

## COMMISSION DECISION

of 28 July 1971

on a dispute between France and the Netherlands on the fixing of tariff rates for the carriage of goods by road between the two countries in implementation of Council Regulation (EEC) No 1174/68

(Only the French and Dutch texts are authentic)

(71/301/EEC)

## THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community;

Having regard to Council Regulation (EEC) No 1174/68<sup>1</sup> of 30 July 1968 on the introduction of a system of bracket tariffs for the carriage of goods by road between Member States, and in particular Articles 2 to 4 thereof;

Whereas France, by letter of 24 May 1971 from the Office of its Permanent Representative, and the Netherlands, by letter of 23 June 1971, from the Office of its Permanent Representative, referred to the Commission, pursuant to Article 4 (2) (b) of Regulation (EEC) No 1174/68, the dispute which has arisen between those countries on certain aspects of the tariff in respect of road transport between France and the Netherlands;

Whereas at the meeting with the representatives of the Commission on 21 June 1971, the representatives of the two Member States notified the Commission, in accordance with Article 4 (2) (a) of the said Regulation, of their agreement on all aspects of that tariff which are not the subject of the dispute which has been referred to the Commission;

Whereas the dispute relates to the general level of the tariff rates and to the differentiation of the rates by tariff classes of goods;

Whereas the Netherlands considers that rates proposed jointly by French and Netherlands carriers for the different tariff classes, in the proposal published in the *Journal Officiel de la République française* of 25 November 1970, are justified, having regard to Article 3 of Regulation (EEC) No 1174/68, in parti-

cular by the cost of the corresponding transport operations effected by Netherlands carriers;

Whereas France, on the other hand, considers that the rates proposed by the carriers are too high, that the differentiation of the rates by tariff classes is excessive and that, for the rates to be in line with Article 3 of Regulation (EEC) No 1174/68, they should be reduced by 25 % for up to 125 km, by a percentage decreasing gradually from 25 to 8 % for distances of from 126 to 200 km and by 8 % for distances of 201 km and over, and that the rates for tariff class I should be fixed at 110 % and those of tariff class IV at 85 % of the rates for tariff class II;

Whereas France is of the opinion that, in this connection, the cost increase, on which the carriers based their 1970 proposal, exceed for French carriers, when compared with a tariff proposed by the latter in 1967, the cost increases which have actually occurred since then; whereas the return on which the carriers base their calculation is excessive having regard to the concept of 'fair returns' within the meaning of the second subparagraph of Article 3 (1) of the said Regulation; whereas the carriers' cost calculations do not take account of the need for only one driver for short hauls and whereas the variations in the differentiation of rates by tariff classes appear to exaggerate the differential cost of transport;

Whereas, pursuant to Article 3 of Regulation (EEC) No 1174/68 'each tariff shall be drawn up by reference to a base-rate, which shall be the middle point of the bracket', the bracket spread being 23 % of the maximum rate; whereas 'the base-rate shall be fixed having regard both to the average cost of the transport operation concerned, including the general expenses of the business, for a properly managed undertaking enjoying normal conditions of use of its carrying capacity, and to market conditions and shall be such as to provide a fair return for carriers'; whereas 'tariffs may vary according to the circum-

<sup>1</sup> OJ No L 194, 6.8.1968, p. 1.

stances of the service provided and in particular according to the technical and economic characteristics of the operation in question, the route concerned, the length of the transit period, the tonnage conditions and the type of goods carried';

Whereas, as regards the level of the rates,

- in fixing the base-rates of the tariffs, account must be taken of the average cost of the corresponding transport operation effected by French and Netherlands carriers;
- the percentage increase since 1967, mentioned by France, has reference to transport costs and not to the tariff proposed by the carriers in 1967, the relationship of which to those costs was not that provided for in Regulation (EEC) No 1174/68;
- for determining vehicle crew costs, account must be taken of the provisions of Council Regulation (EEC) No 543/69<sup>1</sup> of 23 March 1969 on the harmonization of certain social legislation relating to road transport;
- the average profit margin taken for calculation of the rates should correspond to what is customary in that sector;

Whereas, having regard to the provisions of Article 3 of Regulation (EEC) No 1174/68, account should be taken, in the differentiation of the rates by tariff classes of the criteria employed for the breakdown of goods between tariff classes;

Whereas the rate differentials for tonnage conditions other than 20 metric tons, should take account, in particular, of the actual conditions of carriage of consignments in the different categories of vehicles;

After consulting the Committee of Experts set up by Article 11 of Regulation (EEC) No 1174/68,

HAS ADOPTED THIS DECISION:

#### Article 1

For consignments in the 20 metric tons conditions of goods falling within tariff class II, the upper limit of the bracket tariff for transport between France and the Netherlands shall be that set out in the pro-

posal by the French and Netherlands carriers published in the *Journal Officiel de la République française* of 25 November 1970, less:

- 11.5 % for distances of 121 to 130 km;
- 2 % for distances of 291 to 300 km;
- 0 % for distances of 441 to 460 km;
- 4.5 % for distances of 781 to 800 km;
- 5.5 % for distances of 1151 to 1200 km and above.

For distances between those shown in the first subparagraph, the rate shall be reckoned by linear progression.

#### Article 2

The rates for consignments of goods falling within tariff class I shall be those for tariff class II, plus 12.5 %.

The rates for consignments of goods falling within tariff classes III and IV shall be those for class II, less 7.5 % and 17.5 % respectively.

#### Article 3

The rates for other tonnage conditions shall be those for the 20 metric tons conditions plus:

- 7.5 % for the 15 metric tons condition;
- 26.5 % for the 10 metric tons condition;
- 50 % for the 7 metric tons condition;
- 76 % for the 5 metric tons condition.

#### Article 4

This Decision is addressed to the French Republic and to the Kingdom of the Netherlands. It shall be communicated to the other Member States.

#### Article 5

This Decision shall become effective after a period of 20 days from its notification, unless a Member State refers the matter to the Council.

Done at Brussels, 28 July 1971.

*For the Commission*

*The President*

Franco M. MALFATTI

<sup>1</sup> OJ No L 77, 29.3.1969, p. 49.