II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 20 December 1977**

**relating to proceedings under Article 85 of the EEC Treaty (IV/28.282 : The Distillers Company Limited, Conditions of Sale and Price Terms)**

**(Only the English text is authentic)**

(78/163/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation No 17 of 6 February 1962 [1], and in particular Articles 3, 4, 5, 15 and 25 thereof,

Having regard to the notification made on 30 June 1973, pursuant to Articles 5 (1) and 25 of Regulation No 17, by The Distillers Company Limited of London in the United Kingdom, of 'Seller's Conditions of Sale' which 38 of its subsidiary companies apply to United Kingdom trade customers,

Having regard to the application submitted to the Commission, pursuant to Article 3 of Regulation No 17, on 18 May 1976 on behalf of

A. Bulloch & Co. of Eaglesham,
A. Bulloch (Agencies) Ltd of Catrine, Ayrshire,
John Grant (Blenders) Ltd of Larkhall,
Inland Fisheries Ltd of Eaglesham,
Classic Wines Ltd of Glasgow,

and on 7 March 1977 by Madison Benson and Carter Ltd, of London, all the foregoing being situated in the United Kingdom and which application concerned the price terms applied by the said 38 subsidiary companies,

Having regard to the Commission's decision of 31 March 1977 to initiate proceedings in this case,

Having heard the undertakings and persons concerned in accordance with Article 19 of Regulation No 17 and with Regulation No 99/63/EEC of 25 July 1963 [2],

Having regard to the opinion of the Advisory Committee on Restrictive Practices and Dominant Positions, delivered pursuant to Article 10 of Regulation No 17 and 21 October 1977,

Whereas :

### I. THE FACTS

The present proceedings concern conditions of sale and price terms applied by 38 subsidiary companies of The Distillers Company Limited (hereinafter referred to as 'DCL') to sales of Scotch whisky, gin, vodka and Pimm's to their trade customers established in the United Kingdom (hereinafter referred to as 'United Kingdom trade customers').

#### 1. The Distillers Company Limited and its subsidiary companies

1.1. *The DCL Group*

Established in 1877, through the amalgamation of six Scotch whisky distillers, The Distillers Company Limited today includes more than 70 principal subsidi-

[1] OJ No 13, 21. 2. 1962, p. 204/62.

[2] OJ No 127, 20. 8. 1963, p. 2268/63.

aries established in the United Kingdom and elsewhere and engaged not only in the alcoholic beverage industry but also in the yeast and chemical industries, as well as in the manufacture of food products. With effect from 30 June 1969, the company acquired shares in the United Glass Company Ltd and, since 1972, has had a 50 % holding in this company. The production and distribution of spirits remain the major activities of the DCL group.

The 38 DCL subsidiary companies concerned, which are listed in Annex 1 to this Decision, are all established in the United Kingdom and are producers of spirits, i.e. 32 of Scotch whisky, four of gin, one of vodka, one of Pimm's. These are the principal DCL subsidiaries and together they cover the whole of DCL activities in spirits in the United Kingdom.

For the year ending 31 March 1977 the total turnover of the DCL group was £ 847 172 000. The total turnover in Scotch whisky, gin, vodka and other potable products of the DCL group was £ 732 053 000. After eliminating the effect of duty, the breakdown of DCL's turnover was 55·7 % from sales in Europe [1], of which around ... % was obtained in EEC countries other than the United Kingdom and Ireland, 27·2 % from sales in North and South America, 17·1 % from sales in Africa, Asia and Australia.

The DCL group is the world's largest distiller of Scotch whisky accounting for approximately a 40 to 50 % market share in production and sales in the United Kingdom over the last four years and is by far the biggest seller of Scotch whisky throughout the world. In the EEC countries, other than the United Kingdom, DCL puts its market share for the year 1975 at ... % in Belgium and Luxembourg, ... % in Denmark, ... % in France, ... % in Italy and in Germany, ... % in Ireland and ... % in the Netherlands. The well-known brands of Scotch whisky supplied by the DCL group are Johnnie Walker, Haig, Black and White, Vat 69, White Horse and Dewar's.

As regards gin, DCL's share of United Kingdom production has been around ... % during the years 1973, 1974 and 1975. Its sales have, during this same period, amounted to approximately 70 % of the total gin sales in the United Kingdom. DCL exports large quantities of gin and estimates that its market share in EEC countries other than the United Kingdom ranges from ... % in Ireland to ... % in Belgium and Luxembourg. Among DCL brands in gin are High and Dry, Gordon's Special Dry London Gin and Booth's Finest Dry Gin.

[1] In the published version of this Decision, some values have hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning business secrets.

The DCL group accounts for about one-quarter of the United Kingdom vodka market, supplying the brand 'Cossack Vodka' which has the second highest sales in the market.

1.2. *Distribution of DCL spirits*

Each of the 38 DCL subsidiary companies is responsible for the distribution and marketing of its spirits, which bear its own brand names. The distribution channels in the common market are organized as follows :

(a) In the United Kingdom, most of the DCL subsidiary companies sell their brands of spirits direct to the wholesale trade. A few subsidiaries employ distributors.

The wholesale trade itself can be divided into two broad sectors :

— the 'tied trade' essentially consists of brewery groups which own licensed retail outlets through which the products are sold either by the bottle or by the measure. Most of these brewery companies also act as wholesalers in the free trade sectors. Purchases by the brewery groups represent about half the total sales of spirits of DCL subsidiary companies in the United Kingdom,

— the 'free trade' consists of a wide range of customers, including establishments as diverse as individual licensed grocers, chains of non-brewery retail outlets (such as some of the supermarket chains) and 'multiples' (i.e. wholesale business which also own retail outlets, but which are not brewery controlled). They all generally sell by the bottle. In addition, licensed hotel chains may sell by the measure on their premises.

The DCL subsidiary companies sell their spirits to about 1 000 United Kingdom wholesalers (hereinafter referred to as 'United Kingdom trade customers').

(b) In the other common market countries, most of the DCL subsidiary companies each have their own sole distributors who, within their areas, import and distribute for resale one or several brands of DCL's subsidiaries' spirits. The brands thus supplied to the sole distributors are usually resold to wholesalers. There are about 200 sole distributors within the common market.

(c) For the purpose of duty-free consumption only, the DCL subsidiaries sell spirits directly to ships' chandlers. They number about 1 000 in the common market.

## 2. DCL's conditions of sale and price terms

### 2.1. *Notified 'Seller's Conditions of Sale'*

On 30 June 1973 DCL, on behalf of the 38 subsidiary companies abovementioned, notified the Commission of the seller's conditions of sale applied by each of its subsidiaries for their sales of spirits to United Kingdom trade customers only. It was seeking an exemption under Article 85 (3).

The seller's conditions of sale consisted mainly of:

— provisions relating to terms of delivery and payment,

— a clause (5b) which imposed an export prohibition on the United Kingdom customers of the DCL subsidiaries and on subsequent purchasers: 'If the goods are sold by seller in bottles for delivery in Great Britain, they will not be resold for delivery outside Great Britain ... This condition must be incorporated in all sub-sales.', and

— a clause (6) prohibiting resale in bond: 'Such of the goods as are sold under bond shall not be resold or otherwise transferred by purchaser except out of bond and after excise (or customs) duty (at the full rate from time to time in force in respect of goods of the same description intended for consumption in the United Kingdom) has been paid by purchaser in respect of such goods on the removal thereof from bond'.

On 8 July 1975, in reply to a request of the Commission dated 2 June 1975, DCL submitted to the Commission a new text of the previously notified seller's conditions of sale, without specifying the date on which it came into force.

The main alterations were:

— the revision of clause 5b which limits, as of its date, export prohibition to territories outside the EEC and which reads as follows: 'if the goods are sold by the seller in bottles for delivery in the United Kingdom, they will not be resold for delivery outside the territories of the European Economic Community as constituted at the date of sale by seller. This condition must be incorporated in all sub-sales.',

— the removal of clause 6 concerning the prohibition on resale in bond.

The Commission later learned that the new text had come into operation on 24 June 1975 when DCL addressed a circular letter to its subsidiaries' United Kingdom trade customers in which the new seller's conditions of sale were included as Appendix I.

### 2.2. *DCL's circular letter of 24 June 1975 concerning the 'Home Trade Conditions of Sale and Price Terms'*

On 11 July 1975 DCL submitted to the Commission the text of the circular letter of 24 June 1975 and its two annexes (Appendix I and Appendix II) in reply to a Commission request for information made on 4 July 1975 in accordance with Article 11 of Council Regulation No 17 and received by DCL on 9 July 1975. On 25 February 1977 DCL informed the Commission of changes to Appendix II which were dated 23 February 1977.

The circular latter of 24 June 1975 bears the title 'Home Trade Conditions of Sale and Price Terms'. It was sent by DCL on behalf of its subsidiary companies to all their trade customers in the United Kingdom 'to notify them of amendment of the conditions of sale governing sales of spirits by those companies and to clarify and confirm the basis on which the various allowances, rebates and discounts are offered to them.'

The first section of the letter is entitled 'Conditions of Sale' and states that: 'the conditions of sale which have been in force for the home trade since before the United Kingdom entered the common market include a prohibition against export. The conditions, including this prohibition, were notified to the EEC authorities ... Following the referendum, we are now amending the conditions of sale to permit export by home trade customers to other common market countries ... export outside the common market is still prohibited.' Reference is also made to Appendix I to the DCL circular letter.

Appendix I to the DCL circular letter contains the new version of the seller's conditions of sale.

The circular letter of 24 June 1975 contains a second section entitled 'Price Terms'. The following statements were included:

(a) 'Although the amended conditions of sale permit exports for consumption in other common market countries, the various allowances, rebates and discounts are designed to meet the particular requirements of the home trade and customers are only entitled to them when the goods are in fact consumed within the UK.'

(b) 'Accordingly, if you wish to buy for export to other common market countries, you must indicate this in your order and purchase must be made at the gross price.'

(c) 'It is hoped that all customers will cooperate in order to enable a simple and convenient system to be operated. If, however, a customer obtains or claims any home trade allowances, rebates or discounts in respect of goods which he has bought and any of those goods turn up in any country outside the UK, the right is reserved for all companies in the DCL Group to sell thereafter to such customer only at the gross price.'

'Attached (as Appendix II) is a note of certain contractual provisions which authoritatively state and amplify the foregoing principles and which, until further notice, will form part of every contract made hereafter between any company in the DCL Group and any home trade customer for the purchase of spirits by the latter.'

Appendix II to the DCL circular letter is entitled 'Certain Contractual Provisions (relating to price) additional to Conditions of Sale'. It states that :

— the provisions of this Appendix 'will form part of every contract made by a purchaser and a subsidiary company of the DCL group for the purchase of any brands of spirits' and 'are additional to seller's conditions of sale (the subject of Appendix I)',

— 'all allowances, discounts and rebates (hereinafter referred to as price allowances) are designed to meet the particular market circumstances of the home trade'.

It also specifies that any DCL subsidiary company shall be entitled to charge 'the gross price without any reduction of such price by price allowances'

— when a DCL subsidiary selling to a purchaser has a reasonable belief that any quantity of goods bought by the purchaser from any DCL subsidiary has been or will be consumed outside the United Kingdom,

— even when the exports are made by a subsequent purchaser,

— regardless of the quantity ordered, until and to the extent that the purchaser produces evidence satisfactory to the selling DCL subsidiary company that the goods will be consumed in the United Kingdom,

— provided that upon such production the purchaser shall promptly receive the relative price allowances together with reasonable interest thereon.

On 23 February 1977, DCL, on behalf of its subsidiary companies, addressed a letter to their United Kingdom trade customers informing them of changes made to Appendix II to the circular letter of 24 June 1975. The only modification is that the price charged for spirits to be exported, previously defined as being 'the gross price without any reduction of such price by price allowances', is now expressed as 'the gross EEC export price'. The gross EEC export price is the gross price charged to sole distributors in other EEC countries before deduction of any allowances granted to them.

The provisions of Appendix II as explained in the second section of the DCL circular letter of 24 June 1975 and which was modified on 23 February 1977 are hereinafter referred to as 'price terms'.

2.3. *Complaints*

On 18 May 1976 the following undertakings presented a request to the Commission, pursuant to Article 3 of Regulation No 17, seeking the initiation of a procedure to terminate infringements of Articles 85 and 86 of the EEC Treaty resulting from the DCL price terms of 24 June 1975 :

A. Bulloch & Co. of Eaglesham,
A. Bulloch (Agencies) Ltd of Catrine, Ayrshire,
John Grant (Blenders) Ltd of Larkhall,
Inland Fisheries Ltd of Eaglesham,
Classic Wines Ltd of Glasgow.

These undertakings are related companies established in the Glasgow area. They purchase large quantities of DCL whisky for resale and dealt recently with DCL subsidiaries through an intermediate company to which the circular letter of June 1975 was addressed. Some of the whisky which they had bought in bond at the home trade price and sold to another whisky dealer in the United Kingdom was later found by DCL representatives in supermarkets in France and Belgium. Subsequently DCL asked the complainants for further payment and refused to sell them any in-bond whisky except at the gross price. The complainants have stated that the application of the gross price makes parallel export impossible.

On 7 March 1977 another request in application of Article 3 of Regulation 17 was presented by Madison Benson and Carter Ltd of London, United Kingdom, also raising the difficulties of obtaining Scotch whisky for export.

## 3. DCL's prices and price allowances

3.1. *The price allowances to United Kingdom trade customers*

The various allowances, rebates and discounts (price allowances) which DCL subsidiary companies offer to United Kingdom trade customers of DCL spirits and which, in application of the price terms, are granted exclusively on spirits for consumption in the United Kingdom, are as follows.

— The 'wholesale allowance' is granted in consideration of the wholesale functions carried out by certain traders; it is granted to United Kingdom customers who purchase a minimum quantity, e.g. 1 000 cases of Scotch whisky per annum. The allowance is a fixed sum per case.

— The 'aggregate quantity rebate' is granted in consideration of the quantity of spirits purchased from DCL's subsidiary companies during a certain period.

— The 'deferred special allowance' is, in effect, a loyalty rebate in respect of the purchase of DCL Scotch whisky only. It is granted only to customers purchasing a minimum of 1 000 cases per annum when the proportion of the amounts purchased from DCL subsidiary companies to the total purchases of Scotch whisky by the buyer in question is at least 60 %.

— The 'performance bonus rebate', made available for purchases of Scotch whisky only for the year March 1977 to March 1978, is a target bonus for maintaining at least 95 % of direct purchases of DCL brands in a given year, compared with that in the previous year.

— Cash discount is granted on duty-paid spirits to United Kingdom customers who forward cash with order.

— Promotional allowances are from time to time granted by individual DCL subsidiary companies by way of contributions to special promotions for their brands.

3.2. *Prices and rebates to United Kingdom trade customers: for example, Scotch whisky*

Indicated below, as an example, are the prices and price allowances made to United Kingdom trade customers by DCL subsidiary companies for a case of 12 bottles of Johnnie Walker Red Label at 24 June 1975 and 1 March 1977. All the DCL subsidiaries adopt the same price conditions for the same categories of Scotch whisky. Johnnie Walker Red Label is a standard blended Scotch whisky, at least three years old. A complete table of prices charged since 1 January 1973 is set out in Annex II. Prices of DCL Gordon's Special Dry London Gin and Cossack Vodka from 24 June 1975 to 1 March 1977 are given in Annexes III and IV.

The gross price is a notional resale price at which wholesalers supposedly sell to their retail customers. The gross prices of a case of 12 bottles of Johnnie Walker Red Label have been as follows:

| | 24 June 1975 | 1 March 1977 |
|---|---|---|
| Gross duty-paid price | £ 41·58 | £ 51·53 |
| Excise duty | — £ 30·93 | — £ 37·92 |
| Gross price (VAT and excise duty excluded) | £ 10·65 | £ 13·61 |

Price allowances which, in application of the price terms, are granted to United Kingdom trade customers only when the DCL Scotch whisky purchased is consumed within the United Kingdom, have amounted to the following:

| | 24 June 1975 | 1 March 1977 | |
|---|---|---|---|
| | Maximum (1) | Maximum (1) | (Average) (2) |
| Wholesale allowance | £ 3·75 | £ 4·00 | £ . . . |
| Aggregate quantity rebate | £ 0·95 | £ 1·24 | £ . . . |
| Deferred special allowance | £ 0·25 | £ 0·25 | £ . . . |
| Performance bonus rebate | — | £ 0·16 | £ . . . |
| | £ 4·95 | £ 5·65 | £ . . . |
| Cash discount | + £ 0·35 | + £ 0·90 | — |
| Total amount | £ 5·30 | £ 6·55 | £ (. . .) |

(1) These figures indicate the maximum amount available in respect of each allowance or rebate and the corresponding price to United Kingdom trade customers.

(2) These figures indicate an average of each allowance or rebate usually obtained by customers and the corresponding price to United Kingdom trade customers.

The net prices paid by United Kingdom trade customers for Scotch whisky consumed within the United Kingdom were arrived at as follows :

| | 24 June 1975 | 1 March 1977 | |
|---|---|---|---|
| | Maximum (1) | Maximum (1) | (Average) (2) |
| Gross price | £ 10·65 | £ 13·61 | £ ... |
| Allowance | — £ 5·30 | — £ 6·55 | — £ ... |
| Net price | £ 5·35 | £ 7·06 | £ (...) |

(1) These figures indicate the maximum amount available in respect of each allowance or rebate and the corresponding price to United Kingdom trade customers.

(2) These figures indicate an average of each allowance or rebate usually obtained by customers and the corresponding price to United Kingdom trade customers.

Prices actually charged to United Kingdom trade customers for purchases of a case of Johnnie Walker Red Label to be consumed in an EEC country other than the United Kingdom have been as follows :

24 June 1975 : £ 10·65 (Gross price) ;
1 March 1977 : £ 13·51 (Gross EEC export price).

All the foregoing information was supplied by DCL.

The price to be paid for the product when intended for export to EEC Member States was at 24 June 1975 £ 10·65, i.e. 99 % higher than the price to be paid for the product when intended for consumption within the UK, namely £ 5·35. The comparable figures at 1 March 1977 were £ 13·51 and £ 7·06 (or £ ...)(1) respectively, giving a differential of 92·7 % (or ... %).

3.3. *Price control and excise duty system in the United Kingdom*

All prices of spirits supplied to the United Kingdom home market, otherwise than for export, are controlled by the Price Commission which was set up under the Counter-Inflation Act of 1973. The prices may be increased at minimum intervals of three months when a producer can present proof that an increase in the price covers an increase in costs without increasing the net profit margins above levels determined by reference to the best two of the five accounting years ending on 31 March 1973.

The export prices applied by DCL both to UK trade customers and to sole distributors are not subject to the control of the Price Commission.

British excise duty is payable at the time at which the spirits are removed from bond. Spirits intended for export circulate under bond until they pass through customs ; the system of excise duty in the United Kingdom does not provide for the payment of excise duty on them nor for a reimbursement if paid.

(1) The figures in brackets hereinafter refer to '(average)' prices to United Kingdom trade customers, i.e. prices after application of an average of the allowances usually obtained by them.

3.4. *DCL's sales in EEC countries other than the United Kingdom*

DCL subsidiary companies sell their spirits direct to sole distributors in the other countries of the common market.

The prices to a sole distributor in all these Member States of a case of 12 bottles of Johnnie Walker Red Label have been as follows :

| | 24 June 1975 £ | 1 March 1977 £ |
|---|---|---|
| (fob London) Exclusive distributor, gross price | | 13·51 |
| Cash discount | ... | ... |
| Distributor's allowance | ... | ... |

In addition to the abovementioned allowance and discount, DCL subsidiary companies do in some cases contribute to expenditure incurred by their sole distributors on the advertising or promotion of their brands.

The price paid by United Kingdom trade customers for products intended for consumption in common market countries other than the United Kingdom was ... % higher at 24 June 1975 and ... % higher at 1 March 1977 than the price paid by sole distributors. Between 24 June 1975 and 1 February 1977 the price paid by sole distributors in common market countries was similar to that available to United Kingdom trade customers for products intended for consumption in

the United Kingdom, but since 1 March 1977 has been ... % higher (or ... % higher, if comparison is made with the average price to United Kingdom trade customers).

### 4. Development of parallel exports

According to information supplied by DCL, parallel exports of DCL Scotch whisky from the United Kingdom to other EEC countries amounted approximately to 100 000 cases in 1973, to 400 000 cases in 1974 and to 550 000 cases in 1975 in spite of the non-exportation clause contained in the conditions of sale.

From the date of the circular letter, 24 June 1975, up to 12 July 1976, only one customer had indicated to DCL subsidiary companies that it wished to buy for export to other EEC countries and purchased 1 400 cases at the gross price. The aggregate quantity of Scotch whisky forming part of orders in respect of which DCL subsidiary companies obtained evidence that whisky purchased by United Kingdom trade customers was resold to other EEC countries and required further payment, amounted to over 6 000 cases.

Since July 1976 up to July 1977, around 250 000 cases were bought at the gross price.

## II. PROCEEDINGS AND MAIN ISSUES RAISED

### 1. Procedural steps

By letters of 4 July 1975 and 15 August 1975 to DCL the Commission, while requesting information in pursuance of Article 11 of Regulation No 17, indicated that the price terms of 24 June 1975 appeared to be intended to prevent or impede parallel exports of DCL products from the United Kingdom and to be in breach of Article 85 (1) of the EEC Treaty.

DCL answered that the 'price terms have been in existence for a considerable time and certainly antedated the commencement of parallel exports from the United Kingdom to other common market countries' and that 'in these circumstances it can hardly be contended that these terms were designed to impede such exports'. It also argued of the necessity to protect sole distributors against parallel exports at lower prices. The Commission reminded DCL of the provisions of Regulation 67/67/EEC and of the established views of the Commission concerning the prevention of parallel exports.

After investigation and several requests for information, the Commission amplified its first assessment in a statement of objections addressed to DCL on 22 April 1977 and a hearing was held on 23 June 1977. In replying in writing and orally to the Commission's objections, DCL admitted that the price terms infringe Article 85 (1). DCL also requested that an exemption of the price terms under Article 85 (3) be given, at least for a limited period pending cessation of the 'brewers' monopoly power' in the United Kingdom and/or the national tax discrimination of the continental EEC.

In the statement of objections of 22 April 1977, the Commission indicated that the conditions of sale notified on 30 June 1973 had infringed Article 85 (1) and could not be exempted. DCL did not contest these findings.

### 2. The issue of notification of the price terms

The price terms as such have not been notified formally in accordance with Commission Regulation No 27 of 3 May 1962 [1].

DCL contended that it was not necessary to notify the price terms. On the one hand, they should be considered as part of an overall trading pattern for which formal notifications had been made. On the other hand, they could not be regarded as other than an 'amelioration' of the formal total export prohibition notified with the conditions of sale on 30 June 1973. As a result of this export prohibition discounts were granted exclusively on sales of spirits to be consumed within the United Kingdom. It followed that no change was made on 24 June 1975 to the basis on which discounts were offered to United Kingdom trade customers. But the limitation of the discounts to sales for United Kingdom consumption assumed relevance after the deletion of the non-exportation clause and created a less restrictive system than the absolute prohibition previously in force. To the extent to which the Commission considered that the price terms affected exports to the rest of the EEC, it must recognize that they fell within the limits of the export prohibition contained in the conditions of sale notified and that they were covered by this notification.

### 3. DCL argument in support of an exemption of the price terms

In support of an exemption of the price terms, DCL raised the benefits of the sole distribution system of which consumers receive a fair share. It held that the price terms were an indispensable restriction in order to avoid the destruction of the sole distribution system. The price terms only tended to ensure that competition between sole distributors and parallel importers was fair, having regard to their differing obligations and to the differing market conditions within the EEC. These particular circumstances, amplified

[1] OJ No 35, 10. 5. 1962, p. 1118/62.

below, justified the grant of an individual exemption, notwithstanding the provisions of Regulation 67/67/EEC (1).

The differences between the market conditions and requirements in the United Kingdom and in the other EEC countries, as described by DCL, may be summarized as follows.

The United Kingdom spirit market was unique, in particular as far as Scotch whisky is concerned. Scotch whisky, the traditional drink, constituted some 50 % of the United Kingdom spirit market. Brands of spirits as a whole must compete almost exclusively on price in that country.

The retail trade was very concentrated ; the five largest DCL trade customers, three of which are brewers, took over 40 % of total sales. The biggest brewers, as owners of the 'tied houses' where spirits were sold, exercised a great purchasing power on spirits producers and thus obtained important price advantages.

Indeed, DCL granted substantial price discounts to recognize the commercial power of their large United Kingdom trade customers and to combat the ability of those customers who controlled retail outlets to exclude DCL companies' brands.

DCL's circular letter of 24 June 1975 and the two versions of its Appendix II stated that such discounts were 'designed to meet the particular requirements of the United Kingdom market'. DCL explained that these 'particular requirements of the home market related to the manner in which DCL subsidiary companies traded in the United Kingdom as compared to the manner in which they sold to other countries in the common market' where sole distributors had been appointed to satisfy the requirements of these markets.

Contrary to the situation in the United Kingdom, Scotch whisky in the other EEC countries enjoyed only a very small share of the total spirits market (e.g. in Germany only about ... %) and must strive to win sales from such products as aquavit, brandy and rum or other whiskies. Although not a 'new' product, Scotch whisky did not constitute a traditional, well-established drink there. English gins represented an even smaller part of the spirit market in these countries (e.g. in Germany ... %, DCL gins ... %). DCL 'Cossack' vodka had been marketed there for only about 15 years and found it extremely difficult to make headway, despite substantial promotion. As to Pimm's, Pimm's Limited which owned this unique product had considerable difficulty in achieving market penetration.

Furthermore, competition between Scotch whisky and other spirits in these EEC Member States was made more difficult by discriminatory taxes and other protectionist legislation expressly designed to favour local spirits and to protect them from Scotch whisky. As an example, excise duties on Scotch whisky in France were nearly double those on rum.

Thus, sole distributors were essential to ensure the penetration of these markets and the necessary promotion of DCL spirits. They brought about valuable advantages to distribution : in particular, they ensured regular supply and contributed to guaranteeing quality by the prevention and control of the sale of spirits bearing counterfeit labels. Contrary to United Kingdom wholesalers, sole distributors had to invest in the long term interest of the brand. Sole distributors, who themselves resold to wholesalers, were in a sense one stage higher in the distribution chain than United Kingdom wholesalers.

The promotional activity undertaken by sole distributors cost them, according to DCL, on average £5 per case. The price structure within the EEC must be such as to enable them to bear this cost without being undercut by parallel importers. That was the reason why, after removal of the non-exportation clause from the conditions of sale, DCL confirmed that the various discounts would not be payable in regard to exports to other EEC countries.

## III. APPLICABILITY OF ARTICLE 85 OF THE EEC TREATY

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

DCL (including the DCL subsidiaries) and each of their United Kingdom trade customers who purchase for resale are undertakings within the meaning of Article 85 (1).

The following conditions of sale and price terms apply to the sale of spirits, namely Scotch whisky, gin, vodka and Pimm's by the 38 DCL subsidiary

(1) *cf.* Article 3 (b) (2) of Regulation 67/67/EEC which withdraws the benefit of the block exemption of exclusive distribution agreements when parallel exports are prevented. (OJ No 57, 25. 3. 1967, p. 849/67).

companies listed in Annex 1 to this Decision to their United Kingdom trade customers :

(a) the seller's conditions of sale which were notified on 30 June 1973 applied in any case from 1 January 1973 (1) and were amended by Appendix I of DCL's circular letter of 24 June 1975 ; and

(b) the price terms which are set out in the DCL circular letter of 24 June 1975 and its Appendix II, i.e. 'Certain contractual provisions (relating to price) additional to conditions of sale', modified on 23 February 1977 and which have been applied since 24 June 1975 or about that date.

These conditions of sale and price terms form an essential part of the standard contracts of sale between the DCL subsidiary companies and their United Kingdom trade customers, which contracts are agreements between undertakings within the meaning of Article 85 (1).

## 1. The seller's conditions of sale

### 1.1. *Application of Article 85 (1) of the EEC Treaty*

(a) The following provisions of the notified seller's conditions of sale had as their object and effect the restriction of competition within the common market from 1 January 1973 to or to about 24 June 1975 at which later date such provisions were abandoned.

— The prohibition on reselling, outside Great Britain, spirits sold for delivery in Great Britain, such prohibition to be incorporated in all sub-sales (clause 5 b), was aimed at preventing and did prevent the United Kingdom trade customers of DCL's subsidiaries and their subsequent purchasers from reselling the DCL spirits and competing in the other common market countries.

— The prohibition on reselling under bond (clause 6) tended to prevent all competition from DCL United Kingdom trade customers in other common market countries. This arrangement indeed obliged the buyer of spirits from DCL's subsidiaries to pay British excise duty before reselling the spirits. The resale price of spirits in another common market country would thus have included a high amount of British non-reimbursable excise duty. This ruled out any possibility of resale there.

As an example, a United Kingdom trade customer who bought a case of 12 bottles of Johnnie Walker Red Label at £5·35 (2) had to pay £30·93 in British excise duty before reselling it. He, as well as his subsequent purchasers, could not then compete with sole distributors in other common market countries who were supplied with identical products under bond at £ ... (2). Other excise duty had of course to be paid on spirits imported by the sole distributors, as well as on spirits bought from United Kingdom trade customers, in the EEC country where they were consumed.

The prohibition amounted to an indirect export prohibition.

In view of the DCL position on the United Kingdom market for Scotch whisky, gin, vodka and Pimm's, these two clauses restricted competition to a considerable extent.

This direct and indirect export prohibition imposed on DCL United Kingdom trade customers was likely to affect trade between Member States. It prevented trade between the United Kingdom and other EEC Member States, caused an artificial partition of the common market and was likely to hinder the establishment of a single market among Member States.

Accordingly, the prohibitions on exports to EEC countries and on resale under bond constituted an infringement of Article 85 (1) from 1 January 1973 to or to about 24 June 1975.

(b) The conditions of sale as notified on 30 June 1973 and as modified on 24 June 1975 contain a prohibition to export outside the common market countries (clause 5 b). This prohibition precludes spirits bought in the United Kingdom from being exported to a third country and reimported into another EEC country. Such prohibition is capable of restricting competition within the common market and of affecting trade between Member States when, for example, the level of prices, of customs duties and transportation costs in respect of the goods in question would allow reimports into EEC countries to take place.

However, in this case, the application of customs duties borne by spirits crossing the external frontiers of the European Economic Community tends to make such reimports improbable. The prohibition to export outside the common market countries contained in the conditions of sale is not therefore likely at present to restrict competition and affect trade between Member States to an appreciable extent.

(1) Date when United Kingdom membership of the EEC came into effect.

(2) Prices in force at and immediately prior to 24 June 1975.

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

Under the terms of Article 85 (3) the provisions of Article 85 (1) may be declared inapplicable in the case of any agreement between undertakings which contributes to the improvement of the production or distribution of goods or to the promotion of technical or economic progress while reserving to users an equitable share in the profit resulting therefrom, and which :

(a) neither imposes on the undertakings concerned any restrictions not indispensable to the attainment of the above objectives ;

(b) nor enables such undertakings to eliminate competition in respect of a substantial proportion of the goods concerned.

In the notification of the seller's conditions of sale on 30 June 1973, DCL argued that the conditions of sale contributed to the improvement of distribution and to the promotion of economic progress by ensuring that the goods are distributed with maximum efficiency ; the consumers would obtain the whole of the benefit arising from this improvement and progress.

Nevertheless, the restrictions established above brought about no perceptible objective improvement in the distribution such as would compensate for the adverse effect on competition and free movement of goods in the common market. The market conditions and the nature of the goods in question were not such as to justify a complete isolation of the United Kingdom from the rest of the common market.

Following the Commission statement of objections, DCL admitted that these conditions of sale could not be exemped under Article 85 (3).

Accordingly, the request made by DCL on behalf of its 38 subsidiary companies for exemption of the seller's conditions of sale as notified on 30 June 1973 is rejected.

## 2. Price terms

2.1. *Application of Article 85 (1) of the EEC Treaty*

The price terms applied to transactions for sales of spirits between DCL subsidiary companies and their United Kingdom trade customers are laid out in the DCL circular letter of 24 June 1975 — under the heading 'Price Terms' and its Appendix II modified on 23 February 1977.

(a) The price terms have as their object the restriction and distortion of competition within the common market.

Under the price terms, DCL United Kingdom trade customers have to inform the selling DCL subsidiary company that they wish to export to other EEC countries. Purchases must then be made at the gross price.

This gross price was until 22 February 1977 the price before deduction of any allowances, rebates or discounts normally granted to United Kingdom trade customers. Since 23 February 1977, it is the price before deduction of any allowances or discounts to sole distributors in other EEC countries. In both cases, United Kingdom trade customers are charged different prices for identical goods dependent on whether they resell in the United Kingdom or in another common market country.

The price terms tend to restrict competition in EEC countries other than the United Kingdom and amount to an indirect export prohibition.

The price terms, in providing for the application to DCL United Kingdom trade customers of a different price for spirits exported to other EEC countries from that charged when the spirits are resold for consumption in the home market and in reserving price allowances for spirits for resale and consumption in the United Kingdom, restrict the opportunity of such customers reselling in an EEC country other than the United Kingdom. Sales by DCL United Kingdom trade customers and by their subsequent purchasers in EEC countries other than the United Kingdom are indeed rendered, at the very least, more difficult. Competition in such countries on the part of DCL United Kingdom trade customers and traders purchasing from them is thereby restricted.

DCL admitted that their price terms were intended, following the removal of the export prohibition, to protect DCL sole distributors from competition on the part of traders purchasing from DCL trade customers in the United Kingdom and reselling for consumption in the sole distributors' territories.

The non-applicability of price allowances on spirits for export and the application to the same customers of different prices for spirits for export and for spirits for United Kingdom consumption are clearly an attempt to impede parallel imports from the United Kingdom into EEC countries other than the United Kingdom, with the same object as a formal export prohibition and can be regarded as a more efficient way to discourage export.

DCL United Kingdom trade customers are requested by DCL to indicate their intention or that of their subsequent purchasers to export to other EEC countries. Furthermore, the price terms provide for the exaction of penalties for non-observance. A customer who has not observed the price terms, or who is suspected of not observing them, may have to pay the gross price, even on spirits for consumption in the United Kingdom. He may later obtain reimbursement with reasonable interest of the amount equivalent to the price allowances to the extent to which he provides proof of consumption in the United Kingdom. Nevertheless, the application of this provision may strongly affect the commercial position of such a customer and amounts to a sanction and an effective incentive to observe the agreed price terms.

DCL argued that such price terms, restricting the allocation of price allowances to spirits sold for consumption in the United Kingdom, could not have been designed to impede imports into other EEC countries since they have been in existence for a considerable period of time and certainly antedated the commencement of such imports. This argument does not alter the assessment that the price terms have as their object the restriction of competition in EEC countries other than the United Kingdom, but demonstrates that since the existence of such price terms was simply a consequence of the non-exportation clause, the clarification of 24 June 1975 was clearly designed to maintain the effects of this non-exportation clause.

These price terms have as a further object to distort competition by preventing the price advantages attributable to the competitive conditions in the United Kingdom from affecting the competitive structure in the rest of the common market.

As stated in the circular letter of 24 June 1975 and Appendix II, the price allowances 'are designed to meet the particular requirements of the home trade'. DCL explained that these price allowances were intended to fit in with the competitive conditions of the United Kingdom spirits market which was characterized by the power of the purchasers and the strong price competition between the different brands of spirits.

The reservation of price allowances on spirits for United Kingdom consumption prevents the effect of favourable pricing in the United Kingdom from being extended to the DCL spirits market in common market countries other than the United Kingdom. This amounts to an isolation of the United Kingdom market in respect of such price advantages attributable to the competitive conditions which prevail in the United Kingdom with the effect of preventing them from affecting the competitive conditions in other common market countries. Accordingly, consumers in those countries cannot benefit from the better price advantages in the United Kingdom.

(b) As the price terms clearly have as their object the restriction and distortion of competition within the common market, it is not necessary to show their actual repercussions in order to establish the applicability of Article 85 (1) of the EEC Treaty. However, it should be noted, as a subsidiary matter, that the effect of the price terms is to restrict and distort competition to a considerable extent within the common market.

The prices at 24 June 1975 and 1 March 1977 of a case of 12 bottles of Johnnie Walker Red Label are used as an example. The price terms have entailed, for a British purchaser who wishes to export, a buying price 99 % and 92·7 % (or ... % 'average' price) higher than the price he would pay in the absence of this restriction. An increase of this size considerably distorts competition within the common market.

Moreover, as a result of the price terms, the price paid by a United Kingdom trade customer of DCL wishing to export has at these dates been ... % and .... % higher than that paid for the same product by the sole distributors in the other common market countries. Indeed, sole distributors have higher costs due to their obligations of promoting the spirits. It has been argued that these costs approximate to the difference between the buying price of the parallel importer and that of the sole distributor. However, such differences in the buying price make it distinctly difficult for the DCL United Kingdom trade customers and, even more so, for their subsequent customers to compete with the sole distributors in the other EEC Member States or at the very least, render parallel export unattractive.

DCL has strictly implemented its price terms and effectively pursued those who breached them. DCL either asked for the price difference when spirits bought at the home trade price were later found in EEC countries other than the United Kingdom or charged certain customers the gross price for purchases suspected of being intended for exports. Such customers could then bring

proof of actual consumption in the United Kingdom and be entitled to a refund. For a year following the application of the price terms of 24 June 1975, no cases of spirits purchased at the gross price were exported, except on one occasion, namely that of a United Kingdom customer who had purchased some 1 400 cases of Scotch whisky at the gross price with the intention of exporting them to other EEC countries.

DCL has stated that from July 1976 to July 1977, United Kingdom trade customers purchased approximately 250 000 cases of Scotch whisky at the gross price. However, this figure still leaves open how many of these cases were exported since the gross price is also charged for certain purchases even when the customer does not necessarily intend to export.

In any event, the said volume of parallel exports remains even lower than that before 24 June 1975 (550 000 cases) at a time when a formal nonexportation clause was imposed on DCL customers. It can reasonably be assumed that exports would have reached a significantly higher level in the absence of the restriction resulting from the price terms.

The complainants have stressed the difficulties which, due to the DCL pricing practices, they face in their trading of spirits. They find themselves in practice debarred from exporting to other EEC countries after purchase at the gross price. DCL subsidiaries tend to charge them systematically the gross price with the effect that an extra burden is imposed on their trading activities in the United Kingdom.

Furthermore, these price terms enable DCL to maintain a price to sole distributors which is somewhat higher or at least similar to that charged to United Kingdom trade customers, although sole distributors are at a higher level in the distribution chain and bear promotional expenses which the United Kingdom wholesalers do not bear.

Accordingly, in view of DCL's market position in relation to Scotch whisky, gin, vodka and Pimm's in the United Kingdom, the price terms appreciably restrict and distort competition within the common market.

(c) The price terms are likely to affect trade between Member States; they hinder or, at the very least, make it more difficult for United Kingdom customers to export DCL spirits to the other common market countries, which they would do to a large extent in the absence of these terms. Thus they tend to partition the common market by hindering exchanges between the United Kingdom and other EEC countries for a substantial part of the products in question and are prejudicial to the establishment of a single market among Member States.

Accordingly, the price terms of 24 June 1975 infringe Article 85 (1). DCL did not contest these findings.

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

2.2.1. The issue of notification

The price terms are not eligible for an exemption under Article 85 (3) since they have not been properly notified in accordance with Article 4 of Regulation No 17 and with the provisions of Commission Regulation No 27. The price terms were not exempt from notification under Article 4 (2) (1) of Regulation 17 because, although they amount to an agreement between undertakings from one Member State, the United Kingdom, they do relate to exports between Member States.

The price terms are not covered by the notification of the conditions of sale of 30 June 1973 since this notification contained no mention of the price structure. Moreover, the circular letter of 24 June 1975 and its Appendix II contain provisions over and above those of the agreement as notified. DCL did itself view them as separate measures since it replied on 8 July 1975 to a Commission request for information concerning the conditions of sale by sending to the Commission only the new version of those conditions of sale contained in Appendix I to the 24 June 1975 circular letter, omitting to refer to the circular letter itself and its Appendix II.

The sending of a copy of the price terms on 11 July 1975 to the Commission upon request cannot be considered as a notification.

Nevertheless, DCL requested in its written observations on the Commission's objections and at the hearing that approval be given under Article 85 (3) to DCL's United Kingdom price terms.

2.2.2. The conditions of Article 85 (3)

The price terms, however, could not be exempted, even if they had been properly notified, since they do not satisfy the requirements of Article 85 (3).

(a) DCL put forward the following arguments in support of its contention that the price terms fulfilled the conditions of Article 85 (3).

The system of distribution by which one distributor is appointed to promote sales and to ensure the proper distribution of spirits, had numerous advantages and beneficial results in other EEC countries. The price terms were part of an overall trading pattern within which the exclusive distribution system contributes to improving distribution while reserving a fair share of the benefit to the consumer. The price terms were an indispnesable restriction to ensure that, while meeting the cost of their sales promotional obligations, sole distributors would be in a position to compete with parallel importers. Two particular circumstances justified the restrictive measure : on the one hand, sales promotion was required in the EEC countries other than the United Kingdom because DCL spirits, although not a new product, were not yet well established ; on the other hand, in the United Kingdom market spirit prices were kept artificially low due to the power of DCL's purchasers, mainly the brewers.

(b) However, the agreement, which has to be evaluated in the light of Article 85 (3) in the present proceedings, is not an exclusive distribution agreement but a series of agreements contained in and arising from sales contracts concluded between DCL subsidiary companies and United Kingdom trade customers of which the price terms are an essential part. The question is not whether the exclusive dealing agreements are beneficial, but whether the price terms which are not part of those agreements, albeit economically related thereto, are such as to be able to benefit from an Article 85 (3) exemption.

These sales contracts are not in themselves capable of directly achieving an improvement of distribution in EEC Member States. The price terms exclusively concern the application of differing prices with the object of hindering exports by United Kingdom trade customers. They further deprive the consumers in EEC countries other than the United Kingdom of possibilities of buying DCL spirits at a lower price and of the advantages deriving from competition on the United Kingdom spirits market.

The price terms therefore do not fulfil the conditions of Article 85 (3).

(c) Even if the price terms were to be viewed in relation to the exclusive distribution system established by DCL, they could not be exempted.

The Commission recognizes that, frequently, some advantages may result from the appointment of exclusive distributors in EEC countries, with responsibilities for promoting sales for a producer situated in another EEC country. As to the sole distribution agreements concluded by DCL subsidiaries with distributors in EEC Member States other than the United Kingdom the Commission had indicated its intention to take a favourable decision [1].

Admitting that the appointment of sole distributors by DCL brings about an improvement of distribution, it can however not be established that the price terms amount to a restriction which is indispensable to the attainment of that objective.

Since, according to DCL, DCL spirits are not as well-established in other EEC countries as in the United Kingdom, sales and promotion are more costly in these other countries. However, DCL spirits are not new products to need introduction for which extraordinary promotional efforts are required. The marketing conditions in these countries are not such as to call for a protection of these markets from competition on the part of traders purchasing DCL spirits in the United Kingdom.

According to DCL, competition between brands and the bargaining power of some purchasers such as the brewers have led to a low price level of DCL spirits in the United Kingdom which make it difficult for them to raise prices in the United Kingdom.

[1] See notice published in OJ No C 9, 2. 2. 1971 in accordance with Article 19 (3) of Regulation No 17, in case No IV/10.469 — White Horse Distillers — B.A.P. CORIMA.

DCL however is in a position to ensure, by other means than through the impediment of parallel exports, the efficient performance of their functions by its sole distributors. DCL could, for example, as it does in the United Kingdom market, itself assume the responsibility of promoting sales in the other EEC markets or allow for the costs resulting from promotion by sole distributors in the prices charged to them. At present DCL charges similar prices to United Kingdom wholesalers and sole distributors while imposing on them differing obligations, a price structure which may well have contributed to the difficulty faced by sole distributors. It has not been established that the market conditions described by DCL do not permit the application of other pricing arrangements which would not result in a restriction of competition.

Accordingly, DCL price terms do not fulfil the conditions set out in Article 85 (3) and DCL's request for an exemption for a limited period pending cessation of the 'brewer's monopoly power' could not be met.

## IV. APPLICABILITY OF ARTICLE 3 (1) OF COUNCIL REGULATION No 17

Under the terms of Article 3 (1) of Council Regulation No 17, where the Commission, upon application or upon its own initiative, finds that there is an infringement of Article 85 of the Treaty, it may by decision require the undertakings concerned to bring such infringement to an end.

In view of the serious effect on competition within the common market resulting from the price terms, the DCL group should be required to terminate without delay the infringement constituted by the price terms, with the obligation upon The Distillers Company Ltd, to ensure that this requirement is satisfied. The DCL group should in particular be required to refrain from all further action calculated to restrict exportation from the United Kingdom into other EEC countries of their spirits bought by United Kingdom trade customers.

## V. APPLICABILITY OF ARTICLE 15 OF COUNCIL REGULATION No 17

Under the terms of Article 15 (2) of Regulation No 17, 'The Commission may by decision impose on undertakings fines of from 1 000 to 1 000 000 units of account, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement where, either intentionally or negligently :

(a) they infringe Article 85 (1) ... of the Treaty ; ... In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.'

Paragraph 5 of Article 15 of Regulation No 17 states that :

'The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place :

(a) after notification to the Commission and before its decision in application of Article 85 (3) of the Treaty, provided they fall within the limits of the activity described in the notification ; ...'

Article 15 (2) of Regulation No 17 is applicable in respect of the DCL price terms of 24 June 1975.

By offering and applying the price terms, DCL committed an infringement of Article 85 (1) of particular gravity and consequence for the free movement of goods and the trading activities of numerous traders in DCL spirits within the common market.

The price terms cannot benefit from the provisions of Article 15 (5) of Regulation No 17. First, they have not been notified in accordance with Article 4 of Regulation No 17 and with the provisions of Commission Regulation No 27. Secondly, they do not fall within the limits of the activity described in the notification on 30 June 1973 of the conditions of sale. In describing its activity in this notification, DCL made no reference to its pricing arrangements within the EEC. Although the price terms as well as the prohibitions to export contained in the notified conditions of sale affected exports, they each amounted to distinct provisions.

However, the Commission takes into account that, in the circumstances of this case, DCL's failure to notify may well have been in the bona fide belief that, since the price terms had been communicated to the Commission in the course of correspondence relating to the conditions of sale, the prior notification of the conditions of sale would extend to the price terms and that no separate notification of the price terms was necessary.

The Commission refrains from imposing a fine in this case.

HAS ADOPTED THIS DECISION :

*Article 1*

The prohibition to export from the United Kingdom to other EEC countries and the prohibition to resell in bond contained in the seller's conditions of sale, which have been notified to the Commission on 30 June 1973, and which are part of the contracts for the sale of spirits entered into by 38 subsidiary companies of The Distillers Company Limited with their trade customers established in the United Kingdom, constituted an infringement of Article 85 (1) of the Treaty establishing the European Economic Community, from 1 January 1973 to or to about 24 June 1975.

*Article 2*

The application for a declaration under Article 85 (3) that Article 85 (1) is inapplicable is refused in respect of the provisions and the period referred to in Article 1 hereof.

*Article 3*

The price terms, which are part of the contracts referred to in Article 1 hereof and which are set out in Appendix II of The Distillers Company Limited circular letters of 24 June 1975 and of 23 February 1977, constitute an infringement of Article 85 (1) of the Treaty establishing the European Economic Community and an application of Article 85 (3) is not justified.

*Article 4*

The Distillers Company Limited to which this Decision is addressed shall ensure that the infringement referred to in Article 3 hereof is brought to an end without delay. In particular The Distillers Company Limited and its subsidiary companies shall refrain from all further action by means of their price terms calculated to restrict the exportation from the United Kingdom into other EEC countries of their spirits bought by trade customers established in the United Kingdom.

*Article 5*

This Decision is addressed to The Distillers Company Limited, 21 St James's Square, London, United Kingdom, which shall notify it to its subsidiary companies listed in Annex 1 hereto.

Done at Brussels, 20 December 1977.

*For the Commission*

Raymond VOUEL

*Member of the Commission*

*ANNEX I*

**List of The Distillers Company Ltd subsidiary companies referred to above**

John Dewar & Sons Ltd.
John Walker & Sons Ltd.
James Buchanan & Co. Ltd.
Buchanan-Booth's Agencies Ltd.
White Horse Distillers Ltd.
Wm. Sanderson & Son Ltd.
John Haig & Co. Ltd.
Distillers Agency Ltd.
A. & A. Crawford Ltd.
J. & G. Stewart Ltd.
Macdonald Greenlees Ltd.
Slater Rodger & Co. Ltd.
James Watson & Co. Ltd.
W. P. Lowrie & Co. Ltd.
Ainslie & Heilbron (Distillers) Ltd.
John Gillon & Co. Ltd.
John Begg Ltd.
Bermore Distilleries Ltd.
Peter Dawson Ltd.
Maclay Duff (Distillers) Ltd.
Mitchell Bros. Ltd.
Bulloch Lade & Co. Ltd.
J. & R. Harvey & Co. Ltd.
Daniel Crawford & Son Ltd.
John Hopkins & Co. Ltd.
Baird-Taylor Ltd.
Donald Fisher Ltd.
D. & J. McCallum Ltd.
Low Robertson & Co. Ltd.
John Robertson & Co. Ltd.
J. & W. Hardie Ltd.
John Crabbie & Co. Ltd.
Tanqueray Gordon & Co. Ltd.
Booth's Distilleries Ltd.
Charles Tanqueray & Co. Ltd.
Boord & Son Ltd.
J. & J. Vickers & Co. Ltd.
Pimm's Ltd.

*ANNEX II*

**Price of DCL Scotch whisky : one case of Johnnie Walker Red Label**

| Date | Under bond gross price | Price allowances (maximum) | UK wholesalers' net price | Relationship of gross price to net price | Sole distributors' price | Relationship of gross price to sole distributors' price | Relationship of sole distributors' price to UK wholesalers' price |
|---|---|---|---|---|---|---|---|
| 1. 1. 1973 / 11. 1. 1974 | £ 8·25 | (3·00 + 0·95 (1) + 0·25 + 0·15) (2)<br>£ 4·35 | £ 3·90 | 114 % | | % | % |
| 12. 1. 1974 / 31. 12. 1974 | £ 8·25 | (3·00 + 0·95 + 0·25 + 0·35)<br>£ 4·55 | £ 3·70 | 123 % | | % | % |
| 1. 1. 1975 / 31. 3. 1975 | £ 9·55 | (3·50 + 0·95 + 0·25 + 0·35)<br>£ 5·05 | £ 4·50 | 112 % | | % | % |
| 1. 4. 1975 / 30. 6. 1975 | £ 10·65 | (3·75 + 0·95 + 0·25 + 0·35)<br>£ 5·30 | £ 5·35 | 99 % | | % | % |
| 1. 7. 1975 / 31. 7. 1975 | £ 11·71 | (4·00 + 0·95 + 0·25 + 0·35)<br>£ 5·55 | £ 6·16 | 90 % | | % | % |
| 1. 8. 1975 / 31. 9. 1975 | £ 11·71 | (4·00 + 0·95 + 0·25 + 0·35)<br>£ 5·55 | £ 6·16 | 90 % | | % | % |
| 1. 10. 1975 / 26. 1. 1976 | £ 12·16 | (4·00 + 0·95 + 0·25 + 0·35)<br>£ 5·55 | £ 6·61 | 83·9 % | | % | % |
| 27. 1. 1976 / 6. 4. 1976 | £ 12·16 | (4·00 + 0·95 + 0·25 + 0·35)<br>£ 5·55 | £ 6·61 | 83·9 % | | % | % |
| 7. 4. 1976 / 31. 1. 1977 | £ 12·16 | (4·00 + 0·95 + 0·25 + 0·55)<br>£ 5·75 | £ 6·41 | 89·7 % | | % | % |
| 1. 3. 1977 | £ 13·61<br>[£ 13·51] | (4·00 + 1·24 + 0·25 + 0·16 + 0·90)<br>£ 6·55 | £ 7·06 | 84·8 %<br>[92·7 %] | (3) | %<br>% | % |

(1) Increase 1 April 1973.
(2) Until 30 September 1973.
(3) Increase 1 February 1977.

*ANNEX III*

**Price of DCL gin : one case of Gordon's Special Dry London Gin**

| Date | Under bond gross price | Price allowances (maximum) | UK wholesalers' net price | Relationship of gross price to net price | Sole distributors' price | Relationship of gross price to sole distributors' price |
|---|---|---|---|---|---|---|
| 14. 4. 1975 / 30. 6. 1975 | £ 9·50 | (3·50 + 0·94 + 0·35)<br>£ 4·79 | £ 4·71 | 101 % | | % |
| 1. 7. 1975 / 30. 9. 1975 | £ 9·85 | (3·60 + 0·94 + 0·35)<br>£ 4·89 | £ 4·96 | 98·5 % | | % |
| 1. 10. 1975 / 2. 2. 1976 | £ 10·55 | (3·70 + 0·94 + 0·35)<br>£ 4·99 | £ 5·56 | 89·7 % | | % |
| 3. 2. 1976 / 31. 3. 1976 | £ 10·55 | (3·70 + 0·94 + 0·35)<br>£ 4·99 | £ 5·56 | 89·7 % | | % |
| 1. 4. 1976 / 28. 2. 1977 | £ 10·55 | (3·70 + 0·85 + 0·55)<br>£ 5·10 | £ 5·45 | 93·5 % | | % |
| 1. 3. 1977 | £ 11·75 | (3·70 + 1·00 + 0·90)<br>£ 5·60 | £ 6·15 | 91 % | | |

*ANNEX IV*

**Price of DCL vodka : one case of Cossack Vodka**

| Date | Under bond gross price | Price allowances (maximum) | UK wholesalers' net price | Relationship of gross price to net price | Sole distributors' price | Relationship of gross price to sole distributors' price |
|---|---|---|---|---|---|---|
| 1. 4. 1975 / 30. 9. 1975 | £ 10·47 | (4·25 + 0·87 + 0·35)<br>£ 5·47 | £ 5·00 | 109·4 % | | % |
| 1. 10. 1975 / 28. 2. 1976 | £ 11·32 | (4·50 + 0·87 + 0·35)<br>£ 5·72 | £ 5·60 | 102 % | | % |
| 1. 3. 1976 / 28. 2. 1977 | £ 11·32 | (4·50 + 0·87 + 0·55)<br>£ 5·92 | £ 5·40 | 109·6 % | | % |
| 1. 3. 1977 | £ 12·07 | (4·50 + 0·94 + 0·90)<br>£ 6·34 | £ 4·98 | 127·3 % | | % |