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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 June 1978

settling the dispute between the Federal Republic of Germany on the one side and Belgium and the Netherlands on the other over the level of the compulsory tariffs for the carriage of goods by road between those Member States

(Only the Dutch, French and German texts are authentic)

(78/559/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2831/77 of 12 December 1977 on the fixing of rates for the carriage of goods by road between Member States [1], and in particular Article 13 thereof,

I

Whereas the Netherlands Government, in a letter from its Permanent Representation dated 10 October 1977, informed the Commission that its negotiations with the German Government with a view to raising the bilateral tariff for the carriage of goods by road between the Federal Republic of Germany and the Netherlands (DNST) had not led to an agreement; whereas the Netherlands Government therefore asked the Commission to take a decision on this dispute pursuant to Article 4 (2) (b) of Council Regulation (EEC) No 1174/68 of 30 July 1968 on the introduction of a system of bracket tariffs for the carriage of goods by road between Member States [2]; whereas in a letter dated 3 February 1978 it changed the legal basis of its request by invoking Article 13 of Regulation (EEC) No 2831/77, which replaced Regulation (EEC) No 1174/68 with effect from 1 January 1978;

Whereas the Netherlands Government pointed out in its request that an increase of 20 to 25 % in the DNST is justified because of the increase in costs since the tariff was brought into force in 1971 and because of the present state of the market; whereas the Netherlands Government is nevertheless prepared to compromise in its negotiations with the German Government by accepting a smaller increase; whereas the Netherlands Government also agrees to increase the rates expressed in guilders in relation to those expressed in marks to take account of the divergent movement of the two currencies since the inception of the DNST;

Whereas, moreover, according to the Netherlands Government the profitability of Netherlands undertakings has deteriorated as shown in the table below:

Year	*Net surplus (%)*
1971	6·4
1972	7·6
1973	5·2
1974	1·4
1975	1·5
1976 [1]	2·0 [1]

(1) OJ No L 334, 24. 12. 1977, p. 22.
(2) OJ No L 194, 6. 8. 1968, p. 1.

(1) Provisional.

Whereas, furthermore, the Netherlands Government does not consider that there are grounds for fearing that a small increase in rates expressed in marks, as proposed during the negotiations, would be detrimental to general prices policy;

Whereas the Belgian Government, in a letter from its Permanent Representation dated 23 November 1977, made a similar communication to the Commission and submitted an identical request concerning the bilateral tariff between the Federal Republic of Germany and Belgium (DBST) and, in a letter dated 21 February 1978, also based the said request on Article 13 of Regulation (EEC) No 2831/77;

Whereas the Belgian Government also believes that an increase in the DBST is inevitable because of the increase in costs and because of the state of the market; whereas the increase need not, however, be the same in the two schedules, but could be varied to take account of the divergent movement of the currencies; whereas the Belgian Government emphasizes that the DBST has stayed the same since its introduction in September 1971 while the costs of Belgian undertakings have increased by about 52 % between that date and 1 January 1977, yielding an average cost per tonne/kilometre of Bfrs 2·39; whereas, according to the Belgian Government, the average rates obtained by Belgian undertakings on the transport market between Belgium and the Federal Republic, expressed as a percentage of the upper limit of the bracket, have moved as shown below:

First half of 1973	75·0
Second half of 1973	78·5
First half of 1974	85·3
Second half of 1974	85·7
First half of 1975	88·6
Second half of 1975	89·8
First half of 1976	87·8
Second half of 1976	92·9
First half of 1977	92·6

Whereas the German Government justifies its refusal to raise the rates in marks in the two tariffs on the grounds that, basically, the determining factor in the formation of rates under the rules in question is the state of the market; whereas it points out that the average rates for carriage effected by German undertakings (otherwise than in special agreements) are still within the bracket at a level which is still well below the upper limit, the rates actually charged covering the whole bracket spread, with certain clusters at the upper limit and lower limit, as is clear from the following tables:

DNST tariff

Index of rates obtained, the upper limit of the tariff being 100	Number of operations	Percentage
More than 100	2 087	16·3
100	469	3·7
95 to less than 100	624	4·9
90 to less than 95	1 081	8·5
85 to less than 90	1 205	9·4
80 to less than 85	1 547	12·1
78 to less than 80	903	7·1
77 to less than 78	2 908	22·8
Less than 77	1 937	15·2

The corresponding DBST figures are as follows:

Index of rates obtained, the upper limit of the tariff being 100	Number of operations	Percentage
More than 100	2 300	16·7
100	486	3·5
95 to less than 100	605	4·4
90 to less than 95	1 278	9·3
85 to less than 90	1 042	7·6
80 to less than 85	1 789	13·0
78 to less than 80	926	6·7
77 to less than 78	4 199	30·5
Less than 77	1 148	8·3

Whereas the German Government further points out that the rates below the minimum in the German schedules have been agreed legally within the brackets expressed in guilders and in francs, while, as regards those above the maximum, some are legally and others illegally in excess of the maximum tariff expressed in marks, in relation to the Community rules;

Whereas it is further argued that the clusters of rates near the lower and upper limits of the brackets are attributable to the very nature of a system of compulsory bracket tariffs, and that, in these circumstances, it does not appear advisable to raise the schedules expressed in marks, even if it is accepted that costs have increased; whereas, moreover, an increase in the tariffs of a percentage equivalent to that requested by the other two Governments could instead be achieved by making an appropriate increase in the rates within the present brackets if the state of the market allowed this, while the imposition of an increase in the tariffs contrary to the state of the market would be ineffective, since such a measure could be evaded through special agreements; whereas the German point of view is that the first essential is to remove the disparities resulting from the movement of exchange rates;

Whereas the Commission has not succeeded in obtaining precise information on the important matter of how the productivity of undertakings has

evolved ; whereas it is undeniable in this respect that rationalization of the operation of undertakings and technical progress have appreciably curbed the increase in costs per unit of production since the two tariffs were introduced ;

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Whereas pursuant to Article 11 (3) of Regulation (EEC) No 2831/77, Member States may, in order to offset the effects of monetary fluctuations, decide unilaterally to carry out an upward revision of rate schedules expressed in their currency ;

Whereas, in consequence, there are no longer any grounds for dispute in this area on which the Commission might arbitrate concerning the adjustment of the schedules expressed in guilders in the DNST and in francs in the DBST to the changes in exchange rates since 1971 ;

Whereas the Commission consequently considers it unnecessary to pronounce on the requests made on this subject by the Government of the Netherlands and the Government of Belgium ;

Whereas a decision to adjust the tariffs in any respect other than this particular one has to accord with Article 10 of Regulation (EEC) No 2831/77, and in particular paragraph 1 thereof ;

Whereas, pursuant to that Article, compulsory tariffs are to be drawn up by reference to a base rate, which is to be the middle point of the bracket ; whereas, pursuant to the same provision, the base rate is to be fixed having regard to both the average cost of the transport operation concerned, including where appropriate, the general expenses of the business, for a properly managed undertaking enjoying normal conditions of use of its carrying capacity, and market conditions, and is to be such as to provide a fair return for carriers ;

Whereas an increase in compulsory tariffs also has to be considered in the light of the objectives of the Treaty of promoting balanced and stable expansion and the harmonious development of the economies of the Member States ;

Whereas as regards the first criterion — the cost price — information provided by the Governments concerned shows that there has undeniably been an increase in average road haulage costs ;

Whereas the information provided by the Governments concerning the size of this increase differs ; whereas the Commission considers it evident, however, that a major rise has occurred in all essential elements of the cost of the transport services in question ; whereas this applies particularly to salaries and wages and the purchase and running costs of vehicles ;

Whereas, however, the Commission considers that, for a correct assessment of the implications of this increase, account has to be taken of the improvement in the productivity of transport undertakings ;

Whereas a comparison, taking account of such increase, of costs and average receipts obtained by carriers shows that the latter no longer cover costs per tonne/kilometre ;

Whereas, however, the data on costs and receipts taken into consideration relate to all international transport services performed by transport undertakings, and Regulation (EEC) No 2831/77 stipulates that the base rate is to be calculated in respect of properly managed undertakings enjoying normal conditions of use of their carrying capacity, i.e. where the expense revenue ratio is better than the general average ;

Whereas as regards the second criterion — the state of the market — account should be taken in particuular of the level of rates actually charged on the routes considered and their scatter over the bracket ;

Whereas, as regards these two aspects, the rates charged cover the entire bracket spread and their average level at the end of 1977 was 85·6 % for German undertakings, 93 % for Dutch undertakings and 96 % for Belgian undertakings ;

Whereas, however, the bracket spread is no longer 23 % but has widened appreciably as a result of monetary disparities, with the result that the 85 % average recorded for German undertakings is influenced by the charging, for a number of operations, of rates legally agreed in guilders or francs and higher averages for Dutch and Belgian undertakings reflect the effects of charging rates established in marks ;

Whereas, as regards the criterion of a fair return for carriers, the evidence supplied to the Commission indicates a definite eroding of the profit margins of the undertakings concerned ; whereas, however, this state of affairs should be seen against the background of the recession of recent years, which has hit the inland transport sector as a whole and also most other sectors of economic activity ;

Whereas, however, in order to adjust the tariff schedules to the changes in costs, the base rates should be increased in such a way as to enable a properly managed undertaking working in normal operating conditions to cover its costs with the receipts from rates formed by reference to the revalued tariffs ;

Whereas, in the exercise of its power of assessment, the Commission considers that a 15 % increase in the DNST and DBST base rates is both necessary and adequate ; whereas such an increase is not intended to cover costs in each individual case, or aim which would not accord with the objectives of the tariff system ; whereas the Commission believes, however, that an increase of 15 % represents the correct adjustment to the tariffs ;

Whereas in particular it takes the view that the cost increases of over 50 % claimed by the various trade bodies must be adjusted to allow for the improvement in productivity, and that account must be taken of the fact that the levels at which the tariffs were initially fixed were too high ;

Whereas, having regard to its repercussions on the economy in general, a case can also be made for this increase in the light of the objectives of the Treaty ;

Whereas the said increase is without prejudice to any unilateral adjustment on the part of the Government of the Netherlands or of the Government of Belgium with a view to adapting the schedules as expressed in guilders or francs to take account of currency fluctuations ;

Whereas the Committee provided for in Article 16 of Regulation (EEC) No 2831/77 has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS DECISION :

Article 1

1. The base rates of the compulsory tariffs for the carriage of goods by road between :

— Germany and the Netherlands,

— Germany and Belgium,

shall be raised by 15 %.

2. Within 30 days from the date on which this Decision takes effect, the Governments concerned shall publish the tariffs as amended pursuant to this Decision.

Article 2

This Decision shall be without prejudice to any unilateral action by the Netherlands or Belgian Governments under Article 11 (3) of Regulation (EEC) No 2831/77 with a view to increasing the rates of the two tariffs as expressed in guilders or francs in order to offset the effects of monetary fluctuations since their coming into force.

Article 3

Pursuant to Article 13 (2) of Regulation (EEC) No 2831/77 this Decision shall take effect one month after its publication in the *Official Journal of the European Communities*, unless a Member State refers the matter to the Council in the meantime.

Article 4

This Decision is addressed to the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands.

Done at Brussels, 12 June 1978.

For the Commission

Richard BURKE

Member of the Commission