currently sold by Van Olffen in the Netherlands.

Van Olffen indicates the alcoholic content of its advocaat on the bottle: thus the bottles imported by Soenen indicated an alcoholic content of 14³/₄°. Cinoco on the other hand does not indicate alcoholic content on the bottle; it differentiates its bottles from those of Van Olffen by attaching a label on which it displays its name and address, even though the advocaat may in fact have been manufactured by Van Olffen, and sold by Cinoco in Belgium or Luxembourg.

II. Findings

Under the terms of Article 85 (1) of the EEC Treaty, the following are prohibited 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 or effect the prevention, restriction, or distortion of competition within the common market.

The fact of prohibiting in a Member State trade in a product legally trade marked in another Member State on the sole ground that an identical trade mark of the same origin has been registered in the first Member State is incompatible with the provisions for the free movement of goods within the common market — namely Articles 30 and 36 of the EEC Treaty. So long as undertakings act in accordance with principles which do not conform to the EEC Treaty in the field of trademark rights, Article 85 of the Treaty will be applicable, provided the circumstances are such as to constitute an infringement of the Article and that, in particular, there exist links of a legal, financial, technical or economic nature between two current owners ⁽²⁾.

Products manufactured by the original Dutch owner of the trade mark, and imported by it or by a third party into Belgium and Luxembourg, cannot be regarded as spurious products; furthermore, nothing in the present decision will prevent Cinoco from prohibiting, on the basis of its rights in the trademark 'Advocaat Zwarte Kip', the importation and supply of products which are truly spurious ⁽³⁾. Thus the substance of the trademark right is not put in issue.

Van Olffen, Thissen, Nolet and Cinoco are undertakings within the meaning of Article 85 (1) and the agreement signed in 1938, which concerned rights

⁽¹⁾ Translation: 'We assure you that we will do everything possible to prevent delivery of our Advocaat from the Netherlands to Belgium'.

⁽²⁾ Judgment of the Court of Justice on 3 July 1974 in case 192/73, not yet published in the Reports.

⁽³⁾ Decision of the Commission of 29 September 1964, Grundig/Consten, OJ No 161, 20. 10. 1964, p. 2545/64.

and interests which have since devolved on new owners, is an agreement between undertakings which is capable of falling within the scope of Article 85 (1).

Agreements concluded before the EEC Treaty came into force, but whose effect continues after that date, may come within Article 85. Although the text of the 1938 agreement also included the assignment of the trade mark 'Advocaat Zwarte Kip', the wording of the agreement and the subsequent events, such as the devolution of the interests to new parties, the registration of the trade mark by both parties, their exchange of letters, and the proceedings instituted by Cinoco, show clearly that the agreement of 1938 was intended to partition the market and continues to have this effect in any event.

This agreement has therefore, in so far as the trade mark 'Advocaat Zwarte Kip' is used to prevent the importation of products bearing that same trade mark, the effect of restricting competition within the common market and, by depriving the parties to the agreement and Dutch dealers of the capacity to export freely the products concerned to Belgium and Luxembourg, restricts supply on the market and at the same time, by preventing Belgian and Luxembourg dealers from importing the products, reduces demand for such products. The free interplay of supply and demand is thus restricted by this partitioning of markets.

It should be noted that as regards the significance of the restriction, Cinoco has requested the Commission to apply the Communication of 1970 concerning agreements of minor importance⁽¹⁾. It must, however, be pointed out that this Communication is for guidance purposes only and that the terms of the agreement do not in any case fulfil the essential conditions in favour of small and medium-sized undertakings laid down in the Communication.

Van Olffen benefits from the financial and commercial support of V.N. Heineken, which holds an important position amongst manufacturers of alcoholic beverages in the Benelux countries and by which it is in fact fully owned. A similar though less pronounced relationship exists between Cinoco and Stella Artois. Further, the position on the Benelux market for advocaat of the parties to the agreement is far from negligible. It should nevertheless be examined whether or not the restriction of competition is significant. Despite the fact that the quan-

ties of advocaat imported by Soenen were very small, the creation of obstacles to trade between Member States based on trade mark rights can prevent the importation of extremely large quantities; therefore the potential restriction of competition that can result from such obstacles is very considerable. Consequently, the agreement has the effect of restricting trade within the common market to a significant extent.

Cinoco objected that the partition of markets was justified by the difference in quality in the products concerned; that the advocaat imported by Soenen contained about 14° alcohol whilst that manufactured by Cinoco contained 18°. Cinoco has in fact in the meantime reduced the alcoholic content of its product to 16°, but, in any event, a difference in quality cannot justify a partitioning of markets. A supplier is entitled to indicate on the packaging of his product its composition, origin, and alcoholic content. Van Olffen in fact states the alcoholic content on the bottle, whilst Cinoco indicates the origin of the products sold by it. The consumer is in danger of being misled only if the supplier omits to state either the composition or the origin of a product. The importation by Soenen of advocaat manufactured and put into circulation by Van Olffen has not harmed the interest of the consumer, but has, if anything, benefited it, by allowing the consumer the opportunity of purchasing advocaat manufactured by Van Olffen's new processes — and moreover at a lower price. It is ultimately for the consumer to decide the effect he will allow a difference in quality to have on the choice he alone must make.

Equally, the agreement, by separating off the Netherlands market from those of Belgium and Luxembourg, has the effect of affecting trade between Member States, in that the importation of products originating in the Netherlands and bearing the same trade mark in Belgium and Luxembourg is prevented, something which may significantly affect trade between Member States in a manner potentially harmful to the achievement of the objectives of a single market among Member States;

The assignment of a trade mark does not escape the application of Article 85, unless it is effected in such a way as both to avoid any partitioning of the market and to reconcile the overall exercise of trade mark rights at Community level with respect for the conditions of competition and for the principle of the

⁽¹⁾ OJ No C 64, 2. 6. 1970.

unity of the market ⁽¹⁾. In this case, the effect of the agreement is to keep the markets partitioned off from one another; it is this restriction alone which must be opposed in order to maintain the unity of the market. Thus the present Decision is not directed at the agreement in so far as the latter assigns a trade mark from one undertaking to another, but only at the agreement for the partitioning of markets included therein.

The 1938 agreement therefore fulfils the conditions necessary for the application of Article 85 (1) of the EEC Treaty.

The provisions of Article 85 (1) may be declared inapplicable in the case of any agreement or category of agreements between undertakings, any decision or category of decisions by associations of undertakings, and any concerted practice or category of concerted practices, which contributes to improving the production or distribution of goods, or to promoting technical or economic progress, whilst allowing consumers a fair share of the resulting benefit, and which does not:

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

The agreement was not notified to the Commission under Article 5 (1) of Council Regulation No 17/62. It was not exempt from such notification by virtue of Articles 5 (2) and 4 (2) (b) of that Regulation, given that its effect is to prevent the vendor and third parties from freely importing and exporting within the Community products bearing the same trade mark.

Even if the agreement had been exempt from notification, it would still not have come within Article 85 (3), since it does not satisfy the requirements of that paragraph. In particular — the agreement does not contribute to improving the production or distribution of goods or to promoting either technical or

economic progress within the meaning of the paragraph; on the contrary, the effect is to hinder the distribution of advocaat.

Under Article 3 (1) of Regulation 17/62, where the Commission upon application finds that there is an infringement of Article 85, it may by decision require the undertakings concerned to bring such infringement to an end. It is the intention of the Commission, having regard to the foregoing considerations, to require the undertakings concerned to bring this infringement to an end forthwith,

HAS ADOPTED THIS DECISION:

Article 1

The agreement dated 17 February 1938 concerning the use of the trade mark 'Advocaat Zwarte Kip' in the Netherlands, Belgium and Luxembourg, in so far as it has the effect of prohibiting the importation of products bearing the same trade mark, namely 'Advocaat Zwarte Kip', constitutes an infringement of Article 85 (1) of the EEC Treaty and does not qualify for exemption under paragraph 3 of that article.

Article 2

VB Van Olffen of Hattem and SA Cinoco of Brussels shall forthwith bring to an end the infringement as found in Article 1 by refraining from preventing the free movement between the Netherlands, Belgium and Luxembourg of products bearing the trade mark 'Advocaat Zwarte Kip'.

Article 3

This Decision is addressed to:

- Van Olffen VB of Hattem;
- Cinoco SA of Brussels.

Done at Brussels, 24 July 1974.

For the Commission

The President

François-Xavier ORTOLI

⁽¹⁾ Judgment of the Court of Justice of 18 February 1971 in Case 40/70, Reports XVII, 83.

COMMISSION DECISION

of 25 July 1974

relating to a proceeding under Article 85 of the EEC Treaty
(IV/26.602 — FRUBO)

(Only the Dutch text is authentic)

(74/433/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

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

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

Having regard to Regulation No 26 ⁽²⁾ of 4 April 1962 applying certain rules of competition to production of the trade in agricultural products, and in particular Article 2 thereof;

Having regard to the application submitted on 8 February 1968, pursuant to Article 3 (2) (b) of Regulation No 17, by the undertaking Govers en Zonen of Amsterdam (Netherlands);

Having regard to the application submitted on 2 January 1970, pursuant to Article 2 (3) of Regulation No 26, by Nederlandse Vereniging voor de Fruit- en Groentenimporthandel of the Hague (Netherlands) and by Nederlandse Bond van Grossiers in Zuidvruchten en ander geïmporteerd fruit FRUBO of the Hague (Netherlands) in respect of the agreement concluded in 1952 between these two Associations and revised on 1 February 1961, 15 February 1965, 1 August 1968, 15 March 1972 and 21 February 1974;

Having regard to the notification of this agreement submitted on 21 April 1972, pursuant to Article 4 (1) of Regulation No 17, by the two abovementioned Associations;

Having regard to the application submitted on 5 October 1973, pursuant to Article 3 (2) (b) of Regulation No 17, by 22 Dutch undertakings belonging to Nederlandse Bond van Grossiers in Zuidvruchten en ander geïmporteerd fruit 'FRUBO';

Having heard the undertakings and associations of undertakings concerned pursuant to Article 19 (1) of Regulation No 17 and in accordance with Regulation No 99/63/EEC ⁽³⁾ of 25 July 1962;

Having regard to the Opinion dated 26 April 1974 obtained of the Advisory Committee on Restrictive Practices and Monopolies pursuant to Article 10 of Regulation No 17,

WHEREAS:

I

1. In 1952 an Agreement concerning the sale by auction in the Netherlands of fresh citrus fruit and apples and pears of non-European origin (hereinafter referred to as 'fruit') was concluded between Nederlandse Vereniging voor de Fruit — en Groentenimporthandel (hereinafter referred to as the 'Importers' Association') and Nederlandse Bond van Grossiers in Zuidvruchten en ander geïmporteerd fruit 'FRUBO' (hereinafter referred to as the 'Wholesalers' Association'). This Agreement was successively amended on 1 February 1961, 15 February 1965 and 1 August 1968.

Following an initial statement of objections addressed to them on 12 November 1969, the two abovementioned Associations amended on 15 March 1972 certain clauses of the Agreement, in particular as regards the conditions of admission to auctions, which in the statement of objections were considered to be incompatible with the provisions of Article 85 (1).

They then notified to the Commission on 21 April 1972 the Agreement thus amended; and after receiving a second statement of objections, which was addressed to them on 19 November 1973, the Associations concerned again amended, on 12 February 1974, the provisions of the Agreement relating to the obligation to market fruit solely by auction.

The main provisions of the Agreement as finally amended are as follows:

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No 30, 20. 4. 1962, p. 993/62.

⁽³⁾ OJ No 127, 20. 8. 1963, p. 2268/63.

- (a) Participation in the auctions held in Rotterdam is subject to prior authorization by the *Commissie importveilingen* (Committee for the sale by auction of imported goods), a committee responsible for ensuring compliance with the provisions of the Agreement and composed of three members of the Importers' Association and three members of the Wholesalers' Association (Articles 2⁽³⁾ and 54 of the Agreement). Importers authorized to take part in the auctions may however authorize foreign wholesalers to take part but only in respect of transit sales (Article 5).
- (b) Authorization to take part in the auctions as a seller is granted on request to any importer established in the EEC who:
- if he is not a member of the Importers' Association, has given an undertaking in writing to that Association and to the Wholesalers' Association to comply with the provisions of the Agreement, and
 - has provided these two Associations, if this condition is laid down by the *Commissie importveilingen*, with a bank guarantee of 10 000 Guilders (Article 2).
- (c) Authorization to take part in the auctions as a buyer is granted on request to any wholesaler in fruit and vegetables established in the Netherlands who:
- if he is not a member of the Wholesalers' Association, has given an undertaking in writing to that Association and to the Importers' Association to comply with provisions of the Agreement, and
 - during one year before submission of the application has carried on the activity of a wholesaler in citrus fruits and who in this capacity has regularly marketed these products during the said year (Article 3).
- These conditions are not required in the case of wholesalers who are not established in the Netherlands and who do not therefore market citrus fruits regularly in that country.
- (d) Importers and wholesalers authorized to take part in the Rotterdam auctions are 'forbidden to market in the Netherlands otherwise than through import auctions fresh citrus fruit produced outside the territory of the EEC and apples and pears not originating in Europe which have not yet been sold at such auctions' (Article 9 (1)). 'The preceding rule shall be waived where the fruit referred to in the first paragraph has been purchased from an importer established in another member country of the EEC who has previously imported the fruit, cleared it through customs and unloaded it' (Article 9 (2)) ⁽¹⁾. 'A purchaser who avails himself of the waiver provided for in paragraph 2 must be able to prove, upon being so required by the *Commissie importveilingen*, that the conditions laid down in that paragraph are satisfied' (Article 9 (3)).
- (e) This obligation to buy and sell fruit only through import auctions does not apply to the following transactions:
- sales and purchases in transit,
 - sales to processing plants,
 - sales of fruit, the condition of which is such that it cannot reasonably be put up for auction,
 - sales of soft fruit where the quantities are very small (Article 11).
- (f) The Rotterdam auctions are held each week on Monday, Tuesday and Wednesday at 11 a.m. Fruit may not be offered for sale unless the quantities have been notified in advance in particulars of sale or by entry in a catalogue. The sale of larger quantities is authorized only if the excess over the quantities announced is not more than 20% and if notification has been made before the start of the sale.
- (g) As regards the organization of these auctions, the Agreement lays down in addition a whole series of technical provisions concerning, *inter alia*, the provision of samples of the fruit offered for sale (sampling and display), the inspectors responsible for checking the condition of the fruit and the quantities offered for sale and for supervising the taking of samples, so-called 'blind' sales, where samples of the fruit could not be exhibited in time; the terms of delivery of the goods sold.
- (h) The *Commissie importveilingen* may impose the following penalties on those who do not comply with the provisions of the Agreement:
- a reprimand,
 - communication of the infringement to the parties bound by the Agreement,
 - a fine of up to 10 000 Guilders,
- (1) On 24 June 1974 the Associations concerned notified the Commission by telex that it was proposed at their next Annual General Meeting to delete the word 'unloaded' and that, in the meantime, in anticipation of a formal decision, the condition as to unloading would no longer be enforced.

— a prohibition on taking part in auctions for a certain period,

— exclusion from auctions;

2. Until 21 February 1974, the original Articles 9 and 10 prohibited wholesalers taking part in the Rotterdam auctions from supplying the Dutch market with purchases made in other Member States of the Community, with the exception of citrus fruits purchased at the Antwerp auctions.

3. The fruit marketed through the Rotterdam auctions is mainly citrus fruit, since apples and pears of non-European origin are imported only in small quantities. About 80% of citrus fruit consumed in the Netherlands passes through the Rotterdam auctions. Nine importers established in the Netherlands take part regularly in these auctions as sellers, while those from other Member States rarely take part. The number of wholesalers who obtain supplies at these auctions is about 350, which represents almost all wholesalers whose principal activity is the marketing of fruit in the Netherlands;

4. The large quantities of citrus fruit marketed at the Rotterdam auctions are sold not only in the Netherlands but also on the German market and to a lesser extent in the other Member States of the EEC. The origin and varieties of the citrus fruit offered for sale at these auctions are numerous and the prices recorded are generally lower than those found in other Community countries. It is, however, not certain that the citrus fruit sold at Rotterdam is, as regards all countries of origin, of the same quality or freshness as that sold on the other large EEC import markets. Quality and freshness are tending more and more to become the factors determining the choice of Dutch consumers and distributors, particularly on account of the increasing competition from Spanish citrus fruit, which can be delivered much more quickly to the Dutch market (by rail) than can citrus fruit from further away (which arrives by sea). The Commission has moreover found that a number of wholesalers authorized to take part in the auctions do not always comply with the provisions of the Agreement, in that they occasionally make purchases of citrus fruit in other Member States of the EEC which was either produced in those Member States or in third countries, passing through the Rotterdam auctions, something they would not do unless there was a sound economic reason therefor.

II

1. The provisions of the Agreement, which was concluded between two associations of undertakings, bind directly and are effectively applied by the undertakings taking part in the Rotterdam auctions. This Agreement must therefore be considered to be an agreement between undertakings within the meaning of Article 85 (1) of the Treaty;

2. The present version of the Agreement contains certain provisions which have as their object and effect the restriction of competition within the common market. Article 9 (1) prohibits importers and wholesalers authorized to take part in the Rotterdam auctions from marketing, otherwise than through these auctions, citrus fruit produced in third countries and apples and pears produced outside Europe where this fruit is intended for consumption in the Netherlands and has not yet either been sold or purchased at another fruit import auction or sold after unloading⁽¹⁾ and clearance through customs from an importer or wholesaler established in another Member State.

This prohibition in effect basically restricts the freedom of supply of the wholesalers taking part in the Rotterdam auctions, and hence their ability to compete since it prevents them from becoming importers themselves and thus compels them to obtain at the Rotterdam auctions the bulk of their supplies of fruit from third countries intended for consumption in the Netherlands. Although Article 9 (1) does not prevent wholesalers from obtaining supplies at other EEC fruit import auctions, that is to say, the Antwerp and Hamburg auctions, only meagre supplies are available at these two other auction centres. Moreover, while Article 9 (2) allows Dutch wholesalers to purchase from undertakings established in other EEC Member States, it must be stated that the conditions governing such purchases are so restrictive as to be virtually prohibitive, the practical result of these conditions being that Dutch wholesalers may consign to the Netherlands fruit from third countries purchased by them in some other Member State only if it has been both unloaded⁽¹⁾ and cleared through customs in that other Member State. It is thus prohibited for a Dutch wholesaler to consign to the Netherlands fruit from third countries which he has himself imported into another Member State or which has not first been unloaded⁽¹⁾ and cleared through customs by an importer or wholesaler himself established in another

⁽¹⁾ See note ⁽¹⁾ on page 17.

Member State. Removal of the requirement that the fruit must have been unloaded in the other Member State makes no appreciable difference to these restrictive effects, since the ban on the marketing in the Netherlands of fruit from third countries imported by Dutch wholesalers themselves into another Member State remains unaffected thereby. It is therefore clear that Article 9 of the Agreement effectively restricts the freedom of supply of the wholesalers taking part in the Rotterdam auctions and that this restriction is particularly marked since those wholesalers are responsible for a major share of the distribution of citrus fruit intended for consumption in the Netherlands.

The abovementioned prohibition also has the effect of restricting the freedom of sale within the common market of importers established in other Member States of the Community. Thus, although the Agreement does not prohibit these importers from taking part as sellers in the Rotterdam auctions whenever they wish to sell in the Netherlands a quantity of fruit which, say, could not have been sold at remunerative prices on their domestic market, such importers may not sell directly, that is without passing through the auctions, to the Dutch wholesalers taking part in these auctions fruit which they themselves have imported but have not yet unloaded⁽¹⁾ or cleared through customs. In other words, the Agreement prevents an importer from another EEC Member State from forwarding to a Dutch wholesaler directly, that is without going through the Rotterdam auctions, part of an order of citrus fruit from a third country when he finds that he will be unable to sell the entire order on his own national market.

3. The obligation on the wholesalers parties to the Agreement to obtain the bulk of their supplies of fruit intended for consumption in the Netherlands only at the public import sales, and the resulting restriction on the freedom of sale of importers from the other Member States, are likely to affect trade between Member States. With the exception of citrus fruit produced in the Community (i.e. in Italy), fruit purchased at the Antwerp and Hamburg auctions and fruit produced in third countries and purchased in other EEC Member States from undertakings which have already cleared it through customs and unloaded⁽¹⁾ it, wholesalers bound by the Agreement may not import directly, that is without passing through the Rotterdam auctions, fruit intended for consumption in the Netherlands. This prohibition applies not only to fruit purchased by Dutch wholesalers in third countries and imported by them into the Netherlands but also to fruit from third countries which was either purchased by these Dutch wholesalers in other Member States before being unloaded and cleared through customs or which they themselves have imported into these other Member

States. The fact that Dutch wholesalers taking part in the auctions are prevented from supplying the Dutch market with fruit which they themselves had either previously imported into other Member States or otherwise purchased freely from importers and wholesalers in other Member States of the Community is likely to affect trade between Member States.

Moreover, the overall effect of these restrictions on Dutch wholesalers in their freedom to carry on their business (including the prohibition on importing directly from third countries) is to damage the competitive structure of this sector of the common market by weakening the competitive position of these wholesalers in their dealings with the importers and with other wholesalers of the Community. This is capable of affecting the flow of trade between Member States in a manner likely to hinder the establishment of a single market among these States.

4. Before the last amendment of the Agreement, which only took place on 21 February 1974, the provision of the original Articles 9 and 10 were even more restrictive than those of the new Article 9. The original provisions of the Agreement as notified prohibited wholesalers taking part in the Rotterdam auctions from purchasing from undertakings established in the other Member States of the Community citrus fruit from third countries and apples or pears of non-European origin, with the exception of fruit purchased at the Antwerp auctions.

5. There is no other provision in the present version of the Agreement which seems likely to significantly restrict competition or to affect trade between Member States; the fact that only wholesalers established in the Netherlands who have been engaged for at least a year in the wholesale citrus fruit trade are authorized to take part in the Rotterdam auctions for the purpose of purchasing fruit intended for the Dutch market cannot be regarded as a significant restriction on competition or as being likely to affect trade between Member States. The obligation to have been engaged for at least a year in the wholesale trade is considered to have been fulfilled where such activity was carried out in an EEC Member State other than the Netherlands, while according to information obtained by the Commission, a wholesaler who applies for permission to take part in the auctions is regarded by the Associations concerned as being established in the Netherlands

⁽¹⁾ See note (1) on page 17.

provided that he intends to and will in fact distribute citrus and other fruit on a regular basis in the Netherlands.

III

Although the products covered by the Agreement are listed in Annex II to the EEC Treaty, the agreement itself cannot, for the following reasons, be regarded as coming within Article 2 of Regulation No 26:

1. This is not an agreement concluded by farmers, farmers' associations or associations of such associations and it therefore cannot come within the second sentence of Article 2 (1) of Regulation No 26.
2. The agreement cannot be considered to form an integral part of a national market organization, since such a market organization does not exist in the Netherlands.
3. The agreement cannot be regarded as necessary to the attainment of the objectives set out in Article 39 of the Treaty, since, as is shown below, it is neither the only nor the best means of attaining them, and could not be regarded as necessary to their attainment. Moreover, in the sector in question the Council has defined ⁽¹⁾ a number of means for attaining the objectives of the above-mentioned Article and the Agreement in question does not form part of these means and is thus outside the framework of the objectives of the common policy pursued in the fruit and vegetables sector.

Two of the objectives laid down in Article 39 are to increase the agricultural productivity of the Community and thus to ensure a fair standard of living for its agricultural community, and these cannot therefore be invoked as aims pursued by the Agreement

since it concerns only imports of fruit produced outside the Community. It remains only to examine whether the Agreement is necessary to the attainment of the following objectives of Article 39:

- to stabilize markets (A),
- to assure the availability of supplies (B),
- to ensure that supplies reach consumers at reasonable prices (C);

A. The Agreement cannot be regarded as necessary to market stabilization as referred to in Article 39 (c) because, as is shown by the other objectives set out in Article 39 and by the provisions of Articles 38 to 47 in general, the objective of market stabilization refers to the adjustment of supply to demand in order to ensure the marketing of Community production at remunerative prices which are not subject to excessive fluctuations. This objective therefore differs from the aims pursued by the Agreement, since the object and effect of the latter is to concentrate Dutch demand for fruit imported into the Community from third countries, to the exclusion of all other sources of supply upon those importers taking part in the Rotterdam auctions, and it is not concerned with the marketing of Community production;

B. Neither is the Agreement necessary to the attainment of the objective as referred to in Article 39 (d) of assuring the availability of supplies. This objective is intended mainly to ensure that the Community's requirements are covered to a certain extent by its own resources, so that the supply of the Community market does not depend solely on the importation of agricultural products from external markets. Moreover, even if the words of Article 39 (d) to be interpreted were as meaning to ensure a regular market supply, it is not necessary in order to achieve this result to debar some of the possible competitors (in this case wholesalers) from importing and to oblige others (sellers established in other EEC countries) to sell via the Rotterdam auctions.

C. Lastly, the Agreement is not necessary in order to ensure that supplies reach consumers at reasonable prices, as provided in Article 39 (e). It should in the first place be pointed out that this objective cannot be taken out of the agricultural context and pursued independently of the other objectives of Article 39, since it is intended mainly to prevent the scope of the other objectives laid down in Article 39 being extended too far in the development of the common agricultural policy, to the detriment of the

⁽¹⁾ Council Regulation No 1035/72, 18. 5. 1972 (OJ No L 118, 20. 5. 1974). Regulation No 2511/69 (OJ No L 318, 18. 12. 1969).

consumer. However, even if this objective could be isolated from its context, in order for an agreement to be regarded as necessary to its attainment, it would have to be established that it was only owing to the Agreement that consumers enjoyed reasonable prices. It cannot, however, be said that the Agreement enables consumers to enjoy reasonable prices, since in certain cases it may lead to higher prices than those which might be formed on a free market. In this connection it should be pointed out that the Agreement rules out — by reason of the obligation imposed on Dutch wholesalers taking part in the Rotterdam auctions — the possibility of substantial economies in distribution costs which might result from the abolition of an intermediate stage in the distribution network. Moreover, competition to the importers from wholesalers effecting direct imports could also contribute to the attainment of a more favourable price level for consumers. Lastly, the fact that foreign sellers cannot penetrate the Dutch market by selling direct to wholesalers bound by the agreement can also have unfavourable economic effects, for the resulting delivery network may entail substantial costs and make speedy deliveries of fresh products more difficult.

IV

1. In general a system of sales by auction may make it possible, because of the resulting concentration of supply and demand, to reduce to some extent transport and marketing costs in respect of the goods concerned. However, in the present case these advantages occur regularly and to a perceptible extent only in respect of citrus fruit imported by sea from distant countries. In respect of fruit from other countries and in particular citrus fruit from Spain, these advantages are practically cancelled out by the disadvantages resulting from the rigidity inherent in this system of distribution. Thus the fact that auctions are held only on certain days and that the goods must be accessible in advance in order for samples to be taken sometimes causes delays of several days in deliveries to retailers, and, since perishable goods are involved, the freshness of the fruit and sometimes even its quality suffer from these delays in delivery. Moreover, the obligation to pass through Rotterdam can cause additional transport costs in the case, for example, of citrus fruit for delivery to customers in the southern part of the Netherlands or in frontier regions. Furthermore, in order to appreciate the effects of an agreement such as the one under consideration, it is necessary to establish whether there might be better sources of supply than those provided under the agreement; that this may actually be the case is revealed by the fact that certain wholesalers party to the Agreement sometimes prefer to obtain

supplies elsewhere than at Rotterdam in spite of the penalties they risk incurring. The Agreement is aimed precisely at preventing these supplies reaching those parties to it who might have a demand for them; whereas, nevertheless, notwithstanding these negative features, it cannot be ruled out that the Rotterdam auctions do produce positive effects, although only in respect of supplies of citrus and other fruit offered there on better terms than elsewhere.

2. In those cases where the Rotterdam auctions have the effect of improving the distribution of imported citrus fruit in the Netherlands, it is possible that this improvement may, in part at least, also benefit the customer, that is the wholesaler, and through him the retailers and the consumer.

3. In order to obtain the advantages resulting from the Rotterdam auctions, it is not essential to oblige the wholesalers and importers who are authorized to take part in those auctions to market citrus fruit produced outside the Community and intended for consumption in the Netherlands only through the medium of the auctions. In effect, the essential economic advantage of a system of auction sales lies in the economies that can be achieved by comparison with operation on an individual basis by the various traders concerned. In the present case this is primarily reflected in lower import prices in itself a sufficient incentive to the Dutch wholesalers to continue to obtain their supplies at the Rotterdam auctions.

Moreover, even without the obligation referred to above there are still other reasons why Dutch wholesalers would not be induced to import direct citrus fruit in such quantities as might, by progressively reducing the advantages obtained from the Rotterdam auctions, eventually lead to the disappearance of this system of marketing. It is, in effect, very unlikely that wholesalers would import citrus fruit by sea from distant countries because, first, they do not have the means and specialized experience necessary to effect this kind of import, and, secondly, the terms offered at the Rotterdam auctions are, generally speaking, more advantageous than those they could obtain themselves. On the other hand, it could happen that certain wholesalers would make purchases in, say, Spain or on other EEC import markets whenever prices were more favourable than those at Rotterdam, or, in the event of prices being equal, whenever they could obtain quicker deliveries or fresher fruit. Wholesalers would thus be encouraged to import direct only when the advantages offered by the Rotterdam auctions were less than those they could obtain on other markets. This is,

moreover, the only kind of direct importation which certain wholesalers are at present attempting to engage in, without, however, having any apparent adverse effect on the Rotterdam auctions.

In conclusion then, it is clear, for all the reasons set out above, that the obligation imposed by Article 9 of the Agreement is not indispensable to the attainment of the advantages arising from that Agreement.

4. Since the third condition for the applicability of Article 85 (3) is not satisfied, it is unnecessary to examine whether the fourth condition is satisfied. It should nevertheless be pointed out that the Agreement, by causing a major concentration of the Dutch demand for citrus fruit at the Rotterdam auctions, eliminates or hinders direct competition on the Dutch market in respect of a substantial part of the supply of such fruits from sellers established in other EEC countries,

HAS ADOPTED THIS DECISION:

Article 1

The provisions of Article 9 of the Agreement concluded between Nederlandse Vereniging voor de Fruit en Groentenimporthandel of the Hague (Netherlands) and Nederlandse Bond van Grossiers in Zuidvruchten en ander geïmporteerd fruit 'FRUBO' of The Hague (Netherlands), relating to the sale by auction of citrus

and other fruit imported into the Netherlands, and the application of those provisions, constitute infringements of Article 85 (1) of the Treaty establishing the European Economic Community.

Article 2

The declaration of non-applicability requested by the parties concerned under paragraph 3 of the said Article 85 is hereby refused.

Article 3

The associations of undertakings referred to in Article 1 and the undertakings listed in the Annex hereto shall forthwith bring the said infringements to an end.

Article 4

This Decision is addressed to Nederlandse Vereniging voor de Fruit- en Groentenimporthandel of The Hague (Netherlands), to Nederlandse Bond van Grossiers in Zuidvruchten en ander geïmporteerd fruit 'FRUBO' and to the undertakings participating in the Rotterdam auctions and listed in the Annex to this Decision.

Done at Brussels, 25 July 1974.

*For the Commission
The President*

François-Xavier ORTOLI

BILAG — ANLAGE — ANNEXE — ANNEX — ALLEGATO — BIJLAGE

Virksomheder der deltager i auktionssalg i Rotterdam
 Unternehmen, die an den Versteigerungen in Rotterdam teilnehmen
 Undertakings participating in the Rotterdam fruit auctions
 Entreprises participant aux ventes aux enchères de Rotterdam
 Imprese partecipanti alle vendite pubbliche di Rotterdam
 Ondernemingen die aan de veilingen te Rotterdam deelnemen

Algemeene Vruchten Import Mij (AVIM) N.V.	Walenburgweg 53 Postbus 1912	Rotterdam
Fruit- en Groenten Maatschappij Jac. van den Berg B.V.	Rochussenstraat 209a	Rotterdam
Jan van den Brink B.V.	Marconistraat 19a Postbus 6179	Rotterdam
Citronas B.V.	Keileweg 80, Postbus 6094	Rotterdam
De la Bella & Co. B.V.	Erasmusstraat 11	Rotterdam
P. van Hoeckel & Co's Im- en Exporthandel B.V.	Schiekade 91b Postbus 757	Rotterdam
Van der Horst's Fruitimport „Hofrim" B.V.	Postbus 11099	Rotterdam
B.V., Internationale Fruit Maatschappij	Westersingel 45	Rotterdam 3003
Kooy Rotterdam B.V., p/a Diskomarkt Groothandelsmarkt „Spaanse Polder"	Verkoopenheid 126	Rotterdam
T. Port (Rotterdam) B.V.	's-Gravendijkwal 90 Postbus 1170	Rotterdam
B.V. Solbandera Valencia Sinaasappelen Import Maatschappij	Postbus 29123	Rotterdam
Velleman & Tas B.V.	Postbus 6118	Rotterdam 3007
Aartsen & Zn., J. M.	Voorvang 4	Breda
Albada Jelgersma B.V., Th.	Postbus 402	Breda
Ambtman, firma L. J.	't Weerom 3	Barendrecht
Amersfoort, S. van h/n firma Groka	Van Speykstraat 5	Den Helder
Amsterdamse Fruithandel B.V.	Centr. Markt hal 19	Amsterdam
Apotheker & Zn.	Duursumerweg 1	Loppersum
Arnts & Zn., W. Th.	van Hogendorpstraat 31	Twello
Appel & Adolf B.V.	Phoenixstraat 1	Alkmaar
A & O Groenten- en Fruitcentrale „Overholland"	J. C. Beetslaan 163	Hoofddorp
Baarens B.V.	Markt 9, Postbus 4	Kruiningen
Baas & Zn., T.	Bleekerssingel 19	Gouda
Bakker & Zn., D.	Centr. Markt Pier A, loods 8	Amsterdam

Bakker & Co., H.	J. Huitzingstraat 3	Hoogezand
Bakker, M. P. J.	Gerberalaan 43	Naaldwijk
Bakker & Brouwer	Kalverweg 2	Schoonrewoerd
Bakker & de Mooy	Erasmusplein 18	Den Haag
Bakker N.V., v/h A.K.	Veilingterrein loods 14	Barendrecht
Bakkum, P.W.J.	't Kalf 144c	Zaandam
Ballegooyen, W. van	Grote Kerkstraat 7	Wijk en Aalburg
Banaan N.V., De	Zuidstraat 58-59	Den Helder
Barlingen B.V., Th. van	Vanadiumweg 24	Amersfoort
Bauw, Gebr.	Groenteweg 41	Den Haag
Beenen, J.	Sparrenlaan 6	Zwolle
Bemden, U.I. van	's-Heer Hendrikskinderenstraat 16	Goes
Berg B.V., van den	Postbus 62	Winterswijk
Beijer & Zn., N.V., G.M.	Stationsweg 18 D	Ter Borg
Blaey & Zonen, F. de	Lange Reksestraat 8	Terneuzen
Blanken, P.	Industrieweg 40 hal 101	Rotterdam
Boer Centr. Magazijn, N.V. De	J. C. v. Markenstraat 12	Assen
Boer B.V., C. W. de	Vulcanusweg 297-301	Delft
Boerman, A.	de Sav. Lohmanweg 9-11	Dordrecht
Boerwinkel, N. A.	Industrieweg 40 hal 108	Rotterdam
Boesten, M. J. L.	Mauritslaan 82	Geleen
Bood, P.	Schoterstraat 31	Haarlem
Boom, A.	Postbus 46	Zwijndrecht
Boomkens & Zn., J. M. H.	Steenvoordelaan 62	Rijswijk Z.H.
Boomkens, B. L.	v. Musschenbroekstraat 151	Den Haag
Boomkens, A. M.	Groot Hertoginnelaan 25	Den Haag
Boon & Zn., A.	Jan van Krimpenweg hal 12	Haarlem
Bos — Nijmegen B.V.	Postbus 393	Nijmegen
Bosschaart, M.	Noordstraat 80	Vlissingen
Boudewijn & Zn., T.	de la Reyweg 721	Den Haag
Bouman, H.	Haagjesweg 214	Emmen
Boxtel & Zn., W. R. van	Hoofdstraat 18	Schijndel
Bras, H.	Papiermolenstraat 4	Alkmaar
Bredafruit B.V.	Teteringenstraat 38-38a	Breda
Bredewolt, H.	Esdoornlaan 11-13	Roosendaal
Bredewolt, W. J.	St. Josefstraat 12	Roosendaal
Brink & Zn., N.V., P. J. van den	Croeselaan 303	Utrecht
Brug Groothandel B.V.	Missetstraat 5	Doetinchem
Bruigom & Visser	Schelluinsestraat 44	Gorinchem
Bruyn, A. de	Westkanaalweg 113	Ter Aar
Bruys & Zn., fa. Wed. J.	Moerstraatsebaan 320	Bergen op Zoom
Buisman, N.	Centr. Markt hal 78-80	Amsterdam
Burg, F. van der	Willem de Zwijgerlaan 53	Vlaardingen

Caris-Dormans, J. H.	St. Anthoniusplein 11	Maastricht
Caris B.V.	Broekstraat 27	Horn
Cekafruit B.V.	Centr. Markt hal 3	Amsterdam
Cohen, I.	dr. J. W. Racerstraat 3	Delden
Cohen, L.	de Grote Riethure 20	Westmaas
Cok N.V., Gebr.	Zuidweg 10	Krabbendijke
Colpa-van Es B.V., J.W.	Marktweg 144	Den Haag
Comgros B.V.	Gebr. Meeldijk 68	Barendrecht
Coopman & Zn., J.	Schoolholm 16 B	Groningen
Daas & Zn., C. J. den	Laagraven 34	Utrecht
Daas, R. H. den	van der Goesstraat 4	Utrecht
Dam, L. van	Centr. Markt E 6	Amsterdam
Deckers, A. J.	van Milstraat 1	Ammerzoden
Deckers, A. J. M.	Uilencotenweg 18	Ammerzoden
Deutekom, N.V. Handels- en Produktie Mij v/h As	Noord 40-42	Schagen
Doddema & Zn., B.	Oude Werflaan 75	Winschoten
Dommele B.V., M.C. van	Strijmaden 11	Roosendaal
Dooren, Th. van	Planerenstraat 14	Nijmegen
Doornbos, fa. Gebr. J.J. & A.B.	Schietbaanlaan 56a	Rotterdam
Doornbos B.V., Gebr. W. & H.	Industrieweg 40 hal 91-92	Rotterdam
Dorsten B.V.	Haagjesweg 210	Emmen
Dungen, J. W. v. d.	Limietlaan 39	's-Hertogenbosch
Duyn B.V., C.J.	Postbus 42	Beverwijk
Dijk's Groothandel Zeist N.V.	Postbus 62	Odijk
Dijk & Zn. B.V., H. van	Hoornseweg 26	Den Hoorn post Delft
Dijkstra, C. A.	Noord 139	Workum
Eden, D. van	Beersterstraat 22	Winschoten
Eeuwijk-van Campen B.V., G.M. van	Dommelstraat 5	Eindhoven
Eerste Groningsche Handelsmij N.V.	Postbus 211	Groningen
Egro B.V.	Prins Hendrikweg 29-31	Emmen
Elfferich & Zn. B.V., F.C.	Westvest 13	Delft
Elfferich, A.	Noordeinde 47	Delft
Elisen, H.	Gen. Bothastraat 7	Eindhoven
Elisen, L.	Galjoenstraat 37	Tilburg
Ende, Wed. P. van der	Scheen 54	Joure
Engels Fruit Engros	Langermaatweg 11	Hengelo (0)
Esveld, M.	Griseldestraat 15 II	Amsterdam
Eijk, P. M. van	Floresstraat 150	Vlaardingen
Eijken, J. J. van	Rijnstraat 42 I	Woerden
Faas, J.	Lisserdijk 485	Lisserbroek
Faber & Zn., J.	Kleie Palen 17-23	Sneek

Fahner & Zn., Wed. A.	Oosterkade 46	Leeuwarden
Feijter, J.P. de	Burg. Geillstraat 9	Terneuzen
Figo Fruitimport	Nieuwe Haven 215	Gouda
Franssens jr., P.	Peizerweg 86	Groningen
Gemert N.V., v/h	Brug. Jacobstraat 15	Enschede
Gent & Zn., A. van	Leestraat 29	Baarn
Geja Handels- en Transport B.V.	Groenewoudseweg 83	Alverna
Genugten, Chr. van de	Mr. Dr. Frederiksstraat 12a	Breda
Geus & Zn., N.V., J. de	Centr. Markt H 11	Amsterdam
Golverdingen & Zn., J.	Korenbrugstraat 22	Gorinchem
Goor jr., P.J. van	Jan van Krimpenweg 5	Haarlem
Gorel & Kuilenburg, v/h fa.	Postbus 169	Bussem
Gouw, B.V., Jan de	Massetlaan 24	Tilburg
Graaf's Fruit Im- en Export B.V.	Postbus 82	Deventer
Grofa N.V.	Cruquiusweg 2	Arnhem
Groot, W.L. de	Graaf Ansfriedstraat 13	Kerkdriel
Haagsma B.V., P.	Snekerstraat 14	Bolsward
Hafic, Coop. Ink. Ver. U.A.	Marktweg 144	Den Haag
Hagenaars B.V., Gebr.	Noordsingel 88 a	Bergen op Zoom
Hammink & Zn., J.	Grote Markt 32	Arnhem
Harten, J.C. van	Jan van Galenstraat 159 II	Amsterdam
Harten, Ph. van	Burg. de Vlughtlaan 275	Amsterdam
Hartsuiker & Zn., J.	Prins Hendrikstraat 8	Meppel
Hebing & Zn., A.	Griftstraat 27	Apeldoorn
Heemskerk, Gebr.	Zuidbuurtseweg 70	Zoeterwoude
Heemskerk & Zn., W.	Jagersweg 27	Apeldoorn
Hegi jr., J.J.	Daltonstraat 72	Den Haag
Heimeriks N.V.	Industrieweg 40, hal 37/40	Rotterdam
Herder B.V., N.	Zuiderdiep 51 b	Groningen
Hertogh & Zn., M.C.	Dunne Bierkade 32	Den Haag
Heuvel B.V., A. van den	Gebr. Meeldijk 31	Barendrecht
Hexspoor B.V., Bernard	Postbus 1019	Tilburg
Hexspoor, W.A.	Hart van Brabantlaan 13	Tilburg
Heykoop & Zn., N.V. J.	Industrieweg 40	Rotterdam
Hiemstra & Zn., J.J.	Heerenwal 102	Heereveen
Hoeckel B.V., van	Belcrumweg 30-32	Breda
Hoeckel & Zn., N.V. P. van	Postbus 1060	's-Hertogenbosch
Hoeve & Zn., J.	Nunspeterweg 15	Elburg
Hofman, H.	Kerkhoflaan 3	Emmen
Hofman, F.	Freericksplaats 17 b	Rotterdam 13
Hogesteger, P.	Oude Singel 91	Goes
Hommerson, G.	Kerkweg 11	Neder-Hardinx-veld

Hoogesteger, P.	Centr. Markt H 58	Amsterdam
Hoogerbrugge & Zn., H.L.	Blauwgras 137	Rotterdam-Ommoord
Horst B.V., A. van der	Albatrosstraat 1-3	Utrecht
Horst, J. van der	Homeruslaan 46	Utrecht
Huizing & Zn., A.	Bareveldstraat 23	Wildervank
Ilichan's Fruithandel N.V.	Broederenkerkplein 9	Zutphen
Jager, J.	Ooster Parallelweg 68	Assen
Jager, Joh.	Ampèrestraat 95	Assen
Jagt, C.G.	Rodenbachstraat 78	Den Haag
Janssen, B.	Centr. Markt hal nis 2	Amsterdam
Janssen, F.B.	Belcrumweg 42	Breda
Kampschreur, Th.	Tijgerstraat 2	Nijmegen
Keesmaat, W.	Jan Blankensstraat 81	Den Haag
Kekem, A. van	Weteringstraat 39 c	Rotterdam
Kerk Hzn., A.J. van de	Aart van Gelderstraat 8	Woerden
Kivits & Zn., J.P.	Mgr. van Kesselstraat 21	Vlijmen
Kleeser, C.O.	Couperusstraat 38	Ridderkerk
Kley & Co., A.M. v.d.	Louis Davidsstraat 597	Den Haag
Kley B.V., A.J.F. v.d.	F.D. Rooseveltlaan 1	Rijswijk Z.H.
Kok & Zn., B.V., J.H.	Jan van Krimpenweg 1 hal 6	Haarlem
Koning B.V., S.	Nieuwstraat 103	Dordrecht
Koning B.V., S.	Grooth. markt Peizerweg	Groningen
Koning B.V., S.	Industrieweg 40 hal 85-87	Rotterdam
Kosterman, Gebr.	Eidsonstraat 154	Den Haag
Kraayenzang, W.	Kl. Overstraat 1-3	Deventer
Kruidenier Hzn., C.V., fa. H.	Postbus 68	Barendrecht
Kruisinga B.V.	Postbus 1061	Leeuwarden
Kruihof, fa. Gebr.	Postbus 57	Zwolle
Kruihof, fa. Gebr. T. & A.	Zwolseweg 1 a	Elburg
Kuiper, Th.	Phoenixstraat 11	Alkmaar
Kukler & Zn., A.	Herenstraat 128	Leiden
Kuys, W.J.	Achterstraat 9	Vlijmen
Leeuwen & Zn., P. van	Markt 18-19	Arnhem
Leeuwen & Zn., P.L. van	Molenstraat 71-73	Gorinchem
Leever & Zn., N.V., H.	Centr. Markt 67	Amsterdam
Lem, N.V., A. van der	Parallelweg 79	Beverwijk
Lempers, H.J.	Nieuwhuisstraat 5	Heerlen
Levarht & Zn., J.M.	Dorpsstraat 102	Aalsmeer
Leijenaar & Zn., L.J.	Postbus 51	Uitgeest
Lindemans, J.M.	Crooswijkse singel 5	Rotterdam

Linden N.V., Jan van der	Industrieweg 40 hal 52	Rotterdam
Lobur, B.V.	Industrieweg 40	Rotterdam
Looman, N.V. Grooth. Gebr.	Centr. Markt A.T. 1	Amsterdam
Looy, D. van	Nieuwedijk 79	Lemmer
Maat & Zn., G.	Energieweg 14-15	Vlaardingen
Maitre, N.W. le	Laagraven 15	Utrecht
Malsen, B.V. Grooth. Max van	Centr. Markt	Amsterdam
Martinus, P.E.	Visserijstraat 7-9	Enschede
Maters, G.	Jekerstraat 1	Nijmegen
Meeder N.V., J.A.	Coolhaven 90-94	Rotterdam
Meeder N.V., L.	Zaagmolenkade 34-36	Rotterdam
Meesters & Zn., C.V., A.	Nijverstraat 159	Tilburg
Meeteren, D.A. van	Loosdorp 2	Leerdam
Meter & Zn., A.	Kruisweg 17	Marum
Meyboom, fa.	Industrieweg 40	Rotterdam
Meyboom-Pernis, Grooth. B.V.	Ring 29	Pernis
Meyers B.V. Eissifruit	In de Cramer	Heerlen
Middeldorp, v.	Colensostraat 55	Den Haag
Midland B.V.	Veldstraat 4	Wijk en Aalburg
Milius, Louis	Kleine Gracht 39-41	Maastricht
Milius, Gebr.	van Hasseltkade 18	Maastricht
Mol-Pauwels B.V.	Parallelweg 143	's-Hertogenbosch
Moos & Zn., J.	Centr. Markt Pier A loods IV	Amsterdam
Mooy, J. de	Nieuwe Barteldweg 19	Twello
Mooy, Gebr. de	Mgr. Willekenslaan 119	Rijswijk Z.H.
Mostert & Zn., fa. H.C.	Croeselaan 209 bis	Utrecht
Mulder, L.	Zijlweg 50 B	Delfzijl
Mulder, J.	Phoenixstraat 24-28	Alkmaar
Nebafruit	Molensingel 9	Venlo
Nebafruit	Doddendaal 105 a	Nijmegen
Nebafruit	Schaesbergerweg 134-136	Heerlen
Nederl. Fruit Import N.V.	Zonnebloemstraat 36	Den Haag
Nederl. Fruit Groothandel B.V.	Jan van Krimpenweg 27	Haarlem
Neuteboom & Zn., Fa. W.	Langebrug 2c	Leiden
Neys, H.R.	Johannastraat 22	Arnhem
Niesler & Zn., A.	Dorpstraat 28	Breskens
Nijhof's Handel Mij N.V.	Langelermatweg 107	Hengelo
Ons Belang	Hengelosestraat 99	Enschede
Ooyen Rotterdam B.V.	Industrieweg 40 hal 63-64	Rotterdam
Ouwerkerk, M. van	Gijsbr. v. Amstelstraat 336	Hilversum
Paine, Job. la	2e Westerdokstraat 19	Almelo

Pasma, Chr.	Rooseveltstraat 35	Leiden
Peek & Verhoef's Grooth. B.V.	Simon Stevinweg 80	Hilversum
Pierik, J.	Nieuwe Deventerweg 70	Zwolle
Piller & Zn., H.	Centr. Markt Pier A 3	Amsterdam
Popping, W.J.	Burchtstraat 84	Nijmegen
Post & Zn., J.	Dijkgraafseweg 52-54	Wageningen
Postuma & Zn., Sj.	Postbus 122	Kampen
Priester, J.C. de	Braakmanstraat 17	Middelburg
Ravenswaay B.V., S.G. van	Parallelweg 3-4-5	Veenendaal
Randstad Noord N.V.	Graftmeerstraat 67	Hoofddorp
Reedijk B.V., A.	Hanenburglaan 84	Den Haag
Rep & Zn., M.	Postbus 404	Zaandam
Reynierse, J.	Herengracht 60	Middelburg
Roeffen, A.C.M.	Pegstukken 17	Schijndel
Romar & Zn. B.V.	Kennemerstraatweg 69	Alkmaar
Romeyn, H.	Morsestraat 14	Ede
Roodenburg, A.	St. Philipsland 25 I	Amstelveen
Roodenburg & Zn., C.M.	Schansweg 3	Rotterdam
Roos, P.	Steenhoffstraat 42	Soest
Rooy B.V., Gebr. van	Gen. Bothastraat 3	Eindhoven
Ruhe & Zn., A.J.	Joseph Israëlskade 102 I	Amsterdam
Ruyter, D. de	Breedstraat 7	Alkmaar
Rijn & Zn., fa C.	Biltonstraat 6	Amersfoort
Rijswijk B.V., C.	Nieuwe Haven 69	Edam
Schaaphok, fa. J.	Grooth. Markt hal 9	Groningen
Schelling, B.J.	Postbus 1019	Oud-Beijerland
Scheltus, C.	Postjesweg 187	Amsterdam
Scherpenhuizen N.V., Gebr.	Voskuilenweg 93-95	Heerlen
Scholten B.V., A.J.M.	Postbus 129	Enschede
Seip's Groothandel	Jagerslaan 71	Nieuw Amsterdam
Siere B.V., Fruithandel	Rooseveltstraat 27	Leiden
Silfhout-Handelmij N.V.	Heideweg 20 A	Hooglanderveen
Slootweg & Zn., W.	Zuidsingel 18	Hazerswoude
Slothouber, F.N.C.	L. van Meerdervoort 768	Den Haag
Slothouber B.V., Gebr.	Driepoortenweg 12	Arnhem
Sluis & Zn., J.	Broerhuisstraat 20-22	Delft
Sluis & Zn., J.v.d.	Jufferenwal 3	Zwolle
Sluys N.V., L.F.v.d	Rottenburgseweg 104	Middelharnis
Smallenburg, A.P.	Geraniumstraat 52	Hilversum
Smets & Zn., A.	Zuidsingel 7	Venlo
Smets, P.	Minister Ruysstraat 9	Geleen
Smit & v.d.Berg, fa F.	Marktweg 144	Den Haag

Smit, B.V., Gebr.	Haven N.Z., 21b	Almelo
Smits, W.	Keizerdijk 75	Maasdam
Soudant, N.	Eburonenweg 25	Maastricht
Spanjaard & Zn., Y.	Postbus 288	Alkmaar
Sperwer Oost Nederland G.A.	Binnenhavenstraat 2 A	Hengelo (O)
Speulstra & Co., fa. C.	Droevendal 33	Leeuwarden
Spiering, H.F.	Bos en Lommerweg 180	Amsterdam
Spijk & Zn., fa. K.v.d.	Kranenburgweg 4	Zwolle
Staay N.V., J.A.v.d.	Grondherendijk 29-31	Rotterdam
Steffens Pzn. & Zn., J.	Koudenhorn 42 rood	Haarlem
Steinmeijer N.V., G.H.	Elsbeekweg 2	Hengelo (O)
Stekelenburg's Grooth N.V., van	Churchilllaan 2 Postbus 41	Helmond
Stienstra jr., J.	Acacialaan 53	Groningen
Stigter, A. de	Middelkoop a 1	Leerbroek
Stokking, N.V. Im- en Exporthandel mij v/h H.J.	Postbus 60	Apeldoorn
Swanenburg & Zn., Gebr.	Kapteijnstraat 34	Leiden
Sijstermans & Zn., H.L.	Jongmansweg 23	Heerlerheide
Tabak N.V., Cor	Dorpsstraat 122	Noord Scharwoude
Tax' Fruithandel	Teteringenstraat 38	Breda
Terlouw & Zn. B.V., C.G.	Prinsengracht 87-91	Ameide
Thoen & Co., C.G.	Bleulandweg 198	Gouda
Tiggerlaar, J.	Oosterparallelweg 52	Assen
UGRO B.V.	Laagraven 21	Utrecht
Vandooren, N.	Postbus 156	Maastricht
Veen & Degen, fa v.d.	Markt 22-23	Arnhem
Ven & Zn., L.v.d.	Industrieweg 40 hal 60	Rotterdam
Verhaaren & Zn. B.V., A.F.	Wilgenstraat 5	Tilburg
Verhey's Groothandel B.V.	Postbus 810	Rhoon
Verkerke & Zn., J.	Williamstraat 1	Bergen op Zoom
Verspeek, F.W.	Hoofdpoortstraat 45	Zierikzee
Verwey & Zn.	Steenvoordelaan 54	Rijswijk Z.H.
Vinanen's Fruith., J. van	Ommerenveldseweg 44	Ommeren (bij Tiel)
Visje, A.	Westerdijk 1 A	Hoorn
Visser G. de	Slijkstraat 25-27	Vlissingen
Voestermans, Gebr.	Hendriklaan 33	Roermond
„VONA" B.V.	Markt 24-25	Arnhem
Vonk & Zn., B.	Landstraat 82	Bussum
Vooren N.V., A.	Postbus 80	Beverwijk
Voorinhtolt, G.	Semsstraat 20	Stadskanaal
Vos, P.A.W.	Hoge Larenseweg 262	Hilversum
Vos & Zn., A.J.	Postbus 1070	Oud-Beijerland

Vreugdenhil's Groothandel	Molenweg 56	Hoedekenskerke
Vries & Zn., fa.B.de	Dijkswal 3	Harlingen
Vries, R. de	Industrieweg 40 hal 87	Rotterdam
Vroegop, Ruhe & Co. N.V.	Centrale Markt S 1	Amsterdam
Vrij, H. de	Burg. Hazenberglaan 297	Rotterdam
Vugt B.V., van	Past. van Akenstraat 24	Vlijmen
Waal B.V., Ben van der	Industrieweg 40 hal 70	Rotterdam
Wal, L. ter B.V.	Industrieweg Postbus 22	Meppel
Walderveen, H. van	Laagraven 29	Utrecht
Waterman & Zn., A.	Zuidweg 4	Krabbendijke
Weerdenburg, J.P. van	Houtstraat 7	Wamel (C)
Well B.V., A.J.M. van	Postbus 20	Zevenhuizen
Wel, P. van der	Laagraven 25	Utrecht
Werf & Zn., P.v.d.	Turfkade 5	Franeker
Wesseling, W.	Huttenwal 16	Rijssen
Wessels, E.J.	Bornebroeksestraat 97	Almelo
Westerman, G.	Grintweg 96	Winschoten
Westerman, Geert	Nassaustraat 31	Winschoten
Westland Import Rotterdam B.V.	Laagraven 33	Utrecht
Weverwijk, P.G. van	Tienhovensekade 4	Everdingen
Wibic v/h A.G.v.d. Horst jr., B.V.	Centr. Markt 17	Amsterdam
idem	Moerstraatsebaan 12	Bergen op Zoon
idem	Westsingel 134	Goes
Wibic v/h A.G.v.d. Horst jr., B.V.	Marktweg 144 no. 61-64	Den Haag
idem	Jan van Krimpenweg hal 15	Haarlem
idem	Plein 1940-1945 nr. 23	Middelburg
idem	Postbus 11099	Rotterdam
idem	Groeselaan 297	Utrecht
Widt, H. de	Koninginneweg 155	Rotterdam
Viggemansen, T.	Baarsjesweg 280 II	Amsterdam
Vindig N.V., J.C.	Centr. Markt hal 20	Amsterdam
Witte, J. de	Kloetingseweg 26	Goes
Wubben, C.	Marktweg 199	Den Haag
Wubben & Zn., N.V., H.J.G.	Marktweg 359	Den Haag
idem	Centr. Markt	Amsterdam
Wurf & Zn., J.v.d.	Laagraven 31	Utrecht
Wijnans, fa. L.	Rodestraat 19	Venlo
Wijnalda-Kuntz B.V.	Postbus 52	Assen
Zaalen, C.J. van	Hongarenburg 188	Den Haag
Zandbergen, Gebr.	Kanaalkade 74	Alkmaar
Zwaard & Zn., J.P.v.d.	Belcrumweg 34-36	Breda
Zwijgers, Joh.	Dorpsstraat 76a	Waddinxveen
Zijderveld, G. van	Papesteeg 22	Tiel

COMMISSION DECISION

of 29 July 1974

derogating from Recommendation No 1-64 of the High Authority concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community (63rd derogation)

(74/434/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to High Authority Recommendation No 1/64 ⁽¹⁾ of 15 January 1964 to the Governments of the Member States concerning an increase in the protective duty on iron and steel products at the external frontiers of the Community, and in particular Article 3 thereof;

Having regard to the agreement reached on 25 June 1974 by representatives of the Member States within the Council on tariff measures to be taken for the last six months of 1974;

Whereas, for years past, representatives of the Governments of the Member States met within the Council have unanimously agreed on six-monthly derogations from the harmonized Community customs duties for steel;

Whereas these derogations take the form of either a reduction or temporary suspension of certain customs duties or of the granting of tariff quotas at reduced or suspended rates of duty; whereas the last tariff measures of this kind were taken by the representatives of the Governments of the Member States on 25 June 1974 for the last six months of 1974;

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

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

Whereas these are special cases in the commercial policy field justifying the authorization of derogations pursuant to Article 3 of Recommendation No 1/64;

Whereas there should be a guarantee that quotas granted will be used solely to supply the needs of industries in the importing countries and that re-exportation to other Member States, in the same state as that in which they were imported, of imported iron and steel products, will be prevented;

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

⁽¹⁾ OJ No 8, 22. 1. 1964, p. 99/64.

HAS ADOPTED THIS DECISION:

Article 1

The Governments of the Member States are hereby authorized to derogate from the obligations arising

under Article 1 of High Authority Recommendation No 1/64 of 15 January 1964 to the extent necessary to introduce, in respect of imports from third countries of the iron and steel products set out below, suspension of duties or tariff quotas up to the quantities and at the levels indicated in respect of each of these products:

CCT heading No	Description of goods	Member States	Quota (metric tons)	Customs (%)
ex 73.15 A V b) 1	Special wire rod (wire rod of high carbon steel, not further worked than hot-rolled, between 4.5 and 6 mm in diameter and of a carbon content in weight of between 0.62 and 0.74%) for the tyre industry	Germany Benelux France Italy Ireland	1 900 9 000 4 000 8 000 3 000	0 0 0 0 0
ex 73.15 A V b) 1	Special wire rod (wire rod of high carbon steel, not further worked than hot-rolled, between 4.5 and 6 mm in diameter and of a carbon content in weight of between 0.62 and 0.85%) for the tyre industry	Benelux	1 800	0
ex 73.15 A V b) 1	Special wire rod (of high carbon steel, not further worked than hot-rolled, between 4.5 and 13 mm in diameter) for the manufacture of springs and 'piano wire' containing in weight — 0.60 to 1.05% of carbon — not more than 0.05% of sulphur and phosphorus taken together — 0.15 to 0.30% silicon — not more than 0.10% of all other elements (with the exception of manganese and chromium) taken together (Germany and Benelux are authorized to import—within their quotas—special wire rod of alloy steels, between 4.5 and 13 mm in diameter, for valve springs, with the following characteristics: a) Chrome-vanadium products: 0.40—0.65% C; 0.15—0.30% Si; 0.60—0.90% Mn; 0.15—1.10% Cr; 0.15—0.30% Va; not more than 0.30% Mo; P and S content of less than 0.035% each; b) Chrome-silicon products: 0.50—0.60% C; 1.35—1.60% Si; 0.60—0.80% Mn; 0.55—0.80% Cr; P and S content of less than 0.035% each)	Germany Benelux France	8 500 1 350 1 200	0 0 0
ex 73.15 B VII a)	'Electrical' sheets and plates of allied steel, grain-oriented, highly permeable, with a watt-loss of 1.23 watts or less per kg for a thickness of 0.30 mm, or of 1.26 watts or less per kg for a thickness of 0.35 mm, measured at 17 000 gauss and 50 Hz	Germany Netherlands	1 200 700	0 0
ex 73.16 A II b)	Used rails for re-rolling	France	36 000	0

Article 2

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

Article 3

1. This Decision is addressed to all Member States.
2. It shall be valid until 31 December 1974.

Done at Brussels, 29 July 1974.

For the Commission

The President

François-Xavier ORTOLI

COMMISSION RECOMMENDATION

of 2 August 1974

to the French Republic concerning the adjustment of the state monopoly of a commercial character in manufactured tobacco vis-à-vis the new Member States

(74/435/EEC)

I

In France, manufactured tobacco is subject to a State monopoly of a commercial character within the meaning of Article 37 (1) of the EEC Treaty. Under Order No 59.80 of 7 January 1959 and Decree No 61-15 of 15 January 1961 on the organization of the Service d'exploitation industrielle des tabacs et allumettes (SEITA); SEITA still holds the exclusive rights to import and market manufactured tobaccos.

Under the first subparagraph of Article 44 (1) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties, the new Member States are progressively to adjust their State monopolies of a commercial character within the meaning of Article 37 (1) of the EEC Treaty, so as to ensure that by 31 December 1977 no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States. Moreover, the second subparagraph of Article 44 (1) imposes equivalent obligations on the original Member States in relation to the new Member States.

Article 44 (2) reads: 'From the beginning of 1973 the Commission shall make recommendations as to the manner in which and the timetable according to which the adjustment provided for in this Article must be carried out, it being understood that the manner and timetable must be the same for the new Member States and the original Member States'.

This Recommendation will not — indeed it cannot — deal with the question whether the monopoly is compatible with Article 37 (1) of the EEC Treaty as regards the original Member States, particularly as far as retail trading is concerned. Since, in the new Member States, there are no monopolies of a commercial character in this particular industry, there is no need to address recommendations to them under the first subparagraph of Article 44 (1).

However, since SEITA still retains its exclusive right to import and market manufactured tobacco, the Commission feels that the adjustment provided

for in Article 44 (1) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties should consist, firstly, of progressively eliminating that form of discrimination which consists of imposing quantitative restrictions on imports of manufactured tobacco from the new Member States, deriving from SEITA's discretionary power to grant or refuse import licences. Secondly, it should lead to termination by 31 December 1977 of the exclusive right held by SEITA to import, export and market tobacco wholesale from the new Member States.

II

Subsequently for these reasons, and whilst reserving the right to take such further action as it may consider necessary in the light of the results obtained by the application of this Recommendation, the Commission recommends the French Republic, pursuant to Article 44 (2) of the Act concerning the Conditions of Accession and the Adjustments to the Treaties:

1. to open an import quota for manufactured tobacco from the new Member States of:

— 3% of 1973 national production for 1974,

— 5% of 1974 national production for 1975,

— 9% of 1975 national production for 1976,

— 15% of 1976 national production for 1977.

it being understood that by 31 December 1977 all quantitative restrictions on imports of manufactured tobacco from the new Member States will have been removed;

2. to inform all concerned, by appropriate publicity, of the new opportunities offered to them by these quotas to obtain supplies of manufactured tobacco from the new Member States;

wholesale market manufactured tobacco from the new Member States.

Done at Brussels, 2 August 1974.

For the Commission

The President

3. to terminate by 31 December 1977 SEITA's exclusive right to import, export and sell on the

François-Xavier ORTOLI
