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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 310/78

of 14 February 1978

amending Regulation (EEC) No 878/77 as regards the exchange rates to be applied for tomato concentrates and isoglucose

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 129 on the value of the unit of account and of the exchange rates to be applied for the purposes of the common agricultural policy⁽¹⁾, as last amended by Regulation (EEC) No 2543/73⁽²⁾, and in particular Article 3 thereof,

Having regard to the proposal from the Commission,

Whereas pursuant to Article 2 (5) of Council Regulation (EEC) No 878/77 of 26 April 1977 on the exchange rates to be applied in agriculture⁽³⁾, as last amended by Regulation (EEC) No 179/78⁽⁴⁾, a new representative rate applies in Italy to skinned tomatoes from 1 February 1978; whereas, however, in the case of tomato concentrates for which a marketing year exists, the new rate should apply only from the beginning of the said marketing year, that is from 1 July 1978;

Whereas this differential treatment of products in the same sector is contrary to the sound management of the markets of these products; whereas to avoid this inconvenience, the new rate for tomato concentrates should be applied from a date which is as close as possible to that adopted for skinned tomatoes;

Whereas, as regards the minimum price to be observed on importation, such measures should not be applied to operations in respect of which import licences have already been applied for before the entry into force of this Regulation;

Whereas the isoglucose sector is closely linked with the sugar sector; whereas, however, no marketing year

exists in respect of the former; whereas, in view of the current wording of Article 2 (6) of Regulation (EEC) No 878/77, it would follow that in the absence of a marketing year, the new representative rate fixed for the pound sterling would not apply to the two above-mentioned sectors from the same date; whereas such differentiation should be avoided;

Whereas the Monetary Committee will be consulted, and, in view of the urgency involved, the envisaged measures should be adopted in accordance with the conditions laid down in Article 3 (2) of Regulation No 129,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 2 (5) of Regulation (EEC) No 878/77, (d) and (e) shall be replaced by the following:

- '(d) subject to (e) and (f), the beginning of the 1978/79 marketing year for the other products for which the marketing year has not yet commenced on the day of the entry into force of Regulation (EEC) No 178/78;
- (e) 20 February 1978 for tomato concentrates;
- (f) the date of the entry into force of Regulation (EEC) No 178/78:
 - for milk and milk products, beef and veal, pigmeat, and sugar;
 - for the additional aid referred to in Article 1 (2) of Regulation (EEC) No 2511/69⁽⁵⁾;
 - in all other cases not mentioned above.'

⁽¹⁾ OJ No 106, 30. 10. 1962, p. 2553/62.

⁽²⁾ OJ No L 263, 19. 9. 1973, p. 1.

⁽³⁾ OJ No L 106, 29. 4. 1977, p. 27.

⁽⁴⁾ OJ No L 26, 31. 1. 1978, p. 3.

⁽⁵⁾ OJ No L 318, 18. 12. 1969, p. 1.

Article 2

Article 2 (6) of Regulation (EEC) No 878/77 shall be replaced by the following :

'6. The representative rate for the pound sterling, fixed by Regulation (EEC) No 179/78, shall apply with effect from :

- (a) 1 July 1978 for isoglucose ;
- (b) 1 August 1978 for eggs, poultry, ovalbumin and lactalbumin ;
- (c) 16 December 1978 for wine ; however, other dates may be laid down for the distillation operations ;
- (d) 1 January 1979 for fishery products ;
- (e) subject to the provisions laid down under (f), the beginning of the 1978/79 marketing year for the other products for which the marketing year has not yet commenced on the day of the entry into force of Regulation (EEC) No 179/78 ;

- (f) the date of application of the prices for the 1978/79 marketing year for beef and veal and for milk and milk products, and the date applicable to milk and milk products for pigmeat and for all other cases not mentioned above.'

Article 3

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

However, as regards the minimum price on importation fixed for tomato concentrates, this Regulation shall apply only to operations carried out under cover of an import licence for which an application is lodged, within the meaning of Article 6 of Commission Regulation (EEC) No 193/75 of 17 January 1975 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products ⁽¹⁾, as last amended by Regulation (EEC) No 1470/77 ⁽²⁾, on or after 20 February 1978.

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

Done at Brussels, 14 February 1978.

For the Council

The President

P. DALSAGER

⁽¹⁾ OJ No L 25, 31. 1. 1975, p. 10.

⁽²⁾ OJ No L 162, 1. 7. 1977, p. 11.

COMMISSION REGULATION (EEC) No 311/78**of 16 February 1978****fixing the import levies on cereals and on wheat or rye flour groats and meal**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2727/75 of 29 October 1975 on the common organiza-
tion of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77⁽²⁾, and in particular
Article 13(5) thereof,

Whereas the import levies on cereals, wheat and rye
flour, and wheat groats and meal were fixed by Regula-
tion (EEC) No 1729/77⁽³⁾ and subsequent amending
Regulations ;

Whereas it follows from applying the provisions
contained in Regulation (EEC) No 1729/77 to the

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 191, 30. 7. 1977, p. 5.

ANNEX

to the Commission Regulation of 16 February 1978 fixing the import levies on cereals and on wheat or rye flour groats and meal

(u.a./tonne)

CCT heading No	Description	Levies
10.01 A	Common wheat, and meslin	87.05
10.01 B	Durum wheat	115.20 ⁽¹⁾ ⁽⁵⁾
10.02	Rye	75.72 ⁽⁶⁾
10.03	Barley	79.66
10.04	Oats	73.59
10.05 B	Maize, other than hybrid maize for sowing	77.65 ⁽²⁾ ⁽³⁾
10.07 A	Buckwheat	0
10.07 B	Millet	77.79 ⁽⁴⁾
10.07 C	Grain sorghum	81.48 ⁽⁴⁾
10.07 D	Canary seed; other cereals	0 ⁽⁵⁾
11.01 A	Wheat or meslin flour	133.51
11.01 B	Rye flour	117.63
11.02 A I a)	Durum wheat groats and meal	189.57
11.02 A I b)	Common wheat groats and meal	143.14

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0.50 u.a./tonne.

⁽²⁾ Where maize originating in the ACP or OCT is imported into the French overseas departments, the levy is reduced by 6 u.a./tonne as provided for in Regulation (EEC) No 706/76.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1.50 u.a./tonne.

⁽⁴⁾ Where millet and sorghum originating in the ACP or OCT is imported into the Community the levy is reduced by 50 %.

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0.50 u.a./tonne.

⁽⁶⁾ The import levy charged on rye produced in Turkey and transported directly from that country to the Community is laid down in Council Regulation (EEC) No 1180/77 and Commission Regulation (EEC) No 2622/71.

COMMISSION REGULATION (EEC) No 312/78

of 16 February 1978

fixing the premiums to be added to the import levies on cereals, flour and malt

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2727/75 of 29 October 1975 on the common organ-
ization of the market in cereals⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77⁽²⁾, and in particular
Article 15 (6) thereof,

Whereas the premiums to be added to the levies on
cereals and malt were fixed by Regulation (EEC) No
1730/77⁽³⁾ and subsequent amending Regulations ;

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

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 191, 30. 7. 1977, p. 7.

ANNEX

to the Commission Regulation of 16 February 1978 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(u.a./tonne)

CCT heading No	Description	Current 2	1st period 3	2nd period 4	3rd period 5
10.01 A	Common wheat, and meslin	0	0	0	2.16
10.01 B	Durum wheat	0	0	0	12.36
10.02	Rye	0	0	0	2.18
10.03	Barley	0	0	0	0.67
10.04	Oats	0	0	0	0
10.05 B	Maize, other than hybrid maize for sowing	0	0	0	0
10.07 A	Buckwheat	0	0	0	0
10.07 B	Millet	0	0.34	0.34	0.34
10.07 C	Grain sorghum	0	2.68	2.68	2.68
10.07 D	Other cereals	0	0	0	0
11.01 A	Wheat or meslin flour	0	0	0	3.02

B. Malt

(u.a./tonne)

CCT heading No	Description	Current 2	1st period 3	2nd period 4	3rd period 5	4th period 6
11.07 A I (a)	Unroasted malt, obtained from wheat, in the form of flour	0	0	0	3.84	3.84
11.07 A I (b)	Unroasted malt, obtained from wheat, other than in the form of flour	0	0	0	2.87	2.87
11.07 A II (a)	Unroasted malt, other than that obtained from wheat, in the form of flour	0	0	0	1.19	1.19
11.07 A II (b)	Unroasted malt, other than that obtained from wheat, other than in the form of flour	0	0	0	0.89	0.89
11.07 B	Roasted malt	0	0	0	1.04	1.04

COMMISSION REGULATION (EEC) No 313/78

of 16 February 1978

fixing the minimum import levies on olive oil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾,

Having regard to Council Regulation No 162/66/EEC of 27 October 1966 on trade in oils and fats between the Community and Greece⁽³⁾,

Having regard to Council Regulation (EEC) No 2843/76 of 23 November 1976 laying down special measures in particular for the determination of the offers of olive oil on the world market⁽⁴⁾, as amended by Regulation (EEC) No 2361/77⁽⁵⁾, and in particular Article 2 (3) thereof,

Having regard to Council Regulation (EEC) No 2844/76 of 23 November 1976 laying down special measures in particular for the determination of the offers of olive oil on the Greek market⁽⁶⁾, as amended by Regulation (EEC) No 2361/77, and in particular Article 2 (3) thereof,

Having regard to Council Regulation (EEC) No 1514/76 of 24 June 1976 on imports of olive oil from Algeria⁽⁷⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1521/76 of 24 June 1976 on imports of olive oil from Morocco⁽⁸⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EEC) No 1508/76 of 24 June 1976 on imports of olive oil from Tunisia⁽⁹⁾, and in particular Article 5 thereof,

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

Whereas, in Regulation (EEC) No 1362/76 of 14 June 1976⁽¹¹⁾, the Commission decided to use the tendering procedure to fix the levies on olive oil;

Whereas Article 4 of Commission Regulation (EEC) No 3188/76 of 23 December 1976 on detailed rules for the implementation of the special measures for the determination of offers of olive oil on the world market and the Greek market⁽¹²⁾, as last amended by Regulation (EEC) No 2413/77⁽¹³⁾, lays down the criteria for fixing the rate of the minimum levy;

Whereas that rate must be fixed for each of the products concerned on the basis of an examination of the world or Greek markets and of the Community market, and also of the levy rates indicated by the tenderers;

Whereas account should be taken of the oil content of products other than olive oil; whereas, however, no levies are applied to imports of oil-cake and other residues falling within subheading 23.04 A of the Common Customs Tariff and having an oil content of not more than 3 %;

Whereas account should be taken in applying the levy of the provisions of the agreements between the Community and certain non-member countries; whereas, in particular, the levy must be calculated on the basis of the levy to be collected on imports from non-member countries;

Whereas the application of the rules described above to the levy rates submitted by tenderers on 13 and 14 February 1978 results in the fixing of the minimum levies as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum levies on imports of olive oil shall be as shown in the Annex.

Article 2

This Regulation shall enter into force on 17 February 1978.

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

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No 197, 29. 10. 1966, p. 3393/66.

⁽⁴⁾ OJ No L 327, 26. 11. 1976, p. 4.

⁽⁵⁾ OJ No L 277, 29. 10. 1977, p. 2.

⁽⁶⁾ OJ No L 327, 26. 11. 1976, p. 6.

⁽⁷⁾ OJ No L 169, 28. 6. 1976, p. 24.

⁽⁸⁾ OJ No L 169, 28. 6. 1976, p. 43.

⁽⁹⁾ OJ No L 169, 28. 6. 1976, p. 9.

⁽¹⁰⁾ OJ No L 142, 9. 6. 1977, p. 10.

⁽¹¹⁾ OJ No L 154, 15. 6. 1976, p. 13.

⁽¹²⁾ OJ No L 359, 30. 12. 1976, p. 26.

⁽¹³⁾ OJ No L 279, 1. 11. 1977, p. 55.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 16 February 1978 fixing the minimum import levies on olive oil

(u.a. / 100 kg)

CCT heading No	Greece	Non-member countries
07.01 N II	6.00	10.00
07.03 A II	6.00	10.00
15.07 A I a)	30.00 ⁽³⁾	56.00 ⁽³⁾
15.07 A I b)	30.00 ⁽³⁾	54.00 ⁽³⁾
15.07 A I c)	30.00 ⁽³⁾	54.00 ⁽³⁾
15.07 A II a)	31.00	58.00 ⁽¹⁾
15.07 A II b)	45.00	84.00 ⁽²⁾
15.17 B I a)	14.00	25.00
15.17 B I b)	22.00	40.00
23.04 A	2.00 ⁽⁴⁾	4.00 ⁽⁴⁾

(¹) For imports of oil falling within this tariff subheading :

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 3.20 u.a./100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 2.50 u.a./100 kg.

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

- (a) produced entirely in Algeria, Morocco or Tunisia and transported directly from any of those countries to the Community, the levy to be collected is reduced by 6 u.a./100 kg ;
- (b) produced entirely in Turkey and transported directly from that country to the Community, the levy to be collected is reduced by 4.80 u.a./100 kg.

(³) For imports of oil falling within this tariff subheading and produced entirely in one of the countries listed below and transported directly from any of those countries to the Community, the levy to be collected is reduced by :

- (a) Greece and Spain : 0.50 u.a./100 kg ;
- (b) Turkey : 18.50 u.a./100 kg provided that the operator furnishes proof of having paid the export tax applied by that country ; however, the repayment may not exceed the amount of the tax in force ;
- (c) Algeria, Morocco, Tunisia : 20.50 u.a./100 kg provided that the operator furnishes proof of having paid the export tax applied by those countries ; however, the repayment may not exceed the amount of the tax in force.

(⁴) Pursuant in Article 3 of Regulations (EEC) No 2843/76 and (EEC) No 2844/76, no import levy is collected on oil-cake and other residues falling within subheading 23.04 A of the Common Customs Tariff and having an oil content of not more than 3 %.

COMMISSION REGULATION (EEC) No 314/78

of 16 February 1978

on the distillation for the 1977/78 wine year of wines suitable for producing certain potable spirits obtained from wine with a registered designation of origin

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 816/70 of 28 April 1970 laying down additional provisions for the common organization of the market in wine⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾, and in particular Article 6d (5) thereof,

Whereas Article 6d (1) of Regulation (EEC) No 816/70 provides that in years in which the harvest of wine suitable for producing certain potable spirits obtained from wine with a registered designation of origin exceeds by 1 000 000 hectolitres the volume of wine used for this purpose in the previous wine year, it may be decided that the wines in question may be distilled; whereas this condition is fulfilled in the case of the 1977/78 wine year; whereas distillation of these wines should therefore be permitted;

Whereas it should be made clear that this distilling operation which was formerly governed by Article 6b of Regulation (EEC) No 816/70, remains subject to the provisions of Council Regulation (EEC) No 1931/76 of 20 July 1976 laying down general rules governing the distillation of wines provided for in Articles 6b, 6c, 24a and 24b of Regulation (EEC) No 816/70⁽³⁾, as last amended by Regulation (EEC) No 1675/77⁽⁴⁾;

Whereas, in accordance with Regulation (EEC) No 1931/76 and in order to facilitate control measures, time limits must be laid down for the lodging of applications for approval, for the approval itself and for the distillation in question;

Whereas those parties which have applied to enter into a distillation contract must be informed in good time of the outcome of the approval procedure;

Whereas the items to be included in the distillation contracts should be specified;

Whereas Article 2a of Regulation (EEC) No 1931/76 makes provision for limiting distillation to products

with an alcoholic strength of 86° or more; whereas this provision should be applied, since the market in potable spirits is at present oversupplied and may be disturbed if products with an alcoholic strength of 85° or less are produced as a result of these distillation operations;

Whereas, in order to allow producers to receive the whole of the buying-in price with the minimum delay, there should be provision requiring the payments referred to in Article 3 (1) and (3) of Regulation (EEC) No 1931/76 to be made within 30 days after the conditions laid down therein have been fulfilled;

Whereas the prices of the wines intended for distillation are not such as to permit the sale, under normal conditions, of the products obtained from such distillation; whereas it is therefore necessary to pay an aid and to fix its amounts at a level which, having regard to normal costs, will permit its sale;

Whereas technical criteria for the approval of distillers should be laid down; whereas provision should also be made to enable approval in principle to be withdrawn from the distiller in the event of default on his part, except in cases of *force majeure* or inevitable accident;

Whereas the intervention agencies referred to in Article 6 of Regulation (EEC) No 1931/76 and the Commission must be informed of the progress of the distillation operations and must in particular receive information as to the quantities of table wine distilled and the quantities of alcohol obtained;

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

HAS ADOPTED THIS REGULATION:

Article 1

Distillation as provided for in Article 6d (1) of Regulation (EEC) No 816/70 is hereby authorized for the 1977/78 wine year in respect of wines suitable for

⁽¹⁾ OJ No L 99, 5. 5. 1970, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 211, 5. 8. 1976, p. 5.

⁽⁴⁾ OJ No L 187, 27. 7. 1977, p. 3.

producing certain potable spirits obtained from wine with a registered designation of origin and shall be carried out in accordance with Regulation (EEC) No 1931/76 and with this Regulation.

Applications for the approval of contracts shall be lodged by 15 March 1978.

Contracts must be approved by 31 March 1978.

Distillation operations must be carried out between 15 February and 15 July 1978.

Article 2

1. The intervention agency referred to in Article 6 of Regulation (EEC) No 1931/76 shall inform the contracting parties, not later than 15 days after the receipt of the application for approval of a distillation contract, of the outcome of the approval procedure.

2. Each contract shall state :

- (a) the quantity, colour and actual alcoholic strength of the wines to be distilled ;
- (b) the name and address of the producer ;
- (c) the place where the wine is stored ;
- (d) the name of the distiller or the business name of the distillery ;
- (e) the address of the distillery.

3. 'Distiller' shall mean a person who distils wines on his own account or for the account of other persons.

Article 3

1. The buying-in price as fixed in Article 6d (3) of Regulation (EEC) No 816/70 shall be 1.14 units of account per degree per hectolitre.

2. The amount of the aid provided for in Article 2 of Regulation (EEC) No 1931/76 shall be 0.70 unit of account per degree per hectolitre if the wine has been processed into a product with an alcoholic strength of 92° or over.

3. Payments under Article 3 (1) and (3) of Regulation (EEC) No 1931/76 shall be made not later than 30 days after the prescribed conditions are met.

4. In the case referred to in Article 3 (5) of Regulation (EEC) No 1931/76, the minimum buying-in price shall be paid not later than 30 days after the

total quantity of wine covered by the contract has entered the distillery.

5. In the case referred to in Article 3 (6) of Regulation (EEC) No 1931/76, the minimum buying-in price shall be paid not later than 30 days after the total quantity of wine covered by the contract has been distilled. Where the competent intervention agency of a Member State has not decided to apply the said Article 3 (6) generally, the distiller may apply it only after ascertaining that the producer is in agreement.

Article 4

1. No distiller shall be approved within the meaning of Article 5 of Regulation (EEC) No 1931/76 unless he is able to process the wine into a product with an alcoholic strength of 92° or over.

2. Approval shall be withdrawn, except in cases of *force majeure* or inevitable accident, if the distiller does not pay the producer the buying-in price or if he does not fulfil his obligations under Community provisions.

Article 5

1. Distillers shall send to the intervention agency not later than the 10th day of each month, a list of the quantities of wine distilled during the previous month, indicating the quantities, expressed as pure alcohol, and the products which they have obtained.

2. Member States shall inform the Commission by telex, not later than the 20th day of each month in respect of the previous month :

- of the quantities of wine covered by approved distillation contracts,
- of the quantities of wine distilled, and the quantities, expressed as pure alcohol, of products which they have obtained.

3. Member States shall communicate by 10 August 1978 particulars of any cases in which distillers have not fulfilled their obligations and of any measures taken as a result.

Article 6

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

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION REGULATION (EEC) No 315/78

of 16 February 1978

amending Regulation (EEC) No 1918/77 on the delivery of various consignments of skimmed-milk powder as food aid

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
804/68 of 27 June 1968 on the common organization
of the market in milk and milk products⁽¹⁾, as last
amended by Regulation (EEC) No 2560/77⁽²⁾, and in
particular Article 7 (5) thereof,

Whereas Commission Regulation (EEC) No 1918/77
of 19 August 1977 on the delivery of various consign-
ments of skimmed-milk powder as food aid⁽³⁾,
provides *inter alia* for the delivery at a Community
port of 1 330 tonnes of skimmed-milk powder
enriched with vitamins destined for Ethiopia, of
which 330 tonnes through Caritas and 1 000 tonnes
through Oxfam; whereas in view of the difficulties of
transport to that country, the request made by Caritas
in agreement with Oxfam, should be granted; whereas
the destinations of the 330 tonnes initially allocated to
Caritas should therefore be changed and the 1 000
tonnes intended for Oxfam should be re-allocated to
Caritas, with the necessary changes of destination;

Whereas it should be stipulated that any supplemen-
tary costs should be borne by Caritas, as agreed by
that organization;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 1918/77 the
entries under consignments S and T are hereby
amended as follows:

Under item 2, the beneficiary 'Oxfam' shall read:

- (a) 'Oxfam : 200 t }
Caritas : 400 t' } for consignment S,
(b) 'Oxfam : 15 t }
Caritas : 600 t' } for consignment T.

Article 2

Annex II to Regulation (EEC) No 1918/77 is hereby amended as follows:

1. Under lot Q, the second entry, concerning Ethiopia, shall read:

Partial quantities (in tonnes)	Recipient country	Inscription on the packaging
150 180	Kenya Haute-Volta	} See note

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 218, 26. 8. 1977, p. 1.

2. Under lot S, the entry shall read :

Lot	Total quantity of a lot (in tonnes)	Partial quantities (in tonnes)	Recipient country	Inscription on the packaging
S	600	200	Éthiopie	Skimmed-milk powder / Enriched with vitamins A and D / Gift of the European Economic Community / For free distribution in Ethiopia / Oxfam / 1501 / Assab
		100	Angola	
		30	Bénin	
		20	Burundi	
		30	Îles du Cap-Vert	
		30	Égypte	
		100	Mozambique	
		50	Niger	
		40	République de Djibouti	

See note

3. Under lot T, the second entry, concerning Ethiopia, shall read :

Partial quantities	Recipient country	Inscription on the packaging
225	Ghana	} See note
225	Maroc	
150	Zaïre	

4. The following note shall be inserted at the end :

Note : The necessary inscriptions on the packaging shall be made by Caritas'.

Article 3

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

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

COMMISSION REGULATION (EEC) No 316/78

of 16 February 1978

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Whereas, in accordance with Article 2 of Council Regulation (EEC) No 1774/76 of 20 July 1976 on special measures for linseed⁽²⁾, coefficients of equivalence for linseed have been fixed in the Annex to Commission Regulation (EEC) No 1799/76 of 22 July 1976 laying down detailed rules for the application of special measures in respect of linseed⁽³⁾, as last amended by Regulation (EEC) No 37/78⁽⁴⁾;

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

both linseed and linseed oil, which served as the basis for fixing the current coefficients of equivalence, have changed considerably since the beginning of the 1977/78 marketing year; whereas new coefficients of equivalence for linseed should therefore be fixed which take the new situation into account;

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

HAS ADOPTED THIS REGULATION :

Article 1

For purposes of the fixing of the average world market price for linseed for the 1977/78 and subsequent marketing years, the Annex to Regulation (EEC) No 1799/76 is hereby amended to read as follows :

(u.a. / 100 kg)

	Coefficients of equivalence	
	Amount to be deducted from the price	Amount to be added to the price
Linseed from		
— Canada	0.034	
— the United States		0.520
— Argentina		1.387

Article 2

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

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 67, 15. 3. 1976, p. 29.
⁽²⁾ OJ No L 199, 24. 7. 1976, p. 1.
⁽³⁾ OJ No L 201, 27. 7. 1976, p. 14.
⁽⁴⁾ OJ No L 7, 10. 1. 1978, p. 7.

COMMISSION REGULATION (EEC) No 317/78**of 16 February 1978****enabling short-term private storage contracts to be concluded for the A III type
of table wine**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
816/70 of 28 April 1970 laying down additional provi-
sions for the common organization of the market in
wine⁽¹⁾, as last amended by Regulation (EEC) No
2560/77⁽²⁾, and in particular Article 5 (7) thereof,

Whereas Article 5 (1) of the said Regulation intro-
duces a system of aid for the private storage of table
wine and grape must and lays down that the granting
of such aid is to be subject to the conclusion of a
short-term or a long-term storage contract; whereas
the first subparagraph of Article 5 (2) lays down that
short-term storage contracts for table wine may be
entered into when the weighted average price of that
type of table wine remains below the activating price
for two consecutive weeks;

Whereas the weighted average price of the A III type
of table wine has remained below the activating price
for this type of wine for two consecutive weeks;

Whereas the conditions set out in the first indent of
the first subparagraph of Article 5 (2) of Regulation
(EEC) No 816/70 are therefore fulfilled,

HAS ADOPTED THIS REGULATION:

Article 1

Short-term private storage contracts may be concluded
for the A III type of table wine.

Article 2

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

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 99, 5. 5. 1970, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

COMMISSION REGULATION (EEC) No 318/78**of 16 February 1978****correcting Regulation (EEC) No 261/78 fixing the export refunds on white sugar
and raw sugar exported in the natural state**

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organi-
zation of the market in sugar ⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77 ⁽²⁾, and in particular the
first sentence of the last subparagraph of Article 19 (2)
thereof,

Whereas the export refunds on white sugar and raw
sugar exported in the natural state were fixed by
Commission Regulation (EEC) No 261/78 of 8
February 1978 ⁽³⁾;

Whereas verification has shown that a price does not
correspond with the measures submitted for the
opinion of the management committee; whereas the
Regulation in question must therefore be corrected,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EEC) No 261/78, the
amount '18·80' under subheading 17.01 B (a) is hereby
replaced by '18·55'.

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 39, 9. 2. 1978, p. 11.

COMMISSION REGULATION (EEC) No 319/78
of 16 February 1978
fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾, and in particular the fourth subparagraph of Article 16 (2) thereof;

Having regard to the opinion of the Monetary Committee,

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

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

Whereas Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and from rice⁽⁴⁾, as last amended by Regulation (EEC) No 2560/77, defines the specific criteria to be taken into account when the refund on these products is being calculated;

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 February 1978.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 281, 1. 11. 1975, p. 65.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 16 February 1978 fixing the export refunds on malt

<i>(u.a. / tonne)</i>	
CCT heading No	Refund
11.07 A I a)	104.90
11.07 A I b)	0
11.07 A II a)	93.68
11.07 A II b)	75.00
11.07 B	87.41

COMMISSION REGULATION (EEC) No 320/78

of 16 February 1978

fixing the corrective amount applicable to the refund on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾, and in particular the third sentence of the second subparagraph of Article 16 (4) thereof,

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

Having regard to the opinion of the Monetary Committee,

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

Whereas Council Regulation (EEC) No 2744/75 of 29 October 1975 on the import and export system for products processed from cereals and from rice⁽⁴⁾, as last amended by Regulation (EEC) No 2560/77, made possible the fixing of a corrective amount for certain products listed in Article 1 (d) of Regulation (EEC) No 2727/75;

Whereas Regulation (EEC) No 1281/75⁽⁵⁾ laid down detailed rules for the advance fixing of export refunds for cereals and certain products processed from cereals;

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

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

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

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

Whereas, if the system of corrective amounts is to operate normally, corrective amounts should be calculated on the following basis:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 February 1978.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

⁽⁴⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽⁵⁾ OJ No L 131, 22. 5. 1975, p. 15.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 16 February 1978 fixing the corrective amount applicable to the refund on malt

(u.a./tonne)

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

(u.a./tonne)

CCT heading No	6th period 8	7th period 9	8th period 10	9th period 11	10th period 12	11th period 1
11.07 A I a)	—	—	—	—	—	—
11.07 A I b)	—	—	—	—	—	—
11.07 A II a)	—	—	—	—	—	—
11.07 A II b)	0	0	—75·00	—75·00	—75·00	—75·00
11.07 B	0	0	—87·41	—87·41	—87·41	—87·41

COMMISSION REGULATION (EEC) No 321/78
of 16 February 1978
fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation No 136/
66/EEC of 22 September 1966 on the establishment
of a common organization of the market in oils and
fats⁽¹⁾, as last amended by Regulation (EEC) No
2560/77⁽²⁾, and in particular Article 27 (4) thereof,

Whereas the amount of the subsidy referred to in
Article 27 of Regulation No 136/66/EEC was fixed by
Regulation (EEC) No 190/78⁽³⁾, as last amended by
Regulation (EEC) No 284/78⁽⁴⁾;

Whereas, in the absence of the indicative price for the
1978/79 marketing year for colza and rape seed in
case of pre-fixation for the month of July 1978, the
amount of subsidy on these products has been
obtainable only on the basis of the indicative price for
the month of July 1977; whereas, therefore, this
amount may be applied on a temporary basis and
should be confirmed or replaced when the indicative
price for the 1978/79 marketing year is known;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 190/78
to the information at present available to the Commis-
sion, that the amount of the subsidy at present in
force should be altered as shown in the Annex to this
Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amount of the subsidy referred to in Article
27 of Regulation No 136/66/EEC is hereby fixed as
shown in the table annexed to this Regulation.
2. The amount of the subsidy for the month of
July 1978 will, however, for colza and rape seed, be
confirmed or replaced as from 17 February 1978 to
take into account the indicative price which is fixed
for these products for the 1978/79 marketing year.

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

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

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 27, 1. 2. 1978, p. 24.

⁽⁴⁾ OJ No L 41, 11. 2. 1978, p. 26.

*ANNEX***to the Commission Regulation of 16 February 1978 fixing the amount of the subsidy on oil seeds**

Subsidy applicable from 17 February 1978 to colza and rape seeds (CCT heading No ex 12.01) and sunflower seeds (CCT heading No ex 12.01) (u.a./100 kg)

	Colza and rape seed	Sunflower seed
Subsidy	11·442	13·490
Subsidy in the case of advance fixing :		
— for the month of February 1978	11·442	13·490
— for the month of March 1978	11·819	13·989
— for the month of April 1978	11·559	13·989
— for the month of May 1978	11·559	14·018
— for the month of June 1978	11·492	—
— for the month of July 1978	9·364 ⁽¹⁾	—

⁽¹⁾ Subject to confirmation.

COMMISSION REGULATION (EEC) No 322/78
of 16 February 1978
fixing the world market price for colza and rape seed

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the markets in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza and rape seed⁽³⁾, as last amended by Regulation (EEC) No 3477/73⁽⁴⁾,

Having regard to Commission Regulation (EEC) No 2300/73 of 23 August 1973 laying down detailed rules for applying differential amounts for colza and rape seed and repealing Regulation (EEC) No 1464/73⁽⁵⁾, as last amended by Regulation (EEC) No 1234/77⁽⁶⁾, and in particular Article 9 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas, pursuant to Article 9 (4) of Regulation (EEC) No 2300/73, the Commission must determine the world market price for colza and rape seed ;

Whereas the world market price should be determined in accordance with the rules and the criteria set out in Commission Regulation (EEC) No 190/78 of 31 January 1978 fixing the amount of the subsidy

on oil seeds⁽⁷⁾, as last amended by Regulation (EEC) No 321/78⁽⁸⁾ ;

Whereas, to enable the price system to operate normally, the world market price should be calculated on the following basis :

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

Whereas, applying all these provisions, the world market price for colza and rape seed should be fixed as shown in the table annexed to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The world market price referred to in Article 9 (4) of Regulation (EEC) No 2300/73 and the rates to be used for converting them into national currencies shall be as shown in the table annexed to this Regulation.

Article 2

This Regulation shall enter into force on 17 February 1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

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

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁴⁾ OJ No L 357, 28. 12. 1973, p. 6.

⁽⁵⁾ OJ No L 236, 24. 8. 1973, p. 28.

⁽⁶⁾ OJ No L 143, 10. 6. 1977, p. 9.

⁽⁷⁾ OJ No L 27, 1. 2. 1978, p. 24.

⁽⁸⁾ See page 21 of this Official Journal.

ANNEX

World market price applicable from 17 February 1978 for colza and rape seed (CCT heading No ex 12.01)

	u.a./100 kg ⁽¹⁾
World market price	18.912
World market price where the subsidy is fixed in advance :	
— for the month of February 1978	18.912
— for the month of March 1978	18.839
— for the month of April 1978	19.099
— for the month of May 1978	19.099
— for the month of June 1978	19.166
— for the month of July 1978	19.166

⁽¹⁾ The conversion rates from units of account into national currency as foreseen by Article 9 (5) (a) of Regulation (EEC) No 2300/73 are the following :

1 u.a. = DM	3.15665
1 u.a. = Fl	3.35507
1 u.a. = Bfr/Lfr	48.6572
1 u.a. = FF	7.02326
1 u.a. = Dkr	8.56656
1 u.a. = £	0.766536
1 u.a. = I £	0.766536
1 u.a. = Lit	1 292.81

COMMISSION REGULATION (EEC) No 323/78**of 16 February 1978****altering the basic amount of the import levy on syrups and certain other sugar products**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3330/74 of 19 December 1974 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EEC) No 2560/77⁽²⁾, and in particular Article 15 (7) thereof,

Whereas the basic amount of the import levy on syrups and certain other sugar products was fixed by Regulation (EEC) No 186/78⁽³⁾, as amended by Regulation (EEC) No 230/78⁽⁴⁾;

Whereas it follows from applying the rules and other provisions contained in Regulation (EEC) No 186/78

to the information at present available to the Commission that the basic amount of the levy at present in force should be altered as shown in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The basic amount of the import levy on the products listed in Article 1 (1) (d) of Regulation (EEC) No 3330/74 is hereby fixed, per 100 kilograms of product, at 0.2417 unit of account per percentage point of sucrose content.

Article 2

This Regulation shall enter into force on 17 February 1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 359, 31. 12. 1974, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 27, 1. 2. 1978, p. 16.

⁽⁴⁾ OJ No L 32, 3. 2. 1978, p. 31.

COMMISSION REGULATION (EEC) No 324/78

of 16 February 1978

fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
3330/74 of 19 December 1974 on the common organ-
ization of the market in sugar⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77⁽²⁾, and in particular
Article 15 (7) thereof,

Whereas the import levies on white sugar and raw
sugar were fixed by Regulation (EEC) No 1436/77⁽³⁾,
as last amended by Regulation (EEC) No 309/78⁽⁴⁾;

Whereas it follows from applying the rules and other
provisions contained in Regulation (EEC) No 1436/77
to the information at present available to the Commis-

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

HAS ADOPTED THIS REGULATION :

Article 1

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

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

(¹) OJ No L 359, 31. 12. 1974, p. 1.

(²) OJ No L 303, 28. 11. 1977, p. 1.

(³) OJ No L 161, 1. 7. 1977, p. 9.

(⁴) OJ No L 45, 16. 2. 1978, p. 21.

ANNEX

to the Commission Regulation of 16 February 1978 fixing the import levies on white sugar
and raw sugar

(u.a. / 100 kg)		
CCT heading No	Description	Levy
17.01	Beet sugar and cane sugar, in solid form :	
	A. White sugar ; flavoured or coloured sugar	24.17
	B. Raw sugar	20.48 (¹)

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

COMMISSION REGULATION (EEC) No 325/78
of 16 February 1978
fixing the import levies on isoglucose

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1111/77 of 17 May 1977 laying down common provisions for isoglucose⁽¹⁾, as amended by Regulation (EEC) No 2560/77⁽²⁾, and in particular Article 3 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas, pursuant to Article 3 of Regulation (EEC) No 1111/77, a levy is to be charged on imports of the products specified in Article 1 of that Regulation; whereas this levy is to consist of a fixed component and a variable component;

Whereas these components are defined in Article 3 (1) of Regulation (EEC) No 1111/77; whereas, pursuant to Commission Regulation (EEC) No 1469/77 of 30 June 1977 laying down rules for applying the levy and the refund in respect of isoglucose and amending Regulation (EEC) No 192/75⁽³⁾, the fixed component referred to in Article 3 of Regulation (EEC) No 1111/77 must be equal to that used for fixing the import levy on products falling within subheading 17.02 B II a) of the Common Customs Tariff;

Whereas the levy must be fixed each month;

Whereas, to enable the system of levies to function normally, the levies should be calculated using:

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

Whereas in view of the foregoing the levies on isoglucose shall be fixed as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The levies referred to in Article 3 (4) of Regulation (EEC) No 1111/77 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 February 1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 134, 28. 5. 1977, p. 4.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 162, 1. 7. 1977, p. 9.

ANNEX

to the Commission Regulation of 16 February 1978 fixing the import levies on isoglucose

(in u.a.)		
CCT heading No	Description	Levies per 100 kg of dry matter
17.02	Other sugars in solid form ; sugar syrups, not containing added flavouring or colouring matter ; artificial honey, whether or not mixed with natural honey ; caramel : D. Other sugars and syrups : I. Isoglucose	32.17
21.07	Food preparations not elsewhere specified or included : F. Flavoured or coloured sugar syrups : III. Isoglucose	32.17

COMMISSION REGULATION (EEC) No 326/78

of 16 February 1978

altering the import levies on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2727/75 of 29 October 1975 on the common organi-
zation of the market in cereals ⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77 ⁽²⁾, and in particular
Article 14 ⁽⁴⁾ thereof,

Having regard to Council Regulation (EEC) No
1418/76 of 21 June 1976 on the common organiza-
tion of the market in rice ⁽³⁾, as amended by Regula-
tion (EEC) No 1158/77 ⁽⁴⁾, and in particular Article 12
⁽⁴⁾ thereof,

Whereas the import levies on products processed
from cereals and rice were fixed by Regulation (EEC)
No 168/78 ⁽⁵⁾;

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

account per tonne of basic product ; whereas, pursuant
to Article 1 of Regulation (EEC) No 1579/74 ⁽⁶⁾, the
levies at present in force must therefore be altered as
shown in the table annexed to this Regulation,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies to be charged on products
processed from cereals and rice covered by Regulation
(EEC) No 2744/75 ⁽⁷⁾, as last amended by Regulation
(EEC) No 2560/77, as fixed in the Annex to Regula-
tion (EEC) No 168/78 are hereby altered as shown in
the table annexed to this Regulation.

Article 2

This Regulation shall enter into force on 17 February
1978.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 136, 2. 6. 1977, p. 13.

⁽⁵⁾ OJ No L 25, 31. 1. 1978, p. 8.

⁽⁶⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽⁷⁾ OJ No L 281, 1. 11. 1975, p. 65.

ANNEX

to the Commission Regulation of 16 February 1978 altering the import levies on products processed from cereals and rice

CCT heading No	Levies in u.a./tonne	
	Third countries (other than ACP or OCT)	ACP or OCT
11.01 D ⁽²⁾	136.44	131.44
11.02 A IV ⁽²⁾	136.44	131.44
11.02 B I a) 2 aa)	76.98	74.48
11.02 B I a) 2 bb) ⁽²⁾	133.94	131.44
11.02 B I b) 2 ⁽²⁾	133.94	131.44
11.02 C IV ⁽²⁾	119.33	116.83
11.02 D IV ⁽²⁾	76.98	74.48
11.02 E I a) 2 ⁽²⁾	76.98	74.48
11.02 E I b) 2 ⁽²⁾	151.04	146.04
11.02 F IV ⁽²⁾	136.44	131.44

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

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

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

COMMISSION REGULATION (EEC) No 327/78

of 16 February 1978

fixing the refunds applicable to cereals and wheat or rye flour groats and meal

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation (EEC) No
2727/75 of 29 October 1975 on the common organ-
ization of the market in cereals ⁽¹⁾, as last amended by
Regulation (EEC) No 2560/77 ⁽²⁾, and in particular the
first sentence of the fourth subparagraph of Article 16
(2) thereof,

Having regard to the opinion of the Monetary
Committee,

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

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

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

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

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

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 17 February
1978.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 303, 28. 11. 1977, p. 1.

⁽³⁾ OJ No L 281, 1. 11. 1975, p. 78.

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

⁽⁵⁾ OJ No L 168, 27. 7. 1971, p. 16.

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

Done at Brussels, 16 February 1978.

For the Commission

Finn GUNDELACH

Vice-President

ANNEX

to the Commission Regulation of 16 February 1978 fixing the refunds applicable to cereals and wheat or rye flour groats and meal

CCT heading No	Description	Refund (u.a./tonne)
10.01 A	Common wheat and meslin	0
10.01 B	Durum wheat	0
10.02	Rye :	
	— for exports to :	
	— Switzerland, Austria and Liechtenstein	55.00
	— other third countries	65.00
10.03	Barley :	
	— for exports to :	
	— Switzerland, Austria and Liechtenstein	56.00
	— Iberian Peninsula	60.00
	— Zones I, II, III, IV and V	0
	— other third countries	65.00
10.04	Oats	0
10.05 B	Maize, other than hybrid maize for sowing	—
10.07 C	Grain sorghum	—
ex 11.01 A	Wheat flour :	
	— of an ash content of 0 to 520	80.00
	— of an ash content of 521 to 600	80.00
	— of an ash content of 601 to 900	70.00
	— of an ash content of 901 to 1 100	70.00
	— of an ash content of 1 101 to 1 650	60.00
	— of an ash content of 1 651 to 1 900	60.00
ex 11.01 B	Rye flour :	
	— of an ash content of 0 to 700	45.00
	— of an ash content of 701 to 1 150	45.00
	— of an ash content of 1 151 to 1 600	45.00
	— of an ash content of 1 601 to 2 000	45.00
11.02 A I a)	Durum wheat groats and meal :	
	— of an ash content of 0 to 950	155.00
	— of an ash content of 951 to 1 300	155.00
	— of an ash content of 1 301 to 1 500	155.00
11.02 A I b)	Common wheat groats and meal :	
	— of an ash content of 0 to 520	80.00

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 December 1977

relating to a proceeding under Article 85 of the EEC Treaty (IV/29.146 — BMW
Belgium NV and Belgian BMW dealers)

(Only the French and Dutch texts are authentic)

(78/155/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

I. The facts

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

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

Having regard to the applications made pursuant to Article 3 (2) (b) of Regulation No 17 by Automobilimporte C. Heuer, Dillingen, on 24 November 1975 and by MGH Motorgesellschaft mbH, Herford, on 9 December 1975,

Having regard to the Commission Decision of 3 November 1976 to initiate proceedings against BMW Belgium NV, Kontich, and 47 Belgian BMW dealers,

Having heard BMW Belgium NV and the 47 BMW dealers in accordance with Article 19 (1) of Regulation No 17 and with Regulation No 99/63/EEC⁽²⁾,

Having regard to the opinion delivered by the Advisory Committee on Restrictive Practices and Dominant Positions on 19 October 1977 pursuant to Article 10 of Regulation No 17,

Whereas :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

1. From the applications made on 20 October 1975 by MGH and on 19 November 1975 by Heuer, the Commission learned that Belgian dealers belonging to the BMW network were no longer prepared to supply them with certain models of new BMW vehicles for export to the Federal Republic of Germany. BMW Belgium NV, which, through BMW Holding AG, Zurich, Switzerland, is wholly dependent on Bayerische Motoren Werke AG, Munich, and is its general importer for Belgium, had taken a series of measures to hinder imports. In particular it had required its 90 appointed dealers in Belgium to enter into an agreement, set out in a circular addressed to all dealers on 29 September 1975, to prevent exports from taking place; 47 of the Belgian BMW dealers acted as required and signed the circular.

On 13 January 1975, BMW Belgium had notified the standard form distribution agreement entered into by its dealers and applied for exemption under Article 85 (3) of the EEC Treaty. However the standard form agreement contains no export prohibition. It simply prohibits appointed BMW dealers from selling new BMW vehicles to dealers that are not approved by BMW. It largely corresponds to the standard agreement which is used as a basis for the selective distribution system operated in the Federal Republic of

Germany and West Berlin by Bayerische Motoren Werke AG, Munich. The latter was exempted by the Commission Decision of 13 December 1974⁽¹⁾, one of the main reasons being that there were no prohibitions on exports by approved BMW dealers. There has so far been no individual decision exempting the standard form distribution agreement for Belgium notified by BMW Belgium.

The details of the case are as follows :

2. In 1975 retail prices for new cars, including BMWs, were lower in Belgium than in other common market countries. Price controls imposed by the Belgian Government, designed to contain inflation, were responsible for a temporary freeze of retail prices for cars. The difference in price resulted in new BMW vehicles being re-exported from Belgian to other countries in the Community and elsewhere. In some cases consumers in Community countries other than Belgium bought vehicles directly from Belgian dealers in the BMW network. In other cases consumers used the services of intermediaries which without being appointed by the manufacturers for the purpose, nevertheless handled such imports. Exports were also facilitated by the fact that dealers that were not members of the BMW network bought BMW cars from authorized Belgian dealers for resale to the consumer. On occasion Belgian BMW dealers even sold BMW vehicles to approved BMW dealers in Germany.

3. The sale of BMW vehicles from Belgium to consumers in other Community countries disturbed local BMW dealers in whose territory the consumer lived, particularly because their dealership agreement obliged them to provide guarantee service even on BMW vehicles that they had not sold themselves. BMW Munich found that it was in a situation where BMW vehicles were being sold to the consumer through channels that had not been envisaged. Having received information from the beginning of 1975 about BMW vehicles re-imported into Germany by German BMW dealers and having checked German BMW registrations and the chassis numbers of BMW vehicles sold through BMW Belgium, BMW Munich wrote to BMW Belgium on 17 January, 21 and 22 May, 10, 20 and 23 June, 22 July and 14 and 17 October 1975, and there were discussions on 25 April and 3 October 1975.

⁽¹⁾ OJ No L 29, 3. 2. 1975, p. 1.

In its letters to BMW Belgium, BMW Munich referred only to actual cases where unauthorized dealers had bought or where there was reason to believe they had bought BMW vehicles in Belgium. In its letters of 17 January, 23 June, 22 July and 17 October 1975, BMW Munich made it clear that the distribution system operated in Belgium prohibited sales only to unauthorized dealers but not to the consumer in other Community countries. The letter of 22 July 1975, for instance, states :

'May we remind you that, according to the terms of the dealership agreement, re-exports in themselves do not constitute a breach and no objection should be taken to individual cases. Please confine your attention to cases where you suspect there has been a sale to an unauthorized dealer in breach of the agreement.'

By letter dated 23 June 1975, BMW Munich indicated that re-imports of new BMW cars into Germany had achieved an excessive degree of publicity and were harming its relations with BMW dealers in certain areas and alleged that this was compromising its attempts to improve deliveries to export markets and the further development of distribution networks. BMW Belgium was asked to send a circular to its dealers drawing their attention to BMW's distribution policy ; the circular was to make the following points :

- '1. The legal situation following approval of the BMW distribution agreement by the European Communities is that no BMW dealer may sell to unauthorized dealers. This requires dealers to exercise extreme caution and to have considerable knowledge of the trade when assessing prospective customers.
2. Any breach of the contractual provisions may immediately invalidate the distribution agreement.
3. The need by the importer to have BMW dealers' interests at heart justifies the emphasis on seeing sales of new vehicles in relation to the potential profit to the network that they can generate (second-hand sales, after-sales services, sales of spare parts, credit arrangements and insurance).
4. The importer's obligation to develop the market also means that in case of shortage vehicles have to be allotted to individual areas in accordance with actual need.'

This letter from BMW Munich of 23 June 1975 further specified that these arguments had been approved by its legal department.

4. These letters from BMW Munich to BMW Belgium caused BMW Belgium to approach individual Belgian dealers on the subject of certain exports (letters dated 29 May, 9 and 19 June, 3, 9 and 24 July, 28 and 29 August, 10 and 19 September and 1 and 23 October 1975), and produced three circulars to all Belgian BMW dealers.

The circular of 4 July 1975 read as follows :

'Export sales

In the past few weeks we have unfortunately received information from BMW's Munich Head Office to the effect that a number of dealers have been selling BMW cars in the Netherlands and Germany. At a time when we are having to ration car supplies we can see no justification for such sales.

Furthermore, we would remind you that the BMW distribution agreement requires each dealer to refrain from selling any BMW product to dealers who have not been appointed for the sale of BMW goods.

Dealers who sell cars through such unauthorized dealers in Belgium or elsewhere are in serious breach of their BMW distribution agreement.

We must inform you that severe action will have to be taken ; if necessary, BMW dealer status will be withdrawn if such breaches continue.'

The abovementioned circular of 29 September 1975, signed by 47 BMW dealers, whereby BMW Belgium complied with the instruction given by BMW Munich on 23 June 1975 to send such a circular (see paragraph 3 above, read as follows :

'Sales of new BMW vehicles in foreign countries

Apart from sending individual letters to specific dealers, we wrote to all of you on 4 July 1975 referring you to the provisions of the BMW distribution agreement concerning sales to unauthorized dealers.

However, reports are still coming in from Germany and the Netherlands to the effect that Belgian dealers are selling cars there, and we must unfortunately conclude that these dealers cannot or will not understand the consequences of what they are doing.

At a special meeting of the Dealers' Advisory Committee we made the following points :

1. It is a fact that certain dealers are supplying cars to Germany and the Netherlands.
2. The reasons are, firstly, the difference in price and, secondly the fact that certain dealers have too many cars in stock or else a poor range.
3. It will be clear that BMW Munich can draw only two conclusions from this :
 - (a) Belgian prices are too low ;
 - (b) Belgian dealers have excessive stocks.

The consequences are clear enough :

- (a) our prices must be brought up to those of neighbouring countries as quickly as possible ;
 - (b) supplies of new vehicles to Belgium must be cut back from October 1975.
4. You yourselves are already being put at a serious disadvantage by the fact that a time when BMW vehicles are in a short supply you are supplying customers who :
 - (a) will never come to your workshop ;
 - (b) will never buy parts or accessories from you ;
 - (c) will never give you the opportunity to make a further profit on a car sold to you in part exchange ;
 - (d) will never, unlike most customers in your territory, give you any reason to expect an opportunity to sell them a second or third BMW.
5. Moreover, you will be creating serious difficulties both for yourselves and for the other members of the network by provoking BMW into what would after all be a logical reaction — drastically reducing the number of cars intended for Belgium.

Our view is therefore that in the present situation there is only one solution : henceforth no BMW dealer in Belgium will sell cars outside Belgium or to firms who propose to export them. Our solidarity and the protection of our network are at stake. This absolute solidarity of the BMW network and strict compliance with this sales policy should be convincing and will help to restore confidence in the Belgian BMW network. We therefore ask you to agree to the above proposals by signing the attached copy.

We enclose a statement by the members of Dealers' Advisory Committee, who fully support our arguments and will meet you personally to explain their views.

Agreed:

The Belgian BMW Dealers' Advisory Committee, as requested by BMW Belgium, addressed the following circular to all Belgian BMW dealers on 29 September 1975. Its content, agreed by BMW Belgium, was as follows:

'Export sales'

As members of the Dealers' Advisory Committee we unanimously support the statements made by BMW Belgium in its circular of 29 September 1975. We find it particularly regrettable that the entire distribution network should suffer on account of a small number of dealers who irresponsibly ignore the importer's recommendation of 4 July 1975 by delivering cars for export.

We have therefore asked for the names of these dealers to be made known to us so that we, your Advisory Committee, can inform you which of your fellow dealers are responsible for any reduction in the supply of two-door and 518 models to Belgium.

The Advisory Committee considers that its most important function is to give good advice to the BMW distribution network, and the only advice it has to offer in this case is: "No more sales outside Belgium".

5. The Advisory Committee's duties are:

- to discuss with BMW Belgium's management all general questions relating to all or part of the distribution network,
- to make recommendations concerning the development of business by BMW dealers and relations with BMW customers,
- to give BMW Belgium the opportunity to deal with a small number of dealers representative of the whole network when establishing policy for the Belgian market,
- to improve mutual relations between BMW dealers.

The Advisory Committee's circular of 29 September 1975 was signed by the eight members of the Committee, who are proprietors of or hold senior positions in the following firms:

- Autohandel O. Cocquyt NV, Brugge,
- Etn. W. Jorssen, Wilrijk,
- Garage Hindrickx, Roeselare,
- Pvba J. Siau-Vermeesch, Dendermonde,
- Ets. Jo Vallé, Bree,
- Ets. J. Depotter, Chièvres,
- Etn. J. De Smeth, Overijse,
- Garage J. Wiliquet, Verviers.

6. Further to the circular from the Advisory Committee there were two regional meetings of BMW dealers held on 13 and 31 October 1975.

At the meeting of 13 October 1975, deliveries from Belgium to Germany and the Netherlands were discussed. Several dealers reported on their experience of German dealers and individuals and Belgian firms buying cars in Belgium and then registering them in other countries. The question of what provisions applied in respect of value added tax in such cases was also discussed. A number of dealers further expressed the view that sales outside their own territory were disadvantageous to them, since they made for no improvement in contribution to the profits or profitability at their own garages.

At the meeting of 31 October 1975, the dealers again considered the circular on exports of new vehicles. Protests were made that BMW's conclusions seemed to apply both to dealers who had been supplying non-approved dealers and dealers who had been complying with their agreement. The point was finally made that BMW Belgium itself also seemed to have been selling cars to Germany.

7. After BMW Belgium had informed BMW Munich of the content of its circular of 29 September 1975 by letter of 30 September 1975 and at a meeting in Paris on 3 October 1975, BMW Munich wrote the following letter on 17 October 1975:

'Sales to dealers'

We are pleased to see what you have been doing about dealers who, by supplying unauthorized dealers in breach of their agreement, have been jeopardizing the efficiency of the BMW distribution network. We also thank you for your discussing with the Belgian Dealers' Advisory Committee with a view to ensuring that our Belgian organization obtains full benefit of the potential earnings from business following on from our deliveries to you.

As already mentioned on 17 January, 23 June and 22 July 1975, we must again ask you, in respect of any measures taken, to bear in mind that :

- no action may be taken against your dealers simply because they have re-exported cars ; warnings may be given only where a dealer is suspected of selling cars to non-approved dealers in breach of his Agreement,
- no action may be threatened against your dealers unless made necessary by a proved breach of their agreement.

This instruction must also be complied with in any correspondence between BMW Belgium SA and the Belgian distribution network.

The above does not of course affect the obligation of BMW SA to keep supplies of vehicles to individual dealers and supplies of particular models under regular review and to adjust deliveries as part of the normal responsibilities of an importer.

The obligation of dealers to notify sales under the "VIS" system must be strictly complied with.

Similar considerations will naturally apply to decisions by BMW AG concerning deliveries to the Belgian market, which will seek solely to offset differing stock levels and delivery schedules in neighbouring markets.'

8. There is disagreement between MGH and Heuer, the applicants, and BMW Belgium and BMW Munich as to whether BMW Belgium can rely on the terms of the BMW distribution agreement in order to prevent sales to dealers not appointed by BMW when the Belgian BMW distribution system has not yet been exempted by the Commission, whether the applicants were justified in inducing Belgian BMW dealers to supply them with new BMW cars, and whether the applicants were to be regarded simply as agents for the ultimate consumer, and over the criteria for such status.

9. On 12 June 1975, BMW Munich informed MGH that BMW dealers in Europe were prohibited from supplying new BMW vehicles to persons or firms not within the BMW distribution system for

resale, and that MGH was inducing BMW network dealers to act in breach of their agreements. BMW Munich demanded that MGH state in writing that in future it would obtain no more BMW vehicles from BMW dealers. On 23 June 1975, MGH replied that it did not buy BMW vehicles for resale but solely as agent for the consumer, this not being contrary to the BMW distribution arrangements. MGH pursued its endeavours to obtain new BMW cars from BMW dealers in Belgium, but realized that more and more BMW dealers were refusing to supply German consumers and referred to the circular they had received from BMW Belgium as the reason for such refusal.

On 9 October 1975, BMW Belgium informed MGH that its order for 12 BMW vehicles could not be met as there was a shortage in Belgium. MGH was asked to stop trying to obtain BMW vehicles from Belgian BMW dealers. On 24 October 1975, MGH replied that it was acting solely as an agent and that in this capacity represented consumers in the Federal Republic of Germany. It further alluded to the Commission Decision of 13 December 1974 relating to the BMW distribution system in Germany⁽¹⁾, according to which consumers were entirely free to buy BMW products anywhere in the common market and could call on the services of any firm for that purpose.

MGH demanded that BMW Belgium should declare in writing that it would not prevent it from operating in this capacity. On 7 November 1975, BMW Belgium wrote to the legal advisers of MGH, stating that they would make no such declaration since there was no evidence to prove that MGH was in fact only an agent. It had gained the impression that MGH was really a dealer and was endangering BMW's Belgian distribution system.

By letter dated 24 November 1975, MGH suggested to BMW Belgium that it should agree that MGH would in future import new vehicles into Germany on the basis of the written authority of the purchasers in German who were involved. On 2 December 1975, BMW Belgium replied that MGH had still provided no proof that it was indeed acting only as an agent. The fact that MGH described itself as an agent was immaterial to the actual nature of its business. If MGH did not cease its activities of reselling, BMW Belgium would have to take steps.

⁽¹⁾ OJ No L 29, 3. 2. 1975, p. 8 (paragraph 30).

10. On 27 January 1976, MGH applied for an interlocutory injunction against BMW Belgium in the Antwerp Commercial Court, under Article 54 of the Belgian Trade Practices Act and Article 85 (1) of the EEC Treaty, seeking revocation of the circular of 29 September 1975.

11. On 20 February 1976, BMW Belgium sent the following circular to all Belgian BMW dealers :

'Sales of new BMW vehicles to unauthorized dealers

On 29 September 1975, we wrote to you on the subject of the new situation arising on the Belgian market following the sale of new BMW vehicles to dealers in other countries in 1975. At that time we made a number of recommendations and stated what, at least in our view, was and still is in your best interests.

We are informed that this circular and the letter attached to it are regarded by outsiders as instructions from importers to dealers, although this was not our intention.

If this has been the case, we should now like to put an end to any misunderstanding.

It was not in the past, nor is it now, our intention or that of the Dealer's Advisory Committee to impose specific instructions on you or to prohibit you from exporting. You are to regard our circular of 29 September 1975 as null and void to the extent that it might be construed as an export prohibition.

The object of that circular was to remind you that under your distribution agreement you are prohibited from selling BMW vehicles to unauthorized dealers in Belgium or elsewhere.

In no case do we wish or did we wish to prevent a BMW dealer from trading with an agent acting for

private customers, but we do oppose transactions between BMW dealers and resellers.

With the agreement of the Dealers' Advisory Committee we should like once again to remind you that it is not in your own financial interest to confine your business to the sale of new BMW vehicles. A customer who brings his BMW vehicle to you for maintenance, buys spare parts and accessories from you and uses your servicing facilities is also providing you with the means of making a profit. The same applies when you take a customer's present vehicle in part exchange. Finally a satisfied customer will come back to you when he buys his next BMW.

We hope that we have now cleared up any remaining doubts as to the rights and duties of appointed BMW dealers in Belgium.'

12. Having issued this circular on 20 February 1976, BMW Belgium stated before the Antwerp Commercial Court that it would no longer refuse to sell new vehicles to MGH or prevent their sale by the Belgian distribution network provided MGH ceased reselling vehicles sold to it by BMW Belgium and acted solely as an importing intermediary agent, producing if necessary, an authority in each case. MGH accepted this statement made before the court. The president of the Commercial Court confirmed this agreement between the parties in settlement of the case. BMW Belgium was ordered to pay the costs.

13. Since that time MGH has brought an action against BMW Belgium in the Bielefeld Landgericht (regional court) (Case 10 162/76), seeking damages on the ground that, in breach of Article 85 (1) of the EEC Treaty, BMW Belgium had unlawfully and wrongfully prevented MGH from seeking to make a profit by arranging sales of new BMW vehicles in Germany.

14. From the correspondence between the applicant Heuer (letters dated 20 October, 24 November and 15 December 1975) and BMW Belgium (letters dated 7 November and 8 December 1975 and 23 January 1976) it appears that BMW Belgium was refusing to supply cars to Belgian BMW dealers for supply to Heuer, referring to its suspicion that Heuer was acting as a reseller. On 23 January 1976, BMW Belgium informed Heuer that in future it would no longer object to its import business, as Heuer had proved that on recent occasions it had indeed been acting only as agent. Heuer nevertheless succeeded in obtaining BMW vehicles from Belgian BMW dealers only until 6 August 1975. Subsequent attempts until 20 February 1976 were unsuccessful.

15. From figures supplied by BMW Belgium NV, the total number of new BMW vehicles re-exported to the Federal Republic of Germany alone between May and November 1975 was 103, but only 14 between December 1975 and October 1976, during which period no more than three vehicles were exported in any one month. In November 1975, the appropriate Belgian authority authorized an increase in retail prices, aligning Belgian prices more closely with those in other Community countries and reducing the incentive to re-export. Between 1 November 1975 and the end of 1976, there were several changes in the recommended list prices to consumers in Belgium and other Community countries, narrowing the differences in the prices actually charged in individual countries.

Whereas these differences between Belgian and German list prices for three popular BMW models between 25 August and 1 November 1975 were 12.2, 10.1 and 12.9 %, the differences between 20 September and 31 December 1976 were down to 3.6, 1, and 4.6 % respectively.

16. Between 18 July 1973, when it commenced business, and 30 September 1974, BMW Belgium achieved total sales of Bfrs [.....], of which Bfrs [.....] were accounted for by new cars. In the business year 1 October 1974 to 30 September 1975, sales totalled Bfrs [.....], of which Bfrs [.....] were accounted for by new cars. Between 1 October 1975 and 20 February 1976, a total of [.....] new BMW cars were delivered to a total value of Bfrs [.....].

BMW's 1975 and 1976 market shares in percentages for cars in Belgium and in the other countries where re-exports can be shown to have taken place were as follows :

	1975	1976
Belgium	2.3	2.0
Federal Republic of Germany (including West Berlin)	6.1	5.6
Netherlands	2.0	2.0
France	0.8	0.7
Italy	1.5	1.4
United Kingdom	0.6	0.7

The undertakings, from which originate the members of the Advisory Committee of BMW dealers who

signed the circular of 29 September 1975 (see paragraph 4 above), achieved the following turnovers in Belgian francs in 1975 :

	Total	New BMW vehicles
Cocquyt	(.....)	(.....)
Jorssen	(.....)	(.....)
Hindrickx	(.....)	(.....)
Siau-Vermeesch	(.....)	(.....)
De Smeth	(.....)	(.....)
Vallé	(.....)	(.....)
Depotter	(.....)	(.....)
Wiliquet	(.....)	(.....)

17. The Commission began its investigations in this case with a request for information dated 26 November 1975, received by BMW Belgium on 28 November 1975, intended to establish whether and to what extent BMW Munich, BMW Belgium and the Belgian BMW Dealers' Advisory Committee were preventing exports from Belgium to other common market countries. The request had the stated object of ascertaining to what extent BMW Belgium or BMW dealers had infringed Article 85 of the EEC Treaty, whether BMW Belgium's application for exemption from the prohibition of Article 85 (1) should be dismissed and whether proceedings should be initiated under Article 15 (1) (a) and (2) (a) of Regulation No 17.

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

Article 85 (1) prohibits, as incompatible with the common market, all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.

18. The 47 Belgian BMW dealers who declared in writing that they accepted BMW Belgium's circular of 29 September 1975 are undertakings for the purposes of Article 85, and by their written declaration entered into an agreement with the undertaking BMW Belgium and with each other on the terms set out in BMW Belgium's circular of 29 September 1975 (see paragraph 4 above). The content of the agreement should be seen in the context of the market circumstances prevailing at that time (paragraphs 2, 3 and 15 above) and, above all, the circular from the Dealers' Advisory Committee to BMW dealers of 29 September 1975, dispatched together with BMW Belgium's circular of the same date and agreed in advance with BMW Belgium.

19. The Advisory Committee's circular of 29 September 1975 is also based on an agreement between the members of the Advisory Committee and between them and BMW Belgium, which approved the content thereof. The object of this agreement was to dissuade all Belgian BMW dealers from exporting any new vehicles at all.

20. The main content of these two agreements is as follows:

Whereas, by letter of 22 July 1975, BMW Munich clearly informed BMW Belgium that re-exports did not of themselves constitute a breach of the distribution agreement (paragraph 3 above), BMW Belgium's circular of 29 September 1975, like that of 4 July 1975 (paragraph 4) referred explicitly to the distribution agreement, which only prohibited sales to unauthorized dealers, but did not refer to the otherwise general freedom to export. Indeed, although exports were certainly not entirely prohibited, the letter further stated, despite what had been said in the circular of 4 July 1975, that Belgian dealers were still selling in Germany and the Netherlands and could not or would not understand the consequences of what they had been doing. Since BMW Belgium stated that one of the consequences was that BMW Munich would probably have to reduce the numbers of cars available for distribution in Belgium and that Belgian BMW dealers were creating serious problems for German and Dutch dealers, any businessman placing a reasonable interpretation on the terms of the circular could only conclude that its authors sought the abandonment of all export business — and indeed the circular was concluded by the following statement: 'Our view is therefore that in the present situation there is only one appropriate solution: henceforth no BMW dealer in Belgium will sell cars outside Belgium ...'. This can only mean that cars were not even to be sold directly to consumers or to firms acting as their agent. The fact that the circular sought a general prohibition of exports can be seen from the remainder of the above sentence, which in addition to prohibiting sales to unauthorized dealers appears to prohibit all exports ('henceforth no BMW dealer in Belgium will sell cars ... to firms who propose to export them'). Finally, the appeal that is then made to the 'absolute solidarity of the BMW network' is clearly designed to persuade Belgian BMW dealers to refrain from any exports which might disturb the business of BMW dealers in other Community countries.

The intention to impose a general export prohibition is further evidenced by the text of the circular from the Advisory Committee of the same day, agreed with BMW Belgium and unanimously supporting BMW Belgium's circular. The damaging effects to the network as a whole were referred to, it was indicated that the names of dealers that nevertheless insist on exporting would be made public, and it was made clear that harm would result if exports of any kind continued. The final sentence of the circular revealed its intention by stating the view of the Committee that 'the only advice it has to offer in this case is: "no more sales outside Belgium".'

21. The two agreements of 29 September 1975 (paragraphs 18 and 19 above) have the object, as can be seen from their manifest content (paragraph 20), of appreciably preventing, hindering and distorting competition in the common market. Where a distribution network operated by a motor vehicle manufacturer, based on sales by selected dealers throughout the common market and on concentration of sales promotion by each dealer primarily in his allotted territory, is reinforced by a general prohibition on exports by dealers even if in one Member State only no particular proof is required of the extent to which appointed dealers have been dissuaded by the export prohibition from selling to consumers outside their own allotted territory or would have been able to effect such sales in the absence of the prohibition. As stated clearly in its Decision of 13 December 1974⁽¹⁾ and on other occasions⁽²⁾, the Commission will exempt selective distribution systems in the motor industry under Article 85 (3) of the EEC Treaty, regarding the restrictions of competition inherent therein as indispensable for that purpose, only if there is no other restriction on the freedom of consumers to buy new cars anywhere in the common market or to effect such purchases by agents. An exemption always requires an examination as to whether potential competition remains between all the selected dealers in the common market, so that they are compelled through competitive pressures to react to each other's price structures and to respond to low prices quoted by other dealers. The export prohibition concerned in these proceedings sought to eliminate such pressures and insulate the market operated by Belgian dealers for new BMW vehicles from the markets operated by other dealers for these vehicles in the common market.

The finding that there was intentional restriction and distortion of competition is not invalidated, as the firms concerned allege, by the fact that the export prohibition was formally operated only for the fairly brief period 29 September 1975 to 20 February 1976. The decision as to whether an agreement of initially unlimited duration is incompatible with the common market and prohibited by Article 85 (1) of the EEC Treaty cannot depend on the length of time during which competition was actually disrupted. If it did, the Commission could take no action until competition had been disrupted, which cannot be the meaning of a prohibition on restrictive practices which is designed to protect competition. The fact also remains that BMW Belgium was obliged to revoke its circular of 29 September 1975 only because of the measures taken by the applicants (paragraphs 8 to 14) and the prompt reaction of the Commission (paragraph 17).

⁽¹⁾ OJ No L 29, 3. 2. 1975, p. 1.

⁽²⁾ Fourth Commission report on competition policy (1974), pp. 24 and 25 and 57 to 65; fifth Commission report on competition policy (1975), pp. 23 and 24 and 49 to 52.

The further allegation by the undertakings concerned that, immediately after they issued their circular, market circumstances had changed and consumer prices in Belgium had been aligned with prices in other Community countries is also of no relevance. They themselves do not deny that before and at the time of the circular there were price differences which meant that reimports were both possible and, from the consumer's point of view, economically desirable. BMW Belgium and the firms that signed the agreements of 29 September 1975 could not foresee, furthermore, whether consumer prices in the various Community countries might again diverge. The fall in re-exports to the Federal Republic of Germany noted by BMW Belgium after 1 November 1975 (paragraph 15) in no way invalidates the finding that the object of the agreements was to restrict competition appreciably.

Finally the BMW dealers concerned allege that they could not have infringed Article 85 (1) because the distribution agreement with BMW Belgium made them so dependent on BMW Belgium for business purposes that there was no question for them of failing to comply with BMW's request that they sign the circular. The distribution agreement does indeed create a degree of dependence, notably through its inherent prohibition of competition, the duration of the agreement, the opportunities for the examination of business records and for varying the treatment of individual dealers. However, the fact that of the 90 addressees of the circular, only 48 BMW dealers (one of whom has since died) signed, shows that there were 42 dealers who were not willing to enter into a written agreement to infringe the rules of competition of the EEC Treaty. The 47 dealers could have refused and ought to have done so.

22. Since it has been shown that the agreement had the object of appreciably restricting and distorting competition, there is no need, for a finding of an infringement, to proceed to consider the extent to which it also had the effect of restricting and distorting competition. It is accordingly unnecessary to determine what consumers were unable to obtain new BMW vehicles after 29 September 1975 as a result of the agreements and whether the applicants, in attempting to obtain more BMW vehicles, were acting solely as agents for consumers outside Belgium.

23. The fact that the general export prohibition in the agreement, which has the object of restricting and distorting competition in the common market, is such as appreciably to affect trade between Member States also follows from the very nature of such a prohibition. It related directly to inter-State trade in a specific branded product. Belgian BMW dealers retain the

freedom to meet orders from consumers in the territory allotted to another Belgian BMW dealer, but are deprived of that freedom in inter-State trade. Yet, as the Commission has always held⁽¹⁾, trade in new BMW vehicles through distribution channels other than those set up by BMW Munich is precisely that which Article 85 (1) of the EEC Treaty aims to protect.

24. Accordingly the agreements of 29 September 1975 are incompatible with the common market and prohibited by Article 85 (1) of the EEC Treaty. The undertakings party to the agreements acted contrary to that prohibition until 20 February 1976. The requirements for a decision under Article 3 (1) of Regulation No 17 finding that there has been an infringement are accordingly satisfied.

III. Inapplicability of Articles 4 (2) (1) and 15 (5) of Council Regulation No 17

25. BMW Belgium has notified the Commission of its selective distribution system, which excludes unauthorized dealers from selling new BMW vehicles and consequently from exporting them from Belgium to other Community countries. However, no agreement prohibiting any export by Belgium BMW dealers from Belgium or sales to consumers in other Member States, which in both cases would go beyond the content of the distribution agreement as notified, has been notified to the Commission under Article 4 (1) of Regulation No 17.

There can be no doubt that persons agreeing to a general prohibition on exports cannot rely on Article 4 (2) (1) of Regulation No 17. The Commission does not therefore have to consider whether Article 85 (3) of the EEC Treaty applies to an agreement between BMW Belgium and 47 of its 90 Belgian appointed dealers by which a general export prohibition was introduced. An export prohibition which goes beyond a simple prohibition on sales to unauthorized dealers directly affects exports to other Member States for the purpose of this provision.

As no notification has been made, the Commission is not prevented by Article 15 (5) of Regulation No 17 from imposing a fine under Article 15 (2) (a) thereof in respect of the infringement.

⁽¹⁾ Commission Decision of 28 September 1964 in Grundig-Consten (OJ No 161, 20. 10. 1964, p. 2545/64).

Judgment of the Court of Justice of 13 July 1966 in Joined Cases 56 and 58/64, Grundig-Consten [1966] ECR 299.

Commission Decision of 13 December 1974 in BMW (OJ No L 29, 3. 2. 1975, p. 1).

Fourth Commission report on competition policy (1974), pp. 24 and 25 and 57 to 65.

Fifth Commission report on competition policy (1975), pp. 23 and 24 and 49 to 52.

IV. Applicability of Article 15 (2) (a) of Council Regulation No 17

This provision empowers the Commission by decision to impose on undertakings fines of from 1 000 to 1 000 000 units of account where they intentionally or negligently infringe Article 85 (1) of the EEC Treaty.

26. BMW Belgium and the eight undertakings of which the proprietors or managers are members of the Belgian Dealers' Advisory Committee (paragraph 5) intentionally agreed to persuade all Belgian BMW dealers to participate in any agreement to refrain from all re-exports (paragraphs 19, 20, 21, 23 and 24). They consistently took part in the subsequent agreement between BMW Belgium and the 47 Belgian BMW dealers, this infringement being also intentional (paragraphs 18, 20, 21, 23 and 24). In the light of the Commission Decision of 13 December 1974 in the BMW case, the judgments of the European Court and the Commission Decisions concerning export prohibitions in distribution agreements⁽¹⁾, BMW Belgium and the eight members of the Belgian Dealers' Advisory Committee were aware that in agreeing a general export prohibition they were infringing Article 85 (1) of the EEC Treaty. This follows, in particular, from the fact that in their circular letter they subscribed to formulations of the general export prohibition which are not necessary for and go beyond a selective distribution system.

In fixing the amount of the fine under Article 15 (2) of Regulation No 17 regard shall be taken of both the gravity and the duration of the infringements (last sentence of Article 15 (2)).

The gravity of the infringement in this case lies in the fact that a selective distribution system which itself restricts competition has been compounded by a general export prohibition based on a prohibited agreement.

As to the question of the amount of the fine to be imposed on BMW Belgium, there is the aggravating circumstance that BMW Belgium invited others to commit the infringement and was in a position to exert and did exert economic pressure on the members of the Advisory Committee. By acting in such a manner BMW Belgium bears a major responsibility for the infringement, and hence liability to a fine. The indications given by BMW Munich made BMW Belgium perfectly aware that it was acting in breach of the prohibition in Article 85 (1) of the EEC Treaty (paragraph 3, in particular the letter from BMW Munich dated 22 July 1975). It cannot be

pleaded in BMW's favour that German and Dutch BMW dealers had demanded action against re-exports. By not confining its action to enforcing the obligations of a selective system and by not advising of the need to adjust prices, BMW Belgium reacted improperly by resorting to territorial protection for BMW dealers outside Belgium by means of a prohibited restrictive practice.

On the other hand, as regards the amount of the fine to be imposed on the eight undertakings represented by members of the Belgian BMW Dealers' Advisory Committee, there are mitigating circumstances. As has already been said, they are dependent for business purposes on BMW Belgium (end of paragraph 21). However, they too cannot escape the charge that as spokesman for the Belgian BMW dealers they should not have taken part in a prohibited restrictive practice and they should not have sought its occurrence.

The fines to be imposed on BMW Belgium and these eight undertakings should reflect the fact that the agreement existed for only a relatively brief period and that its effects cannot be quantified precisely.

The turnovers of the undertakings in question and particularly their turnovers in new BMW vehicles (see paragraph 16) also determine the amount of the fine. The turnovers achieved give indications of the relevant market positions of the undertakings involved and thereby indicate the gravity of their involvement in the infringement. The turnovers are also important for the purpose of determining the degree to which the undertakings are affected by the fines imposed.

The fines to be imposed on the eight undertakings, the owners or managers of which form the Advisory Committee, are to be relatively small in view of the circumstances of the case. The fact that some of these undertakings had a relatively small turnover is also a factor to be taken into account in fixing the fine.

27. The other BMW dealers involved in the infringement (paragraphs 18, 20, 21, 23 and 24) were at least negligent by being unaware, when signing the agreement, that they were engaging in a prohibited restrictive practice. On reasonable reflection, they should have realized without difficulty that in signing the circular letter they agreed to a general export prohibition which went beyond the needs of a selective distribution system and thereby infringed the competition rules of the EEC Treaty. In the light however of their degree of involvement, the imposition of the lowest possible fine is appropriate. It therefore follows that no account can be taken of their differences in turnover,

⁽¹⁾ See note (1) of this Official Journal.

HAS ADOPTED THIS DECISION :

Article 1

It is hereby established that the undertakings named in Article 4 infringed Article 85 (1) of the Treaty establishing the European Economic Community by agreeing on the general export prohibition called for in the circular from BMW Belgium of 29 September 1975 and the circular from the Belgian BMW Dealers' Advisory Committee, and maintaining that prohibition from 29 September 1975 to 20 February 1976.

Article 2

The following fines are hereby imposed in respect of the infringement found in Article 1 :

1. BMW Belgium : 150 000 (one hundred and fifty thousand) units of account or 7 500 000 Belgian francs.
2. For each of the undertakings numbered 2 to 6 in Article 4 : 2 000 (two thousand) units of account or 100 000 Belgian francs.
3. For each of the undertakings numbered 7 to 9 in Article 4 : 1 500 (one thousand five hundred) units of account or 75 000 Belgian francs.
4. For each of the undertakings numbered 10 to 48 in Article 4 : 1 000 (one thousand) units of account or 50 000 Belgian francs.

Article 3

This Decision shall be enforceable in the manner provided in Article 192 of the Treaty establishing the European Economic Community.

The fines imposed under Article 2 shall be payable within three months from the date of adoption of this Decision to the following account :

Commission of the European Communities,
Banque Bruxelles Lambert,
310.0231000.32.

Article 4

This Decision is addressed to the following undertakings :

1. BMW Belgium NV, Pierstraat 231, 2550 Kontich ;
2. Autohandel O. Cocquyt NV, Maria van Bourgondielelaan 63, 8000 Brugge ;
3. Etn W. Jorssen, Boomsesteenweg 427, 2610 Wilrijk ;
4. Garage Hindrickx, Meensesteenweg 86, 8800 Roeselare ;
5. Pvba J. Siau-Vermeesch, Lindanustraart 21, 9330 Dendermonde ;
6. Ets. J. De Smeth, Steenweg op Brussel 558, 1900 Overijse ;
7. Ets. Jo Vallé, Peerderbaan 114, 3690 Bree ;
8. Ets. J. Depotter, Ch. St. Ghislain 117b, 7950 Chièvres ;
9. Garage J. Wiliquet Sprl, rue David 61, 4800 Verviers ;
10. Ets. Rajans SA, chaussée de Nivelles 20, 1420 Braine-l'Alloud ;
11. Garage Verhaeren, avenue Odon Warland 226, 1090 Bruxelles ;
12. S. C. Dewilde Motor, chaussée de Vleurgat 73, 1050 Bruxelles ;
13. Ets. Autogamas Sprl, chaussée de Mons 711/713, 1070 Bruxelles ;
14. Ets. Houyoux, rue de Neufchatel 7/11, 1050 Bruxelles ;
15. Garage Léon Louyet Sprl, route de Mons 77—79, 6000 Charleroi ;
16. Station Albert 1^{er} SA, avenue Albert 1^{er} 277, 1320 Genval ;
17. Sprl Auto-Service, rue Anatole France 31, 7100 La Louvière ;
18. Ets. A. Petit & Co. SA, boulevard Frankignoul 8, 4020 Liège ;
19. Ets. Jean Blaise Sprl, rue d'Anderluss 64, 6558 Lobbes ;
20. Ets. Cuisinier, avenue de Jemappes 137, 7000 Mons ;
21. Ets. Briot Sprl, rue Dewez 18/20/22, 5000 Namur ;
22. Garage Georges Antoine, rue des Six Bonniers 10/12, 4100 Seraing ;
23. Garage Hubert Scaillet, chaussée de Dinant 43, 5311 Spontin ;
24. Ets. Ferracin, rue Ste. Barbe 106, 5600 Tamines ;
25. Ets. Le Stop, chaussée de Namur 250, 1300 Wavre ;
26. Autobedrijf De Ruyscher, O. L. Vrouwplaats 17/20, 9300 Aalst ;
27. Garage W. Termont-Vermeire, Veldekensstraat 41, 9991 Adegem ;
28. NV Centrauto, Plantin & Moretuslei 159/161, 2200 Borgerhout ;
29. Garage R. Geurts & Zn Pvba, Grotestraat 63/67, 3600 Genk ;
30. Etn. Dekkers, Rooigemlaan 619, 9000 Gent ;
31. Etn. J. Vandeperre Pvba, Steenweg op Brussel 510, 1500 Halle (Brabant) ;
32. J. Sebrechts, Turnhoutsebaan 42, 2241 Halle (Kempen) ;
33. Garage Van Avondt & Zn Pvba, Brusselsesteenweg 242, 3020 Herent-Leuven ;
34. Garage A. Ottevaere, Leuvensesteenweg 135, 2970 Hever ;
35. Ceres-Leterme Pvba, Augustijnenstraat 62, 8900 Ieper ;
36. Garage St Christophe Pvba, Burg. Vercruysselaan 26, 8500 Kortrijk.

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| <p>37. Garage Vangoidsenhoven, Aarschotsesteenweg 42, 3306 Vissenaken-Kumtich ;</p> <p>38. Garage Moderne-Ghyselinck J., Grote Kaai 17, 9100 Lokeren ;</p> <p>39. Garage R. Kellens-Behiels, Jos. Smeetslaan 175, 3630 Maasmechelen ;</p> <p>40. Garage S. De Mey, Aalterbaan 197, 9990 Maldegem ;</p> <p>41. Etn. J. & M. Sels Pvba, Gen. de Wittelaan 8, Industriepark, 2800 Mechelen ;</p> <p>42. Garage Tanghe Pvba, Steenweg op Haacht 51, 1910 Melsbroek ;</p> <p>43. Pvba Gebr. Van den Bulck, Van Heybeeckstraat 13, 2060 Merksem ;</p> <p>44. Pvba De Kempische Molen, Borgerhoutsedijk 165, 2400 Mol ;</p> | <p>45. Garage Aalbrecht W., Steenweg op Vilvoorde 210, 1890 Opwijk ;</p> <p>46. Etn. Erco NV — W. Roefs, Bredabaan 1165/1167, 2120 Schoten ;</p> <p>47. Garage A. Liesens, Neremweg 151, 3700 Tongeren ;</p> <p>48. Garage Centrum-Mottoul, Walderdonk 99, 9070 Wachtebeke.</p> |
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- Done at Brussels, 23 December 1977.
- For the Commission*
- Raymond VOUEL
- Member of the Commission*
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