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## Legislation

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## I

*(Acts whose publication is obligatory)*

**COUNCIL REGULATION (EEC) No 3408/82  
of 13 December 1982**

**fixing for 1983 the quantity of oil seeds and vegetable oils for which the Hellenic Republic is authorized to apply an import control system**

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to the 1979 Act of Accession,

Having regard to Regulation (EEC) No 39/81 of 1  
January 1981 authorizing the Hellenic Republic to  
apply a temporary system for control of imports of oil  
seeds and vegetable oils<sup>(1)</sup>, and in particular Article 4  
(2) thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 39/81 authorized  
Greece to apply, up to 31 December 1983, a system of  
import documents for oil seeds and vegetable oils  
imported onto its territory; whereas the maximum

quantity of oils beyond which Greece may suspend the  
issue of documents was fixed at 25 000 tonnes for  
1981 and at 30 000 tonnes for 1982; whereas it is  
necessary to fix the maximum quantity for 1983,

HAS ADOPTED THIS REGULATION:

*Article 1*

The ceiling figures for oil seeds and vegetable oils  
referred to in Article 4 (2) of Regulation (EEC) No  
39/81 are hereby fixed at 35 000 tonnes for 1983.

*Article 2*

This Regulation shall enter into force on 1 January  
1983.

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

Done at Brussels, 13 December 1982.

*For the Council*

*The President*

N. A. KOFOED

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<sup>(1)</sup> OJ No L 3, 1. 1. 1981, p. 9.

**COUNCIL REGULATION (EEC) No 3409/82****of 13 December 1982****amending Regulation (EEC) No 2764/77 extending the period for which Class III  
may be applied in respect of certain fruit and vegetables**

THE COUNCIL OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Council Regulation (EEC) No  
1035/72 of 18 May 1972 on the common organization  
of the market in fruit and vegetables<sup>(1)</sup>, as last  
amended by Regulation (EEC) No 1738/82<sup>(2)</sup>, and in  
particular the first subparagraph of Article 4 (2)  
thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 1035/72 provides that,  
unless an extension is decided upon in accordance  
with the voting procedure laid down in Article 43 (2)  
of the Treaty, Class III may not be applied beyond the  
fifth year following the date of entry into force of the  
Regulation which defines it; whereas Regulation  
(EEC) No 2764/77<sup>(3)</sup> extended this possibility of  
application until 31 December 1982;

Whereas the marketing of Class III represents a large  
share of producers' incomes where there is no Class II  
for the product; whereas, where there is a Class II, the  
share of producers' incomes represented by Class III is

considerably lower, although not negligible, particu-  
larly at certain times of the year;

Whereas, moreover, the marketing of Class III  
products enables certain consumers with modest  
incomes to obtain supplies of those products;

Whereas it seems advisable, therefore, to provide for  
Class III to be applicable for a limited period beyond  
31 December 1982,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 1 of Regulation (EEC) No 2764/77 the date  
'31 December 1982' shall be replaced by '31  
December 1986'.

*Article 2*

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

It shall apply as from 1 January 1983.

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

Done at Brussels, 13 December 1982.

*For the Council*

*The President*

N. A. KOFOED

<sup>(1)</sup> OJ No L 118, 20. 5. 1972, p. 1.

<sup>(2)</sup> OJ No L 190, 1. 7. 1982, p. 7.

<sup>(3)</sup> OJ No L 320, 15. 12. 1977, p. 5.

**COUNCIL REGULATION (EEC) No 3410/82****of 13 December 1982****fixing for the 1983/84 milk year the guideline figure for the fat content of standardized whole milk imported into Ireland and the United Kingdom**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1411/71 of 29 June 1971 laying down additional rules on the common organization of the market in milk and milk products falling within tariff heading No 04.01<sup>(1)</sup>, as last amended by Regulation (EEC) No 566/76<sup>(2)</sup>, and in particular Article 3 (6) (b) thereof,

Having regard to the proposal from the Commission,

Whereas, pursuant to Article 3 (5) of Regulation (EEC) No 1411/71, Ireland and the United Kingdom apply within their territories the formula of non-standardized whole milk within the meaning of the second indent of Article 3 (1) (b) of that Regulation;

Whereas, pursuant to Article 3 (6) and (7), a guideline figure must be fixed for the 1983/84 milk year for the fat which standardized whole milk coming from another Member State must contain to be able to be

marketed within the territories of the two abovementioned Member States; whereas this guideline figure must be the weighted average fat content of the whole milk produced and marketed in the importing Member State during the previous year,

HAS ADOPTED THIS REGULATION:

*Article 1*

For the 1983/84 milk year, the guideline figure referred to in Article 3 (6) (b) of Regulation (EEC) No 1411/71 shall be:

- 3.52 % for Ireland,
- 3.83 % for the United Kingdom.

*Article 2*

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

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

Done at Brussels, 13 December 1982.

*For the Council*

*The President*

N. A. KOFOED

<sup>(1)</sup> OJ No L 148, 3. 7. 1971, p. 4.

<sup>(2)</sup> OJ No L 67, 15. 3. 1976, p. 23.

## COMMISSION REGULATION (EEC) No 3411/82

of 20 December 1982

fixing the import levies on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EEC) No 1451/82<sup>(2)</sup>, and in particular Article 13 (5) thereof,

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

Having regard to the opinion of the Monetary Committee,

Whereas, the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Regulation (EEC) No 2118/82<sup>(5)</sup> and subsequent amending Regulations;

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

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

a band of 2.25 %, a rate of exchange based on their central rate,

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

Whereas these exchange rates being those recorded on 17 December 1982;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2118/82 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 21 December 1982.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSAER

*Member of the Commission*

<sup>(1)</sup> OJ No L 281, 1. 11. 1975, p. 1.

<sup>(2)</sup> OJ No L 164, 14. 6. 1982, p. 1.

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

<sup>(4)</sup> OJ No L 263, 19. 9. 1973, p. 1.

<sup>(5)</sup> OJ No L 223, 31. 7. 1982, p. 44.

## ANNEX

to the Commission Regulation of 20 December 1982 fixing the import levies on cereals and on wheat or rye flour, groats and meal

| (ECU/tonne)    |                                           |                                      |
|----------------|-------------------------------------------|--------------------------------------|
| CCT heading No | Description                               | Levies                               |
| 10.01 B I      | Common wheat, and meslin                  | 115.02                               |
| 10.01 B II     | Durum wheat                               | 150.82 <sup>(1)</sup> <sup>(2)</sup> |
| 10.02          | Rye                                       | 104.69 <sup>(6)</sup>                |
| 10.03          | Barley                                    | 106.30                               |
| 10.04          | Oats                                      | 92.61                                |
| 10.05 B        | Maize, other than hybrid maize for sowing | 109.82 <sup>(2)</sup> <sup>(3)</sup> |
| 10.07 A        | Buckwheat                                 | 0                                    |
| 10.07 B        | Millet                                    | 34.77 <sup>(4)</sup>                 |
| 10.07 C        | Grain sorghum                             | 99.47 <sup>(4)</sup>                 |
| 10.07 D        | Canary seed; other cereals                | 0 <sup>(3)</sup>                     |
| 11.01 A        | Wheat or meslin flour                     | 175.15                               |
| 11.01 B        | Rye flour                                 | 160.64                               |
| 11.02 A I a)   | Durum wheat groats and meal               | 247.09                               |
| 11.02 A I b)   | Common wheat groats and meal              | 187.99                               |

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

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

<sup>(3)</sup> Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1.81 ECU/tonne.

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

<sup>(5)</sup> Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0.60 ECU/tonne.

<sup>(6)</sup> 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 3412/82  
of 20 December 1982**

**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 <sup>(1)</sup>, as last amended by  
Regulation (EEC) No 1451/82 <sup>(2)</sup>, and in particular  
Article 15 (6) thereof,

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

Having regard to the opinion of the Monetary  
Committee,

Whereas the premiums to be added to the levies on  
cereals and malt were fixed by Regulation (EEC) No  
2119/82 <sup>(5)</sup> and subsequent amending Regulations;

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

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

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

Whereas these exchange rates being those recorded on  
17 December 1982;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 21 December  
1982.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 281, 1. 11. 1975, p. 1.

<sup>(2)</sup> OJ No L 164, 14. 6. 1982, p. 1.

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

<sup>(4)</sup> OJ No L 263, 19. 9. 1973, p. 1.

<sup>(5)</sup> OJ No L 223, 31. 7. 1982, p. 47.

## ANNEX

to the Commission Regulation of 20 December 1982 fixing the premiums to be added to the import levies on cereals, flour and malt

## A. Cereals and flour

(ECU/tonne)

| CCT heading No | Description                               | Current<br>12 | 1st period<br>1 | 2nd period<br>2 | 3rd period<br>3 |
|----------------|-------------------------------------------|---------------|-----------------|-----------------|-----------------|
| 10.01 B I      | Common wheat, and meslin                  | 0             | 0               | 0               | 0               |
| 10.01 B II     | Durum wheat                               | 0             | 0               | 0               | 0               |
| 10.02          | Rye                                       | 0             | 0               | 0               | 0               |
| 10.03          | Barley                                    | 0             | 0               | 0               | 0               |
| 10.04          | Oats                                      | 0             | 0               | 0               | 0               |
| 10.05 B        | Maize, other than hybrid maize for sowing | 0             | 1.04            | 1.04            | 1.04            |
| 10.07 A        | Buckwheat                                 | 0             | 0               | 0               | 0               |
| 10.07 B        | Millet                                    | 0             | 10.40           | 10.40           | 10.40           |
| 10.07 C        | Grain sorghum                             | 0             | 0               | 0               | 0               |
| 10.07 D        | Other cereals                             | 0             | 0               | 0               | 0               |
| 11.01 A        | Wheat or meslin flour                     | 0             | 0               | 0               | 0               |

## B. Malt

(ECU/tonne)

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

**COMMISSION REGULATION (EEC) No 3413/82  
of 20 December 1982**

**fixing the import levies on live cattle and on beef and veal other than frozen**

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Council Regulation (EEC) No 805/68  
of 27 June 1968 on the common organization of the  
market in beef and veal <sup>(1)</sup>, as last amended by the Act  
of Accession of Greece <sup>(2)</sup>, and in particular Article 12  
(8) thereof,

Whereas the import levies on live cattle and on beef  
and veal other than frozen were fixed by Regulation  
(EEC) No 3144/82 <sup>(3)</sup>;

Whereas it follows from applying the detailed rules  
contained in Regulation (EEC) No 3144/82 to the  
quotations and other information known to the

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

HAS ADOPTED THIS REGULATION :

*Article 1*

The import levies on live cattle and on beef and veal  
other than frozen shall be as specified in the Annex  
hereto.

*Article 2*

This Regulation shall enter into force on 3 January  
1983.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSAER

*Member of the Commission*

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<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 291, 19. 11. 1979, p. 17.

<sup>(3)</sup> OJ No L 331, 26. 11. 1982, p. 17.

## ANNEX

to the Commission Regulation of 20 December 1982 fixing the import levies on live cattle and on beef and veal other than frozen <sup>(1)</sup> for the period beginning 3 January 1983

(ECU/100 kg)

| CCT heading No       | Yugoslavia <sup>(2)</sup> | Austria/Sweden/<br>Switzerland | Other third countries |
|----------------------|---------------------------|--------------------------------|-----------------------|
| 01.02 A II (a)       | — Live weight —           |                                |                       |
|                      | 44-785                    | 19-415                         | 102-110               |
|                      | — Net weight —            |                                |                       |
| 02.01 A II a) 1      | 85-092                    | 36-889                         | 194-009               |
| 02.01 A II a) 2      | 68-073                    | 29-511                         | 155-206               |
| 02.01 A II a) 3      | 102-110                   | 44-267                         | 232-811               |
| 02.01 A II a) 4 aa)  | —                         | 55-333                         | 291-014               |
| 02.01 A II a) 4 bb)  | —                         | 63-294                         | 332-878               |
| 02.06 C I a) 1       | —                         | 55-333                         | 291-014               |
| 02.06 C I a) 2       | —                         | 63-294                         | 332-878               |
| 16.02 B III b) 1 aa) | —                         | 63-294                         | 332-878               |

<sup>(1)</sup> In accordance with Regulation (EEC) No 435/80, levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

<sup>(2)</sup> This levy is applicable only to products complying with the provisions of Regulation (EEC) No 1725/80 (OJ No L 170, 3. 7. 1980, p. 4).

(a) The levy which is to be applied to young male bovine animals, intended for fattening, of a live weight of 300 kg or less, imported under the conditions set out in Article 13 of Council Regulation (EEC) No 805/68 of 27 June 1968, and in the provisions adopted for its application, is totally or partially suspended in accordance with those provisions.

**COMMISSION REGULATION (EEC) No 3414/82**  
**of 20 December 1982**  
**fixing the import levies on frozen beef and veal**

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Council Regulation (EEC) No 805/68  
of 27 June 1968 on the common organization of the  
market in beef and veal <sup>(1)</sup>, as last amended by the Act  
of Accession of Greece <sup>(2)</sup>, and in particular Article 12  
(8) thereof,

Whereas the import levies on frozen beef and veal  
were fixed by Regulation (EEC) No 3145/82 <sup>(3)</sup>;

Whereas it follows from applying the detailed rules  
contained in Regulation (EEC) No 3145/82 to the  
quotations and other information known to the

Commission that the levies should be altered to the  
amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION :

*Article 1*

The import levies on frozen beef and veal shall be as  
set out in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 3 January  
1983.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSGER

*Member of the Commission*

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<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 291, 19. 11. 1979, p. 17.

<sup>(3)</sup> OJ No L 331, 26. 11. 1982, p. 21.

## ANNEX

to the Commission Regulation of 20 December 1982 fixing the import levies on frozen beef and veal <sup>(1)</sup> for the period beginning 3 January 1983

(ECU/100 kg)

| CCT heading No             | Levy           |
|----------------------------|----------------|
|                            | — Net weight — |
| 02.01 A II b) 1            | 179.071        |
| 02.01 A II b) 2            | 143.257 (a)    |
| 02.01 A II b) 3            | 223.839        |
| 02.01 A II b) 4 aa)        | 268.607        |
| 02.01 A II b) 4 bb) 11     | 223.839 (a)    |
| 02.01 A II b) 4 bb) 22 (b) | 223.839 (a)    |
| 02.01 A II b) 4 bb) 33     | 308.003 (a)    |

(<sup>1</sup>) In accordance with Regulation (EEC) No 435/80, levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the overseas countries and territories.

(a) Where products are imported under the conditions set out in Article 14 of Council Regulation (EEC) No 805/68 of 27 June 1968 and in provisions adopted for its application, the levy is totally or partially suspended in accordance with those provisions.

(b) Entry under this subheading is subject to the production of a certificate issued on conditions laid down by the competent authorities of the European Communities.

**COMMISSION REGULATION (EEC) No 3415/82**  
**of 20 December 1982**  
**on the supply of milled rice to the International Committee of the Red Cross 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 1418/76 of 21 June 1976 on the common organization of the market in rice <sup>(1)</sup>, as last amended by the Act of Accession of Greece, and in particular Article 25 thereof,

Having regard to Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid <sup>(2)</sup>, and in particular Article 6 thereof,

Having regard to Council Regulation No 129 of 23 October 1962 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy <sup>(3)</sup>, as last amended by Regulation (EEC) No 2543/73 <sup>(4)</sup>, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas on 26 April 1982 the Council of the European Communities expressed its intention to grant, under a Community measure, 2 755 tonnes of cereals for the International Committee of the Red Cross under its food-aid programme for 1982;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by Commission Regulation (EEC) No 1974/80 of 22 July 1980 laying down general implementing rules in respect of certain food-aid operations involving cereals and rice <sup>(5)</sup>, as last amended by Regulation (EEC) No 3323/81 <sup>(6)</sup>; whereas it is necessary to specify, for the purposes of the Community measures envisaged, the characteristics of the products to be supplied and the supply conditions which are set out in the Annex 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 Italian intervention agency shall be charged with implementing the mobilization and supply procedures in accordance with the provisions of Regulation (EEC) No 1974/80 and with the conditions laid down in the Annex hereto.

*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, 20 December 1982.

*For the Commission*

Poul DALSAGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 166, 25. 6. 1976, p. 1.

<sup>(2)</sup> OJ No L 281, 1. 11. 1975, p. 89.

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

<sup>(4)</sup> OJ No L 263, 19. 9. 1973, p. 1.

<sup>(5)</sup> OJ No L 192, 26. 7. 1980, p. 11.

<sup>(6)</sup> OJ No L 334, 21. 11. 1981, p. 27.

## ANNEX I

1. **Programme :** 1982
2. **Recipient :** International Committee of the Red Cross (ICRC)
3. **Place or country of destination :** El Salvador
4. **Product to be mobilized :** milled round grain rice
5. **Total quantity :** 450 tonnes (1 305 tonnes of cereals)
6. **Number of lots :** one
7. **Intervention agency responsible for conducting the procedure :**  
Ente nazionale Risi, piazza Pio XI, 1, I-Milano (telex 26 032)
8. **Method of mobilizing the product :** the Community market
9. **Characteristics of the goods :**
  - rice of fair and sound merchantable quality, free from abnormal smell and pests
  - moisture : 15 %
  - broken rice : 5 % maximum
  - chalky grains : 5 % maximum
  - grains striated with red : 3 % maximum
  - spotted grains : 1.5 % maximum
  - stained grains : 1 % maximum
  - yellow grains : 0.050 % maximum
  - amber grains : 0.20 % maximum
10. **Packaging :**
  - in bags <sup>(1)</sup> :
    - quality of the bags : woven synthetic
    - net weight of the bags : 50 kg
  - marking on the bags :  
a red cross 15 × 15 cm followed by (in letters at least 5 cm high):  
'ELS-15 / ARROZ / DONACIÓN DE LA COMUNIDAD ECONÓMICA EUROPEA /  
ACCIÓN DEL COMITÉ INTERNACIONAL DE LA CRUZ ROJA / DESTINADO A LA  
DISTRIBUCIÓN GRATUITA / ACAJUTLA'
11. **Port of shipment :** a Community port
12. **Delivery stage :** cif
13. **Port of landing :** Acajutla
14. **Procedure to be applied in order to determine supply costs :** tendering
15. **Deadline for the submission of tenders :** 12 noon on 10 January 1983
16. **Shipment period :** 20 January to 20 February 1983
17. **Security :** 12 ECU per tonne
18. **At the request of the ICRC, the successful tenderer shall supply to the beneficiary on delivery, the following documents :**
  - certificate of origin
  - phytosanitary certificate
  - fumigation certificate (fumigation of rice using methyl bromide)
  - *pro forma* invoices, with the words :  
'Los productos mencionados llegan a El Salvador como donativo al pueblo de este país. Según el acuerdo de sede firmado el 12 de septiembre de 1980 (Art. n° 11) el Gobierno autoriza su introducción libre de todo tipo de impuestos.'

(<sup>1</sup>) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

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*ANNEX II*

1. **Programme** : 1982
  2. **Recipient** : International Committee of the Red Cross (ICRC)
  3. **Place or country of destination** : the Philippines
  4. **Product to be mobilized** : milled long grain rice
  5. **Total quantity** : 500 tonnes (1 450 tonnes of cereals)
  6. **Number of lots** : one
  7. **Intervention agency responsible for conducting the procedure** :  
Ente nazionale Risi, piazza Pio XI, 1, I-Milano (telex 26 032)
  8. **Method of mobilizing the product** : the Community market
  9. **Characteristics of the goods** :
    - rice of fair and sound merchantable quality, free from abnormal smell and pests
    - moisture : 15 %
    - broken rice : 5 % maximum
    - chalky grains : 5 % maximum
    - grains striated with red : 3 % maximum
    - spotted grains : 1.5 % maximum
    - stained grains : 1 % maximum
    - yellow grains : 0.050 % maximum
    - amber grains : 0.20 % maximum
  10. **Packaging** :
    - in bags<sup>(1)</sup> :
      - jute sacks lined with cotton sacks, of a minimum weight of 600 g, or
      - composite sacks jute/polypropylene of a minimum weight of 335 g
      - net weight of the bags : 50 kg
    - marking on the bags (in letters at least 5 cm high) :  
'GIFT OF THE EUROPEAN ECONOMIC COMMUNITY'
  11. **Port of shipment** : a Community port
  12. **Delivery stage** : cif
  13. **Port of landing** : Manila
  14. **Procedure to be applied in order to determine supply costs** : tendering
  15. **Deadline for the submission of tenders** : 12 noon on 10 January 1983
  16. **Shipment period** : 20 January to 20 February 1983
  17. **Security** : 12 ECU per tonne
  18. **At the request of the ICRC, the successful tenderer shall supply to the beneficiary on delivery, the following documents** :
    - certificate of origin
    - phytosanitary certificate
    - fumigation certificate
    - *pro forma* invoices
- 

<sup>(1)</sup> Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

## COMMISSION REGULATION (EEC) No 3416/82

of 20 December 1982

on the supply of common wheat flour to the Republic of São Tomé 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  
2727/75 of 29 October 1975 on the common organi-  
zation of the market in cereals<sup>(1)</sup>, as last amended by  
Regulation (EEC) No 1451/82<sup>(2)</sup>, and in particular  
Article 28 thereof,

Having regard to Council Regulation (EEC) No  
2750/75 of 29 October 1975 fixing criteria for the  
mobilization of cereals intended as food aid<sup>(3)</sup>, and in  
particular Article 6 thereof,

Having regard to Council Regulation No 129 of 23  
October 1962 on the value of the unit of account and  
the exchange rates to be applied for the purposes of  
the common agricultural policy<sup>(4)</sup>, as last amended by  
Regulation (EEC) No 2543/73<sup>(5)</sup>, and in particular  
Article 3 thereof,

Having regard to the opinion of the Monetary  
Committee,

Whereas on 3 December 1982 the Council of the  
European Communities expressed its intention to  
grant, under a Community measure, 1 000 tonnes of  
cereals to the Republic of São Tomé under its food-aid  
programme for 1982;

Whereas it is necessary to provide for the carrying-out  
of this measure in accordance with the rules laid down  
by Commission Regulation (EEC) No 1974/80 of 22  
July 1980 laying down general implementing rules in  
respect of certain food-aid operations involving cereals  
and rice<sup>(6)</sup>, as last amended by Regulation (EEC) No  
3323/81<sup>(7)</sup>; whereas it is necessary to specify, for the  
purposes of the Community measures envisaged, the  
characteristics of the products to be supplied and the  
supply conditions which are set out in the Annex 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 Belgian intervention agency shall be charged with  
implementing the mobilization and supply procedures  
in accordance with the provisions of Regulation (EEC)  
No 1974/80 and with the conditions laid down in the  
Annex hereto.

*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, 20 December 1982.

*For the Commission*

Poul DALSGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 281, 1. 11. 1975, p. 1.

<sup>(2)</sup> OJ No L 164, 14. 6. 1982, p. 1.

<sup>(3)</sup> OJ No L 281, 1. 11. 1975, p. 89.

<sup>(4)</sup> OJ No 106, 30. 10. 1962, p. 2553/62.

<sup>(5)</sup> OJ No L 263, 19. 9. 1973, p. 1.

<sup>(6)</sup> OJ No L 192, 26. 7. 1980, p. 11.

<sup>(7)</sup> OJ No L 334, 21. 11. 1981, p. 27.

*ANNEX*

1. **Programme :** 1982
  2. **Recipient :** the Republic of São Tomé
  3. **Place or country of destination :** the Republic of São Tomé
  4. **Product to be mobilized :** common wheat flour
  5. **Total quantity :** 730 tonnes (1 000 tonnes of common wheat)
  6. **Number of lots :** one
  7. **Intervention agency responsible for conducting the procedure :**  
OBEA, rue de Trèves 82, B-1040 Brussels (telex 24 076)
  8. **Method of mobilizing the product :** the Community market
  9. **Characteristics of the goods :**
    - flour of fair and sound merchantable quality, free from abnormal smell and pests
    - moisture : 14 % maximum
    - protein content : 10.5 % minimum (N × 6.25 on dry matter)
    - ash content : 0.62 % maximum referred to dry matter
  10. **Packaging :**
    - in new bags<sup>(1)</sup> :
      - jute sacks of a minimum weight of 600 g, or
      - composite sacks jute/polypropylene of a minimum weight of 335 g
    - net weight of the bags : 50 kg
    - marking on the bags (in letters at least 5 cm high) :  
'FARINHA DE TRIGO / DOM DA COMUNIDADE ECONÓMICA EUROPEIA À REPÚBLICA DEMOCRÁTICA DE SÃO TOMÉ E PRÍNCIPE'
  11. **Port of shipment :** a Community port
  12. **Delivery stage :** cif
  13. **Port of landing :** São Tomé
  14. **Procedure to be applied in order to determine supply costs :** tendering
  15. **Deadline for the submission of tenders :** 12 noon on 4 January 1983
  16. **Shipment period :** 20 January to 20 February 1983
  17. **Security :** 12 ECU per tonne
- 

<sup>(1)</sup> Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

## COMMISSION REGULATION (EEC) No 3417/82

of 20 December 1982

on the supply of maize to the Republic of Tanzania 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  
2727/75 of 29 October 1975 on the common organi-  
zation of the market in cereals<sup>(1)</sup>, as last amended by  
Regulation (EEC) No 1451/82<sup>(2)</sup>, and in particular  
Article 28 thereof,

Having regard to Council Regulation (EEC) No  
2750/75 of 29 October 1975 fixing criteria for the  
mobilization of cereals intended as food aid<sup>(3)</sup>, and in  
particular Article 6 thereof,

Having regard to Council Regulation No 129 of 23  
October 1962 on the value of the unit of account and  
the exchange rates to be applied for the purposes of  
the common agricultural policy<sup>(4)</sup>, as last amended by  
Regulation (EEC) No 2543/73<sup>(5)</sup>, and in particular  
Article 3 thereof,

Having regard to the opinion of the Monetary  
Committee,

Whereas on 26 April 1982 the Council of the Euro-  
pean Communities expressed its intention to grant,  
under a Community measure, 10 000 tonnes of maize  
to the Republic of Tanzania under its food-aid  
programme for 1982;

Whereas it is necessary to provide for the carrying-out  
of this measure in accordance with the rules laid down  
by Commission Regulation (EEC) No 1974/80 of 22  
July 1980 laying down general rules for the imple-  
mentation of certain food-aid operations involving  
cereal and rice products<sup>(6)</sup>, as last amended by Regula-  
tion (EEC) No 3323/81<sup>(7)</sup>; whereas it is necessary to  
specify, for the purposes of the Community measure  
envisaged, the characteristics of the products to be  
supplied and the supply conditions which are set out  
in the Annex 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 French intervention agency shall be charged with  
implementing the mobilization and supply procedures  
in accordance with the provisions of Regulation (EEC)  
No 1974/80 and with the conditions laid down in the  
Annex hereto.

*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, 20 December 1982.

*For the Commission*

Poul DALSGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 281, 1. 11. 1975, p. 1.

<sup>(2)</sup> OJ No L 164, 14. 6. 1982, p. 1.

<sup>(3)</sup> OJ No L 281, 1. 11. 1975, p. 89.

<sup>(4)</sup> OJ No 106, 30. 10. 1962, p. 2553/62.

<sup>(5)</sup> OJ No L 263, 19. 9. 1973, p. 1.

<sup>(6)</sup> OJ No L 192, 26. 7. 1980, p. 11.

<sup>(7)</sup> OJ No L 334, 21. 11. 1981, p. 27.

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*ANNEX*

1. **Programme :** 1982
  2. **Recipient :** the Republic of Tanzania
  3. **Place or country of destination :** the Republic of Tanzania
  4. **Product to be mobilized :** maize
  5. **Total quantity :** 10 000 tonnes
  6. **Number of lots :** one
  7. **Intervention agency responsible for conducting the procedure :**  
ONIC: Office national interprofessionnel des céréales, 21, avenue Bosquet, Paris 7<sup>e</sup> (telex : 270 807)
  8. **Method of mobilizing the product :** Community market
  9. **Characteristics of the goods :**  
The maize must be of fair and sound merchantable quality and correspond at least to the standard quality for which the intervention price is fixed
  10. **Packaging :**
    - in new bags<sup>(1)</sup> :
      - jute sacks of a minimum weight of 600 g, or
      - composite sacks jute/polypropylene of a minimum weight of 335 g
    - net weight of the bags : 50 kg
    - marking on the bags (in letters at least 5 cm high) :  
'MAIZE / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY TO THE UNITED  
REPUBLIC OF TANZANIA'
  11. **Port of shipment :** a Community port
  12. **Delivery stage :** cif
  13. **Port of landing :** Dar es Salam
  14. **Procedure to be applied in order to determine supply costs :** tendering
  15. **Deadline for the submission of tenders :** 12 noon on 4 January 1983
  16. **Shipment period :** February 1983
  17. **Security :** 6 ECU per tonne
- 

<sup>(1)</sup> Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

## COMMISSION REGULATION (EEC) No 3418/82

of 20 December 1982

on the procedure for sale of oil seeds held by the intervention agencies

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<sup>(1)</sup>,  
as last amended by Regulation (EEC) No 1413/82<sup>(2)</sup>,  
and in particular Articles 26 (3) and 27 (5) thereof,

Having regard to Council Regulation No 142/67/EEC  
of 21 June 1967 on export refunds on colza, rape and  
sunflower seeds<sup>(3)</sup>, as last amended by the Act of  
Accession of Greece, and in particular Article 6  
thereof,

Having regard to Council Regulation (EEC) No 878/77  
of 26 April 1977 on the exchange rates to be applied  
in agriculture<sup>(4)</sup>, as last amended by Regulation (EEC)  
No 2792/82<sup>(5)</sup>, and in particular Article 4 (3) thereof,

Whereas under Council Regulation No 724/67/  
EEC<sup>(6)</sup>, as last amended by Regulation (EEC) No  
2382/79<sup>(7)</sup>, oil seeds held by intervention agencies  
must be sold by tender;

Whereas, since the purpose of sale by tender is to  
obtain the best price, contracts must be awarded to the  
tenderers quoting the highest prices, provided that the  
tenders in question correspond to the actual market  
situation; whereas, for this reason, sale prices should  
be determined on the basis of the tenders, provided  
that these tenders are no lower than the intervention  
prices; whereas, however, provision should be made,  
in special cases, for selling oil seeds held by interven-  
tion agencies at a price other than the one referred to  
above, to be fixed in accordance with Community  
rules;

Whereas, in both cases, buyers can be given equal  
access to the products and equal treatment by giving

suitable publicity to the notice of invitation to tender;  
whereas, in the case of the former, agencies should, in  
order to comply with those principles, be required to  
accept tenders until all the quantities available have  
been sold; whereas, in order to achieve that aim in the  
case of the latter, tenders should be submitted within a  
period to be fixed;

Whereas the notices of invitation to tender and the  
tenders should contain all the necessary information  
for identifying the products in question;

Whereas provisions should be made to cover cases in  
which several tenders are submitted quoting the same  
price;

Whereas compliance with the terms of the contract  
should be guaranteed by lodging a security; whereas  
rules should be laid down concerning the security in  
question and the conditions under which it may be  
forfeited, in whole or in part; whereas the extra costs  
incurred following an incomplete sale justify forfeiture  
of all the security when the contract is fulfilled in  
respect of less than 70 % of the amount originally set  
out therein;

Whereas under Article 4 (2) of Council Regulation  
(EEC) No 1134/68<sup>(8)</sup>, the sums specified are payable  
on the basis of the exchange rate applicable when the  
transaction, or part of the transaction, was carried out;  
whereas, under Article 6 of that Regulation, the time  
when a transaction is carried out is considered as being  
the date on which occurs the event, as defined by  
Community rules or, in the absence of and pending  
adoption of such rules, by the rules of the Member  
State concerned, in which the amount involved in the  
transaction becomes due and payable; whereas,  
however, the above rules may be waived pursuant to  
Article 4 (3) of Regulation (EEC) No 878/77;

Whereas, for the transactions in question to be  
conducted rapidly, provision should be made for ful-  
filling the rights and obligations arising from the sales  
contract or sale by tender within certain periods;

Whereas Commission Regulation (EEC) No 189/68<sup>(9)</sup>  
should be repealed;

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

<sup>(2)</sup> OJ No L 162, 12. 6. 1982, p. 6.

<sup>(3)</sup> OJ No 125, 26. 6. 1967, p. 2461/67.

<sup>(4)</sup> OJ No L 106, 29. 4. 1977, p. 27.

<sup>(5)</sup> OJ No L 295, 21. 10. 1982, p. 6.

<sup>(6)</sup> OJ No 252, 19. 10. 1967, p. 10.

<sup>(7)</sup> OJ No L 274, 31. 10. 1979, p. 7.

<sup>(8)</sup> OJ No L 188, 1. 8. 1968, p. 1.

<sup>(9)</sup> OJ No L 43, 7. 2. 1968, p. 7.

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*

Intervention agencies shall, in accordance with the following Articles, put up for sale by tender the oil seeds which they hold:

#### **I. Standing invitation to tender**

##### *Article 2*

1. The intervention agencies shall sell the oil seeds in their possession, in the manner provided for in Articles 2 and 3, to any purchaser who offers at least the intervention price prevailing at the time when the goods are withdrawn from intervention plus an amount of 1 ECU per 100 kilograms.

However:

- (a) where the goods are withdrawn in the last month of the marketing year, the intervention price shall be that valid for the following month,
- (b) in the case of colza and rape seed bought out of intervention under the conditions set out in Article 7a (1) of Commission Regulation No 282/67/EEC<sup>(1)</sup>, the intervention price shall be that resulting from the application of the above provisions, supplemented by the increase laid down in the abovementioned Article 7a.

2. The lots offered for sale in the manner referred to in paragraph 1 shall be the subject of a notice published in the *Official Journal of the European Communities*. For this purpose, Member States shall notify the Commission by telex, not later than the fifth working day of each month, of the quantities of oil seeds in intervention on their territory at the end of the previous month, together with the places where they are stored. The notices of the above quantities put up for sale shall be published in the *Official Journal* not later than the 10th working day of each month, in accordance with the specimen in Annex I.

##### *Article 3*

1. The intervention agency shall conclude the sale with any person who submits a suitable tender to the agency during a working day for a lot or lots not previously sold.

2. The tender shall state the amount by which the price offered exceeds the intervention price, as defined in Article 2 (1) plus 1 ECU per 100 kilograms. This amount shall be expressed in the national currency of the Member State where the seeds are stored, per 100 kilograms of standard quality seeds, delivered on the means of transport, unstowed, ex intervention agency's warehouse.

3. Where several tenders are submitted on the same day for one or more lots, the intervention agency shall conclude the sale with the person who undertakes to pay the highest price.

If several tenderers quote the same price, the award shall be made by drawing lots.

4. 'Tender submitted on the same day' shall mean any tender submitted not later than 2 p.m., local time, on any working day. Any tender submitted after 2 p.m. or submitted on a non-working day shall be considered to have been submitted on the following working day.

#### **II. Periodic invitation to tender**

##### *Article 4*

In accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC, a decision may be taken, in respect of one or more lots, to replace the standing invitation to tender referred to in Articles 2 and 3 by a sale by periodic invitation to tender under the conditions laid down in Articles 5 to 9.

##### *Article 5*

1. Where it is decided that sale is to be by tendering procedure as referred to in Article 4, a notice of invitation to tender shall be drawn up in accordance with the specimen in Annex II. This notice of invitation shall be published in the *Official Journal of the European Communities* and shall be displayed at the headquarters of the intervention agencies concerned.

2. The invitation shall remain open until a date to be fixed. During this period partial invitations may be issued.

3. Lots not awarded as the result of a partial invitation to tender shall be republished for the next partial invitation.

##### *Article 6*

1. Tenders must be received not later than the date and time fixed in the notice of invitation to tender.

Tenders received after the deadline or tenders which do not meet the conditions of sale cannot be taken into consideration.

<sup>(1)</sup> OJ No L 151, 13. 7. 1967, p. 1.

2. Tenders shall state the amount proposed in the national currency of the Member State where the seeds are stored, per 100 kilograms of standard quality seeds, delivered on the means of transport, unstowed, intervention agency's warehouse.

#### Article 7

The tenders shall be examined by the competent authorities of the Member State concerned as soon as possible.

These authorities shall transmit to the Commission, by telex, a list showing for each lot put up for sale the highest offer price received, without giving names.

#### Article 8

In the light of the tenders received, a minimum selling price shall be fixed in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC and, subject to this minimum price being observed, the successful tenderer shall be the person who tenders the highest price.

If several tenderers tender the same price the award shall be made by drawing lots.

#### Article 9

The Commission shall communicate to the Member States, by telex, the minimum prices adopted.

The competent authorities of the Member State shall inform each tenderer of the result of his participation in the invitation to tender at the latest on the fifth working day following the communication by the Commission.

### III. General provisions

#### Article 10

The intervention agencies shall take all the necessary measures to enable the parties concerned, before tenders are submitted, to assess the quality of the seeds put up for sale.

#### Article 11

1. The tenders referred to in Articles 3 and 6 must be submitted to the relevant intervention agency, either handed in, in writing, against a receipt, or sent by registered letter, telex or telegram. They must be made out in one of the official languages of the Community.

2. No tender may cover part of a lot.

3. The tenders must bear the name and address of the tenderer and state the number and weight of the lot or lots to which the tenders relate.

4. A tender shall not be valid unless it is accompanied by a security of 7.5 ECU per 100 kilograms. The

security shall be provided in the form of a guarantee given by an establishment meeting the criteria laid down by the Member State concerned. Where the proof that the security has been provided is presented to the intervention agency after the submission of the corresponding tender the moment at which the tender was submitted, the time of submission of proof of security shall be considered as the time at which the tender was submitted.

5. Tenders submitted which do not comply with these specifications cannot be accepted.

6. When notifying their tenders, operators may request advance fixing of the Community aid or the export refund valid on the day the tender is received, as defined by Commission Regulation (EEC) No 1204/72<sup>(1)</sup> and Council Regulation No 142/67/EEC respectively.

For quantities which have not been awarded, such advance fixing shall be cancelled and the security shall be released.

#### Article 12

1. The security shall be released when :

- (a) the tenderers have not been awarded the goods ; or
- (b) the successful tenderer has satisfied, except in case of *force majeure*, the obligations laid down by this Regulation, and, where appropriate, other conditions compatible with the provisions of this Regulation, laid down by the Member State concerned, and where the quantity taken over is at least 99 % of the quantity placed at his disposal.

2. Except in case of *force majeure*, the security shall be forfeit :

- (a) in proportion to the quantities not taken over during the period provided for in Article 14 (5), where the quantity taken over is above or equal to 70 % and below 99 % of the quantity placed at the disposal of the successful tenderer ;
- (b) in total if the quantity taken over is less than 70 % of the quantity placed at the disposal of the successful tenderer.

#### Article 13

1. The purchaser shall be informed of the quantity awarded by the intervention agency as soon as possible, by telex, telegram or registered letter.

2. The purchaser shall pay the price which he offered for the quantity awarded before the goods are placed at his disposal.

The price must be calculated on the basis of the quantity set out in the notice of invitation to tender and in respect of the lot for which he has been declared the successful tenderer.

<sup>(1)</sup> OJ No L 133, 10. 6. 1972, p. 1.

The difference between the final price to be paid and the price indicated in the previous paragraph shall be settled on the basis of the weight of the goods on removal, the weight being adjusted in accordance with paragraph 3.

3. Where the seeds delivered are not of the standard quality, their weight shall be determined in accordance with the method set out in the Annex to Regulation (EEC) No 1204/72 and the increase or reduction given in Annex I to Regulation No 282/67/EEC shall be applied to their selling price.

4. The rate to be used for converting the amounts fixed in ECU in this Regulation into national currency shall be the representative rate in force:

- on the day the tender is submitted, in the case of sale by standing invitation to tender,
- on the final day for the submission of tenders, in the case of sale by periodic invitation to tender.

#### Article 14

1. Samples shall be taken when the goods leave the intervention agency's warehouse, in accordance with the methods set out in Regulation (EEC) No 1470/68<sup>(1)</sup>.

2. The seeds' impurity, moisture and oil content shall be determined in accordance with the methods set out in Regulation (EEC) No 1470/68.

3. The removal costs, up to the stage of delivery on the means of transport, intervention agency's warehouse, unstowed, and including the costs of weighing, sampling and analysis shall be borne by the intervention agency.

4. The goods must be taken over at the warehouse not later than the 30th day following the date of notification of the award.

However, if the quantities to be taken over by a single purchaser exceed 8 000 tonnes a period of 60 days following the date of the notification of the award shall be granted for the removal of the goods. Where the invitation to tender takes place under the procedure provided for by Articles 5 to 9, the price to be paid for quantities withdrawn after the first 30 days shall be supplemented by an amount equal to that of the monthly increase applicable in the marketing year in which the award is made.

5. Except in case of *force majeure*, if the purchaser does not abide by the deadlines provided for in paragraph 4, he shall pay an additional amount of 1 ECU per 100 kilograms for the quantity concerned for each month or part of a month of delay.

After the deadlines referred to in paragraph 4, any risks relating to the storage of the goods shall be borne by the purchaser. Except in cases of *force majeure*, if certain quantities of seed are not taken over by two months at the latest following the deadlines referred to in paragraph 4 the sale shall be cancelled for these quantities and the security shall be forfeit as provided for in Article 12(2).

6. No dispute shall be entertained if the weight recorded on delivery does not correspond to that indicated in the notice of invitation to tender.

#### Article 15

Regulation (EEC) No 189/68 is hereby repealed.

#### Article 16

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, 20 December 1982.

For the Commission

Poul DALSGER

Member of the Commission

<sup>(1)</sup> OJ No L 239, 28. 8. 1968, p. 2.

## ANNEX I

**Notice of invitation to tender : sale of oil seeds held by an intervention agency in accordance with Article 2 of Regulation (EEC) No 3418/82 (standing invitation to tender)**

Name, address, telex and telephone numbers of the intervention agency

### Type of seeds

| Lot No | Nominal weight<br>(tonnes) | Year of harvest | Place of storage |
|--------|----------------------------|-----------------|------------------|
|        |                            |                 |                  |

The lots marked with an asterisk (\*) are those of 'double-zero' colza and rape seeds.

*ANNEX II*

**Notice of invitation to tender : sale of oil seeds held by an intervention agency in accordance with Article 5 of Regulation (EEC) No 3418/82 (exceptional invitation to tender)**

| Name, address, telex and telephone numbers of the intervention agency | Deadline for submission of tenders |      |
|-----------------------------------------------------------------------|------------------------------------|------|
|                                                                       | Date(s)                            | Time |
|                                                                       |                                    |      |

**Type of seeds**

| Lot No | Nominal weight (tonnes) | Year of harvest | Place of storage |
|--------|-------------------------|-----------------|------------------|
|        |                         |                 |                  |

The lots marked with an asterisk (\*) are those of 'double-zero' colza and rape seeds.

**COMMISSION RECOMMENDATION No 3419/82/ECSC****of 20 December 1982****extending the Community system of monitoring imports into the Community of certain iron and steel products covered by the Treaty establishing the European Coal and Steel Community and originating in third countries**

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

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

Whereas by recommendation No 1399/82/ECSC<sup>(1)</sup>  
the Commission instituted a Community monitoring  
system in respect of imports into the Community of  
certain iron and steel products covered by the Treaty  
establishing the European Coal and Steel Community ;

Whereas the reasons which originally led the  
Commission to introduce these measures, namely the  
need to ensure fuller information on both expected  
imports and the terms under which they are made,  
continue to apply ;

Whereas it is therefore necessary to prolong the said  
Community monitoring system,

HAS ADOPTED THIS RECOMMENDATION :

*Article 1*

The period of validity of recommendation No 1399/  
82/ECSC is hereby extended to 31 December 1983<sup>(2)</sup>.

*Article 2*

This recommendation is addressed to the Member  
States.

Done at Brussels, 20 December 1982.

*For the Commission*

Wilhelm HAERKAMP

*Vice-President*

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<sup>(2)</sup> The import documents delivered during November and  
December 1982 may continue to be used in accordance  
with Article 1 (3) of recommendation No 1399/82/ECSC  
for a period of two months from the date of their delivery  
even if this period ends in 1983.

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<sup>(1)</sup> OJ No L 157, 8. 6. 1982, p. 5.

## COMMISSION REGULATION (EEC) No 3420/82

of 20 December 1982

**re-establishing the levying of customs duties on filament lamps for lighting falling within subheading 85.20 A II and originating in Romania, to which the preferential tariff arrangements set out in Council Regulation (EEC) No 3601/81 apply**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3601/81 of 7 December 1981 applying generalized tariff preferences for 1982 in respect of certain industrial products originating in developing countries<sup>(1)</sup>, and in particular Article 12 thereof,

Whereas, in pursuance of Articles 1 and 9 of that Regulation, suspension of customs duties shall be accorded to each of the countries or territories listed in Annex C, other than those listed in column 4 of Annex A, within the framework of the preferential tariff ceiling fixed in column 9 of Annex A;

Whereas, as provided for in Article 10 of that Regulation, as soon as the individual ceilings in question are reached at Community level, the levying of customs duties on imports of the products in question originating in each of the countries and territories concerned may at any time be re-established;

Whereas, in the case of filament lamps for lighting falling within subheading 85.20 A II, the individual ceiling was fixed at 903 100 ECU; whereas, on 14 December 1982, imports of these products into the Community originating in Romania reached that ceiling; whereas the customs duties in respect of the

products in question must therefore be re-established against Romania,

HAS ADOPTED THIS REGULATION:

*Article 1*

As from 24 December 1982, the levying of customs duties, suspended in pursuance of Council Regulation (EEC) No 3601/81 shall be re-established on imports into the Community of the following products originating in Romania:

| CCT heading No | Description                                                                                                                                                   |
|----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 85.20          | Electric filament lamps and electric discharge lamps (including infra-red and ultra-violet lamps), arc lamps:<br>A. Filament lamps for lighting:<br>II. Other |

*Article 2*

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

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

Done at Brussels, 20 December 1982.

*For the Commission*

Karl-Heinz NARJES

*Member of the Commission*

<sup>(1)</sup> OJ No L 365, 21. 12. 1981, p. 1.

**COMMISSION REGULATION (EEC) No 3421/82  
of 20 December 1982**

**amending for the fourth time Regulation (EEC) No 1959/82 on an invitation to  
tender for the refund on export of wholly milled long grain rice to certain third  
countries**

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Council Regulation (EEC) No  
1418/76 of 21 June 1976 on the common organization  
of the market in rice <sup>(1)</sup>, as last amended by Regulation  
(EEC) No 1871/80 <sup>(2)</sup>, and in particular Article 17  
thereof,

Having regard to Council Regulation (EEC) No  
1431/76 of 21 June 1976 laying down general rules for  
granting export refunds and criteria for fixing the  
amount of such refunds <sup>(3)</sup>, and in particular Article 4  
thereof,

Whereas under Commission Regulation (EEC) No  
1959/82 <sup>(4)</sup>, as last amended by Regulation (EEC) No  
2853/82 <sup>(5)</sup>, an invitation to tender was issued for the  
refund on export of wholly milled long grain rice to  
certain third countries; whereas exports of long grain  
rice carried out up to the present time in the context  
of the said Regulation have not wholly disposed of the  
substantial stocks of rice remaining from the prece-  
ding marketing year; whereas, in view of the yield of  
the new harvest and the estimated amounts of rice  
available from the 1982/83 marketing year, the  
disposal of additional quantities of long grain rice  
should be facilitated; whereas, therefore, the quantities

put out for tender should be increased and the period  
of application of the said Regulation should be  
extended;

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*

Regulation (EEC) No 1959/82 is hereby amended as  
follows:

— in Article 1 (1), the second subparagraph shall be  
replaced by the following:

‘The invitation to tender shall cover a maximum of  
80 000 tonnes of wholly milled long grain rice.’;

— in Article 1 (2), ‘27 January 1983’, shall be replaced  
by ‘28 April 1983’;

— in the second sentence of Article 8, ‘27 January  
1983’ shall be replaced by ‘28 April 1983’.

*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, 20 December 1982.

*For the Commission*

Poul DALSGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 166, 25. 6. 1976, p. 1.

<sup>(2)</sup> OJ No L 184, 17. 7. 1980, p. 1.

<sup>(3)</sup> OJ No L 166, 25. 6. 1976, p. 36.

<sup>(4)</sup> OJ No L 212, 21. 7. 1982, p. 36.

<sup>(5)</sup> OJ No L 299, 27. 10. 1982, p. 28.

**COMMISSION REGULATION (EEC) No 3422/82****of 20 December 1982****altering the basic amount of the import levies on syrups and certain other products in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector<sup>(1)</sup>, as last amended by Regulation (EEC) No 606/82<sup>(2)</sup>, and in particular Article 16 (8) thereof,

Whereas the import levies on syrups and certain other sugar products were fixed by Regulation (EEC) No 2898/82<sup>(3)</sup>, as last amended by Regulation (EEC) No 3311/82<sup>(4)</sup>;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2898/82 to the information known to the Commission that the basic

amount of the levy on syrups and certain other sugar products at present in force should be altered,

HAS ADOPTED THIS REGULATION :

*Article 1*

The basic amounts of the import levy on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1785/81, as fixed in the Annex to amended Regulation (EEC) No 2898/82, are hereby altered to the amounts shown in the Annex to this Regulation.

*Article 2*

This Regulation shall enter into force on 21 December 1982.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSAGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.

<sup>(2)</sup> OJ No L 74, 18. 3. 1982, p. 1.

<sup>(3)</sup> OJ No L 304, 30. 10. 1982, p. 17.

<sup>(4)</sup> OJ No L 350, 10. 12. 1982, p. 23.

## ANNEX

to the Commission Regulation of 20 December 1982 altering the basic amount of the import levies on syrups and certain other products in the sugar sector

(ECU)

| CCT heading No | Description                                                                                                                                                            | Basic amount per percentage point of sucrose content and per 100 kg net of the product in question | Amount of levy 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 : |                                                                                                    |                                         |
|                | C. Maple sugar and other syrup                                                                                                                                         | 0.3882                                                                                             | —                                       |
|                | D. Other sugars and syrups (other than lactose, glucose and malto-dextrine) :                                                                                          |                                                                                                    |                                         |
|                | I. Isoglucose                                                                                                                                                          | —                                                                                                  | 48.92                                   |
|                | ex II. Other                                                                                                                                                           | 0.3882                                                                                             | —                                       |
|                | E. Artificial honey, whether or not mixed with natural honey                                                                                                           | 0.3882                                                                                             | —                                       |
|                | F. I. Caramelized sugar and molasses containing, in the dry state, 50 % or more by weight of sucrose                                                                   | 0.3882                                                                                             | —                                       |
| 21.07          | Food preparations not elsewhere specified or included :                                                                                                                |                                                                                                    |                                         |
|                | F. Flavoured or coloured sugar syrups :                                                                                                                                |                                                                                                    |                                         |
|                | III. Isoglucose                                                                                                                                                        | —                                                                                                  | 48.92                                   |
|                | IV. Other                                                                                                                                                              | 0.3882                                                                                             | —                                       |

**COMMISSION REGULATION (EEC) No 3423/82**  
**of 20 December 1982**  
**fixing the import levies on white sugar and raw sugar**

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Having regard to the Treaty establishing the European  
Economic Community,

Having regard to Council Regulation (EEC) No  
1785/81 of 30 June 1981 on the common  
organization of the markets in the sugar sector<sup>(1)</sup>, as  
last amended by Regulation (EEC) No 606/82<sup>(2)</sup>, and  
in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw  
sugar were fixed by Regulation (EEC) No 1716/82<sup>(3)</sup>,  
as last amended by Regulation (EEC) No 3404/82<sup>(4)</sup>;

Whereas it follows from applying the detailed rules  
contained in Regulation (EEC) No 1716/82 to the  
information known to the Commission that the levies

at present in force should be altered to the amounts  
set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

*Article 1*

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

*Article 2*

This Regulation shall enter into force on 21 December  
1982.

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

Done at Brussels, 20 December 1982.

*For the Commission*

Poul DALSAGER

*Member of the Commission*

<sup>(1)</sup> OJ No L 177, 1. 7. 1981, p. 4.  
<sup>(2)</sup> OJ No L 74, 18. 3. 1982, p. 1.  
<sup>(3)</sup> OJ No L 189, 1. 7. 1982, p. 42.  
<sup>(4)</sup> OJ No L 357, 18. 12. 1982, p. 18.

ANNEX

to the Commission Regulation of 20 December 1982 fixing the import levies on white  
sugar and raw sugar

| (ECU/100 kg)         |                                              |                      |
|----------------------|----------------------------------------------|----------------------|
| CCT<br>heading<br>No | Description                                  | Levy                 |
| 17.01                | Beet sugar and cane sugar, in solid form :   |                      |
|                      | A. White sugar : flavoured or coloured sugar | 38.82                |
|                      | B. Raw sugar                                 | 36.99 <sup>(1)</sup> |

<sup>(1)</sup> 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.

## II

*(Acts whose publication is not obligatory)*

## COMMISSION

## COMMISSION DECISION

of 10 December 1982

relating to a proceeding under Article 85 of the EEC Treaty

(IV/30.077 — Cafeteros de Colombia)

(Only the French text is authentic)

(82/860/EEC)

THE COMMISSION OF THE EUROPEAN  
COMMUNITIES,

Whereas :

Having regard to the Treaty establishing the European  
Economic Community,

## I. THE FACTS

Having regard to Council Regulation No 17 of 6  
February 1962<sup>(1)</sup>, first Regulation implementing  
Articles 85 and 86 of the Treaty, as last amended by  
the Act of Accession of Greece, and in particular  
Articles 3 and 6 thereof,

Having regard to the notification made by the Federa-  
ción Nacional de Cafeteros de Colombia on 29 April  
1980, and supplemented on 2 March 1981, in accor-  
dance with Article 4 of Regulation No 17,

Having decided on 20 July 1982 to open proceedings  
in the case,

Having given the undertaking the opportunity to  
make known its views on the objections raised by the  
Commission, in accordance with Article 19 (1) of  
Regulation No 17 and with Commission Regulation  
No 99/63/EEC of 25 July 1963 on the hearings  
provided for in Article 19 (1) and (2) of Council Regu-  
lation No 17<sup>(2)</sup>,

After consultation with the Advisory Committee on  
Restrictive Practices and Dominant Positions,

(1) Acting upon information received about the sale  
of green coffee in the EEC, the Commission  
obtained particulars of the contracts under  
which the Federación Nacional de Cafeteros de  
Colombia (hereinafter called 'FNC') had agreed  
to supply coffee to its EEC customers in 1978.

(2) As a result, an inspection was carried out at the  
FNC's Brussels office on 25 April 1979 and the  
Commission received copies of the contracts  
which FNC had made with its customers for  
1979.

(3) On 29 April 1980, FNC notified the contracts  
to the Commission and applied for negative  
clearance or exemption under Article 85 (3) of  
the EEC Treaty.

## A. The market for green coffee

(4) The green coffee consumed in the EEC is  
imported from Africa and Latin America. There  
are three main types of green coffee, 'arabicas',  
'robustas' and 'mild arabicas'. Colombia, the  
second biggest coffee producer in the world  
after Brazil, is the biggest producer of milds.

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

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

- (5) FNC estimates the market share of Colombian coffee in the EEC to be 19.68 %. In 1978 it accounted for 33.58 % of the coffee imported by Germany, 14.69 % of coffee imports to Denmark, and 4.37 % of French, 2.34 % of Italian, 28.34 % of Dutch, 1.31 % of United Kingdom and 16.10 % of Belgian and Luxembourg coffee imports.
- (6) In 1962, in view of the imbalance that had emerged between the interests of the coffee-producing and consuming countries, an International Coffee Agreement was signed under UN auspices by the producer and consumer countries. The Agreement was revised in 1968 and again in 1976.
- (7) The objectives of the Agreement are *inter alia* to bring about long-term equilibrium between production and consumption and to ensure fair prices in the face of the frequently excessive fluctuations in the levels of world supply and demand.
- (8) All the Member States of the European Community are parties to the International Coffee Agreement and the Community itself is a signatory.
- (11) The head office of FNC — whose staff are appointed by and responsible to the Colombian Ministry of Foreign Affairs — is at Bogota, Colombia, but it also has offices abroad, for example in the EEC in Italy, Denmark and in Belgium.
- (12) FNC controls the sale of all green coffee grown in Colombia. As part of this work, it makes the annual standard contracts with coffee roasters in the EEC which are the subject of these proceedings.
- (13) The contracts are the same whether the coffee is supplied by FNC itself or by a private exporter who has himself purchased it in Colombia. In both cases, the contract contains the same clauses governing resale. The contracts, however, leave the buyer free to choose his source of supply and, if he chooses to deal with a private exporter, to negotiate a mutually agreeable price.
- (14) In France and Belgium, where there is a very large number of small roasting plants, FNC makes similar contracts with two distributors, SACA in Paris and Installe in Antwerp. These are allowed to supply Colombian green coffee only to roasting plants which appear on a list drawn up by FNC. However, some large coffee roasters in France and Belgium deal direct with FNC.

#### **B. The Federación Nacional de Cafeteros de Colombia**

- (9) In 1940 the Colombian Government set up a National Coffee Fund as an instrument for facilitating the sale of Colombian coffee both on the domestic market and overseas. Article 10 of the decree establishing the Fund provides for a corporate body to administer the Fund. The FNC, which had been in existence since 1927, was appointed to do so from the Fund's inception. FNC is a semi-statutory but private legal entity bringing together all Colombian coffee producers. Its functions were defined by Decree No 2630 of 9 November 1960. Its main task is to organize the sale of Colombian green coffee in overseas markets.
- (10) Article 20 of FNC's constitution stipulates that its purpose is to defend and promote the Colombian coffee industry. One of its chief functions, stated in subparagraph 11 of that Article, is to purchase Colombian producers'

green coffee and sell it on the home and overseas markets.

#### **C. The contracts**

- (15) The main terms of the annual contracts which FNC makes with EEC coffee roasting plants and the named distributors can be summarized as follows.
- (16) (a) The standard contracts provide for two price mechanisms, depending on the supplier.
- (17) Buyers supplied direct by FNC will not pay more than 4 US cents per pound above the average price for non-Colombian milds prevailing at the date of the contract, as established by the International Coffee Agreement (ICO) Indicator Prices, the daily reference prices set by the International Coffee Organization.

- (18) Buyers obtaining supplies from a private exporter will, should the average price of non-Colombian milds be below the contract price, have their price adjusted so that the price difference does not exceed 4 US cents per pound.
- (19) (b) The contract also includes a price change guarantee and a scale of quantity discounts, both applicable regardless of supplier.
- (20) FNC guarantees to adjust the contract price for any fall in the price of Colombian green coffee that occurs within 45 days from the date of the bill of lading.
- (21) FNC's sales contracts include for each registered sale the scale of quantity discounts given on sales within certain ranges (e.g. 1 to 15 000 bags, 75 001 to 100 000 bags, 600 001 to 700 000 bags). The relevant rate of discount, which rises to 5 US dollars per bag, applies to the entire quantity ordered in the contract. Thus, it will always be in buyers' interest to purchase the maximum number of bags so as to obtain a higher rate of discount on their total purchases.
- (22) These terms are extended uniformly to all coffee roasting plants and distributors concluding contracts with FNC, wherever in the common market they may be established.
- (23) (c) The contracts made with coffee roasting plants contain a clause (clause 15) obliging the buyer to use the green coffee in his own roasting plant(s). This prevents buyers selling green coffee to other roasting plants. In 1978 and 1979 contracts this rule carried the express sanction of immediate termination of the contract (clause 15 in 1978, clause 14 in 1979).
- (24) The contracts with the distributors also contain a clause (clause 15) stating that they may sell the coffee supplied only to a predetermined list of roasting plants in France and Belgium respectively and that these undertakings may not resell the coffee in green form.
- (25) Moreover, FNC reserves the right to monitor compliance with this clause and warns that any breach will lead to immediate termination of the contract.
- (26) After the notification of the above contracts of sale, the Commission wrote to FNC pointing out that the clauses referred to could be in breach of Article 85 (1) of the EEC Treaty and asking it to amend them. In reply to the Commission's letter, FNC offered to include the following clauses in its 1981 contracts :
- (27) Contracts concluded directly with roasting plants :
- 'All coffee covered by this Agreement is intended for use in the roasting plant(s) of the buyer. In order to sell any quantity of this coffee in green form, the buyer must obtain previous authorization from FNC. In presenting his request, the buyer should indicate : name of possible purchaser, number of lot and other identification marks, quantity, and reasons for making the sale. This authorization will not be unreasonably withheld.'
- (28) Contracts with distributors :
- 'All coffee covered by this Agreement is to be sold by the buyer in green form to a group of clients previously authorized by FNC and listed in a separate letter. If one of the authorized clients wants to resell any quantity of this coffee in green form, the buyer must obtain previous authorization from FNC. In presenting his request, the buyer must indicate names of both authorized client who wants to resell and prospective purchaser, together with number of lot and other identification marks, quantity, and reasons for making the resale. The authorization from FNC will not be unreasonably withheld.'
- (29) Although the Commission pointed out to FNC that the proposed clauses still did not appear to be compatible with Article 85 (1), the final contracts for 1981 which FNC's representatives sent to the Commission pursuant to the earlier notification nevertheless contained the offending clauses.
- The clauses also appear in the 1982 contracts.
- (30) In reply to the Commission's statement of objections, FNC informed it on 22 September 1982 that in view of the objections it had

decided to delete the clauses prohibiting resale of Colombian green coffee as from 1 January 1983.

## II. LEGAL ASSESSMENT

### A. Applicability of Article 85 (1) of the EEC Treaty

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

(32) FNC is an undertaking within the meaning of Article 85 (1) since it sells the green coffee owned by it and makes commercial contracts with buyers of Colombian green coffee.

(33) Certain of the clauses in the contracts which FNC has made with coffee roasting plants and distributors have as their object and effect a restriction of competition within the common market, for the following reasons.

#### (a) *Restriction of competition*

##### 1. Restriction on resale

(34) Clause 15 (14 in 1979) of the contracts with roasting plants and distributors requires that all the green coffee covered by the contract be used in the former case by the buyer and in the latter case by authorized roasting plants.

(35) This is tantamount to prohibiting any roasting plant owner from buying green coffee for resale in the green state — as this is expressed in the 1978, 1979 and 1980 contracts — whilst distributors may sell green coffee only to roasting plants belonging to their own group.

(36) The 1978 and 1979 contracts further state that failure to observe this rule will result in immediate termination.

In the 1981 and 1982 contracts, resale may be allowed only upon previous authorization by FNC, which amounts to the same thing for the purposes of the restriction because it gives FNC a unilateral veto.

(37) The statement in the new clause 15 that 'this authorization will not be unreasonably withheld' does not mean that FNC will relinquish its veto.

In other words, the contracts prohibit or restrict the sale of green coffee by one roasting plant owner to another or by a distributor to a roasting plant which is not authorized.

(38) The result is to eliminate, or at least appreciably restrict, any competition in the market for Colombian green coffee sold by FNC.

(39) This restriction on the commercial freedom of coffee roasters and distributors restricts competition within the European Community in a manner contrary to Article 85 (1) of the Treaty.

#### 2. Effect in conjunction with quantity discounts

(40) FNC knew that if the contracts had allowed it, the system of quantity discounts would have encouraged roasting plant owners to make group purchases (buying for fellow plant owners as well as to cover their own requirements) in order to obtain lower prices.

(41) Group purchasing would have allowed them to obtain green coffee for their own use and sell it on the market at cheaper prices, which might have affected the price of roasted coffee.

(42) The restriction of competition analyzed in point (1) above is thus aggravated by effects on consumer selling prices.

#### (b) *Effect on trade between Member States*

(43) Clause 15 of the contracts involves an export ban, and hence affects trade between the Member States.

(44) By including clause 15 in its contracts, FNC makes any interpenetration of the Colombian green coffee market very difficult or even impossible. It is able to partition the market into as many isolated units as there are buyers of Colombian coffee, especially as it controls the supply of all Colombian green coffee sold to EEC roasting plants.

(45) The effect of this export ban on inter-Member State trade in green coffee is appreciable since Colombian green coffee accounts for 19.68 % of all green coffee sold to the EEC and up to a third of coffee imports to certain countries, such as the Federal Republic of Germany.

- (46) This situation therefore affects trade between Member States, contrary to Article 85 (1) of the EEC Treaty.

**B. Inapplicability of Article 85 (3) of the EEC Treaty**

- (47) Article 85 (3) of the EEC Treaty states that the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement or category of agreements between undertakings which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives or afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.
- (48) The ban on resale which is included in the contracts between FNC and coffee roasters and distributors does not contribute to improving the distribution of Colombian green coffee in the EEC, since on the contrary it reduces the outlets available to buyers of the commodity in the EEC.
- (49) No such resale ban could pursue any of the other objectives referred to in Article 85 (3).

HAS ADOPTED THIS DECISION :

*Article 1*

Clause 15 (14 in 1979) of the annual contract concluded between the Federación Nacional de Cafeteros de Colombia and coffee roasters in the EEC, and between the said Federación and Installe and SACA, for the years 1978, 1979, 1980, 1981 and 1982 constitutes an infringement of Article 85 (1) of the Treaty establishing the European Economic Community.

*Article 2*

The application for exemption under Article 85 (3) of the Treaty establishing the European Economic Community is refused.

*Article 3*

The Federación Nacional de Cafeteros de Colombia must refrain from including such a clause in any contract which it concludes henceforth with coffee roasters in the EEC or with Installe or SACA.

*Article 4*

This Decision is addressed to La Federación Nacional de Cafeteros de Colombia, Avenida Jimenez No 7-65, Bogota, DE 1, Colombia.

Done at Brussels, 10 December 1982.

*For the Commission*

Frans ANDRIESEN

*Member of the Commission*

**COMMISSION DECISION****of 10 December 1982****relating to a proceeding under Article 86 of the EEC Treaty (IV/29877 — British Telecommunications)****(Only the English text is authentic)****(82/861/EEC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, first Regulation implementing Articles 85 and 86 of the Treaty<sup>(1)</sup>, as last amended by the Act of Accession of Greece, and in particular Article 3 thereof,

Having regard to an application lodged under Article 3 of Council Regulation No 17 on 22 June 1979 by Telespeed Services Limited against the United Kingdom Post Office,

Having regard to the decision of 18 April 1980 to open proceedings in this case,

Having given the United Kingdom Post Office the opportunity to make known its views on the objections raised by the Commission, in accordance with Article 19 of Council Regulation No 17, and with Commission Regulation No 99/63/EEC of 25 July 1963<sup>(2)</sup> on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17,

After consultation with the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

**I. THE FACTS****A. British Telecommunications**

- (1) British Telecommunications is a public corporation established under the Telecommunications Act 1981, an enactment of the United Kingdom Parliament.
- (2) British Telecommunications has, under the Telecommunications Act 1981, a statutory duty to provide telecommunication services and a statutory monopoly for the running of telecom-

munication systems throughout the United Kingdom.

- (3) During most of the time in which the activities later described took place the telecommunication services now provided by British Telecommunications were provided by the United Kingdom Post Office under the Post Office Act 1969, also an enactment of the United Kingdom Parliament. British Telecommunications assumed the responsibilities of the United Kingdom Post Office for telecommunication services from 1 October 1981 under the Telecommunications Act 1981.
- (4) The enactment of the Telecommunications Act 1981 formed part of the measures taken by the United Kingdom Government with the intention of encouraging competition in the telecommunication field.
- (5) Both British Telecommunications and the United Kingdom Post Office are hereinafter referred to as 'BT'.

**B. The International Telecommunication Convention and Union**

- (6) All EEC Member States are among the signatories of the International Telecommunication Convention (ITC) which lays down the purposes and structure of the International Telecommunication Union (ITU). The International Telegraph and Telephone Consultative Committee (CCITT) is one of the permanent organs of the ITU.
- (7) Under Article 11.1 (2) ITC the duties of the CCITT shall be to study technical, operating and tariff questions relating to telegraphy and telephony and to issue recommendations on them. Members of the CCITT are the telecommunication administrations of all ITU member countries, as of right, and any recognized private operating agency which, with the approval of the member country which has recognized it, expresses a desire to participate in the work of the Committee. BT is such a recognized private operating agency.

<sup>(1)</sup> OJ No 13, 21. 2. 1962, p. 204/62.

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

- (8) Under Article 44 ITC the Members are bound to abide by the provisions of the Convention and the Administrative Regulations and to take the necessary steps to impose the observance of these provisions upon private operating agencies authorized by them to establish and operate telecommunications and which engage in international services. Article 1.1 (2) of both Telegraph Regulations and Telephone Regulations provides that 'In implementing the principles of the Regulations, Administrations (or recognized private operating agencies) should comply with the CCITT Recommendations, including any Instructions forming part of those Recommendations, on any matters not covered by the Regulations.'

### C. Retransmission of telephone and telex messages in the UK

- (9) Charges, terms and conditions relating to telecommunication services in the United Kingdom were and are laid down by BT in 'Schemes', made under Section 28 of the Post Office Act 1969 and Section 21 of the Telecommunications Act 1981 respectively.

#### (a) *Telex Scheme 1971*

- (10) The Post Office Telex Scheme 1971 contained the following provision which, in effect, prohibited the operation of commercial message-forwarding agencies:

'21.(2) Except as otherwise provided by any licence granted by the Post Office to the (*telex*) subscriber or with the consent in writing of the Post Office, neither the subscriber nor any other person shall receive any consideration either directly or indirectly in return for or otherwise howsoever on account of the use of the subscriber's installation by or on behalf of any person other than the subscriber (...).'

#### (b) *Schemes T7/1975 and T1/1976*

- (11) In recognition of the fact that message-forwarding agencies can perform a useful service for United Kingdom customers, the above provision was replaced in the Post Office Telex Scheme 1975 (Scheme T7/1975) by paragraph 43 (2) which provided *inter alia* that 'A subscriber may use his (*telex*) installation for the purpose of sending and receiving messages on behalf of other persons and may allow other persons to use his installation for the purpose of

sending and receiving messages on their own behalf'. One condition laid down at paragraph 43 (2) (b) (iii) was that 'any amount charged by a subscriber in respect of the receipt and delivery of a message which both originates and is for delivery outside the United Kingdom or the Isle of Man shall not be such that it enables the originator of the message to send it more cheaply than if he had sent it by means of a telex call made by him directly to the person for whom the message was ultimately intended'.

- (12) The above provisions were reiterated under the heading 'Restriction on assignment of telex service and use of telex installation', in Paragraph 70 (2) of the Post Office Telecommunication Scheme 1976 (Scheme T1/1976), which was in operation from 1 June 1976 to 20 January 1978.

- (13) Concerning paragraph 43 (2) (b) (iii) of Scheme T7/1975, subsequently renumbered 70 (2) (b) (iii) in Scheme T1/1976, BT found it administratively impossible to monitor the situation to ensure that, for any telex traffic between third countries, message-forwarding agencies did not undercut the charges of other Administrations.

#### (c) *Message-forwarding agencies*

- (14) Taking advantage of telecommunication tariffs which are lower, especially in relations with North America, from the UK than from some countries in mainland Europe (e.g. because of differences in tariff policies, such as lower rentals and higher call charges, and in the real costs), and of currency fluctuations which at some times made these UK tariffs still more attractive, a number of communications bureaux operating in the UK have in the last decade entered the business of retransmitting messages originating and for delivery outside the UK. There are approximately 100 message-forwarding agencies in the UK, 11 of which were believed to be engaged in the business of relaying traffic between third countries at the time of publishing Scheme T1/1978 (16 below). These message-forwarding agencies

- (i) offer to receive messages by telex from persons or other telex forwarding agencies in one foreign country and send the messages on by telex to persons or other telex forwarding agencies in other countries. This service may be particularly useful when the same message (such as a detailed specification of goods for which tenders are invited) is required to be sent to a large number of foreign destinations; or

(ii) receive their customers' messages in data form by means of the public telephone system from computers abroad (mainly from the United States) and send them onwards to other countries as data to be received at their destination in visual form, either as printed out messages or as pictures on a visual display unit.

(d) *CCITT Recommendation F 60, Section 3.5*

- (15) In October 1976 the CCITT passed Recommendation F 60 on Telex Operating Methods, whose Section 3.5 entitled 'Restriction on the use of a telex station' contains the following:

'Administrations and recognized private operating agencies should refuse to make the telex service available to a telegraph forwarding agency which is known to be organized for the purpose of sending or receiving telegrams for retransmission by telegraphy with a view to evading the full charges due for the complete route'. 'Administrations shall refuse to provide international telex service to a customer whose activity would be regarded as an infringement of the functions of an Administration in providing a public telecommunication service'.

(e) *Scheme T1/1978*

- (16) In direct or indirect implementation of CCITT Recommendation F 60, Section 3.5, BT in Post Office Telecommunication Scheme (Scheme T1/1978) which came into operation on 21 January 1978, amended Scheme T1/1976 as follows (excerpts):

'44 (2) (a) unless the Post Office otherwise consents in writing, a (*telephone*) subscriber who is engaged in the business of sending and receiving messages on behalf of other persons by means of his telephone installation and/or allowing other persons to use his telephone installation for the purpose of sending and receiving messages on their own behalf shall not so use or allow his telephone installation to be so used for the purpose of sending to or receiving from a place outside the United Kingdom and the Isle of Man any message intended for ultimate reception in visual form'.

'70 (2) (b) any (*telex*) message which originates outside the United Kingdom and the Isle of Man shall not be sent onwards to

a destination outside the United Kingdom and the Isle of Man;

(c) any message which originates outside the United Kingdom and the Isle of Man shall not be sent onwards to a destination within the United Kingdom and the Isle of Man unless it is received as a telex call made directly to the subscriber's installation by the originator of the message. (...);

(d) any message which originates in the United Kingdom or the Isle of Man shall not be sent onwards to a destination outside the United Kingdom and the Isle of Man unless it is sent as a telex call made from the subscriber's installation directly to the person for whom the message is ultimately intended by the originator of the message'.

- (17) In August 1978 BT sent a standard letter to all communications bureau operators in the United Kingdom calling their attention to the above amendments and explaining that they mean, in effect, that private agency operators are prohibited from providing international services for their customers whereby:

- messages in data form are sent or received internationally by telephone and then converted into telecommunication messages for reception in telex, facsimile, written or other visual form,
- telex messages are forwarded in transit between places outside the United Kingdom and the Isle of Man,
- telex messages are sent or received via other message-forwarding agencies.

- (18) BT also explained in this standard letter that 'Indeed, it is because we have managed to keep our international telex charges so low — much lower than in other countries — that it is attractive for other countries to send their telex messages through agencies in this country. (...). The activities of agencies which attract telex messages from other countries to transmit them from the United Kingdom to a third country, cause a serious loss of revenue to other countries and break the international agreements on which world cooperation in telecommunications is founded. They thus put at risk the arrangements we have been able to negotiate with other countries, and so endanger the low tariffs we at present charge to our own customers in the United Kingdom'.

- (19) BT has written a further letter to those agencies believed to be forwarding traffic between telex subscribers in third countries. A written assurance was requested, stating that they understood and would comply with the new provisions. Nine of the 12 recipients gave such an assurance.
- (20) BT has stated to the Commission that it had been under pressure from certain other national telecommunication authorities to prevent retransmission of telex messages between third countries by the UK message-forwarding agencies and that it had introduced the restrictions in order to, in its view, meet its international obligations to other administrations.
- (21) Paragraph 11 (1) of Scheme T1/1976 provides that if a subscriber 'fails to observe or perform any of the provisions of the Scheme, or any obligation on his part arising thereunder, the Post Office may (without prejudice to any other right or remedy):
- (a) without notice, temporarily disconnect any installation or any part of an installation;
  - (b) summarily cease to provide telecommunication service after giving notice of its intention to terminate service provided under the Scheme.'

BT maintains that it has the right to disconnect the facilities of those agencies which persist in ignoring the Scheme restrictions but it has not sought to enforce the restrictions by taking any such action.

- (22) On 22 June 1979, Telespeed Services Limited, one of the UK message-forwarding agencies concerned by the restrictions introduced by BT on 21 January 1978, lodged an application under Article 3 of Regulation No 17 requesting the Commission to find that Articles 85 (1) or 86 of the EEC Treaty had been infringed and to require BT to bring such infringement to an end. The complainant submits that the actual effect of the BT restriction is to prohibit retransmission by a UK telex operator of messages originating outside the UK to destinations outside the UK even where there is no question of lower rates being charged or available. To the best of the complainant's knowledge its charges are the same as or higher than those ruling in the countries of its customers within the EEC.
- (23) In November 1981, BT revoked and replaced all previous schemes by the Telecommunication

Scheme 1981. The provisions of paragraphs 44 (2) (a) and 70 (2) (b) of Scheme T1/1978 were carried into the 1981 Scheme and re-numbered paragraphs 51 (2) (a) and 82 (2) (a) respectively.

- (24) On 22 October 1982, BT wrote to the Commission as follows: 'it is now accepted that, in the context of this case, the CCITT Recommendation directly conflicts with Articles 85 (1) and 86 of the Treaty of Rome. Consequently, British Telecommunications has unilaterally decided to withdraw the particular restrictions at issue and will amend the Telecommunication Scheme accordingly and advise other administrations and UK message-forwarding agencies of this decision'.

## II. LEGAL ASSESSMENT

### A. Applicability of Article 86 of the EEC Treaty

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

#### (a) *Undertaking in a dominant position*

- (25) The United Kingdom Post Office and British Telecommunications are public corporations and economic entities carrying on activities of an economic nature. As such they are undertakings within the meaning of Article 86 of the EEC Treaty.
- (26) British Telecommunications has a statutory monopoly, under the Telecommunications Act 1981, for the running of telecommunication systems throughout the United Kingdom and the Isle of Man. British Telecommunications therefore holds a dominant position in the United Kingdom, which constitutes a substantial part of the common market, for the provision of telex and telephone systems.
- (27) Under the Telecommunications Act 1981 British Telecommunications became the legal successor of the United Kingdom Post Office in respect of the statutory monopoly for the running of telecommunication systems throughout the United Kingdom and of all rights and liabilities thereunder. British Telecommunications is therefore the successor to the United Kingdom Post Office for the purposes of this proceeding.

(b) *Abuse*

(28) Restrictions imposed by an undertaking in a dominant position, even under a power conferred on it by authority, may constitute an abuse of such a dominant position.

(29) Restrictions on the provision on behalf of third parties of telephone and telex services and on the use of telephone and telex installations in the United Kingdom are laid down by BT in 'Schemes' made under Section 28 of the Post Office Act 1969 and Section 21 of the Telecommunications Act 1981 respectively. Under Schemes T7/1975 and T1/1976, subscribers were free to use their installations for the purpose of sending or receiving messages on behalf of third parties.

(30) Until 20 January 1978, however, paragraph 43 (2) (b) (iii) of Scheme T7/1975 and paragraph 70 (2) (b) (iii) of Scheme T1/1976 provided that where a subscriber relayed a telex message both originating and for delivery outside the United Kingdom, the amount he charged should not be such as to enable the originator of the message to send it more cheaply than if he had sent it directly. In so far as it applied to the retransmission of telex messages originating in another EEC Member State for delivery to any country outside the United Kingdom, or originating in any country outside the United Kingdom for delivery to another EEC Member State, this provision was an abuse under Article 86 EEC as it :

(i) limited message-forwarding agencies' activities to the prejudice of customers located in other EEC Member States ;

(ii) applied dissimilar conditions to equivalent transactions with message-forwarding agencies by imposing a condition for the continuation of services that, of all telex messages submitted to BT, those for onward transmission outside the United Kingdom must either originate in the United Kingdom or be charged for by the agencies at a price that ensured that they were not cheaper for the sender than if he had sent them directly. This placed the agencies at a competitive disadvantage *vis-à-vis* the national telecommunication authorities and

agencies in other Member States not subject to such restrictions ; and

(iii) made the use of telephone and telex installations subject to the acceptance by message-forwarding agencies of an obligation to charge prices that had no connection with the type and quality of the telecommunication services provided by them but rather arose out of BT's desire to protect the revenues of other national telecommunication authorities.

It may be noted, however, that the above provision of Schemes T7/1975 and T1/1976 were never enforced (13 above) and were finally deleted on 11 January 1978 with effect on 20 January 1978.

(31) Scheme T1/1978, amending the principal Scheme T1/1976, came into operation on 21 January 1978. The new provisions of paragraphs 44 (2) (a) and 70 (2) (b), which were later carried into the 1981 Scheme as paragraphs 51 (2) (a) and 82 (2) (a) respectively, in effect prohibit message-forwarding agencies in the United Kingdom from retransmitting to destinations outside the United Kingdom

(i) messages intended for ultimate reception in visual form (such as telex, facsimile, printout or picture on a visual display unit) and received in data form via the telephone system from computers abroad ; and

(ii) telex messages originating outside the United Kingdom.

(32) In so far as they apply to telephone and telex messages originating in another EEC Member State for delivery to any country outside the United Kingdom or originating in any country outside the United Kingdom for delivery to another EEC Member State, such prohibitions are an abuse under Article 86 of the EEC Treaty as they :

(i) limit the activities of United Kingdom telephone and telex subscribers acting as message-forwarding agencies to the prejudice of customers in other EEC Member States ; and

(ii) make the use of telephone and telex installations subject to obligations which have no connection with the assignment of telephone or telex services.

- (33) BT contends that it would not be an infringement of Article 86 of the EEC Treaty if BT were to prohibit telex forwarding agencies altogether in order to reserve to itself, in accordance with its monopoly, the sole right of providing international services. Therefore, there can be no justification for holding that the lesser restrictions which it has imposed on the activities of such agencies is an abuse of a dominant position. The Commission doubts that this contention is correct since the scope of BT's monopoly in the relevant legislation is the exclusive privilege of running telecommunication systems not the offering of services making use of such systems. However, even assuming that the contention is correct then BT must exercise the powers granted to it under the statutory monopoly in accordance with the EEC rules on competition (see paragraph 41 *et seq.*).
- (34) With regard to paragraph 32 (i) above, the new restriction laid down in paragraph 44 (2) (a) of Scheme T1/1978, which prohibits UK message-forwarding agencies from using their telephone lines for relaying telex and other visual messages between countries outside the United Kingdom, is an abuse under Article 86 (b) of the EEC Treaty as it both limits the development of a new market and the use of new technology to the prejudice of relay operators and their customers who are thus prevented from making more efficient use of existing telecommunication systems. The fact that in so doing the message-forwarding agencies are simply exploiting the tariff differentials existing between telex and telephone services provided by the telecommunication authorities is irrelevant. Even if this were to result in fewer telex messages, thereby providing savings in costs to the users, this would not put the entire international telex system at risk. The maintenance of obsolete systems through measures taken by an undertaking in a dominant position is an abuse under Article 86 (b) of the EEC Treaty in that it limits technical development to the prejudice of consumers.
- (35) With regard to paragraph 32 (ii) above, the new restriction laid down in paragraph 70 (2) (b) of Scheme T1/1978 is an abuse under Article 86 of the EEC Treaty as it makes the provision and continued provision of telecommunication services subject to the acceptance of an obligation not to deal with certain equivalent telex traffic according to its origin. It is in no way technically necessary nor in commercial usage to treat such traffic differently and as such it has no connection with the provision of telecommunication services. Rather, the obligation again arose out of BT's desire to protect the revenues of other national telecommunication authorities.
- (36) BT's contention that the logical consequence of such a view would be that it would not be free to restrict the use which customers could make of its telecommunication systems can be seen to be unfounded. Any such restrictions imposed by BT in the form of supplementary obligations should fall outside the terms of Article 86 and in this case they have been shown not to do so. As to BT's contention that they do not have to tolerate competition in services which its monopoly was intended to cover, see paragraph 33 above.
- (c) *Effect on interstate trade*
- (37) The prohibitions imposed by BT on message-forwarding agencies in the United Kingdom against the forwarding of messages originating from or for delivery outside the United Kingdom may affect trade between Member States in so far as the countries of destination or origin of such messages are Member States of the European Community.
- (38) Although the prohibitions relate to the use of telecommunication installations within the United Kingdom, they directly affect the provision of services by message-forwarding agencies in the United Kingdom to third parties located in other Member States, as such services may be provided only in direct relations (i.e. not those in transit) between the United Kingdom and other Member States and no longer in relations between Member States other than the United Kingdom or between those Member States and countries outside the European Community.
- (39) Thus, there is a clear restriction on trade between Member States as the prohibition restricts message-forwarding agencies, in carrying on their business, from providing certain services for customers situated in other Member States. The Commission was informed by the complainant that of the 13 000 to 14 000 messages it received from abroad annually between 1976 and 1979 for onward transmission to destinations abroad 85 % originated from EEC countries and 85 % were destined for EEC countries.

- (40) BT considers that it has the right to disconnect those agencies who persist in ignoring the prohibition and this would, of course, have the effect of preventing services of all kinds between Member States being offered by message-forwarding agencies. The complainant has further informed the Commission that it has not sought to develop the provision of these services, for which it saw a considerable potential, as a result of the threat of disconnection by BT. The prohibition has thus also affected the development of such trade between Member States.

#### **B. Applicability of Article 90 (2) of the EEC Treaty**

Article 90 (2) of the EEC Treaty provides that 'Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

- (41) Under the Post Office Act 1969 and the Telecommunications Act 1981, BT has been entrusted with the operation of services of general economic interest, namely the provision of telecommunication systems throughout the United Kingdom. The application of the Treaty rules on competition to BT would not and does not obstruct the performance of its duties in an efficient and economic way. For BT to be exempted from compliance with the rules on competition it is not sufficient that such compliance would make performance of its duties more complicated.
- (42) BT has claimed, but not explained how, it would be obstructed in the performance of its duties. Indeed it would be in BT's interests to allow such traffic. Even if BT were to experience difficulties with other national telecommunication authorities for not preventing message-forwarding agencies in the United Kingdom from undercutting telex tariffs applied in other countries, such a situation would not 'obstruct' the performance of BT's particular task.
- (43) The Commission accepts, in its broadest sense, the view held by BT that international cooperation and the honouring of international commitments are essential features in the

provision of international communications in an efficient and economic way. However, this cooperation should not go so far as to violate the Treaty rules of competition.

- (44) For the reasons set out above the restrictions on the use of telex and telephone facilities and services by BT constitute infringements of Article 86 of the EEC Treaty. BT should therefore be required to terminate any of the restrictions that are still in operation.
- (45) Notwithstanding these infringements, the Commission does not consider that a fine should be imposed on BT in view of the special circumstances of the case and of the matters referred to in paragraph 20 above, and because BT did not enforce the restrictions by disconnecting the facilities of the message-forwarding agencies.

HAS ADOPTED THIS DECISION :

#### *Article 1*

The following provisions of the relevant Telecommunication Schemes of the United Kingdom Post Office and British Telecommunications constitute infringements of Article 86 of the Treaty establishing the European Economic Community :

1. Scheme T7/1975, paragraph 43 (2) (b) (iii)
2. Scheme T1/1976, paragraph 70 (2) (b) (iii)
3. Scheme T1/1978, paragraphs 44 (2) (a) and 70 (2) (b)
4. Scheme/1981, paragraphs 51 (2) (a) and 82 (2) (a).

#### *Article 2*

British Telecommunications shall within two months of the date of notification of this Decision bring the infringements found in Article 1 to an end in so far as those infringements have not already been brought to an end.

#### *Article 3*

This Decision is addressed to British Telecommunications, 2-12 Gresham Street, UK-London EC2V 7AG.

Done at Brussels, 10 December 1982.

*For the Commission*

Frans ANDRIESEN

*Member of the Commission*

### NOTICE OF THE COMMISSION

For the sake of simplification and having regard to their purely declaratory nature, the results of invitations to tender issued by the Commission in the various agricultural sectors will, from 1 January 1983 be published in the C series of the *Official Journal of the European Communities* in the form of a table under the heading 'Notice of decisions taken under various tendering procedures in the agricultural sector'.

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