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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3190/88**of 18 October 1988****on the supply of various lots of skimmed-milk powder as food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3972/86 of 22 December 1986 on food-aid policy and food-aid management⁽¹⁾, as amended by Regulation (EEC) No 1870/88⁽²⁾, and in particular Article 6(1)(c) thereof,

Whereas Council Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food-aid policy and food-aid management⁽³⁾ lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain beneficiary organizations 3 047 tonnes of skimmed-milk powder;

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 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽⁴⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilized in the Community, as Community food aid for supply to the recipients listed in the Annex in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

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, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 168, 1. 7. 1988, p. 7.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

ANNEX I

LOT A

1. **Operation Nos** ⁽¹⁾: 1018/88 to 1023/88 — Commission Decisions of 16 March 1988 : 941 tonnes and 26 July 1988 : 616 tonnes
2. **Programme** : 1988
3. **Recipient** : World Food Programme, Via Cristoforo Colombo 426, I-00145 Rome ; telex 626675 WFP I
4. **Representative of the recipient** ⁽²⁾ : see *Official Journal of the European Communities* No C 103 of 16 April 1987
5. **Place or country of destination** : see Annex II
6. **Product to be mobilized** : vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾ : see *Official Journal of the European Communities* No C 216 of 14 August 1987, page 4 (under I.1.B.1 to I.1.B.3)
8. **Total quantity** : 1 557 tonnes
9. **Number of lots** : one (six parts : A 1 to A 6)
10. **Packaging and marking** : 25 kilograms and see *Official Journal of the European Communities* No C 216 of 14 August 1987, pages 4 and 6 (I.1.B.4 and I.1.B.4.3)
Supplementary markings on packaging : see Annex II and *Official Journal of the European Communities* No C 216 of 14 August 1987, page 6, I.1.B.5
11. **Method of mobilization** : the Community market
The manufacture of the skimmed-milk powder and the incorporation of vitamins must be carried out after the award of the tender
12. **Stage of supply** : free at port of shipment
13. **Port of shipment** : —
14. **Port of landing specified by the recipient** : —
15. **Port of landing** : —
16. **Address of the warehouse and, if appropriate, port of landing** : —
17. **Period for making the goods available at the port of shipment** : 25 November to 10 December 1988
18. **Deadline for the supply** : —
19. **Procedure for determining the costs of supply** : invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** ⁽⁶⁾ : 7 November 1988 at 12 noon
21. **In the case of a second invitation to tender** :
 - (a) deadline for the submission of tenders : 14 November 1988 at 12 noon
 - (b) period for making the goods available at the port of shipment : 2 to 17 December 1988
 - (c) deadline for the supply : —
22. **Amount of the tendering security** : 20 ECU/tonne
23. **Amount of the delivery security** : 10 % of the amount of the tender in ECU
24. **Address for submission of tenders** : Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200, rue de la Loi, B-1049 Brussels ; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer** ⁽⁷⁾ : refund applicable on 16 September 1988 fixed by Regulation (EEC) No 2844/88 (OJ No L 256, 16. 9. 1988, p. 8)

LOT B

1. **Operation Nos** (1): 1015/88 to 1017/88 — Commission Decision of 16 March 1988
2. **Programme**: 1988
3. **Recipient**: World Food Programme, Via Cristoforo Colombo 426, I-00145 Rome; telex 626675 WFP I
4. **Representative of the recipient** (2): see *Official Journal of the European Communities* No C 103 of 16 April 1987
5. **Place or country of destination**: See Annex II
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** (3) (4) (5): see *Official Journal of the European Communities* No C 216 of 14 August 1987, page 4 (under I.1.B.1 to I.1.B.3)
8. **Total quantity**: 1 460 tonnes
9. **Number of lots**: one (three parts: B 1 to B 3)
10. **Packaging and marking**: 25 kilograms and see *Official Journal of the European Communities* No C 216 of 14 August 1987, pages 4 and 6 (I.1.B.4 and I.1.B.4.3) — Parts B 1 and B 2 (6)

Supplementary markings on packaging: see Annex II and *Official Journal of the European Communities* No C 216 of 14 August 1987, page 6, I.1.B.5
11. **Method of mobilization**: the Community market

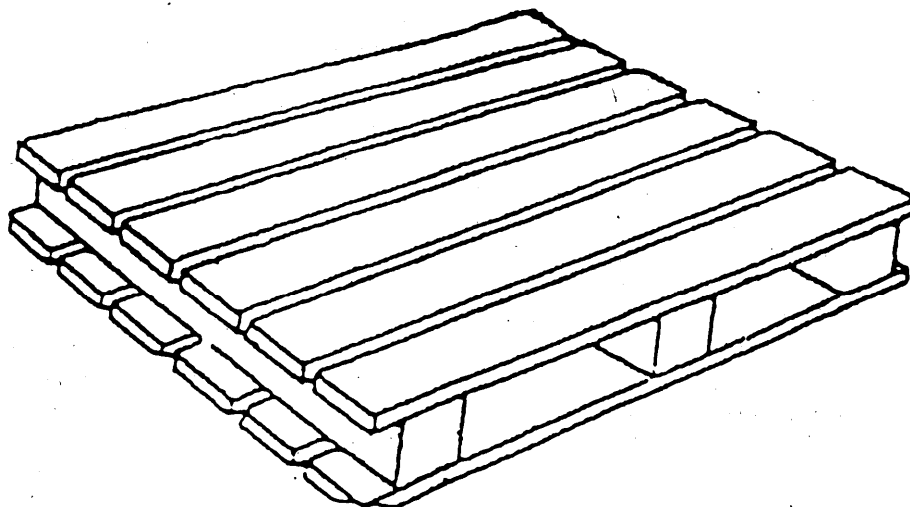
The manufacture of the skimmed-milk powder and the incorporation of vitamins must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 25 November to 10 December 1988
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **In the case of an invitation to tender, date of expiry of the period allowed for submission of tenders** (7): 7 November 1988 at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 14 November 1988 at 12 noon
 - (b) period for making the goods available at the port of shipment: 2 to 17 December 1988
 - (c) deadline for the supply: —
22. **Amount of the tendering security**: 20 ECU/tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ECU
24. **Address for submission of tenders**: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Brussels; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer** (8): refund applicable on 16 September 1988 fixed by Regulation (EEC) No 2844/88 (OJ No L 256, 16. 9. 1988, p. 8)

LOT C

1. **Operation No** (1): 782/88 — Commission Decision of 19 May 1988
2. **Programme**: 1987
3. **Recipient** (10): League of Red Cross and Red Crescent Societies, Logistic Service, PO Box 372, CH-1211 Geneva 19; telex 22555 LRCS CH, tel. 34 55 80
4. **Representative of the recipient** (13): The Sri Lanka Red Cross Society, 106 Dharmapala Mawatha, Colombo 7, Sri Lanka; tel. 9 10 95 / 51 54 34, telex 21201 OBHTEL CE
5. **Place or country of destination**: Sri Lanka
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** (2): see list published in *Official Journal of the European Communities* No C 216 of 14 August 1987, page 4 (under I.1.B.1 to I.1.B.3)
8. **Total quantity**: 30 tonnes
9. **Number of lots**: one
10. **Packaging and marking** (11) (12): 25 kilograms — in 20-foot containers and see list published in *Official Journal of the European Communities* No C 216 of 14 August 1987, pages 4 and 5 (under I.1.B.4 and I.1.B.4.2)
Supplementary markings on packaging:
'ACTION No 7027/88 / a red cross 'VIT. SMP. / GIFT OF THE EUROPEAN ECONOMIC COMMUNITY / ACTION OF THE LEAGUE OF RED CROSS SOCIETIES (LICROSS) / FOR FREE DISTRIBUTION / COLOMBO'
and see list published in *Official Journal of the European Communities* No C 216 of 14 August 1987, page 6 (under I.1.B.5)
11. **Method of mobilization**: the Community market
The manufacture of the skimmed-milk powder and the incorporation of vitamins must be carried out after the award of the supply
12. **Stage of supply**: free at port of landing - landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Colombo
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 15 to 30 November 1988
18. **Deadline for the supply**: 15 January 1989
19. **Procedure for determining the costs of supply**: tendering
20. **Date of expiry of the period allowed for submission of tenders** (4): 7 November 1988 at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 14 November 1988 at 12 noon
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 22 November to 7 December 1988
 - (c) deadline for the supply: 22 January 1989
22. **Amount of the tendering security**: 20 20 ECU/tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ECU
24. **Address for submission of tenders**: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, Bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Brussels; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer** (5): Refund applicable on 16 September 1988 fixed by Regulation (EEC) No 2844/88 (OJ No L 256, 16. 9. 1988, p. 8)

Notes :

- (¹) The operation number is to be quoted in all correspondence.
- (²) At the request of the beneficiary the successful tenderer shall produce a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.
- (³) Commission delegate to be contacted by the successful tenderer : see list published in *Official Journal of the European Communities* No C 227 of 7 September 1985, page 4.
- (⁴) In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of this Annex, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferably :
- either by porter at the office referred to in point 24 of this Annex,
 - or by telecopier on one of the following numbers in Brussels :
 - 235 01 32
 - 236 10 97
 - 235 01 30
 - 236 20 05
- (⁵) Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987) is applicable as regards the export refund and, where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of this Annex.
- (⁶) The successful tenderer shall give the beneficiaries' representatives a health certificate at the time of delivery.
- (⁷) Veterinary certificate issued by an official entity stating that the product was processed with pasteurized milk, coming from healthy animals, processed under excellent sanitary conditions which are supervised by qualified technical personnel and that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious or contagious disease during the 90 days prior to the processing.
- (⁸) The successful tenderer shall give the beneficiaries' representatives a certificate of origin at the time of delivery.
- (⁹) Palletization of skimmed-milk powder
- 25-kg bags to be supplied on a two-way double deck non-reversible pallet with protruding slats, as per design, of the following dimensions :
- 1 m × 1,2 m (approximately one-third of the underside of the pallet to consist of wood) :
- upper board : 22 mm thick,
 - bottom board : 22 mm thick,
 - blocks : 95 × 95 mm.
- 40 bags to be placed onto the pallets, interlocked and shrink-wrapped with a plastic sheet of 150 µm thickness, with three external nylon straps in each direction to secure the unit load.



- (¹⁰) The successful tenderer shall contact the recipient as soon as possible to establish what consignment documents are required and how they are to be distributed.

(¹¹) Supply free at terminal, as provided for in Article 14 (5) (a) of Regulation (EEC) No 2200/87, implies that the following costs at the port of landing shall be borne by the successful tenderer:

- Should containers be used on an FCL/FCL or LCL/FCL basis, all costs of unloading and transportation from the under hook stage up to the designated destuffing area via, if any, transit check shed area. The costs of destuffing the goods from the containers, local charges incurred at a later stage, and costs occasioned by delays of detention or returning the containers are to be borne by the recipient.
- Should containers be used on an LCL/LCL or FCL/LCL basis, all the costs of unloading and transportation from the under hook stage up to the designated destuffing area via, if any, transit check shed area and by way of derogation from the aforementioned Article 14 (5) (a), the LCL charges (destuffing of the goods). The local charges incurred after the stage of destuffing the goods from the containers are to be borne by the recipient.

(¹²) Should containers be used at the stage of delivery free-at-port-of shipment, on an FCL/FCL or FCL/LCL basis, the supplier will bear all costs pertaining to the use of such containers up to the terminal stage, including THC (terminal handling charges). However, the supplier shall not bear any rental cost.

Where, on the basis of the second subparagraph of Article 13 (2) of Regulation (EEC) No 2200/87, the supplier responsible for loading the containers on board the vessel designated by the recipient, the Commission will refund the corresponding costs, excluding terminal handling charges.

Should containers, used on LCL/FCL or LCL/LCL basis, the supplier must deliver the goods to the terminal, at a stage where the stuffing of the containers can be immediately done at the recipient's costs. The supplier shall not bear any cost pertaining to the use of the containers.

(¹³) Commission delegate to be contacted by the successful tenderer: YMCA, Cultural Centre Building, Jai Singh Road, New Delhi 110001; tel. 34 42 22/35 04 30, telex 3161315.

ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II — ANEXO II

Designación del lote Parti Bezeichnung der Partie Χαρακτηρισμός της παρτίδας Lot Désignation du lot Designazione della partita Aanduiding van de partij Designação do lote	Cantidad total del lote (en toneladas) Totalmængde (tons) Gesamtmenge der Partie (in Tonnen) Συνολική ποσότητα της παρτίδας (σε τόνους) Total quantity (in tonnes) Quantité totale du lot (en tonnes) Quantità totale della partita (in tonnellate) Totale hoeveelheid van de partij (in ton) Quantidade total (em toneladas)	Cantidades parciales (en toneladas) Delmængde (tons) Teilmengen (in Tonnen) Μερικές ποσότητες (σε τόνους) Partial quantities (in tonnes) Quantités partielles (en tonnes) Quantitativi parziali (in tonnellate) Deelhoeveelheden (in ton) Quantidades parciais (em toneladas)	Beneficiario Modtager Empfänger Δικαιούχος Beneficiary Bénéficiaire Beneficiario Begunstigde Beneficiário	País destinatario Modtagerland Bestimmungsland Χώρα προορισμού Recipient country Pays destinataire Paese destinatario Bestemmingsland País destinatário	Inscripción en el embalaje Emballagens påtegning Aufschrift auf der Verpackung Ένδειξη επί της συσκευασίας Markings on the packaging Inscription sur l'emballage Iscrizione sull'imballaggio Aanduiding op de verpakking Inscrição na embalagem
A	1 557	A1 : 534	WFP	Niger	Action n° 1018/88 — Niger 0207202 / Action du programme alimentaire mondial / Apapa en transit au Niger
		A2 : 176	WFP	Niger	Action n° 1019/88 — Niger 0357900 / Action du programme alimentaire mondial / Apapa en transit au Niger
		A3 : 713	WFP	Tchad	Action n° 1020/88 — Tchad 0349900 / Action du programme alimentaire mondial / Douala en transit au Tchad
		A4 : 59	WFP	Ghana	Action No 1021/88 — Ghana 0207502 / Action of the world food programme / Tema
		A5 : 30	WFP	Ghana	Action No 1022/88 — Ghana 0225802 / Action of the world food programme / Tema
		A6 : 45	WFP	Ghana	Action No 1023/88 — Ghana 0225802 / Action of the world food programme / Takoradi
B	1 460	B1 : 60	WFP	Burundi	Action n° 1015/88 — Burundi 0304700 / Action du programme alimentaire mondial / Dar-Es-Salaam en transit à Bujumbura — et un point noir d'au moins 30 cm de diamètre (*)
		B2 : 250	WFP	Sudan	Action No 1016/88 — Sudan 0053102 / Action of the world food programme / Port Sudan
		B3 : 1 150	WFP	Colombia	Acción n° 1017/88 — Colombia 0236801 / Despachado por el programa mundial de alimentos / Barranquilla

(*) ... y un punto negro de un diámetro mínimo de 30 cm

... og, en sort plet på mindst 30 cm i diameter

... und ein schwarzer Punkt mit einem Durchmesser von mindestens 30 cm

... και μαύρο σημείο διαμέτρου το λιγότερο 30 cm

... and a black dot at least 30 cm in diameter

... e un punto nero di almeno 30 cm di diametro

... en een zwarte stip van ten minste 30 cm diameter

... um ponto negro de pelo menos 30 cm de diâmetro.

COMMISSION REGULATION (EEC) No 3191/88

of 18 October 1988

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 the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EEC) 2221/88 ⁽²⁾, and in particular Article 13 (5) thereof,Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy ⁽³⁾, as last amended by Regulation (EEC) No 1636/87 ⁽⁴⁾, 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 Commission Regulation (EEC) No 2401/88 ⁽⁵⁾ 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, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 17 October 1988;

Whereas the aforesaid corrective factor affects the entire calculation basis for the levies, including the equivalence coefficients;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2401/88 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 19 October 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.⁽²⁾ OJ No L 197, 26. 7. 1988, p. 16.⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.⁽⁵⁾ OJ No L 205, 30. 7. 1988, p. 96.

ANNEX

to the Commission Regulation of 18 October 1988 fixing the import levies on cereals and on wheat or rye flour, groats and meal

(ECU/tonne)

CN code	Levies	
	Portugal	Third country
0709 90 60	0,00	116,95
0712 90 19	0,00	116,95
1001 10 10	26,28	178,01 ⁽¹⁾ ⁽²⁾
1001 10 90	26,28	178,01 ⁽¹⁾ ⁽²⁾
1001 90 91	0,00	123,17
1001 90 99	0,00	123,17
1002 00 00	31,08	109,39 ⁽⁴⁾
1003 00 10	24,80	116,62
1003 00 90	24,80	116,62
1004 00 10	81,09	50,12
1004 00 90	81,09	50,12
1005 10 90	0,00	116,95 ⁽²⁾ ⁽³⁾
1005 90 00	0,00	116,95 ⁽²⁾ ⁽³⁾
1007 00 90	19,45	131,19 ⁽⁴⁾
1008 10 00	24,80	34,70
1008 20 00	24,80	95,36 ⁽⁴⁾
1008 30 00	24,80	0,00 ⁽⁷⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	24,80	0,00
1101 00 00	6,16	186,86
1102 10 00	57,02	166,61
1103 11 10	53,93	289,11
1103 11 90	7,20	201,27

⁽¹⁾ Where durum wheat originating in Morocco is transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

⁽²⁾ In accordance with Regulation (EEC) No 486/85 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'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by 1,81 ECU/tonne.

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

⁽⁵⁾ Where durum wheat and canary seed produced in Turkey are transported directly from that country to the Community, the levy is reduced by 0,60 ECU/tonne.

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

⁽⁷⁾ The levy applicable to rye shall be charged on imports of the product falling within subheading 1008 90 10 (triticale).

COMMISSION REGULATION (EEC) No 3192/88

of 18 October 1988

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 the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 2221/88⁽²⁾, and in particular Article 15 (6) thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the exchange rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾, 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 Commission Regulation (EEC) No 2402/88⁽⁵⁾ 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, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of

these currencies recorded for a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient;

Whereas these exchange rates being those recorded on 17 October 1988;

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

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 coming from Portugal shall be zero.
2. 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 coming from third countries shall be as set out in the Annex hereto:

Article 2

This Regulation shall enter into force on 19 October 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.
⁽²⁾ OJ No L 197, 26. 7. 1988, p. 16.
⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.
⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.
⁽⁵⁾ OJ No L 205, 30. 7. 1988, p. 99.

ANNEX

to the Commission Regulation of 18 October 1988 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 10	1st period 11	2nd period 12	3rd period 1
0709 90 60	0	0,39	0,39	0
0712 90 19	0	0,39	0,39	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	0
1001 90 99	0	0	0	0
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	1,21
1004 00 90	0	0	0	1,21
1005 10 90	0	0,39	0,39	0
1005 90 00	0	0,39	0,39	0
1007 00 90	0	0	0	0
1008 10 00	0	0	0	0
1008 20 00	0	0	0	0
1008 30 00	0	0	0	0
1008 90 90	0	0	0	0
1101 00 00	0	0	0	0

B. Malt

CN code	(ECU/tonne)				
	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2
1107 10 11	0	0	0	0	0
1107 10 19	0	0	0	0	0
1107 10 91	0	0	0	0	0
1107 10 99	0	0	0	0	0
1107 20 00	0	0	0	0	0

COMMISSION REGULATION (EEC) No 3193/88
of 18 October 1988

amending Regulation (EEC) No 2989/88 increasing to 500 000 tonnes the quantity of durum wheat held by the Italian intervention agency for which a standing invitation to tender for export has been opened

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 2221/88⁽²⁾, and in particular Article 7(6) thereof,

Having regard to Commission Regulation (EEC) No 1836/82 of 7 July 1982 laying down the procedure and conditions for the disposal of cereals held by the intervention agencies⁽³⁾, as last amended by Regulation (EEC) No 2418/87⁽⁴⁾,

Whereas Commission Regulation (EEC) No 2989/88⁽⁵⁾, opened a standing invitation to tender for the export of 300 000 tonnes of durum wheat held by the Italian intervention agency; whereas, in a communication of 6 October 1988, Italy informed the Commission of the intention of its intervention agency to increase by 200 000 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of durum wheat held by the Italian intervention agency for which a standing invitation to tender for export has been opened should be increased to 500 000 tonnes;

Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in store; whereas Annex I to Regulation (EEC) No 2989/88 must therefore be amended;

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

Article 2 of Regulation (EEC) No 2989/88 is replaced by the following:

Article 2

1. This invitation to tender shall cover a maximum of 500 000 tonnes of durum wheat to be exported to all third countries.
2. The regions in which the 500 000 tonnes of durum wheat are stored are listed in Annex I hereto.

Article 2

Annex I to Regulation (EEC) No 2989/88 is replaced by the Annex hereto.

Article 3

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

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 16.

⁽³⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁴⁾ OJ No L 223, 11. 8. 1987, p. 5.

⁽⁵⁾ OJ No L 270, 30. 9. 1988, p. 53.

ANNEX

ANNEX I

(tonnes)	
Place of storage	Quantity
Cuneo	42 650
Torino	8 000
Parma	14 017
Treviso	5 000
Modena	4 045
Ferrara	27 725
Bologna	6 973
Ravenna	7 404
Livorno	2 000
Siena	8 443
La Spezia	3 169
Macerata	13 374
Ancona	28 861
Viterbo	15 001
Roma	17 646
Napoli	36 900
Foggia	45 271
Catanzaro	70 498
Palermo	19 015
Caltanissetta	18 999
Catania	11 218
Enna	4 450
Trapani	10 500
Venezia	10 000
Forli	2 740
Grossetto	1 500
Pisa	3 500
Perugia	5 088
Ascoli Piceno	1 300
Terni	1 550
Latina	1 664
Cagliari	9 500
Matera	5 000
Bari	35 000
Brindisi	2 000

COMMISSION REGULATION (EEC) No 3194/88

of 18 October 1988

opening a standing invitation to tender for the export of 300 000 tonnes of bread-making wheat held by the German intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 2221/88⁽²⁾, and in particular Article 7(6) thereof,

Whereas Article 3 of Council Regulation (EEC) No 1581/86 of 23 May 1986 laying down general rules for intervention on the market in cereals⁽³⁾ provides that cereals held by the intervention agencies shall be disposed of by invitation to tender;

Whereas Commission Regulation (EEC) No 1836/82⁽⁴⁾, as last amended by Regulation (EEC) No 2418/87⁽⁵⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas it is appropriate, in the present market situation, to open a tender for the export of 300 000 tonnes of bread-making wheat held by the German intervention agency;

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 German intervention agency may, on the conditions laid down in Regulation (EEC) No 1836/82, open a standing invitation to tender for the export of 300 000 tonnes of bread-making wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 300 000 tonnes of bread-making wheat to be exported all third countries.
2. The regions in which the 300 000 tonnes of bread-making wheat are stored are listed in Annex I hereto.

Article 3

The export licences shall be valid from their date of issue, within the meaning of Article 9 of Regulation (EEC) No 1836/82, until the end of the second month following.

Article 4

1. By way of derogation from Article 7(1) of Regulation (EEC) No 1836/82, the time limit for submission of tenders under the first partial invitation to tender shall expire on 26 October 1988 at 1 p.m. (Brussels time).
2. The time limit for submission of tenders under the last partial invitation to tender shall expire on 21 December 1988 at 1 p.m. (Brussels time).
3. The tenders shall be lodged with the German intervention agency.

Article 5

The German intervention agency shall notify the Commission of the tenders received not later than two hours after expiry of the time limit for the submission thereof. Notification shall be given as specified in the table in Annex II hereto.

Article 6

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

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 16.

⁽³⁾ OJ No L 139, 24. 5. 1986, p. 36.

⁽⁴⁾ OJ No L 202, 9. 7. 1982, p. 23.

⁽⁵⁾ OJ No L 223, 11. 8. 1987, p. 5.

ANNEX I

(tonnes)	
Place of storage	Quantity
Niedersachsen	60 189
Nordrhein-Westfalen	22 326
Hessen	3 184
Rheinland-Pfalz	3 164
Baden-Württemberg	4 025
Saarland	1 324
Bayern	18 693
South Germany ⁽¹⁾	187 095

⁽¹⁾ The repartition per Federal Land will be published later.

ANNEX II

Standing invitation to tender for the export of 300 000 tonnes of bread-making wheat held by the German intervention agency

(Regulation (EEC) No 3194/88)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) ⁽¹⁾	Price increases (+) or reductions (—) (ECU/tonne)	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

⁽¹⁾ This price includes the increases or reductions relating to the lot to which the tender refers.

COMMISSION REGULATION (EEC) No 3195/88

of 18 October 1988

opening an invitation to tender for the sale of olive oil held by the Spanish intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2210/88⁽²⁾, and in particular Article 12 (4) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2754/78⁽³⁾, provides that olive oil held by the intervention agencies shall be put up for sale by tender;

Whereas, pursuant to Article 1 (2) of Commission Regulation (EEC) No 629/86⁽⁴⁾, the Spanish intervention agency hold in stock large quantities of olive oil;

Whereas Commission Regulation (EEC) No 2960/77⁽⁵⁾, as last amended by Regulation (EEC) No 3826/85⁽⁶⁾ laid down the conditions for the sale by tender on the Community market and for export of olive oil; whereas the state of the market in olive oil is at present favourable for the sale of part of the said oil;

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

The Spanish intervention agency 'Servicio Nacional de Productos agrarios', hereinafter referred to as 'SENPA', shall open an invitation to tender in accordance with the provisions of this Regulation and of Regulation (EEC) No 2960/77 for the sale on the Community market of approximately 25 000 tonnes of lampant virgin olive oil.

By way of derogation from Article 5 (2) of Regulation (EEC) No 2960/77, SENPA shall, where the quantity of oil in a container exceeds 500 tonnes, be authorized to establish several lots with part only of that oil.

By derogation from Article 13 (1) of Regulation (EEC) No 2960/77, withdrawal of the oil awarded must be completed by 15 December 1988 at the latest.

Article 2

The invitation to tender shall be published on 19 October 1988.

Particulars of the lots of oil offered for sale and of the places where they are stored shall be displayed at the central office of SENPA, calle Beneficencia, 8, Madrid 28003, Spain.

A copy of the invitation to tender shall be sent without delay to the Commission.

Article 3

The tenders must reach SENPA, calle Beneficencia, 8, Madrid 28003; Spain, not later than 2 p. m. (local time) on 26 October 1988.

Article 4

1. Tenders shall be submitted for an oil of 3° acidity.
2. Where the oil awarded has a different degree of acidity from that for which the tender was submitted, the price to be paid shall be equal to the price tendered, increased or reduced in accordance with the scale below:
 - up to 3° acidity:
increase of Ptas 493,5 for each degree or fraction of degree of acidity below 3°,
 - above 3° up to 8° acidity:
reduction of Ptas 493,5 for each degree or fraction of degree of acidity above 3°,
 - above 8°:
additional reduction of Ptas 539,8 for each degree or fraction of degree above 8°.

Article 5

Not later than one day after the expiry of the time limit laid down for the submission of tenders, SENPA shall send the Commission a list, without mentioning names, stating the highest tender received for each lot put up for sale.

Article 6

The minimum selling price per 100 kilograms of oil shall be fixed, in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC, on the basis of the tenders received, not later than the 10th working day after the expiry of each final date laid down for the submission of tenders. The decision fixing the minimum selling price shall be notified forthwith to the Member State concerned.

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

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 331, 28. 11. 1978, p. 13.

⁽⁴⁾ OJ No L 60, 1. 3. 1986, p. 8.

⁽⁵⁾ OJ No L 348, 30. 12. 1977, p. 46.

⁽⁶⁾ OJ No L 371, 31. 12. 1985, p. 1.

Article 7

The olive oil shall be sold by SENPA not later than the fifth working day after the date of notification of the decision referred to in Article 6.

SENPA shall supply the agencies responsible for storage with a list of the lots remaining unsold.

Article 8

The security referred to in Article 7 of Regulation (EEC) No 2960/77 shall be Ptas 3 000 per 100 kilograms.

Article 9

The storage charge referred to in Article 15 of Regulation (EEC) No 2960/77 shall be Ptas 400 per 100 kilograms.

Article 10

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

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3196/88

of 18 October 1988

concerning the stopping of fishing for sole by vessels flying the flag of Denmark

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities⁽¹⁾, and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 3977/87 of 21 December 1987, fixing, for certain fish stocks and groups of fish stocks, total allowable catches for 1988 and certain conditions under which they may be fished⁽²⁾, as amended by Regulation (EEC) No 3173/88⁽³⁾, provides for sole quotas for 1988;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of sole in the waters of ICES divisions II and IV by vessels flying the flag of Denmark or registered in Denmark have reached the quota

allocated for 1988; whereas Denmark has prohibited fishing for this stock as from 5 October 1988; whereas it is therefore necessary to abide by that date;

HAS ADOPTED THIS REGULATION:

Article 1

Catches of sole in the waters of ICES divisions II and IV by vessels flying the flag of Denmark or registered in Denmark are deemed to have exhausted the quota allocated to Denmark for 1988.

Fishing for sole in the waters of ICES divisions II and IV by vessels flying the flag of Denmark is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 5 October 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

⁽¹⁾ OJ No L 207, 29. 7. 1987, p. 1.

⁽²⁾ OJ No L 375, 31. 12. 1987, p. 1.

⁽³⁾ OJ No L 282, 15. 10. 1988, p. 30.

COMMISSION REGULATION (EEC) No 3197/88
of 18 October 1988

**amending Regulation (EEC) No 3540/85 laying down detailed rules for the
application of the special measures for peas, field beans and sweet lupins**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1431/82 of 18 May 1982 laying down special measures for peas, field beans and sweet lupins⁽¹⁾, as last amended by Regulation (EEC) No 1104/88⁽²⁾, and in particular Article 3 (7) thereof,

Whereas Article 6 of Commission Regulation (EEC) No 3540/85⁽³⁾, as last amended by Regulation (EEC) No 2730/88⁽⁴⁾, lays down special provisions for the 1985/86, 1986/87 and 1987/88 marketing years concerning the issuing of certificates of purchase at the minimum price and the conditions lupin seeds must meet to be described as sweet lupins; whereas those provisions should be renewed for one marketing year to enable problems arising to be fully reviewed;

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

HAS ADOPTED THIS REGULATION:

Article 1

In the second subparagraph of Article 6 (4) and the second and third subparagraphs of Article 6 (6) of Regulation (EEC) No 3540/85, '1986/87 and 1987/88' is replaced by '1985/86, 1986/87, 1987/88 and 1988/89'.

Article 2

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

It shall apply with effect from 1 July 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 162, 12. 6. 1982, p. 28.

⁽²⁾ OJ No L 110, 29. 4. 1988, p. 16.

⁽³⁾ OJ No L 342, 19. 12. 1985, p. 1.

⁽⁴⁾ OJ No L 241, 1. 9. 1988, p. 114.

COMMISSION REGULATION (EEC) No 3198/88

of 18 October 1988

fixing for the 1987/88 marketing year the reference price for mandarins, including tangerines and satsumas, Wilkings and other similar citrus hybrids, with the exception of clementines

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 2238/88⁽²⁾, and in particular Article 27 (1) thereof,

Whereas Article 23 (1) of Regulation (EEC) No 1035/72 provides that reference prices for the whole Community are to be fixed each year before the beginning of the marketing year;

Whereas the importance of mandarin production in the Community is such that a reference price must be fixed for that product, such price to be operative also for tangerines, satsumas, Wilkings and other similar citrus hybrids, with the exception of clementines;

Whereas the period during which mandarins harvested during a given crop year are marketed extends from October to 15 May of the following year; whereas the quantity put on the market during October and from 1 March to 15 May of the following year represents only a small percentage of that marketed over the whole marketing year; whereas the reference price should therefore be fixed only for the period running from 1 November to the last day of February of the following year;

Whereas the fixing of a single reference price valid for the whole marketing year appears to be the solution to be suited to the particular nature of the Community market in the product in question;

Whereas, under point (a) of the second subparagraph of Article 23 (2) of Regulation (EEC) No 1035/72, reference prices for mandarins, satsumas, tangerines and other similar citrus hybrids, with the exception of clementines,

are fixed at a level equal to that of the previous marketing year, adjusted by an amount equal to the difference between, firstly, the amount resulting from the application, to those reference prices, of the percentage increase in the basic prices and the buying-in prices in relation to the preceding marketing year, and, secondly, the amount corresponding to the increase in the financial compensation provided for in Council Regulation (EEC) No 2511/69 of 9 December 1969 laying down special measures for improving the production and marketing of Community citrus fruit⁽³⁾, as last amended by Regulation (EEC) No 3130/86⁽⁴⁾;

Whereas, in accordance with Articles 140 (2) and 272 (3) of the Act of Accession of Spain and Portugal, the prices of Spanish and Portuguese products will not be used for the purpose of calculating reference prices, during the first phase in the case of Spain and during the first stage in the case of Portugal;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 1988/89 marketing year, the reference price for fresh mandarins including tangerines and satsumas, Wilkings and other similar citrus hybrids, with the exception of clementines (CN code: 0805 20 30, 50, 70, 90), expressed in ECU per 100 kilograms net of packed products of quality class I, of all sizes, shall, for the period 1 November to 28 February, be 27,51.

Article 2

This Regulation shall enter into force on 1 November 1988.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 318, 18. 12. 1969, p. 1.

⁽⁴⁾ OJ No L 292, 16. 10. 1986, p. 5.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

**COMMISSION REGULATION (EEC) No 3199/88
of 18 October 1988**

**amending Regulation (EEC) No 2304/88 fixing the yields of olives and olive oil in
France and Greece for the 1987/88 marketing year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European
Economic Community,

Having regard to Council Regulation No 136/66/EEC of
22 September 1966 on the establishment of a common
organization of the market in oils and fats⁽¹⁾, as last
amended by Regulation (EEC) No 2210/88⁽²⁾, and in
particular Article 5 (5) thereof,

Having regard to Council Regulation (EEC) No 2261/84
of 17 July laying down general rules on the granting of
aid for the production of olive oil and of aid to olive oil
producer organizations⁽³⁾, as last amended by Regulation
(EEC) No 892/88⁽⁴⁾, and in particular Article 19 thereof,

Whereas Commission Regulation (EEC) No 2304/88⁽⁵⁾
fixed the yields of olives and of olive oil in France and in
Greece for the 1987/88 marketing year; whereas a
number of mistakes in regard to certain Greek provinces
have been found in the Annexes to that Regulation;
whereas, the recipients not yet having been able to claim
the aid, these errors should be corrected;

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

1. In Section C of Annex I to Regulation (EEC) No
2304/88 the figures for the provinces of Thessaloniki (32)
and Lasithi (48) are replaced by those shown in Annex I
to this Regulation.

2. In Section C of Annex II to Regulation (EEC) No
2304/88 the lists for zone 1 in Evvia, for zone 2 in
Arkadia, for zone 3 in Larisa and for zones 2 and 3 in
Lasithi are replaced by the lists given in Annex II to this
Regulation.

Article 2

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

It shall apply with effect from 30 July 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

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

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 208, 3. 8. 1984, p. 3.

⁽⁴⁾ OJ No L 89, 6. 4. 1988, p. 1.

⁽⁵⁾ OJ No L 201, 27. 7. 1988, p. 46.

*ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I —
ALLEGATO I — BIJLAGE I — ANEXO I*

Provincia Provins Provinz Επαρχία Province Province Provincia Provincie Provincia	Zona Zone Zone Ζώνη Zone Zone Zona Zone Zona	kg aceitunas/árbol kg oliven/træ kg Oliven/Baum Χιλιόγραμμα ελαιοκάρπου/δένδρο Olives kg/tree kg olives/arbore kg olive/albero kg olijven/boom kg azeitonas/árvore	kg aceite/100 kg aceitunas kg olie/100 kg oliven kg Öl/100 kg Oliven Χιλιόγραμμα ελαιολάδου/ 100 χιλιόγραμμα ελαιοκάρπου Oil kg/100 kg olives kg huile/100 kg olives kg olio/100 kg olive kg olie/100 kg olijven kg azeite/100 kg azeitonas
32. Θεσσαλονίκης	1	6	17
	2	4	15
Λασηθίου	1	28	18
	2	18	21
	3	7	22

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II*

Ευβοίας:

1. *Δήμοι:* Ιστιαιάς, Οικισμοί: Δήμου Λουτρών, Αιδηψού, Ηλία και Πολύφολος.

Κοινότητες: Αθγαριάς, Αγδινών, Αγίου, Βουτά, Γαλατσάδων, Γαλατσώνας, Γερακιού, Καμαριών, Καστανιώτισσας, Κοκκινομηλιάς, Κρυονερίτη, Μηλέων, Μονοκαρυάς Ταξιάρχη, Ωρεών, Αμελάντων, Βλαχιάς, Δαφνούσας Κερασέας, Μετοχίου Κηρέως, Παγώντος, Πηλίου Προκοπίου, Σπαθαρίου, Φαράκλας.

Αρκαδίας:

2. *Κοινότητες:* Αγίου Ανδρέα, Δολιανών, Κορακοβουνίου (εκτός οικισμού ορεινού Κορακοβουνίου).

Λάρισας:

3. *Κοινότητες:* Αγιάς, Αετολόφου, Ανατολής, Γερακαρίου, Δήμητρας, Ελάφου, Καρύτσας, Μαρμαρίνης, Μεγαλόδρουσου, Μεταξοχωρίου, Νερομύλων, Ποταμιάς, Σκλήθρου, Αμπελακίων, Ευαγγελισμού, Λάρισας, Καλοχωρίου, Κυψελοχωρίου, Μακρυχωρίου, Νέσσωνος, Όσσας, Παραποτάμου, Τεμπών, Δήμου Τυρνάδου, Λυγαριάς, Αργυροπούλιου, Γόννων, Δελερίων, Ιτέας, Ροδιάς.

Λασηθίου:

2. *Παχειάς* Άμμου, Βασιλικής, Μουρνιών, Γδοχίων, Παπαγιαννάδων, Περβολακίων, Αρμένων, Χανδρών, Ζήρου (πλην Ξερόκαμπου), Αγίου Γεωργίου, Σκοπής, Βορίου, Καλού Χωρίου, Ελούντας, Βρουχών, Λούμας, Σχοινιάς, Αγίου Αντωνίου, Ρίγας, Λάστρου, Σητείας, Καρυδίου, Απιδίων, Μητάτου, Ρούσας, Εκκλησίας, Αγίας Φωτιάς, Ταπών, Κριτσάς, Ζενίων, Κρούστας.
3. *Κάτω Πισκοπής, Ξεροκάμπου Ζήρου, Ξεροκάμπου Λιθινών, Αδραβαστίου, Αζοκεράμου, Χοχλακίων, Κελαρίων, Κατσιδονίου, Κριτσάς.*

Δήμοι: Αγίου Νικολάου, Νεάπολης.

Κοινότητες: Λακωνίων (Μέσα, Έξω), Βρυσών, Έξω Ποτάμων, Βουλισμένης, Λατσίδας, Μιλάτου, Βραχασίου, Λιμνών, Χουμεριάκου, Φουρνής, Καστελλίου, Νικηθιανού.

COMMISSION REGULATION (EEC) No 3200/88

of 18 October 1988

amending Regulation (EEC) No 3016/78 laying down certain rules for applying conversion rates in the sugar and isoglucose sectors

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⁽¹⁾, as last amended by Regulation (EEC) No 2306/88⁽²⁾,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽³⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾ and in particular Articles 5 (3) and 12 (1) (b) thereof,

Whereas Article 4 of Regulation (EEC) No 1676/88 provides that if agricultural conversion rates are changed, the change will apply to amounts in respect of which the operative event occurs after the alteration has taken effect, and that certain amounts will be adjusted by reference to the agricultural conversion rate applicable when the operative event for the relevant operation occurs; whereas Article 5 of the same Regulation provides that, in cases involving amounts other than those charged or granted in trade or indicated in contracts, the operative event shall be taken to mean the event whereby the economic objective of the operation is attained;

Whereas the operative events specific to the sugar sector are established by Commission Regulation (EEC) No

3016/78⁽⁵⁾, as last amended by Regulation (EEC) No 2750/86⁽⁶⁾;

Whereas Council Regulations (EEC) No 1107/88⁽⁷⁾ and (EEC) No 2250/88⁽⁸⁾ provide for the granting of new forms of Community aid and for national aid for refiners of preferential raw sugar in the United Kingdom; whereas the economic objective of both types of aid — whether for preferential raw sugar or far raw sugar from the French overseas departments — is the refining of that sugar;

Whereas, since the aid in question is national adjustment aid as already provided for in Article 46 of Regulation (EEC) No 1785/81, a more precise definition should be made of the operative event, by adopting as the economic objective the production of sugar beet, sugar cane and sugar in the Member States concerned;

Whereas the aid schemes instituted by Regulation (EEC) No 1107/88 and (EEC) No 2250/88 apply retroactively to the 1987/88 marketing year; whereas the provisions concerning the appropriate operative event should therefore be made applicable to the granting of the aid;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 3016/78 is hereby amended as follows:

1. The following point VIIa is inserted:

Amount concerned	Conversion rate to be applied
VIIa. Aid provided for in Article 9 (4a) of Regulation (EEC) No 1785/81	Agricultural conversion rate applicable on the day when the sugar beet is processed into sugar. If the rate is altered during the marketing year in question, the conversion rate to be applied shall be the average, calculated <i>pro rata temporis</i> of the agricultural rates applying during the marketing year under consideration.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.
⁽²⁾ OJ No L 201, 27. 7. 1988, p. 65.
⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.
⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 359, 22. 12. 1978, p. 11.
⁽⁶⁾ OJ No L 253, 5. 9. 1986, p. 8.
⁽⁷⁾ OJ No L 110, 29. 4. 1988, p. 20.
⁽⁸⁾ OJ No L 198, 26. 7. 1988, p. 28.

2. The following point VIIb is inserted :

Amount concerned	Conversion rate to be applied
'VIIb. Aid provided for in Article 9 (4b) of Regulation (EEC) No 1785/81	Agricultural conversion rate applicable on the day on which the amount of raw sugar in question was refined, and for the Member State in which the refining was carried out.'

3. Point XV is replaced by the following :

Amount concerned	Conversion rate to be applied
'XV. Aid provided for in Article 46 (1) to (4) of Regulation (EEC) No 1785/81	Agricultural conversion rate applicable on 1 January of the marketing year in which the sugar beet, sugar-cane or sugar were produced.'

4. The following point XVa, is inserted into the Annex :

Amount concerned	Conversion rate to be applied
'XVa. Aid provided for in Article 46 (6) of Regulation (EEC) No 1785/81	Agricultural conversion rate applicable on the day on which the quantity of preferential raw sugar in question was refined, and for the Member State concerned.'

Article 2

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

It shall apply, with the exception of point 3, of Article 1 from the beginning of the 1987/88 marketing year.

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

Done at Brussels, 18 October 1988.

For the Commission
Frans ANDRIESSEN
Vice-President

COMMISSION REGULATION (EEC) No 3201/88

of 18 October 1988

increasing the production aid for tomato concentrate obtained from Greek tomatoes during the 1984/85 and 1985/86 marketing years contained in certain types of small packings

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Greece,

Having regard to Council Regulation (EEC) No 426/86 of 24 February 1986 on the common organization of the market in products processed from fruit and vegetables ⁽¹⁾, as last amended by Regulation (EEC) No 2247/88 ⁽²⁾, and in particular Article 5 (5) thereof,

Whereas, following the judgment of the Court of Justice of 19 September 1985 in Case 192/83 (Hellenic Republic v. Commission of the European Communities), Commission Regulation (EEC) No 381/86 ⁽³⁾ provides that production aid paid or payable for tomato concentrate with a dry matter content of less than 93 %, obtained from tomatoes grown in Greece during the 1983/84 marketing year, is to be increased by an increment for products in immediate packings of less than 1,5 kg;

Whereas, following the abovementioned judgment of the Court and the judgments delivered on 26 April 1988 in Cases 97, 99, 193 and 215/86 (Hellenic Republic and 'Asteris and others' v. Commission of the European Communities), the increments in the production aid payable for tomato concentrate contained in certain types of small packings, obtained from tomatoes grown in Greece during the 1984/85 and 1985/86 marketing years, should be determined; whereas, however, as regards the 1986/87 marketing year, Commission Regulation (EEC) No 2077/86 ⁽⁴⁾ assumes the processing costs involved in

packing to be identical for all the Member States and consequently determines specific percentage increases in the aid for tomato concentrate in small packings for Spain, Portugal and Greece;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

1. The production aid paid or payable for tomato concentrate with a dry matter content of less than 93 %, obtained from tomatoes grown in Greece during the 1984/85 and 1985/86 marketing years, shall be increased by the increments fixed in the Annex hereto for products in the sizes of packings indicated.

2. The increments provided for in paragraph 1 shall be paid on application from the processor. Applications shall be submitted to the competent authorities by 30 November 1988 at the latest.

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, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 49, 27. 2. 1986, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 21.

⁽³⁾ OJ No L 44, 21. 2. 1986, p. 16.

⁽⁴⁾ OJ No L 179, 3. 7. 1986, p. 11.

ANNEX

Tomato concentrate

Increment provided for in Article 1 (1):

(in %)

Marketing year	Weight less than 1,5 kg but not less than 0,7 kg, including immediate packing	Weight less than 0,7 kg but not less than 0,25 kg, including immediate packing	Weight less than 0,25 kg but not less than 0,15 kg, including immediate packing	Weight less than 0,15 kg, including immediate packing
1984/85	0,949	1,835	2,656	3,425
1985/86	0,319	0,622	0,912	1,188

COMMISSION REGULATION (EEC) No 3202/88
of 18 October 1988
fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EEC) No 2210/88 ⁽²⁾, and in particular Article 27 (4) thereof,

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture ⁽³⁾, as last amended by Regulation (EEC) No 2792/88 ⁽⁴⁾,

Having regard to Council Regulation (EEC) No 1569/72 of 20 July 1972 laying down special measures for colza, rape and sunflower seed ⁽⁵⁾, as last amended by Regulation (EEC) No 2216/88 ⁽⁶⁾, and in particular Article 2 (3) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 3025/88 ⁽⁷⁾, as last amended by Regulation (EEC) No 3154/88 ⁽⁸⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3025/88 to the infor-

mation known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. The amounts of the subsidy and the exchange rates referred to in Article 33 (2) and (3) of Commission Regulation (EEC) No 2681/83 ⁽⁹⁾ are as set out in the Annexes hereto.

2. The amount of the compensatory aid referred to in Article 14 of Council Regulation (EEC) No 475/86 ⁽¹⁰⁾ are as shown in Annex III to this Regulation for sunflower seed harvested in Spain.

3. The amount of the special subsidy provided for by Council Regulation (EEC) No 1920/87 ⁽¹¹⁾ for sunflower seed harvested and processed in Portugal is fixed in Annex III.

Article 2

This Regulation shall enter into force on 19 October 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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

⁽²⁾ OJ No L 197, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 11.

⁽⁴⁾ OJ No L 250, 9. 9. 1988, p. 12.

⁽⁵⁾ OJ No L 167, 25. 7. 1972, p. 9.

⁽⁶⁾ OJ No L 197, 26. 7. 1988, p. 10.

⁽⁷⁾ OJ No L 271, 1. 10. 1988, p. 62.

⁽⁸⁾ OJ No L 281, 14. 10. 1988, p. 42.

⁽⁹⁾ OJ No L 266, 28. 9. 1983, p. 1.

⁽¹⁰⁾ OJ No L 53, 1. 3. 1986, p. 47.

⁽¹¹⁾ OJ No L 183, 3. 7. 1987, p. 18.

ANNEX I

Aids to colza and rape seed other than 'double zero'

(amounts per 100 kg)

	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3
1. Gross aids (ECU):						
— Spain	0,580	0,580	0,580	0,580	0,580	0,580
— Portugal	0,000	0,000	0,000	0,000	0,000	0,000
— Other Member States	19,554	19,337	19,655	19,734	18,813	19,131
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	46,55	46,04	46,79	47,03	44,88	45,90
— Netherlands (Fl)	51,93	51,36	52,21	52,42	49,99	51,09
— BLEU (Bfrs/Lfrs)	935,70	925,15	940,45	952,89	908,42	923,78
— France (FF)	139,07	137,26	139,65	144,42	137,11	139,53
— Denmark (Dkr)	167,88	165,89	168,68	172,75	164,50	167,31
— Ireland (£ Irl)	15,453	15,251	15,516	16,062	15,248	15,517
— United Kingdom (£)	11,313	11,130	11,309	12,042	11,341	11,422
— Italy (Lit)	28 806	28 394	28 877	30 367	28 743	28 978
— Greece (Dr)	2 127,66	2 061,26	2 082,70	2 058,86	1 867,44	1 817,50
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	89,44	89,44	89,44	89,44	89,44	89,44
— in another Member State (Pta)	2 909,87	2 876,55	2 917,05	2 916,33	2 773,32	2 784,06
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00	0,00
— in another Member State (Esc)	4 255,22	4 210,97	4 253,31	4 249,53	4 069,64	4 069,27

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3
1. Gross aids (ECU):						
— Spain	3,080	3,080	3,080	3,080	3,080	3,080
— Portugal	2,500	2,500	2,500	2,500	2,500	2,500
— Other Member States	22,054	21,837	22,155	22,234	21,313	21,631
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	52,45	51,95	52,70	52,93	50,78	51,80
— Netherlands (Fl)	58,55	57,98	58,82	59,03	56,61	57,70
— BLEU (Bfrs/Lfrs)	1 055,86	1 045,32	1 060,61	1 073,61	1 029,14	1 044,49
— France (FF)	157,76	155,95	158,34	163,38	156,07	158,49
— Denmark (Dkr)	189,77	187,78	190,57	194,85	186,60	189,41
— Ireland (£ Irl)	17,531	17,329	17,594	18,172	17,358	17,627
— United Kingdom (£)	12,954	12,770	12,950	13,730	13,029	13,110
— Italy (Lit)	32 798	32 386	32 869	34 454	32 831	33 065
— Greece (Dr)	2 499,66	2 433,25	2 454,70	2 430,86	2 239,44	2 189,49
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	474,98	474,98	474,98	474,98	474,98	474,98
— in another Member State (Pta)	3 295,40	3 262,08	3 302,58	3 301,86	3 158,85	3 169,59
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	470,02	470,02	470,02	470,02	470,02	470,02
— in another Member State (Esc)	4 725,24	4 680,99	4 723,32	4 719,55	4 539,65	4 539,28

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2
1. Gross aids (ECU):					
— Spain	5,170	5,170	5,170	5,170	5,170
— Portugal	0,000	0,000	0,000	0,000	0,000
— Other Member States	21,502	21,800	22,098	22,074	22,291
2. Final aids:					
(a) Seed harvested and processed in (!):					
— Federal Republic of Germany (DM)	51,20	51,91	52,61	52,61	53,12
— Netherlands (Fl)	57,12	57,91	58,70	58,64	59,21
— BLEU (Bfrs/Lfrs)	1 028,69	1 043,01	1 057,32	1 065,89	1 076,36
— France (FF)	152,55	154,76	156,97	161,45	163,06
— Denmark (Dkr)	184,43	187,03	189,63	193,20	195,11
— Ireland (£ Irl)	16,950	17,195	17,441	17,957	18,136
— United Kingdom (£)	12,360	12,552	12,708	13,448	13,586
— Italy (Lit)	31 548	32 017	32 455	33 935	34 277
— Greece (Dr)	2 298,39	2 326,01	2 337,84	2 288,24	2 314,60
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	797,28	797,28	797,28	797,28	797,28
— in another Member State (Pta)	3 241,94	3 287,91	3 324,26	3 305,90	3 339,26
(c) Seed harvested in Portugal and processed:					
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00
— in Spain (Esc)	6 320,89	6 376,59	6 414,25	6 387,74	6 428,99
— in another Member State (Esc)	6 137,94	6 192,03	6 228,59	6 202,85	6 242,91
3. Compensatory aids:					
— in Spain (Pta)	3 192,35	3 236,12	3 272,46	3 251,35	3 284,71
4. Special aid:					
— in Portugal (Esc)	6 137,94	6 192,03	6 228,59	6 202,85	6 242,91

(!) For seed harvested in the Community as constituted at 31 December 1985 and processed in Spain, the amounts shown in 2 (a) to be multiplied by 1,0298070.

ANNEX IV

Exchange rate of the ECU to be used for converting final aids into the currency of the processing country when the latter is a country other than the country of production

(value of 1 ECU)

	Current 10	1st period 11	2nd period 12	3rd period 1	4th period 2	5th period 3
DM	2,074380	2,069940	2,066020	2,062190	2,062190	2,050650
Fl	2,338960	2,335100	2,331700	2,327550	2,327550	2,316500
Bfrs/Lfrs	43,489500	43,481800	43,476100	43,458100	43,458100	43,446600
FF	7,069710	7,071860	7,074060	7,076830	7,076830	7,087090
Dkr	7,981450	7,983910	7,986310	7,991090	7,991090	8,008030
£Irl	0,773520	0,773283	0,772939	0,772706	0,772706	0,772212
£	0,655244	0,657919	0,660134	0,662366	0,662366	0,668657
Lit	1 545,31	1 549,95	1 554,42	1 559,38	1 559,38	1 572,45
Dr	168,49500	170,09400	171,66300	173,17900	173,17900	178,53200
Esc	170,86200	171,79200	172,62500	173,45300	173,45300	176,12000
Pta	137,14000	137,65000	138,21600	138,79800	138,79800	140,43200

COMMISSION REGULATION (EEC) No 3203/88

of 18 October 1988

introducing a countervailing charge on tomatoes originating in Poland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables⁽¹⁾, as last amended by Regulation (EEC) No 2238/88⁽²⁾, and in particular the second subparagraph of Article 27 (2) thereof,

Whereas Article 25 (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a third country remains at least 0,6 ECU below the reference price for two consecutive market days, a countervailing charge must be introduced in respect of the exporting country concerned, save in exceptional circumstances; whereas this charge is equal to the difference between the reference price and the arithmetic mean of the last two entry prices available for that exporting country;

Whereas Commission Regulation (EEC) No 723/88 of 18 March 1988 fixing for the 1988 marketing year the reference prices for tomatoes⁽³⁾ fixed the reference price for products of class I at 45,73 ECU per 100 kilograms net for the period from 1 October to 20 December 1988;

Whereas the entry price for a given exporting country is equal to the lowest representative prices recorded for at least 30 % of the quantities from the exporting country concerned which are marketed on all representative markets for which prices are available less the duties and the charges indicated in Article 24 (3) of Regulation (EEC) No 1035/72; whereas the meaning of representative price is defined in Article 24 (2) of Regulation (EEC) No 1035/72;

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by

Regulation (EEC) No 3811/85⁽⁵⁾, the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets; whereas it is necessary to multiply the prices with the coefficient fixed in Article 1 (2) (b) of Regulation (EEC) No 723/88;

Whereas, for tomatoes originating in Poland the entry price calculated in this way has remained at least 0,6 ECU below the reference price for two consecutive market days; whereas a countervailing charge should therefore be introduced for these tomatoes;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85⁽⁶⁾, as last amended by Regulation No 1636/87⁽⁷⁾,
- for other currencies, an exchange rate based on the arithmetic mean of the spot market rates of each of these currencies recorded over a given period in relation to the Community currencies referred to in the previous indent, and the aforesaid coefficient,

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of 18,42 ECU per 100 kilograms net is applied to tomatoes (CN code 0702 00) originating in Poland.

Article 2

This Regulation shall enter into force on 20 October 1988.

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 74, 19. 3. 1988, p. 51.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

⁽⁶⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁷⁾ OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3204/88
of 18 October 1988
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 the Act of Accession of Spain and Portugal,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 2306/88⁽²⁾, and in particular Article 16 (8) thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 2336/88⁽³⁾, as last amended by Regulation (EEC) No 3153/88⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2336/88 to the infor-

mation 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 Regulation (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 19 October 1988.

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

Done at Brussels, 18 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 201, 27. 7. 1988, p. 65.

⁽³⁾ OJ No L 203, 28. 7. 1988, p. 22.

⁽⁴⁾ OJ No L 281, 14. 10. 1988, p. 40.

ANNEX

to the Commission Regulation of 18 October 1988 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	35,42 ⁽¹⁾
1701 11 90	35,42 ⁽¹⁾
1701 12 10	35,42 ⁽¹⁾
1701 12 90	35,42 ⁽¹⁾
1701 91 00	45,13
1701 99 10	45,13
1701 99 90	45,13 ⁽²⁾

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

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

COUNCIL REGULATION (EEC) No 3205/88

of 17 October 1988

extending the anti-dumping duty imposed by Regulation (EEC) No 535/87 to certain plain paper photocopiers assembled in the Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 13 (10) thereof,

Having regard to the proposal submitted by the Commission after consultations within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. Procedure

- (1) In January 1988, the Commission received a complaint lodged by CECOM, the Committee of European Copier Manufacturers, on behalf of producers of plain paper photocopiers (PPCs) whose collective output constitutes a major proportion of Community production of the product in question. The complaint contained sufficient evidence of the fact that, following the opening of the investigation concerning PPCs originating in Japan⁽²⁾, which led to the adoption of Regulation (EEC) No 535/87⁽³⁾ imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling PPCs in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84, since replaced by Regulation (EEC) No 2423/88. Accordingly, after consultation, the Commission announced, by notice published in the *Official Journal of the European Communities*⁽⁴⁾, the initiation of an investigation, under the said Article 13 (10), concerning PPCs assembled in the Community by companies related to or associated with the following Japanese manufacturers whose exports of PPCs are subject to a definitive anti-dumping duty :

— Canon Inc.,
— Konishiroku Photo Industry Co.,
— Matsushita Electric Co., Ltd,
— Minolta Camera Co., Ltd,
— Ricoh Company Ltd,
— Sharp Corporation,
— Toshiba Corporation.

- (2) The Commission so advised the companies concerned, the representatives of Japan and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (3) All the companies concerned and the complainants made their views known in writing and requested and were granted hearings by the Commission.
- (4) No submissions were made by purchasers of PPCs assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies :
- Canon Bretagne SA (France),
— Canon Giessen GmbH (Germany),
— Firma Develop Dr Eisbein GmbH (Germany),
— Konica Business Machines Manufacturing GmbH (Germany),
— Matsushita Business Machine (Europe) GmbH (Germany),
— Olivetti-Canon Industrial SpA (Italy),
— Ricoh (UK) Products Ltd (United Kingdom),
— Sharp Electronics (UK) Ltd (United Kingdom),
— Toshiba Systems (France) SA.

- (5) Furthermore, the Commission carried out an investigation at the premises of a supplier of components to some of the companies involved. This supplier of components is a subsidiary of one of the Japanese exporters concerned.
- (6) The period of investigation was from 1 April 1987 to 31 January 1988.
- (7) Following investigation, the Commission established that Sharp Electronics (UK) Ltd had not assembled or produced PPCs in the Community prior to or during the investigation period but had started assembly or production operations following the opening of the present investigation in February 1988.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 194, 2. 8. 1985, p. 5.

⁽³⁾ OJ No L 54, 24. 2. 1987, p. 12.

⁽⁴⁾ OJ No C 44, 17. 2. 1988, p. 3.

- (8) The Commission was, in addition, aware that one of the complainant companies, Rank Xerox Ltd, had, prior to and during the original investigation, assembled or produced certain PPCs in the Community using a significant proportion of parts and materials supplied by Fuji Xerox, a related company on whose exports of PPCs the definitive anti-dumping duty was imposed. Following a visit to Rank Xerox's premises at Mitcheldean, United Kingdom, where these assembly or production operations took place, the Commission established that these operations were not substantially increased after the opening of the anti-dumping investigation. In 1985, when the original anti-dumping investigation was opened, the number of relevant models assembled by Rank Xerox in the Community was lower than in the two previous years. By 1987, the total number of PPCs assembled or produced at Mitcheldean in this period, i.e. since 1983, had increased by only 4 %.

B. Relationship or association with exporter

- (9) Most of the companies referred to in the fourth recital were found to be wholly owned subsidiaries of Japanese exporters of PPCs which were subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 535/87. The exceptions are Olivetti-Canon SpA, in which Olivetti has a 50 % plus one shareholding and Canon the remainder, a joint venture between Canon Inc. and Ing. Olivetti SpA, and Firma Develop Dr Eisbein GmbH in which Minolta Camera Co. Ltd has a majority shareholding. Consequently, all firms concerned were considered to be related to a manufacturer whose exports of the like product are subject to a definitive anti-dumping duty.

C. Production

- (10) Most of the companies referred to in the fourth recital commenced their assembly or production operations after the initiation, on 2 August 1985, of the anti-dumping proceeding concerning imports of PPCs originating in Japan. However, while both Olivetti and Develop had assembled or produced PPCs independently prior to the initiation of the anti-dumping proceeding, the relationship with the exporters concerned was created after the initiation of the original anti-dumping investigation. Prior to that date, no relationship or association of other than a purely commercial nature existed between either Olivetti or Develop with any Japanese exporter of PPCs and, accordingly, Article 13 (10) of Regulation (EEC) No 2423/88 could not apply at that time to these companies.

Following the creation of the Olivetti-Canon joint venture the models produced by this company have remained essentially those previously developed

and produced by Olivetti. The numbers produced, however, have increased substantially.

As regards Develop, following Minolta's acquisition of a controlling interest in the company, assembly or production of certain models, previously produced by Minolta in Japan and exported to the Community, commenced in addition to the continued production of models previously developed and produced by Develop. In 1986, when assembly of the Minolta models began, the total units produced increased from the previous year by approximately 74 % and by a further 38 % in 1987 over the 1986 figure. The 'Minolta' models comprised 48 and 65 % respectively of the total units produced or assembled by Develop in 1986 and 1987. Thus, the assertion made by Develop that no substantial increase in the quantities assembled had occurred since that date was therefore not considered correct.

Most models produced by Olivetti-Canon during the reference period were those for which the research, development and production were carried out by Olivetti prior to the joint venture with Canon. The models for which production began subsequent to the creation of the joint venture were merely developed from previous models and contained many identical parts to the earlier models. Accordingly, these new models had the same high level (well above 40 %) of non-Japanese parts in value as the earlier models.

Similarly, Develop continued to produce, following the takeover by Minolta, two models and a development thereof which were the result of research, development and production both before and after the takeover. These models had a high level (well above 40 %) of non-Japanese parts in value. Accordingly, it is considered inappropriate to extend the anti-dumping duty to these models. However, the models previously exported by Minolta from Japan and assembled by Develop following the takeover had a high content (well above 60 %) of parts of Japanese origin.

- (11) Only Canon was found to have set up assembly or production plants for PPCs in the Community prior to the opening of the anti-dumping investigation and for both these plants, Canon Giessen and Canon Bretagne, it was claimed that no substantial increase in quantities assembled had occurred since the date of the initiation. It was, however, established that, at both plants, volumes of models assembled increased by approximately 30 % in the year following the opening of the original investigation. Canon argued that this percentage increase was in line with those of previous years. In fact, the percentage increases had varied considerably and a 30 % increase from a large base is greater, in absolute terms, than from a

smaller base. In addition, at Giessen, where operations began in 1973, the 30 % increase followed a period of relative stability in production during which, from 1981 to 1985 inclusive, the number of units produced over the whole five year period increased by only 4,6 %. Thus, it was concluded that, on balance, it would not be reasonable to consider the respective increases at the Canon plants at Giessen and Bretagne as constituting less than substantial increases in terms of Article 13 (10) (a) of Regulation (EEC) No 2423/88.

D. Parts

- (12) The value of the parts in question was generally determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community. The relevant value is that of the parts and materials as they are used in the assembly operations, that is on an into-factory basis.
- (13) Several companies concerned claimed that certain subassembled items were of Community origin and that, in addition, they should be treated as parts within the meaning of Article 13 (10) of Regulation (EEC) No 2423/88. It was found, however, that these items were merely assembled in the Community, mainly from parts imported from Japan, by independent suppliers. On the basis of information obtained from the companies making the claim, it was concluded that this assembly did not constitute a substantial process or operation as required by Article 5 of Regulation (EEC) No 802/68⁽¹⁾. The simple assembly operation carried out in the Community was of a basic and unsubstantial nature and was not sufficient to confer Community origin.

A number of companies requested that the assembly costs of certain subassemblies, incurred in their own factory, should be included in the value of Community parts. This request, however, cannot be granted because the cost of assembly cannot be included in the value of parts or materials used in the assembly or production operations under Article 13 (10) of Regulation (EEC) No 2423/88.

- (14) It was also requested by several companies that the costs of production of certain items incurred by them in the Community be included in the value

of Community parts. Where such items constituted parts or materials within the meaning of Article 13 (10) (a) of Regulation (EEC) No 2423/88 and where such parts had acquired Community origin in conformity with Regulation (EEC) No 802/68 the inclusion of such costs in the value of non-Japanese parts was considered appropriate.

Canon

- (15) At the three operations concerned, Canon Giessen, Canon Bretagne and Olivetti-Canon, different models are assembled or produced. The value of Japanese parts used by Canon varied considerably according to model, the weighted average value of Japanese parts for all models assembled at Canon Giessen being 53,8 % and Canon Bretagne 63,0 % and Olivetti-Canon 33,5 %.

Accordingly, the anti-dumping duty cannot be extended to those PPCs assembled in the Community by Canon Giessen and Olivetti-Canon.

Develop

- (16) The weighted average value of Japanese parts for all models produced by Firma Develop Dr Eisbein was found to be 93,7 %.

Konica

- (17) The weighted average value of Japanese parts for all models produced by Konica Business Machines Manufacturing was found to be 99,2 %.

Matsushita

- (18) The weighted average value of Japanese parts for all models produced by Matsushita Business Machine (Europe) was found to be 98,4 %.

Ricoh

- (19) The weighted average value of Japanese parts for all models produced by Ricoh (UK) Products was found to be 87,4 %.

Toshiba

- (20) The weighted average value of Japanese parts for all models produced by Toshiba Systems (France) was found to be 70,0 %.

E. Other Circumstances

- (21) Consideration was given to other relevant circumstances with regard to the assembly operations referred to above, in accordance with Article 13 (10) (a) of Regulation (EEC) No 2423/88.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 1.

(22) In most cases it was found that the nature of the parts sourced in the Community was relatively simple and that they were of low value. Many parts of a higher technological value were imported from Japan and, at least in the initial stages of the assembly operations in the Community, few genuine attempts appear to have been made to substantially change the sourcing pattern. Indeed, it was found that more than one company began operations in the Community and continued for some time with 100 % of Japanese value of parts incorporated in the assembled PPC.

(23) Some companies claimed that it was not or not yet possible for them to find sources of supply in the Community which guarantee a required level of quality. This assertion, however, appears to confuse the distinct issues of quality and technical specifications since Community producers of PPCs of comparable quality to those of the companies concerned source their parts in the Community and have proved that it is not indispensable to use parts predominantly of Japanese origin. It has also been noted in previous cases that sourcing policy can be changed with considerable practical effect within a very short time frame.

(24) As to direct labour, it was found that a certain number of new jobs had been created by the companies concerned. However, the companies investigated only carry out assembly operations whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled PPCs result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembling companies is likely to result in a net loss of employment in the Community.

(25) Furthermore, as regards research and development, it was found that R & D was carried out in the Community only by the two companies, Develop and Olivetti, which had had an integrated PPC production operation prior to the creating of a corporate relationship with a Japanese exporter.

(26) Some companies claimed to have transferred technology to the Community by setting up assembly operations. The amount of technology transferred was, however, minimal and related merely to assembly.

F. Conclusions

(27) In view of the foregoing, it is concluded that the anti-dumping duty should be extended to certain PPCs assembled in the Community. The amount of the duty to be collected, which takes the form of a flat-rate duty for each company, was calculated in a

manner to ensure that it corresponds to the percentage rate of the anti-dumping duty applicable to the exporters in question, on the cif value of the parts or materials from Japan as established for the investigation period.

G. Undertakings

(28) The companies against which protective measures are considered necessary have been informed of the essential facts and considerations on the basis of which the present measures have been proposed. Certain of these companies offered undertakings referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The undertakings offered by Canon Bretagne, Develop and Ricoh are considered acceptable by the Commission which is publishing a Decision to that effect. The anti-dumping duty should accordingly not be extended to PPCs assembled in the Community by these companies. The Commission will examine the acceptability of any further undertakings offered and proceed to the necessary verification as soon as it has been informed by the companies concerned that the conditions justifying the present extension of the anti-dumping duty to assembled products have been removed. Satisfactory guarantees should also be given that these conditions would not recur in the future,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Regulation (EEC) No 535/87 on imports of plain paper photocopiers incorporating an optical system, originating in Japan, is hereby also imposed on plain paper photocopiers incorporating an optical system, corresponding to CN codes ex 9009 11 00, ex 9009 12 00 and ex 9009 21 00, introduced into the commerce of the Community after, having been assembled or produced in the Community by:

- Konica Business Machines Manufacturing GmbH, Lüneburg,
- Matsushita Business Machine (Europe) GmbH, Neumünster,
- Toshiba Systems (France) SA, Arques-la-Bataille.

2. The rate of duty shall be as set out below per unit assembled by the companies concerned:

- Konica Business Machines Manufacturing GmbH 225 ECU,
- Matsushita Business Machine (Europe) GmbH 192 ECU,
- Toshiba Systems (France) SA 28 ECU.

Article 2

1. Parts and materials suitable for use in the assembly or production of plain paper photocopiers by the companies referred to in Article 1 (1) and originating in Japan can only be considered to be in free circulation in so far as they will not be used in the assembly or production operations referred to above.

2. Plain paper photocopiers thus assembled or produced shall be declared to the competent authorities before leaving the assembly or production plant for their introduction into the commerce of the Community. For

the purpose of levying an anti-dumping duty, this declaration shall be considered to be equivalent to the declaration referred to in Article 2 of Directive 79/695/EEC ⁽¹⁾.

3. The provisions in force concerning customs duties shall apply.

Article 3

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

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

Done at Luxembourg, 17 October 1988.

For the Council

The President

Y. POTTAKIS

⁽¹⁾ OJ No L 205, 13. 8. 1979, p. 19.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 July 1988

relating to a proceeding under Article 86 of the EEC Treaty
(Case No IV/30.178 Napier Brown — British Sugar)

(Only the English text is authentic)

(88/518/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⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 (1) thereof,

Having regard to the application made to the Commission pursuant to Article 3 of Regulation No 17 by, *inter alia*, Napier Brown and Company Limited, on 19 September 1980, as subsequently amended and extended, alleging infringements of competition rules by British Sugar plc,

Having regard to the Commission's Decision of 3 July 1986, to initiate proceedings in this case,

Having given the party concerned the opportunity to make known its views on the objections raised by the Commission, pursuant to Article 19 (1) of Regulation No 17 and Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17⁽²⁾,

After consulting the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

THE FACTS

A. Introduction

- (1) This Decision arises from an application pursuant to Article 3 of Regulation No 17 by Napier Brown and Company Ltd (hereinafter 'NB') and certain other United Kingdom sugar merchants — a complaint that was extended and enlarged by NB in mid-1985. NB alleged that British Sugar plc, part of the large multinational group S. & W. Berisford had, contrary to Article 86 of the EEC Treaty, abused the dominant position which it holds in the United Kingdom granulated sugar market.

B. The parties

- (2) British Sugar plc (hereinafter 'BS'), based in Peterborough, United Kingdom, is the largest producer and seller of sugar in the United Kingdom and the only processor of sugar beet in the United Kingdom. The turnover of British Sugar in 1984/85 was £ 637 712 000, and pre-tax profit was £ 53 564 000.

BS is a subsidiary of S. & W. Berisford plc (hereinafter 'Berisford'). Berisford purchased BS in August 1982, following an investigation into the merger by the Monopolies and Mergers Commission (MMC). The latter, in its report, recommended that the merger should be allowed to proceed, and that potential adverse effects on the public interest be remedied by an undertaking which should commit Berisford :

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

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

- to cease trading in Tate & Lyle sugar and sugar products, save for the acquisition of sugar for incorporation in Berisford's and BS's own products, and
- to maintain BS as a separate subsidiary without major changes in its activities or purposes.

In 1981, undertakings were agreed with the United Kingdom Secretary of State, and the merger went ahead. In accordance with these undertakings, Berisford sold S. & W. Berisford (Sugar) Ltd, Berisford's United Kingdom Sugar merchanting business, to NB. Berisford's current sugar interests are confined to producing sugar through BS and buying and selling sugar on Berisford's own account on the world market through its subsidiaries J.H. Rayner Ltd in London, Lonray Inc. in New York, Etlafric SA in Paris, and Intertransazuckerhandels GmbH in Munich.

- (3) The Sugar Act of 1956 gave BS a legal monopoly in the production of beet sugar in the United Kingdom. At this time BS placed a voluntary limitation of 640 000 tonnes on the amount of refined sugar it would produce, and any surplus beet raws were sold to the cane refiners. On accession to the EEC, the United Kingdom sugar market became subject to the Common Agricultural Policy sugar regime.

As the sole United Kingdom beet sugar producer, BS is allocated the entire United Kingdom basic quantity of sugar under the EEC sugar regime, and is thus the only company involved in the production of sugar from beet origin.

- (4) NB is the largest sugar merchant in the United Kingdom. The company engages in buying and selling sugar (including import and transport operations) both as nominal and real merchant. The turnover of NB in 1985 was £300 398 479, and its pre-tax profit on ordinary activities was £1 512 817.

As a sugar merchant NB buys and re-sells sugar in two ways: *real merchanting*, where the merchant buys the sugar in bulk quantities, re-selling it to other customers at a premium, and *nominal merchanting*, where a customer places an order through a merchant so that the job of the merchant is to obtain the best conditions available for his client. The merchant receives a fee for this service. The merchant may choose to deliver the sugar to its client using its own transport facilities. In fact, NB has its own transport facilities for such purposes.

- (5) In late 1984, 39 % of the shares of NB were purchased by Whitworths Holdings Limited (hereinafter 'Whitworths'). Whitworths is a company involved in the import and sale of such products as dried fruits, rice, nuts and speciality sugars. As part of the abovementioned transaction, Whitworths agreed that all sales of sugar under the 'Whitworths' name would in future be made by NB and not by Whitworths itself. This applied to granulated, white and speciality sugars.

C. The product

- (6) The product to which this Decision relates is granulated sugar derived from sugar beet or sugar cane.

Such sugar is sold either for retail or industrial use. For industrial use the sugar is sold either in bulk (tanker) or 50-kilogram sacks. For retail use the sugar is sold jackaged, usually in one-kilogram paper bags. Granulated sugar, whether used for retail or industrial purposes, and whether of beet or cane origin, has similar properties. Retail sugar is, in fact, industrial sugar packaged for retail sale.

D. The complaint

- (7) By a formal application dated 19 September 1980 under Article 3 of Regulation No 17, NB and certain other United Kingdom sugar merchants complained to the Commission that BS was acting in breach of Article 86 of the Treaty of Rome.

The original complaint was based upon allegations that BS, by attracting clients to deal directly with them instead of through merchants, was abusing its dominant position. Part of this dispute, largely covering the original specific allegations made in the above complaint, was settled by negotiation or has been superseded through a change in circumstances. NB however still maintained that BS was engaged in a course of conduct ultimately intended to force the merchants out of the United Kingdom sugar market.

- (8) In October 1983, NB decided to attempt real merchanting in retail packet sugar, which merchants had only done before in large quantities with sugar for industrial use. NB requested 50 000 tonnes of retail sugar (Silver Spoon) from BS. After prolonged negotiations, NB decided that it would be impossible to reach agreement with BS for the purchase of such sugar. To overcome this problem, NB arranged with Whitworths to package industrial sugar under the 'Whitworths' brand for retail sale. To this end 25 000 tonnes of bulk industrial sugar were purchased by NB from BS for supply between July and December 1985⁽¹⁾, part of this sugar being intended for packing into retail packets. At the time of purchase BS was unaware of the intended use of the sugar.

NB began to sell its new brand in mid 1985, and a 'new phase' to the case arose shortly after this, when NB claimed that BS was attempting to remove it from the retail sugar market. This 'new phase' to the case effectively began on 26 July 1985, when NB first drew the attention of the Commission to problems that it was having in its packeting operations allegedly due to BS's actions. NB subsequently extended its formal complaint by alleging that BS has, with the intention of removing NB from the retail sugar market, pursued amongst other actions, those indicated below. These alleged activities of BS led NB, on

⁽¹⁾ Contracts 1/338 and 1/340 dated 21. 2. 1985.

20 December 1985, to make an application for interim measures to safeguard its position pending any final decision the Commission might adopt on the substantive issues.

E. Statement of Objections, interim measures : BS's undertaking

- (9) The Commission sent an interim measures Statement of Objections to BS on 8 July 1986. Subsequently, BS offered, by letter dated 5 August 1986, an undertaking to the Commission covering the points raised in the abovementioned Statement of Objections. The Commission accepted these undertakings by letter dated 7 August 1986. In this letter, the Commission noted that :

'The acceptance of this undertaking does not prejudice the final outcome of the case, which will, *ceteris paribus*, proceed towards the taking of a final decision.'

- (10) Subsequent to this, in October 1986, BS informed the Commission that it intended to implement a comprehensive compliance programme in order to ensure that in the future the Company fulfilled all of its obligations under Article 85 (1) and particularly Article 86 of the Treaty. This programme has subsequently been adopted⁽¹⁾. As part of this programme, BS holds an annual anti-trust compliance review meeting, following which a report is compiled, a copy of which is forwarded to the Commission. The Commission has received no indications since BS offered undertakings that BS has continued to pursue the abuses of its dominant position outlined below.

The Commission accepts that neither the giving of undertakings by BS in response to the Interim Measures Statement of Objections nor the adoption of a compliance programme amounts in any way to an admission of liability by BS as regards the allegations made against them in the Statements of Objections.

F. Matters dealt with in the present Decision

- (11) The part of NB's application dealt with in this Decision concerns the allegations of NB that,

following the extension of its activities into the retail sugar market, BS amongst other actions :

- refused to sell sugar to NB,
- engaged in pricing practices which had the objective of driving NB out of the retail sugar market,
- refused to supply sugar on an ex-factory basis,
- refused to supply sugar to NB of beet origin only,
- offered 'group commitment or loyalty bonuses' to a certain buying group, some of whose members purchased from Napier Brown, in order to persuade all of the group to purchase sugar exclusively from British Sugar.

- (12) This Decision also takes account of BS's 'de-listing policy' — a subject which Napier Brown did not raise in its complaint, but concerning which Commission officials obtained information during an inspection at BS's premises and via subsequent inquiries.

G. 'De-listing'

- (13) The Commission became aware of the facts set out in this section as a result of certain documents copied by Commission inspectors during an inspection at BS. Although the Commission does not intend to take a decision under either Article 85 (1) or Article 86 relating to the following facts, it is necessary to outline certain actions of BS in order to put into context its underlying strategy in carrying-out the actions which the Commission considers to constitute an abuse of BS's dominant position.

- (14) Whitworths package industrial sugar for NB into retail bags. NB subsequently sells this sugar under the Whitworths trade-mark.

- (15) The Commission has ascertained that, at the same time that NB entered the retail sugar market, BS introduced a policy whereby it intended to visit major outlets for retail sugar and offer to them one or more BS products at excellent prices on the condition that the customer 'de-listed' or refused to stock, Whitworths' products.

⁽¹⁾ The text of this programme may be obtained from the Commission, Brussels, telephone : 02/235 23 64.

- (16) Thus, BS intended to make offers which were not necessarily conditional upon the customer agreeing to take all its requirements of one or more products from BS, but rather upon the customer agreeing not to purchase any of one or more products from Whitworths. From internal documents copied at BS during the inspection carried out at BS, it is clear that BS discussed and considered such a policy. Further documents show that BS also attempted to carry out this policy, and subsequent attempts to delist Whitworths related not only to granulated sugars, but also to speciality sugars and dried fruit in which Whitworths have a long-standing reputation.

- (17) Documents obtained from BS which show that BS attempted to implement these ideas include a document, headed 'anti Whitworths drive', which concerning Whitworths Brand sugars noted the following:

'They have good distribution on Browns, Dems etc. You need to identify by account their strengths and come up with specific proposals to de-list them. You need to be aggressive. I am aware much work has already been done on this. An update please.

...

If we are to succeed in seeing-off the Whitworths threat, we MUST attack on all fronts. It is time to get nasty!

- (18) Documents obtained from BS which show that BS subsequently attempted to implement this policy include the Minutes of a meeting in response to the 'anti Whitworths drive' note. These Minutes list the major purchasers of speciality sugar specifying those where Whitworths are listed or not listed. Amongst the companies considered, the following is pertinent:

[...]⁽¹⁾ — Totally de-listed.

[...] — Do have a presence. Our proposition is for solus supply (currently T & L and Whitworth). NTG to action.

Cash & Carry/Wholesale — Strong Whitworth presence. We have good listings but poor distribution. NGT/SP to take up at next negotiation meeting.

- (19) It is clear from these facts that BS adopted a policy of attempting to precipitate the removal of NB from the retail sugar market by all means at its disposal. However, the Commission has not established any case in which 'de-listing' proved successful. In the light of this, the Commission

does not consider it necessary to adopt, in the present case, a decision stating that BS abused its dominant position by the adoption of this policy.

H. The alleged abuses

Refusal to supply

- (20) NB alleged in its complaint that BS constructively refused to sell industrial sugar to NB, with the result that it had to purchase more expensive supplies from companies situated in other Member States, and furthermore that BS made such a refusal with a view to ensuring NB's withdrawal from the retail sugar market.

- (21) The contracts between BS and NB dated 21 February 1985, for the supply of sugar between July and December 1985 expired in December 1985. Regarding supplies after December 1985, NB alerted BS on 3 October 1985 by telephone that it would be requiring sugar, which was followed by a formal written request for 30 000 tonnes of sugar made by letter dated 17 October 1985. BS subsequently informed the Commission that it would deal with the request after its meeting with Directorate General IV (DG IV) arranged for 28 November 1985. The Commission informed BS that the Commission would not accept any arguments of BS that it had sold all its A/B quota between NB's request for sugar and BS's meeting with the Commission as a justification for refusing to sell sugar to NB.

- (22) At the abovementioned meeting with the Commission, BS outlined its intentions:

— under the previous contract NB had rejected various consignments of sugar on the grounds that the grain size of the sugar was excessively large compared with BS's widely available typical analysis. BS therefore offered 30 000 tonnes *per annum* of special grain size sugar at a premium above the price of standard granulated sugar of a minimum £ 26,32 per tonne (five-year contract with a performance bond), supply beginning ± July 1986 when special sorting equipment could be installed.

— BS was aware that it would have limited supplies of sugar for sale due to the EEC sugar regime, and expected to be short of sugar during the 1985/86 season, as it had experienced unusually strong demand from clients during the first few months of the new season. In order to ensure continuity of supplied to its customers, BS had set up a quota system: each customer would only be permitted to purchase amounts equivalent to those purchased (as opposed to contracted for) in the previous season. In the case of NB this quota system would result in the following offer being made

⁽¹⁾ In the published version of the Decision, some information has hereinafter been omitted, pursuant to the provisions of Article 21 of Regulation No 17 concerning non-disclosure of business secrets.

to NB by BS : from the contracts No 1/338 and No 1/340 for supply between July and December 1985, NB had taken, according to the calculations to be used for this scheme, 17 148 tonnes during the 1984/85 sugar year (1 October 1984 to 30 September 1985). Therefore, should NB not take up the 'special grain size' offer, it would be entitled to 17 148 tonnes in the 1985/86 sugar year, of which NB had already contracted to take 10 000 tonnes between October and December under the contracts 1/338 and 1/340. Thus, BS would enter into new additional contracts for standard grain size sugar for a total of 17 148 - 10 000 tonnes = 7 148 for supply to NB in the 1985/86 sugar year.

This offer was transmitted by BS to NB by letter dated 11 December 1985, with contracts No 1/872 and No 1/873 subsequently implementing this offer.

- (23) The Commission investigated NB's allegations by requesting information pursuant to Article 11 of Regulation No 17, and subsequently by an inspection at BS's premises pursuant to Article 14 (2) of Regulation No 17. Following these investigations, the Commission has concluded that BS's refusal to supply NB's requirements of industrial sugar cannot be justified by a shortage of sugar. The quota system adopted by BS was unnecessary, implemented in a manner discriminatory against NB and adopted only to justify BS's refusal to supply.

Furthermore, this refusal cannot be justified by BS's 'special grain size' offer. The Commission, after having examined this offer in the light of all available facts, has concluded that the offer was, like the quota system, unnecessary and adopted only in an attempt to justify BS's refusal to supply standard industrial sugar to NB.

The facts that have led the Commission to these conclusions are as follows :

- (a) Certain documents, discovered by the Commission during the inspection at BS show that BS considered and discussed refusing to sell sugar to NB. A note written by the Executive Marketing and Sales Director⁽¹⁾ and filed under 'Whitworths' reads as follows :

'NB/whit.

...

N.B. — continent
— charges
— cut contract
— no new contract
— T/L no new agreement'

This document was written, according to the abovementioned Director, in approximately August 1985. The document shows that at that time BS considered refusing to supply NB. It is in this context that the following facts, indicating that the quota scheme was only put forward as a reason to justify BS's refusal to supply NB, should be seen.

- (b) Despite the fact that during a meeting with the Commission in late November 1985, BS's Managing Director⁽²⁾ stated that the application of the quota system had been and was to be universal *vis-à-vis* all of BS's customers, the Commission subsequently discovered that BS had contracted to sell considerably more sugar to certain clients during the 1985/86 season than it had done during the 1984/85 season.

In certain cases the contracts regarding these increased industrial sugar supplies were concluded as late as October 1985, the month that NB requested further supplies of industrial sugar from BS.

- (c) Various documents copied during the inspection at BS show that even since the formal introduction of the quota scheme, BS had been actively offering sugar, especially retail, to other clients and particularly to clients or ex-clients of NB.

BS's interest in increasing its sales to purchasers of sugar is shown, for example, in the minutes of its Sales Production Coordinating Committee of 14 November 1985 :

'Retail

- (i) SP confirmed that in period 1 there had been a deficit of 4 000 tonnes against forecasts — it was anticipated that the deficit for period 2 would be reduced to 1 000 tonnes in spite of the overall UK market reduction of some 6 %.
- (ii) In spite of the foregoing this year's forecast of [...] t should be achieved.
- (iii) SP summarized main account activity as follows :
- (...) ((...) total usage) negotiations continue
- [...] — we have [...] of their business and every effort is being made to increase this proportion to [...]

⁽¹⁾ A new Executive Marketing and Sales Director took charge of this post in mid-1986.

⁽²⁾ A new Managing Director took charge of this post in mid-1986.

[...] — currently we have [...] of their total usage and we hope to increase this to [...]

Solus accounts — these include [...] etc and we can but hope to maintain our position with these accounts'.

- (d) Certain BS documents copied during the inspection indicate that the 'sugar shortage', which BS claims justifies the implementation of its quota system, was not in fact perceived by BS as a real one.

Although supplies to industrial clients increased compared with the previous year, the loss in the retail sector made up for this increase, such that no real shortage existed.

A document, 'sugar sales to date' (30 December 1985) notes:

'At present level of activity the annual estimate for industrial sales runs out at approx. [...] tonnes. [...] of the pre-campaign forecast has been negotiated to date. Despite this, the full year effect of the current activity cannot yet be qualified as there is still the possibility of unfavourable conclusions to account negotiations in the second half of the year.

As a result the latest annual estimate (January 86) for industrial sales is [...] which is [...] tonnes above the pre-campaign forecast of [...] tonnes.

Retail sales at [...] were [...] tonnes below forecast. This reflects the effect of the to date net loss of business. Three customers have been lost out of the precampaign forecast of [...] K tonnes with a combined annual volume of [...] tonnes. Set against this are various gains, with the net effect that annual sales are [...] short of the annual estimate (January 86) of [...] tonnes. It is anticipated by marketing that the shortfall can be made up in the later periods.'

Furthermore, a progress report for a Board Meeting of 28 February 1986 notes that:

'Sales + Marketing

(a) Retail

On current estimates, the retail volume for 1985/86 will be down some 6 % on the previous year, assuming current distribution is held. Gaining new accounts to recover some of this lost volume is restricted at this time due to the action being pursued by NB with the EEC Commission.

(b) Industrial sugar sales

Current volume trends remain strong and 1985/86 should at least achieve budget: this will represent an increase of 4 % on the previous year.

Imports continue at a low level and are further restrained by the current disparities in price between the continent and Britain.'

- (e) Evidence discovered by the Commission shows that the quota scheme was in reality only implemented *vis-à-vis* NB as BS was willing to supply customers, purchasing sugar from other sugar producers if this would be necessary to cover any sales above its quota. An internal BS note addressed to BS's Managing Director (January 1986) states that BS's objectives regarding sugar sales were to:

'optimise our consumer base and expand share beyond quota restrictions through buying in sugar; to defend the retail business against NB; to improve industrial sales margins above support price'.

- (f) A document copied at BS shows that the actual implementation of the quota scheme was carried out in a discriminatory manner; NB was not even offered the quantity of sugar that it was entitled to under the quota scheme. If the quota scheme had been correctly implemented, NB would, according to BS's own calculations, receive the same amount of sugar in the 1985/86 season as it had purchased and received during the previous season. However, an internal BS note states:

'Plus factors	
Post December 85	— [...] ...]
Minus factors	
Post December 85	— [...] ...]
	NB [...]

- (g) BS's quota arrangements could have had considerable consequences upon one of its customers who wished to purchase more sugar in the 1985/86 sugar year from BS compared to the amount they had purchased from BS during the 1984/85 sugar year, as BS would, due to the quota scheme, have been forced to refuse to supply this customer any sugar additional to its quota. One would therefore expect that any responsible company would have forewarned its traditional clients of its quota system to enable them to make appropriate arrangements.

However, in a reply to a request for information under Article 11 of Regulation No 17 regarding the clients which BS had informed that it had implemented a quota system, BS replied that it had informed three sugar merchants together with [...] (one company to which BS is selling more in the 1985/86 season than it had sold during the previous season) and [...]. In fact BS only informed these companies and sugar merchants that it was 'looking at possibly being in a limited supply position in 1986 (and so therefore) it is essential that we discuss any indications of any potential upside on these volumes'.

The fact that BS did not make any effort to inform its traditional clients of the existence of the quota scheme indicates that the quota scheme was in fact only intended to be applied to NB.

- (h) BS internal documents dated January 1986 show that BS only concerned itself with whether or not it had implemented the quota scheme *vis-à-vis* other clients than NB three months after the introduction of the quota scheme, and its interest in applying the quota scheme was motivated not by the shortage of sugar, but by the action of the Commission.

The following note, dated 23 January 1986 was sent from the Executive Marketing and Sales Director to the Managing Director and the General Sales Manager for Industrial Sales:

'Industrial sugar — new customer enquiries

I enclose two enquiries which have come to hand. We must be mindful that an attempt to 'set us up' is not impossible under the present circumstances and that these enquiries could have been put forward with this purpose. I believe it is our current practice to pass such matters to merchants and would ask you to ensure that this happens in these two cases.

We have agreed not to make a public announcement about our allocation arrangements for obvious commercial reasons. Nevertheless, it is necessary to be most careful of applications for additional supplies from customers which could be prejudicial to us if granted without consideration. I do not want to discourage the sales force at all from seeking to increase our customer base and the volume of sales we can profitably undertake and hope that we can find ways of meeting all our customers' requirements without damaging our standing; No doubt you will review enquiries for additional

supplies personally — I would appreciate if you would keep me advised on such matters.'

- (i) This refusal to supply cannot be justified by the 'special grain size' offer made by BS, because the facts show that the offer was not requested by NB and furthermore must have been made by BS in the knowledge that NB could not purchase and use the sugar in question at the prices offered by BS.

Taking account of the fact that a small difference in the price of sugar (it being a commodity) makes a considerable difference as to whether or not a merchant can either resell the sugar to an industrial client or profitably repack the sugar for retail sale and sell it in competition with other retail sugar producers — it must have been clear to BS on making this special grain size offer that NB could not accept such an offer as it would have been unable to resell the resultant sugar at a profit either in retail form or to industrial clients under real merchandising contracts.

BS' pricing policy

- (24) NB claims that BS, between early 1985 and 1986, had been undercutting NB's retail sugar prices to clients or potential clients to a level at which it was impossible for a repackager of sugar in the United Kingdom without an internal source of industrial sugar to survive in the long term, thus artificially maintaining an unrealistically low margin between its prices of industrial and retail sugar with the objective of forcing NB out of the market. NB also alleges that, until the end of 1986, BS refused to supply sugar to any customer for use on the relevant market otherwise than on a delivered basis.

Facts found by the Commission regarding BS's pricing policy

- (a) BS' pricing policy in relation to retail sugar sales
- (25) In a case such as this, where an undertaking is alleged to be dominant in the markets for the supply of both a raw material and a downstream product, and it is further alleged that the dominant undertaking maintains an artificially low margin between the price of the raw material (industrial sugar) and the price of the downstream product (retail sugar), the analysis of pricing must be centred upon the difference between the selling price of the dominant companies' raw material and its downstream product prices, in the present case on the margin between BS's price for industrial and that for its retail sugar (the repackaging margin).

- (26) The following are repackaging margins as supplied by NB and BS (price in £ per tonne) which correspond to the period under consideration :

	NB	BS
Cost of packaging (including storage and finance costs where relevant)	[...](⁽¹⁾)	[...]
Cost of transport	[...]	[...]
Cost of advertising	[...]	[...]
Profit margin	[...]	[...]
Total	[...]	[...]

(⁽¹⁾) This amount would have been reduced by [...] if NB had received only beet origin sugar for repackaging.

It is to be noted that the major difference between the two packaging margins supplied by BS and NB respectively is that of transport. This is because BS used a delivered price only system. Thus the margin calculated by BS (i.e. the margin above BS's industrial sugar price, which itself already contained a standard charge for the delivery of that industrial sugar) is simply the costs incurred by BS for delivering retail sugar in addition to its costs of delivering industrial sugar. NB on the other hand, had to pay a standard charge for the delivery of industrial sugar from BS included in the price paid (BS refused to permit NB to collect the sugar) and, in addition, bear its transport costs for retail sugar.

- (27) NB was, during the period under consideration, offered and purchased industrial sugar from BS at [...] per tonne.

[...] NB's main clients or ex-clients, were ultimately offered packet sugar by BS at a net price of [...]. [...] a traditional BS client, approached by NB, was also offered packet sugar by BS at a net price of [...] (see tables below).

In addition to the very attractive price of [...] which was accepted by a [...] Board meeting on 17 December 1985, [...] subsequently received this price backdated to [...], by way of cash rebate paid directly to [...].

[...], who received the offer of net [...] per tonne in [...] had the offer backdated to [...].

[...] explained that it is common practice, when a particular agreement for the supply of sugar expires and negotiations for future supplies have not yet been concluded, for sales of sugar to continue at

the old price on the understanding that the new price will be backdated to the end of the previous agreement.

In the present case the price paid by [...] to BS was re-arranged on [...], [...] and [...], no particular contract expiring on [...]. Thus, taking account of the fact that the price was backdated to an apparently notional date, and not to a date from which negotiations began for a new sugar supply contract, such rebates must be seen as additional price reductions given to [...] in order to regain their business from NB. In fact, during this period [...] purchased [...] tonnes of sugar over a period of approximately [...] months and received a rebate of [...]. This, assuming that [...] members purchase similar amounts during the following year, would amount to a real net price (including rebate) of [...] per tonne.

- (28) The following tables show price movements and offers made to these three particular companies [...].

Price at which [...] has been purchasing granulated retail sugar (source [...] reply to Article 11 letter; based on maximum drop size with annualized promotions):

Date of offer	Offeror	Price (£)	Accepted or not
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]

Price at which [...] has been purchasing granulated retail sugar (source [...]):

Date of offer	Offeror	Price (£)	Accepted or not
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]
[...]	[...]	[...]	[...]

Price at which [...] has been purchasing granulated retail sugar (source ...):

Date of offer	Offeror	Price (£)	Accepted or not
...	...	...	...
...	...	...	...
...	...	...	...
...	...	...	...

- (29) Furthermore, BS has sold one-kilogram bags of granulated sugar to the following companies below the price of [...] per tonne:

[...]

It is not necessary to investigate further in order to discover the names of all companies to which BS sold one-kilogram bags of granulated sugar at or below [...] per tonne for the purpose of this case.

- (30) Assuming the BS repackaging margin of [...] to be correct (i.e. not taking account of a profit margin on repackaging), then the minimum at which NB could sell packet sugar in order not to make a loss (using industrial sugar purchased from BS) would be, assuming that it matched BS's efficiency, [...]. Thus, with retail prices below [...] NB or any repackager as efficient as BS, had an insufficient margin to repackage and sell sugar for retail sale, even without trying to make a profit.
- (31) Certain offers made by BS to NB's clients or potential clients undercut the prices offered by NB and were not made to match offers made by NB, as was claimed by BS.

Furthermore, in a memorandum from the Executive Marketing and Sales Director to the Managing Director and other Executive Directors dated April 1985, it was stated that:

'So far Whiworths/NB have had no success in gaining distribution for their granulated sugar in any major account but it would appear as an act of some desperation they have made an offer to [...] which heavily undercuts our price. We have had no option, therefore, but to react with a new lower price *than* meets the competitor's offer' (emphasis added).

In the light of this, and taking into account the fact that BS has undercut NB's offers to the accounts specified above, the Commission does not accept

that BS had no knowledge that they were actually undercutting offers made by NB.

(b) Delivered pricing

- (32) Before August 1986 BS did not offer an ex-factory purchasing option.

During meetings between BS and the Commission's services which took place in November 1986, BS undertook to offer sugar at not only delivered prices, but also ex-factory prices, and agreed to undertake a study as to how such an option could most appropriately be set up.

Subsequently, British Sugar presented to the Commission, as a part of its compliance programme, a system whereby purchasers of sugar are able to choose between collecting the sugar themselves or having it delivered by British Sugar. This system has subsequently been implemented.

Beet origin: discrimination

- (33) NB has complained that although the contract covering the period September 1985 to March 1986 was for code '701' granulated sugar, which NB maintains means beet-origin only sugar, BS refused to guarantee beet origin even when such was specified in NB's orders under this contract, and often supplied cane-origin sugar purchased by it from Tate & Lyle. NB claimed that, as other clients do receive on request solely beet origin sugar, this is a case of discrimination.
- Irrespective of the disagreement as to the meaning of 'code 701', the BS-NB contracts of February 1986 (No 1/872, 1/873) stipulated that beet-origin sugar could not be guaranteed.

- (34) NB requires beet-origin sugar because it receives an EEC storage rebate for storing EEC-produced beet-origin sugar but not for the storage of preferential cane-origin sugar.
- (35) A formal request for information made in accordance with Article 11 of Regulation No 17 was sent to the beneficiaries of the EEC storage rebate in the United Kingdom. [...] maintained that they receive beet-origin sugar from BS at their request. In the case of one company, [...], it replied as follows: 'We have a long standing agreement with BS that all the sugar delivered by them should be of UK beet origin. This was at our request'. A copy of the letter from BS confirming this, dated 22 March 1983 was supplied.

NB did not wish to purchase the industrial sugar in question solely for the purpose of putting it into retail bags, but equally in order to use it to sell to its clients through its normal merchanting activities. It is clear, therefore, that NB was at least in this respect, directly competing with [...] who, during this period, had the option of placing the sugar it purchased from BS into storage and receiving the storage rebate which NB did not. It is equally clear that BS is perfectly capable of supplying large quantities of beet-origin sugar should it wish to do so — for example, to [...]. The Commission does not therefore accept that BS had insurmountable difficulties in supplying beet-origin sugar to NB.

'Loyalty' or 'group commitment' bonuses

Facts found by the Commission regarding the offering by BS of loyalty bonuses

- (36) The [...] is a group of [...] societies acting as a buying group.

Before NB's entry onto the retail sugar market, all Co-operative Societies had to purchase granulated sugar from the National Co-operative buying group, CWS, as BS and T & L did not deal with members on an individual basis.

- (37) In June 1986, two members of this group, [...] decided to begin purchasing one-kilogram bags of granulated sugar from NB, who agreed to sell directly to individual Co-operative Societies rather than uniquely to CWS.

Offers made by NB to [...], net, were as follows:

[...]

[...]

- (38) BS, on realizing that it had lost two out of seven customers within this buying group, made the following offer directly to the [...] group, to be effective from [...].

(i) Price irrespective of the number of members of the buying group purchasing from BS: [...];

(ii) Loyalty ('group commitment') bonus: [...], available only if all members of the [...] Group purchase granulated sugar from BS alone (i.e. net price [...]).

- (39) [...] subsequently agreed to recommence purchasing from BS, although [...] refused. BS agreed that under such conditions the [...] members purchasing from BS could benefit from the 'group commitment bonus'.

LEGAL ASSESSMENT

Article 86

- (40) Under Article 86 any abuse by one or more undertakings of a dominant position within the common market or a substantial part of it is prohibited as incompatible with the common market in so far as it may affect trade between Member States.

A. The relevant market

- (41) In order for the Commission to determine whether BS occupies a dominant position within the meaning of Article 86 it is necessary first to define the relevant market. This constitutes the area and product sector in which the economic power of the undertaking in question *vis-à-vis* its customers and competitors is to be judged.

The relevant product market

- (42) The relevant product market is granulated sugar. This market may be subdivided into two sub-markets of sugar for sale to retail and industrial clients.

Speciality sugars, liquid sugars and syrups, being used for different purposes than granulated sugars, do not meet the same needs and are not therefore part of the relevant product market because they are not substitutable from the customer's point of view.

Industrially produced sugar substitutes such as saccharin, cyclamates or aspartame only compete with natural sugar in limited uses such as 'diet' products, and thus do not form part of the same relevant product market as granulated sugar⁽¹⁾.

The relevant geographical market

- (43) In the Community⁽²⁾, each Member State is given a basic quantity of beet-origin sugar, which it divides up into quotas between its beet processing companies. This sugar is known as A/B sugar. BS receives all the United Kingdom basic quantity (currently

⁽¹⁾ For fuller details of the different sweeteners available, and their particular characteristics, see paragraphs 2.59-2.75 of the Monopolies and Mergers Commission report on the existing and proposed mergers between Tate & Lyle plc or Ferruzzi Finanziaria SpA and S & W Berisford (HMSO Cmd89) (hereinafter the 'second MMC report').

⁽²⁾ For a more in-depth analysis of the mechanisms and regulations constituting the EEC sugar regime, see the Monopolies and Mergers Commission report on the proposed merger between S & W Berisford and the British Sugar Corporation Limited, 25 March 1981 (ISBN 0 10 224181 3) (hereinafter the 'first MMC report'), and the second MMC report.

1 144 000 tonnes *per annum*), being the only United Kingdom beet processing company. This 'quota' is the maximum amount of sugar produced by BS that it may sell in the Community, as an intervention price system operates for sugar sold in the Community. This quota of sugar may also be sold outside the Community with an export refund. Any sugar produced above this quota must be exported outside the Community without export refund (C sugar) or carried over to the next year's A/B quota. Certain companies dealing in sugar which store sugar qualify for a Community sugar storage rebate. Such a rebate is only granted on storage of beet-origin sugar.

The United Kingdom basic quantity covers approximately half the country's total sugar requirements. The balance is largely made good by the import of cane raws from ACP countries pursuant to a Lomé protocol⁽¹⁾. This is refined by Tate & Lyle plc (hereinafter 'T & L'). Taking account of the production of both BS and T & L, enough sugar is produced in the United Kingdom to cover domestic demand.

- (44) During the previous few years, imports have made up approximately 5 to 10 % of total British sugar consumption. This amount appears to be to a large extent a structural limit to imports, which are unlikely to exceed this figure for the following reasons :

- (i) Because of the natural barrier of the English Channel, which gives rise to additional transport costs, United Kingdom producers of sugar are able to charge a premium on the price of sugar compared with Continental prices. The United Kingdom price is generally set by BS at slightly under that at which sugar may be profitably imported and sold from the Continent. This was recognized by the House of Lords Select Committee Report on Sugar Policy⁽²⁾ which states (paragraph 9) that :

'It is these (EEC) imports which set the level of market prices in the United Kingdom and mean that both beet and cane sugar are priced at just under these levels. There is a consequent lack of price competition, as Tate and Lyle's full refining margin is covered from the UK

market premium, and it cannot afford to cut prices significantly, while BS cuts prices to the extent necessary to sell its increasing throughput, but no more. Faced with this situation, industrial sugar users have been willing to import from the continent as a third source of supply.'

This conclusion was supported by the MMC in paragraph 16.25 of its second report ;

- (ii) Importation of sugar for retail sale from other Member States is even more difficult than the importation of industrial sugar, because English-language bags must be specifically printed for the operation, and because transport is even more expensive as 'drop sizes' are generally smaller for retail compared to industrial sales. This was recognized by the MMC in both of its reports ;
- (iii) In addition to the cost of freight, a further relevant factor is the strength or weakness of sterling. If sterling is strong against other Community currencies imports will be cheaper. If sterling is weak, imports will be more expensive. Currency fluctuations can affect the price by up to £ 15 per tonne either way. Although the Community's system of monetary compensatory amounts is designed to minimize the effect of currency fluctuations it does not remove all distortions. For example, in the first three months of 1986 sterling weakened against the currencies of other Member States so that imports were expensive. Thus no company, taking account of the large variations in price of imported sugar, will rely to any large extent on imports for its supply of sugar. However, during certain periods, largely as a result of currency fluctuations, the importation of sugar becomes profitable, and during these periods merchants undertake such imports ;
- (iv) Many customers who require large, frequent and rapid deliveries upon order would have to be supplied from stocks of imported sugar stored in Great Britain ; an additional cost would thereby be incurred ;
- (v) Furthermore, as the MMC pointed out in its second report, in order to secure a substantial amount of imports a considerably higher price in Britain than on the Continent would be necessary because potential exporters may require a large premium to persuade them to export large quantities of sugar to Britain for fear of retaliatory exports by the British producers.

⁽¹⁾ Protocol 3 on ACP sugar annexed to the ACP-EEC Convention of Lomé, signed on 28 February 1975, and contained in Protocol 7 of the third ACP-EEC Convention signed at Lomé on 8 December 1984.

⁽²⁾ House of Lords session 1979/1980, 44th Report Select Committee on the European Communities 'EEC Sugar Policy', 19 March 1980.

(45) Because of these features, BS has a margin between which it may set British prices, between the Community intervention price for sugar, and the price at which imports would enter Britain in large quantities. It may set these prices just below the level at which imports from the Continent are (aside from periods where currency fluctuations make imports profitable) not competitive and, in fact, during the period under consideration, has done so.

(46) Imports do, however, enter the United Kingdom each year, varying between 5 and 10 % of total sales *per annum*. These enter because many major purchasers of sugar demand a third source of supply from outside the United Kingdom, to ensure continuity of supplies should a shortage of sugar develop as happened in the 1974/75 season, and to act as a competitive threat to British producers. Furthermore, merchants import sugar when conditions are favourable.

(47) Thus, as a result of these features, the role of imports on the British market has been as a complement to domestic sugar, rather than as a fully competitive alternative.

(48) The only part of the United Kingdom in which different conditions prevail is Northern Ireland, which does not form part of the relevant geographical market for the purposes of this case. No sugar is produced in Northern Ireland and, because of transport costs, most supplies are imported from Ireland.

This conclusion is supported by the second MMC report (see paragraph 16.27).

(49) The Commission therefore concludes that for the purposes of Article 86 the relevant market is that of retail and industrial granulated sugar in Great Britain, which is a significant part of the common market.

B. Dominant position

BS holds a dominant position on the British sugar market.

(50) The factors which must be taken into account in deciding whether or not BS has a dominant position on the British market for industrial and retail granulated sugar are as follows:

(i) Market shares on the British sugar market

According to figures supplied by NB, BS held, in the 1984/85 season, 58 % of the relevant market (granulated sugars in Great Britain), Tate & Lyle

37 %, and imports 5 %. This estimated market share conforms to BS's own estimation of its market share (contained in the notification of BS's compliance programme), which BS states to be approximately 58 % in the 1984/85 season.

In the second MMC report, it was estimated that BS enjoyed a market share of between 57 and 61 % of the total white granulated sugar section of the market (see paragraph 2.66 of the report).

(ii) Ability of the other forces upon the relevant market to compete

Tate & Lyle

(51) T & L's position as a cane refiner places it at a considerable disadvantage compared to BS. Because of the Community pricing structure it has a cost disadvantage on refining cane sugar compared to the processing of beet sugar, resulting in T & L being a price follower. This was recognized by the House of Lords Select Committee on EEC Sugar Policy in 1980:

'There is already a lack of price competition in the UK market, as the Communities institutional pricing structure means that Tate & Lyle gets too small a margin to enable it to continue refining and selling cane sugar in the UK unless there is a substantial market premium above intervention price, whereas the same pricing structure allows the BSC a very handsome margin (£ 13 per tonne on the 1978-79 crop as against £ 2 per tonne for Tate & Lyle).

The Committee have noted the sugar users' complaint about the lack of price competition in the UK market as, despite claims of rigorous price competition within the market, it appears that UK market prices are dictated by the price at which Continental sugar can be landed. It also appears to them that one of the two principal sugar suppliers in the market is unable to compete effectively on cost grounds because of the inadequacy of the refining margin allowed to cane refineries in the EEC's institutional structure of support prices for sugar beet.'

(52) The Commission agrees with the opinions of the House of Lords and considers that the facts lying behind these opinions have not materially changed since 1981. The fact that BS is a price leader and T & L, due to the relatively low cane refining margin, is a price follower, was also noted by the MMC in its second report (see paragraphs 16.37 and 16.59).

- (53) Thus the Commission concludes that BS acts as a price leader on the relevant market, and T & L as a price follower. The Commission accepts, as the MMC pointed out, that T & L — with sales of sugar similar in quantity to those of BS — provides BS with competition for individual accounts; but considers that this marginal competition, taking account of the fact that T & L 'is unable to implement price increases on its own and is unwilling because of its financial position to initiate general price reductions' ⁽¹⁾, does not prevent BS from enjoying a dominant position on the relevant market.

Imports

- (54) Imported sugar acts as a limit to the price that BS may charge for its domestically produced sugar, thus giving BS a margin within which it may set United Kingdom sugar prices. During the period under consideration, BS has set British prices just under that at which it would be consistently profitable to undertake imports. The role of imports on the British market has therefore been as a complement to domestic sugar, rather than as a fully competitive alternative. In the light of this, the Commission considers that competition afforded by imported sugar did not, during the period in question, prevent BS from enjoying a dominant position within the meaning of Article 86.

(iii) Ability of BS unilaterally to increase prices, which the market follows

- (55) On 1 July 1986 BS increased its retail sugar price to all its clients by £ 10 per tonne. BS subsequently made a further increase in its retail sugar price by £ 10 per tonne on 20 October 1986. BS has been able to maintain these price rises, and the other producers of retail sugar have also increased their price by similar amounts.

This indicates that BS has 'the power to determine prices [...] for a significant part of the products in question' ⁽²⁾, and furthermore has 'the power to behave to an appreciable extent independently of its competitors, customers and ultimately of the consumers' ⁽³⁾.

(iv) Barriers to entry

Beet-origin sugar

Under Council Regulations (EEC) No 1785/81 ⁽⁴⁾, as last amended by Regulation (EEC) No 1107/88 ⁽⁵⁾, and (EEC) No 193/82 ⁽⁶⁾, the United

Kingdom Government has the ability but not the obligation to reallocate the basic quantity of sugar received by United Kingdom producers amongst varying producers. At present BS receives all the United Kingdom basic quantity. It appears unlikely that the United Kingdom Government would give part of the allocation to a new producer, taking account of the fact that BS already has sufficient modern and efficient capacity to produce all the United Kingdom basic quantity of sugar.

- (56) BS has a well-developed integrated production system and is responsible for all stages of production, from the provision of seed to the growers to the sale of the finished product. Such established, advanced and integrated operations make it difficult for a new producer, which produces on only one level of production, to operate.
- (57) Thus considerable barriers to entry exist regarding the production of beet-origin sugar. Indeed, the fact that no new producer of sugar from beet origin has set up in the United Kingdom since 1936 despite the fact that BS has consistently been profitable, indicates that these barriers to entry are real and appreciable.

Cane-origin sugar

- (58) It appears unlikely that any new company will enter the market importing and refining cane-origin sugar due to the cost disadvantage presently suffered by cane-sugar producers compared to beet-sugar producers.

Imports

- (59) As explained above, imports act as a complement to British domestic sugar rather than as a fully competitive alternative.

Conclusion

- (60) The Commission concludes that, taking account of BS's high market share on the relevant market, the inability of its main competitors to compete fully and effectively with it, the barriers to entry existing on the British sugar market, and BS's proven ability to influence the price at which sugar is sold in Britain by unilateral action, BS holds a dominant position within the meaning of Article 86 on the relevant market — white granulated sugar for both retail and industrial sale in Great Britain.

C. Abuse of a dominant position

Refusal to supply

- (61) BS refused to supply NB with industrial sugar. NB requested 30 000 tonnes of industrial sugar during

⁽¹⁾ The Second MMC report, paragraph 16.6.

⁽²⁾ See the European Court of Justice's definition of a dominant position in the case of *Continental Can*, Case 6/72 ECR (1973), 215.

⁽³⁾ See the European Court's decision in *United Brands*, ECR (1978), 207.

⁽⁴⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽⁵⁾ OJ No L 110, 29. 4. 1988, p. 20.

⁽⁶⁾ OJ No L 21, 29. 1. 1982, p. 3.

the 1985/86 sugar year, and BS was only prepared to offer NB 7 148 tonnes or to offer NB 30 000 tonnes of 'special grain' sugar at a price so high that NB would be unable to use the sugar. BS claims that its refusal to meet NB's request is justified by the necessity of it implementing a quota scheme.

- (62) However, the evidence outlined above shows that the quota scheme implemented by BS was not necessary and was put forward only in order to justify BS's refusal to supply.

BS refused to supply NB with the objective of removing NB as a producer of retail sugar; it is clear that the natural and foreseeable consequence of the refusal to supply NB would be to precipitate NB's withdrawal from the retail sugar market. Indeed, the handwritten document of BS's executive marketing director, proposing to refuse to supply NB, and the documents found at BS relating to BS's 'de-listing' policy, indicate that BS's refusal to supply was made with just such an intention.

- (63) NB cannot be considered to be a new client of BS in relation to this refusal to supply. BS had supplied NB with industrial sugar before, e.g. 30 000 tonnes in 1984/85, a similar amount and type of sugar that NB was requesting in the present case. The fact that NB intended to package a part of this into retail bags, selling the rest to industrial clients as it had done in the past, cannot result in NB being considered as a new client for the purposes of this case.
- (64) The Commission considers that BS has abused its dominant position by refusing to supply industrial sugar to NB without objective necessity, the intention or foreseeable result of which would have been to precipitate the removal of NB from the United Kingdom retail sugar market, thereby reducing competition on that market.

This conclusion is supported by the judgment of the European Court in Joined Cases 6 and 7/73: *ICI and CSC v. Commission* ('Commercial Solvents')⁽¹⁾. In this case the European Court held that:

'... an undertaking being in a dominant position as regards the production of raw material and therefore able to control the supply to manufacturers of derivatives, cannot, just because it decides to start manufacturing these derivatives (in competition with its former customers) act in such a way as to

eliminate their competition which in the case in question, would amount to eliminating one of the principal manufacturers of ethambutol in the common market.

Since such conduct is contrary to the objectives expressed in Article 3 (f) of the Treaty and set out in greater detail in Articles 85 and 86, it follows that an undertaking which has a dominant position in the market in raw materials and *which, with the object of reserving such raw material for manufacturing its own derivatives, refuses to supply a customer, which is itself a manufacturer of these derivatives, and therefore risks eliminating all competition on the part of this customer, is abusing his dominant position within the meaning of Article 86*. (Emphasis added.)

BS's pricing policy

- (i) The pricing policy of BS regarding its sales of retail sugar since NB's entry onto the retail sugar market
- (65) The pricing information indicated above shows that BS has engaged in a price cutting campaign leaving an insufficient margin for a packager and seller of retail sugar, as efficient as BS itself in its packaging and selling operations, to survive in the long term.
- (66) The maintaining, by a dominant company, which is dominant in the markets for both a raw material and a corresponding derived product, of a margin between the price which it charges for a raw material to the companies which compete with the dominant company in the production of the derived product and the price which it charges for the derived product, which is insufficient to reflect that dominant company's own costs of transformation (in this case the margin maintained by BS between its industrial and retail sugar prices compared to its own repackaging costs) with the result that competition in the derived product is restricted, is an abuse of dominant position⁽²⁾.

In the present case, BS's action of reducing the margin between its industrial and retail sugar prices such that it sold retail sugar at a price which no longer reflected its own transformation costs resulted in an abuse of a dominant position and a restriction of competition within the meaning of Article 86. It is clear from the facts as set out above that should BS have maintained this margin in the long term, NB, or any company equally efficient in repackaging as BS without a self-produced source of industrial sugar, would have been obliged to

⁽¹⁾ 6 March 1974, ECR [1974], 223, at point 25 (also *United Brands v. Commission*, Case 22/76; 14 February 1978, ECR [1978], 207).

⁽²⁾ For a similar case under the ECSC Treaty, see *National Carbonylising Company v. Commission*, Case 109/75, 22 October 1975, ECR [1975], p. 1193.

leave the United Kingdom retail sugar market. Thus, taken in the context of the other abuses as outlined above, and of the fact that the intention or natural and foreseeable consequence of the maintenance of this pricing policy by BS would be the removal of NB from the British retail sugar market, the Commission considers that BS's pricing policy constitutes an abuse of a dominant position within the meaning of Article 86.

(67) In its written reply to the Statement of Objections, BS states that certain documents were disclosed to BS's lawyers alone, and not to BS. These documents show in fine detail NB's costs of repackaging industrial sugar into retail bags. BS argues that these documents can only be meaningfully dealt with by BS and not its lawyers, and therefore that the Commission cannot rely on these figures.

(68) In relation to the disclosure of documents, the Commission makes the observations that:

- the documents in question clearly constitute business secrets within the meaning of Article 20 of Regulation No 17 (which NB has insisted upon maintaining secret *vis-à-vis* BS) which it would be unreasonable for BS to have access to,
- NB's costs, grouped into general headings, were given to BS in the Statement of Objections. The finely detailed information in question has been made available to BS's lawyers subject to their undertaking not to reveal the detailed figures to BS themselves. It was therefore open to BS's lawyers to confirm to BS that the Commission is in possession of documents that accurately reflect the general grouped figures given in the Statement of Objections. BS could therefore, clearly comment on the global figures provided in the Statement of Objections.

In the light of these facts, and also taking account of the fact that the figures are only quoted in the Statement of Objections and this Decision in order to achieve the limited objective of showing that the result of BS's actions in maintaining the abovementioned pricing margin would have had the logical result of eventually obliging NB to leave the United Kingdom retail sugar market, the Commission considers that BS's rights of defence were safeguarded in the present case.

(ii) Ex factory pricing

(69) BS has accepted that, before the end of 1986, it refused to supply sugar to its customers unless the customer also accepted that BS itself (whether BS delivered the sugar itself or did so through third parties acting under contract for BS being irrelevant) supplied the service of delivery of the sugar. It

was thus reserving for itself the separate but ancillary activity of delivering the sugar which could, under normal circumstances be undertaken by an individual contractor acting alone (e.g. acting as a real merchant delivering the sugar to a third party customer using his own transport facilities). As the MMC stated in paragraph 2.104 of its second report '... merchants also sell on their own account sugar purchased from the two United Kingdom producers. This form of competition can be expected to restrain the United Kingdom producers from charging excessively for distribution (although not if they refuse to supply sugar on an ex-factory basis).'

(70) The Commission is not aware of any objective necessity requiring BS to reserve such an activity to itself, and the fact that following BS's undertaking it has offered a choice to its clients between ex factory or delivered sugar, indicates that no such objective necessity exists.

(71) The Commission considers that BS has abused its dominant position on the sugar market by refusing to grant to its customers an option between purchasing sugar on an ex factory or delivered price basis, thereby reserving for itself the ancillary activity of the delivery of that sugar, thus eliminating all competition in relation to the delivery of the products.

(72) This conclusion is supported by the judgment of the European Court in the Case *Centre Belge d'Études de Marché — Télémarketing SA v. Compagnie Luxembourgeoise de Télédiffusion SA and Information Publicité Benelux SA*.

In this case, the Court held that:

'... an abuse within the meaning of Article 86 is committed where, without any objective necessity, an undertaking holding a dominant position on a particular market reserves to itself or to an undertaking belonging to the same group, an ancillary activity which might be carried out by another undertaking as part of its activities on a neighbouring but separate market, with the possibility of eliminating all competition from such undertaking.'

Beet origin: discrimination

(73) The Commission considers that BS has applied 'discriminatory conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage' ⁽¹⁾, and has thus abused its dominant position, by denying exclusively beet-origin sugar to NB, while supplying it to others.

⁽¹⁾ Article 86 (c) EEC.

Group commitment, or loyalty bonuses

- (74) BS made an offer to the [...] which involved the granting by BS of a rebate on the price it was willing to offer the members of the buying group at that time purchasing exclusively from BS if, in future, all the members of [...] agreed to purchase exclusively from BS.

Such an offer, which has the effect of requiring certain existing BS customers to 'tie-in' other companies to purchase exclusively from BS in order to receive a reduced price for retail sugar, is, in a manner similar to the operation of a loyalty rebate, designed to deprive the purchasers in question of, or restrict their possible choices of, sources of supply and furthermore to deny other producers, and in this case specifically NB, access to the market.

Due to the commitment bonus, pressure was put upon the members of [...] not purchasing from BS to recommence purchasing from BS, not only because they would benefit from the bonus themselves but also because, should they wish to purchase elsewhere for price or quality reasons, the remaining members of the group would thereafter be obliged to pay a higher price for their sugar. As a result of BS's offer, one member of the group, [...] which was previously purchasing from NB, switched to purchasing sugar from BS.

- (75) The Commission considers that BS has abused its dominant position by offering to conclude, and subsequently concluding, a contract which included a provision for a group commitment bonus.
- (76) This conclusion is confirmed by the judgment of the European Court in the case *Hoffman-La-Roche v. Commission*⁽¹⁾, in which the European Court of Justice considered the application of Article 86 to exclusive purchasing contracts and fidelity rebates involving a dominant undertaking.

D. Effect on trade between Member States

- (77) The Commission considers that the facts as outlined above establish that BS engaged in practices which had the foreseeable result that NB would have been forced to withdraw from the retail sugar market. Indeed, in this case, evidence (e.g. the documents regarding 'de-listing') shows that the alleged abuses were carried out with the intention of removing NB from that market.

The removal of NB from the British retail sugar market would have had clear effects upon trade between Member States, and furthermore, would

have affected the structure of competition and trade within the common market.

- (78) A United Kingdom sugar merchant such as NB has two sources of sugar, domestic and imports, and will import sugar for resale whenever, for example, currency fluctuations make such imports profitable. Thus, NB has purchased in the past, and intends to purchase in the future, sugar from other Member States for both its retail and industrial operations whenever conditions are favourable. Contrary to BS's arguments, these imports cannot be considered to be abnormal and artificial but are part of the normal pattern of trade.

Imports of sugar into the United Kingdom have in the past been almost exclusively of industrial sugar (imports of retail sugar are difficult not only because English language bags must be specifically printed for such an operation, but furthermore because drop sizes are generally smaller for retail than for industrial sugar)⁽²⁾.

NB entered the market using, and intending to continue using, both domestic and imported industrial sugar for its repackaging operations. As a result of NB's entry onto the market, an avenue was opened whereby imported industrial sugar would for the first time be used for retail repackaging whenever conditions favoured the use of such sugar — NB, being the only British repackager without its own domestically produced source of sugar, is thus the only repackager free to choose to source its sugar for repackaging from either domestic or imported sugar, whichever is cheaper at any moment in time. Should NB have been removed from the market, this avenue through which imported sugar could freely and easily be sold upon the British retail market, would have been effectively closed.

NB entered the British retail sugar market because it believed that the differential between the selling price of packet sugar and that of bulk sugar greatly exceeded the cost of an efficient packaging operation⁽³⁾. This large differential occurred because although, as recognized above, imported sugar effectively limits the price that may be charged for industrial sugar in Britain, such imported sugar could not effectively limit retail prices due to the difficulties in importing retail sugar which are outlined above. NB's entry onto the retail market established the first link, independent from domestically produced industrial sugar, between the price of industrial sugar which is limited by the price of imports, and retail sugar, the price of which has not, to the same extent, been limited by the price of imported sugar. Should NB have been removed

⁽¹⁾ BCR [1979] 461, paragraph 89. Also *United Brands v. Commission*, ECR [1978] 207.

⁽²⁾ See, for example, paragraph 5.8 of the first MMC report.

⁽³⁾ See paragraph 2.104 of the first MMC report.

from the retail sugar market, this independent link between British retail and industrial sugar prices, and thus between imported industrial and British, retail sugar prices, would have been effectively closed.

Thus, the Commission concludes that an effect on trade between Member States would have resulted from NB's removal from the market. This is confirmed by the following argument put forward by BS before the MMC in 1981, in which BS recognizes the importance of sugar imported by merchants as a real restraint to the maximum prices that BS may charge on the British market:

'Since BS was the price leader in the UK and Tate & Lyle (because of its low margins) was a price follower, imported continental sugar was the key to price competition. As long as there was a substantial surplus of sugar in the EEC, the continental price could effectively set a ceiling on the price in this country and it was the merchants commercial interest in selling imports (on which they earned a margin and not merely a handling allowance) which provided competition between merchants and BS.'

- (79) As the Court of Justice held in Case 27/62 United Brands (at ground 201), where the occupier of a dominant position established in the common market aims at eliminating a competitor also established in the common market, it is immaterial whether this behaviour relates directly to trade between Member States once it has been shown that such elimination will have repercussions on the patterns of competition within the common market.

This is particularly the case when a dominant company attempts, as in the present case, to remove a competitor whose activities include the import, transformation and resale of a product.

As shown above, BS's actions, having the intention or foreseeable result of precipitating NB's removal from the retail sugar market, had a potential effect on the structure of competition and trade within the common market, and thus on trade between Member States within the meaning of Article 86.

- (80) The refusal of BS to sell industrial sugar to NB had direct and appreciable effects on inter-State trade. Because NB could not purchase beet-origin sugar from BS, it purchased such sugar (under 1986 market conditions more expensively) from other Community producers in France, Denmark and the Netherlands. Until 5 June 1986, NB was unable to use T & L industrial sugar for repackaging because

[...]. Even if NB had been able to purchase T & L sugar for repackaging, it would still have been unwilling to use such sugar for this purpose, because it cannot receive the Community sugar storage rebate for the storage of cane-origin sugar. In this respect, it is notable that NB ordered more than twice as much Continental sugar for import between October 1985 and June 1986 compared with the amounts purchased between October 1984 and September 1985.

Thus an artificial pattern of trade between Member States was created because, had it not been for BS's refusal to supply, NB would not have undertaken a large part of these imports, rather purchasing cheaper sugar from BS. The fact that BS's refusal to supply effectively increased the level of trade between Member States does not prevent BS's action from affecting trade within the meaning of Article 86. As the European Court stated in *Consten and Grundig v. Commission* ⁽¹⁾:

'... what is particularly important is whether the agreement is capable of constituting a threat, either direct or indirect, actual or potential, to freedom of trade between Member States in a manner which might harm the attainment of the objectives of a single market between states. Thus, the fact that an agreement encourages an increase, even a large one, in the volume of trade between states, is not sufficient to exclude the possibility that the agreement may "affect" such trade in the abovementioned manner.'

BS's refusal to supply industrial sugar to NB therefore had an effect on trade between Member States within the meaning of Article 86.

The Commission therefore concludes that BS's abovementioned behaviour had an effect on trade within the meaning of Article 86 of the Treaty of Rome.

E. Conclusion

- (81) On the basis of the considerations set out above, the Commission considers that BS infringed Article 86 of the EEC Treaty in the following ways:

1. By refusing to supply industrial granulated sugar to NB;
2. By reducing its prices for retail sugar to the extent that an insufficient margin existed between its prices for retail and industrial sugar;

⁽¹⁾ ECR [1966] 299.

3. By refusing to sell sugar unless it was on a delivered-price basis;
4. By discriminating against NB in refusing to supply exclusively beet-origin sugar to NB whereas it supplied exclusively beet-origin sugar to other purchasers at their request;
5. By offering 'group commitment' bonuses.

king, a competitor could have been irreversibly removed from the market.

TERMINATION OF THE INFRINGEMENT — REMEDY

- (82) The Commission considers that, taking account of the comprehensive compliance programme adopted by BS and of BS's exemplary behaviour since its receipt of the interim measures Statement of Objections, it is unnecessary to make an order pursuant to Article 3 of Regulation No 17, requiring BS to bring the abovementioned infringements to an end because, in the eyes of the Commission, BS has on its own initiative brought the infringements to an end. NB, the Complainant, concurs with this view.

However, it must be noted that the gravity of the abuses in question were such as to warrant fines regarding BS's actions in the past. The levying of such fines necessitate a formal decision of the Commission.

REMEDIES

(a) Fines

- (83) Under Article 15 of Regulation No 17, infringements of Article 86 may be sanctioned by fines of up to 1 million ECU or 10 % of the turnover of the undertaking in the preceding business year, whichever is the greater. Regard must be had to both the gravity and the duration of the infringement.
- (84) The evidence demonstrates that BS abused its dominant position in several important ways. These several abuses were all designed to have the same effects; namely, to severely damage the position of, or even eliminate, a newly established competitor on the market.

BS sought, as a result of this behaviour, to maintain or reinforce its dominant position.

In fact, the infringements in question were designed to have an adverse effect on the structure of competition in a substantial part of the common market. Moreover, had the Commission not issued a Statement of Objections that led to BS's underta-

- (85) In the light of this, the Commission takes the view that it should impose a fine on BS. In setting the level of this fine, the Commission takes account not only of BS's abusive behaviour, as outlined above, but also of the exemplary manner in which BS has conducted itself following its receipt of the interim measures Statement of Objections.

- (86) As the present Decision relates solely to BS's actions in the past, the fine is set taking account of the fact that the abuses in question occurred in the period between the events leading up to NB's packaging of sugar for retail sale and the adoption by BS of its undertaking and subsequent Community compliance programme — between approximately April 1985 and early August 1986.

- (87) It is the practice of the Commission, in setting a fine, to take account of whether or not the rules of competition of the EEC Treaty have been sufficiently developed by the Decisions of the Commission in any particular area⁽¹⁾. As stated above, the Commission has decided that BS, in selling sugar exclusively on a delivered price basis, abused its dominant position under Article 86. Such a decision constitutes the first time that the Commission has stated that the maintenance of a delivered-price-only system by a dominant company may constitute an abuse of a dominant position within the meaning of Article 86. In the light of this, the Commission has not fined BS in relation to this particular abuse.

In relation to BS's retail-sugar pricing practices, BS argues that the competition rules have been insufficiently developed when the abuse occurred to justify the imposition of a fine. The Commission considers that such pricing practices, adopted with the intention or foreseeable result of removing NB from the retail sugar market, are types of predatory practices clearly envisaged by Article 86, and thus considers that BS intentionally or at least negligently abused its dominant position in this respect. The imposition of a fine for this abuse is therefore justified. The Commission does, however, accept that the law relating to such an abuse has been less fully clarified by Commission Decision and Court ruling than in respect to the other abuses committed by BS, and has taken this into account in fixing the level of the fine.

⁽¹⁾ See, for example, Commission Decision 78/252/EEC (IV/29.176 — Vegetable Parchment, OJ No L 70, 13. 3. 1978, p. 54, paragraph 83).

- (88) However, the Commission considers that, as regards the other abuses outlined above, BS undertook these abuses intentionally or at least negligently. Furthermore, the rules of competition of the EEC Treaty have been sufficiently developed by previous Decisions of the Commission and the European Court of Justice, or are sufficiently clear from the provisions of the Treaty of Rome in the areas covered by those abuses, in order to justify the imposition of a fine in relation thereto,

HAS ADOPTED THIS DECISION:

Article 1

British Sugar plc infringed Article 86 of the EEC Treaty by pursuing against Napier Brown a course of conduct intended to damage Napier Brown's business or to secure its withdrawal from the British retail sugar market, or both, the essential features of which consisted of:

1. Constructively refusing to supply industrial granulated sugar to Napier Brown;
2. Reducing its prices for retail sugar to the extent that an insufficient margin existed between its prices for retail and industrial sugar;
3. Offering sugar on a delivered price-only basis;
4. Discriminating against Napier Brown by refusing to supply exclusively beet-origin sugar to Napier Brown whereas it supplied exclusively beet-origin sugar to other purchasers at their request;
5. Offering 'group commitment' bonuses.

Article 2

For the infringements described in Article 1, a fine of 3 million ECU is hereby imposed on British Sugar plc.

The fine shall be paid into:

- (a) Account No 59000204, Commission of the European Communities (for payment in ECU), Lloyds Bank plc,

The Manager, Payments Section, Overseas Centre, PO Box 63, 38a Paradise Street, UK-Birmingham B1 2AB;

- (b) Account No 108.63.41, Commission of the European Communities (for payment in pounds sterling), Lloyds Bank plc, Overseas Department, PO Box 19, 6 Eastcheap, UK-London EC3P 3AB,

within three months from the date of notification of this Decision. After three months, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ECU operations on the first working day of the month in which this Decision was adopted plus 3,5 % (percentage points), i.e. 9,75 %.

Should payments be made in pounds sterling, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 3

This Decision is addressed to British Sugar plc, PO Box 26, Oundle Road, Petersborough PE2 9QV, United Kingdom.

This Decision shall be enforceable pursuant to Article 192 of the EEC Treaty.

Done at Brussels, 18 October 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION DECISION

of 17 October 1988

accepting undertakings and terminating the investigation under Article 13 (10) of Regulation (EEC) No 2423/88 concerning certain plain paper photocopiers assembled in the Community

(88/519/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community⁽¹⁾, and in particular Article 13 (10) thereof,

After consultations within the Advisory Committee as provided for under the abovementioned Regulation,

Whereas :

A. Procedure

- (1) In January 1988, the Commission received a complaint lodged by CECOM, the Committee of European Copier Manufacturers, on behalf of producers of plain paper photocopiers (PPCs) whose collective output constitutes a major proportion of Community production of the product in question. The complaint contained sufficient evidence of the fact that, following the opening of the investigation concerning PPCs originating in Japan⁽²⁾, which led to the adoption of Regulation (EEC) No 535/87⁽³⁾ imposing a definitive anti-dumping duty on imports of those products, a number of companies were assembling PPCs in the Community under the conditions referred to in Article 13 (10) of Regulation (EEC) No 2176/84, since replaced by Regulation (EEC) No 2423/88. Accordingly, after consultation, the Commission announced, by notice published in the *Official Journal of the European Communities*⁽⁴⁾, the initiation of an investigation, under the said Article 13 (10), concerning PPCs assembled in the Community by companies related to or associated with the following Japanese

manufacturers whose exports of PPCs are subject to a definitive anti-dumping duty :

- Canon Inc.,
- Konishiroku Photo Industry Co.,
- Matsushita Electric Co. Ltd,
- Minolta Camera Co. Ltd,
- Ricoh Company Ltd,
- Sharp Corporation,
- Toshiba Corporation.

- (2) The Commission so advised the companies concerned, the representatives of Japan and the complainants, and gave the parties directly concerned the opportunity to make known their views in writing and to request a hearing.
- (3) All the companies concerned and the complainants made their views known in writing and requested and were granted hearings by the Commission.
- (4) No submissions were made by purchasers of PPCs assembled in the Community. The Commission sought and verified all information it deemed necessary for the purpose of the assessment of the character of the alleged assembly operations and carried out investigations at the premises of the following companies :
- Canon Bretagne SA (France),
 - Canon Giessen GmbH (Germany),
 - Firma Develop Dr Eisbein GmbH (Germany),
 - Konica Business Machines Manufacturing GmbH (Germany),
 - Matsushita Business Machine (Europe) GmbH (Germany),
 - Olivetti-Canon Industriale SpA (Italy),
 - Ricoh (UK) Products Ltd (United Kingdom),
 - Sharp Electronics (UK) Ltd (United Kingdom),
 - Toshiba Systems (France) SA.
- (5) Furthermore, the Commission carried out an investigation at the premises of a supplier of components to some of the companies involved. This supplier of components is a subsidiary of one of the Japanese exporters concerned.

⁽¹⁾ OJ No L 209, 2. 8. 1988, p. 1.

⁽²⁾ OJ No C 194, 2. 8. 1985, p. 5.

⁽³⁾ OJ No L 54, 24. 2. 1987, p. 12.

⁽⁴⁾ OJ No C 44, 17. 2. 1988, p. 3.

- (6) The period of investigation was from 1 April 1987 to 31 January 1988.
- (7) Following investigation, the Commission established that Sharp Electronics (UK) Ltd had not assembled or produced PPCs in the Community prior to or during the investigation period but had commenced assembly following the opening of the present investigation in February 1988.
- (8) The Commission was, in addition, aware that one of the complainant companies, Rank Xerox Ltd, had, prior to and during the original investigation, assembled or produced certain PPCs in the Community using a significant proportion of parts and materials supplied by Fuji Xerox, a related company on whose exports of PPCs the definitive anti-dumping duty was imposed. Following a visit to Rank Xerox's premises at Mitcheldean, United Kingdom, where these assembly or production operations took place, the Commission established that these operations were not substantially increased after the opening of the anti-dumping investigation. In 1985, when the original anti-dumping investigation was opened, the number of relevant models assembled by Rank Xerox Ltd in the Community was lower than in the two previous years. By 1987, the total number of PPCs assembled or produced at Mitcheldean in this period, i.e. since 1983, has increased by only 4 %.

B. Relationship or association with exporter

- (9) Most of the companies referred to in the fourth recital were found to be wholly owned subsidiaries of Japanese exporters of PPCs which were subject to the definitive anti-dumping duty imposed by Regulation (EEC) No 535/87. The exceptions are Olivetti-Canon SpA, a joint venture between Canon Inc. and Ing. Olivetti SpA, in which Olivetti has a 50 % plus one shareholding and Canon the remainder, hereinafter 'Olivetti', and Firma Develop Dr Eisbein GmbH & Co., hereinafter 'Develop', in which Minolta Camera Co. Ltd has a majority shareholding. Consequently, all firms concerned were considered to be related to a manufacturer whose exports of the like product are subject to a definitive anti-dumping duty.

C. Production

- (10) Most of the companies referred to in the fourth recital commenced their assembly operations after the initiation, on 2 August 1985, of the anti-dumping proceeding concerning imports of PPCs originating in Japan. However, while both Olivetti and Develop had assembled or produced

PPCs independently prior to the initiation of the anti-dumping proceeding, the relationship with the exporters concerned was created after the initiation of the original anti-dumping investigation. Prior to that date, no relationship or association of other than a purely commercial nature existed between either Olivetti or Develop with any Japanese exporter of PPCs and, accordingly, Article 13 (10) of Regulation (EEC) No 2423/88 could not apply at that time to these companies.

Following the creation of the Olivetti-Canon joint venture the models produced by this company have remained essentially those previously developed and produced by Olivetti. The numbers produced, however, have increased substantially.

As regards Develop, following Minolta's acquisition of a controlling interest in the company, assembly or production of certain models, previously produced by Minolta in Japan and exported to the Community, commenced in addition to the continued production of models previously developed and produced by Develop. In 1986, when assembly of the Minolta models began, the total units produced increased from the previous year by approximately 74 % and by a further 38 % in 1987 over the 1986 figure. The 'Minolta' models comprised 48 and 65 % respectively of the total units produced or assembled by Develop in 1986 and 1987. Thus, the assertion, made by Develop that no substantial increase in the quantities assembled had occurred since that date was therefore not considered correct.

Most models produced by Olivetti-Canon during the reference period were those for which the research, development and production had been carried out by Olivetti prior to the joint venture with Canon. The models for which production began subsequent to the creation of the joint venture were merely developed from previous models and contained many identical parts to the earlier models. Accordingly, these new models had the same high level (well above 40 %) of non-Japanese parts in value as the earlier models.

Similarly, Develop continued to produce, following the takeover by Minolta, two models and a development thereof which were the result of research, development and production both before and after the takeover. These models had a high level (well above 40 %) of non-Japanese parts in value. Accordingly, it is considered inappropriate to extend the anti-dumping duty to these models. However, the models previously exported by Minolta from Japan and assembled by Develop following the takeover had a high content (well above 60 %) of parts of Japanese origin.

- (11) Only Canon was found to have established assembly or production operations for PPCs in the Community prior to the opening of the anti-dumping investigation and for both these operations, Canon Giessen and Canon Bretagne, it was claimed that no substantial increase in quantities assembled had occurred since the date of the initiation. It was, however, established that, at both operations, volumes of models assembled increased by approximately 30 % in the year following the opening of the original investigation. Canon argued that these percentage variations were in line with those of previous years. In fact, the percentage increases had varied considerably and a 30 % increase from a large base is greater, in absolute terms, than that from a smaller base. In addition, it was established that, at Giessen, which began operations in 1973, the 30 % increase followed a period of relative stability in production during which, from 1981 to 1985 inclusive, the number of units produced remained virtually unchanged and, over the whole five-year period, increased by 4,6 %. Thus, it was concluded that, on balance, it would not be reasonable to consider the respective increases at the Canon operations at Giessen and Bretagne as constituting less than substantial increases in terms of Article 13 (10) (a) of Regulation (EEC) No 2423/88.

D. Parts

- (12) The value of the parts in question was generally determined on the basis of the companies' purchase prices of these parts when delivered to the factories in the Community. The relevant value is that of the parts and materials as they are used in the assembly operations, i.e. on an into-factory basis.
- (13) Several companies concerned claimed that certain subassembled items were of Community origin and that they should be treated as parts within the meaning of Article 13 (10) of Regulation (EEC) No 2423/88. It was found, however, that these items were merely assembled in the Community, mainly from parts imported from Japan, by independent suppliers. On the basis of information obtained from the companies referred to above, it was concluded that this assembly did not constitute a substantial process or operation as required by Article 5 of Council Regulation (EEC) No 802/68⁽¹⁾. The simple assembly operation carried out in the Community was of a basic and

unsubstantial nature and was not sufficient to confer Community origin.

A number of companies requested that the assembly costs of certain subassemblies, incurred in their own factory, should be included in the value of Community parts. This request, however, cannot be granted because the cost of assembly cannot be included in the value of parts or materials used in the assembly or production operations under Article 13 (10) of Regulation (EEC) No 2423/88.

- (14) It was also requested by several companies that the costs of production of certain items incurred by them in the Community be included in the value of Community parts. Where such items constituted parts or materials within the meaning of Article 13 (10) (a) of Regulation (EEC) No 2423/88, and where such parts had acquired Community origin in conformity with Regulation (EEC) No 802/68, the inclusion of such costs in the value of non-Japanese parts was considered appropriate.

Canon

- (15) At the three operations concerned, Canon Giessen, Canon Bretagne and Olivetti-Canon, different models are assembled or produced. The value of Japanese parts used by Canon varied considerably according to model, the weighted average value of Japanese parts for all models assembled at Canon Giessen being 53,8 %, at Canon Bretagne 63,0 % and at Olivetti-Canon 33,5 %.

Accordingly, the anti-dumping duty cannot be extended to those PPCs assembled in the Community by Canon Giessen and Olivetti-Canon.

Develop

- (16) The weighted average value of Japanese parts for all models produced by Firma Develop Dr Eisbein was found to be 93,7 %.

Konica

- (17) The weighted average value of Japanese parts for all models produced by Konica Business Machines Manufacturing was found to be 99,2 %.

Matsushita

- (18) The weighted average value of Japanese parts for all models produced by Matsushita Business Machine (Europe) was found to be 98,4 %.

Ricoh

- (19) The weighted average value of Japanese parts for all models produced by Ricoh (UK) Products was found to be 87,4 %.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 1.

Toshiba

- (20) The weighted average value of Japanese parts for all models produced by Toshiba Systems (France) was found to be 70,0 %.

E. Other circumstances

- (21) Consideration was given to other relevant circumstances with regard to the assembly operations referred to above, in accordance with Article 13 (10) (a) of Regulation (EEC) No 2423/88.
- (22) In most cases it was found that the nature of the parts sourced in the Community was relatively simple and that they were of low value. Many parts of a higher technological value were imported from Japan and, at least in the initial stages of the assembly operations in the Community, few genuine attempts appear to have been made to change substantially the sourcing pattern. Indeed, it was found that more than one company began operations in the Community and continued for some time with 100 % of Japanese value of parts incorporated in the assembled PPC.
- (23) Some companies claimed that it was impossible to find sources of supply in the Community which guarantee a required level of quality. This assertion, however, appears to confuse the distinct issues of quality and technical specifications, since Community producers of PPCs of comparable quality to those of the companies concerned source their parts in the Community and have proved that it is not indispensable to use parts predominantly of Japanese origin. It has also been noted in previous cases that sourcing policy can be changed with considerable practical effect within a very short time frame.
- (24) As to direct labour, it was found that a certain number of new jobs had been created by the companies concerned. However, the companies investigated only carry out assembly operations whereas the Community producers normally have an integrated, in-depth production which requires more personnel. Since the increased sales of assembled PPCs result in decreased sales by the Community producers, it can only be concluded that the functioning of the assembling companies has resulted in a net loss of employment in the Community.
- (25) Furthermore, as regards research and development, it was found that R & D was carried out in the Community only by the two companies, Develop and Olivetti, which had had an integrated PPC production operation prior to the creating of a corporate relationship with a Japanese exporter.
- (26) Some companies claimed to have transferred technology to the Community by setting up

assembly operations. The amount of technology transferred was, however, minimal and related merely to assembly.

F. Conclusion

- (27) In view of the foregoing, it is concluded that the anti-dumping duty should be extended to certain PPCs assembled in the Community and the Commission has proposed, and the Council adopted, a Regulation appropriately extending the anti-dumping duty.

G. Undertakings

- (28) The companies against which protective measures are considered necessary have been informed of the essential facts and considerations on the basis of which the present measures have been proposed. Certain of these companies offered undertakings referring, in particular, to the attainment of a certain proportion of parts originating in the Community. The undertakings offered by Canon Bretagne, Develop Dr Eisbein and Ricoh are considered acceptable by the Commission which established that the conditions justifying an extension of the anti-dumping duty to PPCs assembled by these three companies in the Community had been removed.

The Commission is also satisfied that these conditions would not recur in the future, satisfactory guarantees having been given in the undertaking regarding changes in the sourcing of parts and materials and of other aspects of the three companies' assembly or production operations in the Community. The anti-dumping duty should accordingly not be extended to PPCs assembled in the Community by these companies,

HAS ADOPTED THIS DECISION :

Article 1

The undertakings offered by Canon Bretagne SA, Firma Develop Dr Eisbein & Co. GmbH, and Ricoh (UK) Products Ltd in connection with plain paper photocopiers incorporating an optical system (corresponding to CN codes ex 9009 11 00, ex 9009 12 00 and ex 9009 21 00), and introduced into the commerce of the Community after having been assembled in the Community by Canon Bretagne SA, Firma Develop Dr Eisbein & Co. GmbH and Ricoh (UK) Products Ltd, are hereby accepted.

Article 2

The investigation under Article 13 (10) of Regulation (EEC) No 2423/88 concerning the product described in Article 1 is hereby terminated with regard to Canon Bretagne SA, Firma Develop Dr Eisbein & Co. GmbH and Ricoh (UK) Products Ltd.

Done at Brussels, 17 October 1988.

For the Commission

Willy DE CLERCQ

Member of the Commission

CORRIGENDA

Corrigendum to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine

(Official Journal of the European Communities No L 84 of 27 March 1987)

On page 2, 11th recital:

in line 3 the following is inserted between 'Community' and 'wine-growing':
'land into wine-growing zones; whereas such'.

On page 2, 20th recital:

in line 7 'than' should read 'that'.

On page 3, 25th recital:

in line 2 'shoud' should read 'should'.

On page 4, 42nd recital:

in line 18 'derogation' should read 'derogations'.

On page 5, 48th recital:

in line 4 'warnant' should read 'warrant'.

On page 5, 57th recital:

in line 8-9 'surpluses, in order' should read 'surpluses; whereas in order'.

On page 7, 71st recital:

in line 8 'withdrawl' should read 'withdrawal'.

On page 9, Article 1 (5):

in line 3 the reference to 'Council Regulation (EEC) No 338/79 of 5 February 1979' shall be replaced by 'Council Regulation (EEC) No 823/87 of 16 March 1987' and the footnote should read '(1) See page 59 of this Official Journal.'

On page 13, Article 9 (1):

in the second subparagraph, under (a) in the first indent '338/79' should read '823/87'.

On page 14, Article 13 (1):

in the second subparagraph, second indent 'cultiviation' should read 'cultivation'.

On page 17, Article 21 (1):

in the third subparagraph, line 1 'accried' should read 'carried'.

On page 18, Article 22 (2):

in line 2 'beating' should read 'bearing'.

On page 18, Article 23 (1):

in line 9 'serated' should read 'aerated'.

On page 21, Article 35 (3):

in the second subparagraph, line 1 'deivered' should read 'delivered'.

On page 24, Article 38 (5):

in line 2 'rules' should read 'detailed rules'.

On page 24, Article 39 (5):

in line 1 'Member State' should read 'Member States'.

On page 26, Article 39 (9):

in the first subparagraph, fifth indent 'or' should read 'for'.

On page 26, Article 40 (1):

in line 2 'Article 9' should read 'Article 39'.

On page 27, Article 41 (9):

in line 2 'shall adopted rules' should read 'shall adopt general rules'.

On page 28, Article 45 (1):

In line 7 '338/79' should read '823/87'.

On page 31, Article 53 (3):

in the second subparagraph line 1 'nor' should read 'not'.

On page 32, Article 55 (2):

under (a) in line 3 'diffrence' should read 'difference'.

On page 34, Article 63 (1):

in the last line '338/79' should read '823/87'.

On page 35, Article 65 (2):

- under (b) in the second indent, line 6 'Côtes de Sauvagnac' should read 'Côtes de Saussignac',
- under (c) in line 6 'namens' should read 'names'.

On page 36, Article 67 (1):

In line 4 'serated' should read 'aerated'.

On page 42, Annex I, point 4:

in line 3 '172' should read '272'.

On page 44, Annex I, point 13:

in line 1 'quality wine par' should read 'quality wine psr'.

On page 44, Annex I, point 14:

in line 4, '15 % wol' should read '15 % vol'.

On page 45, Annex I, point 15, first line:

for: 'the first subparagraph of Article 67 (2)',

read: 'the second subparagraph of Article 67 (2)'.

On page 46, Annex I, point 16, first indent:

for: 'Article 67 (2)',

read: 'the second subparagraph of Article 67 (2)'.

On page 47, Annex III, point 1:

under (a) in line 1 'number' should read 'under'.

On page 48, Annex IV, point 3:

under (c) in line 1 'Touren' should read 'Tournon'.

On page 48, Annex IV, point 4:

in line 2 'Trente et Belluno' should read 'Trento and Belluno'.

On page 49, Annex IV, point 5:

under (b) in line 3 'Umbria Veneto' should read 'Umbria, Veneto'.

On page 49, Annex IV, point 6:

in line 2 'Akhaia' should read 'Achaia'.

On pages 50 and 51, Annex VI:

in paragraphs 1 (c) and 3 (d) 'products' should read 'product'.

On pages 54 to 58, Annex VIII, Correlation table:

the references to Articles 2, 46 (3) 48 (1) and 48 (3) (c) of Regulation (EEC) No 337/79, and Article 3 of Regulation (EEC) No 340/79, shall be replaced as follows:

Regulation (EEC) No 337/79	Regulation (EEC) No 822/87
Article 2	Article 27 (2), (3), (4) and (5)
Article 46 (3), first subparagraph	Article 17 (3), first subparagraph
Article 46 (3), second subparagraph	Article 17 (3), second subparagraph
Article 46 (3), third subparagraph	Article 17 (3), third subparagraph
Article 46 (3), fourth subparagraph	Article 17 (2)
Article 46 (3), fifth subparagraph	
Article 46 (3), sixth subparagraph	Article 17 (1)
Article 48 (1)	Article 72 (1), second subparagraph
Article 48 (3) (c)	Article 67 (7)
Regulation (EEC) No 340/79	Regulation (EEC) No 822/87
Article 3	Article 27 (1), second subparagraph

Corrigendum to Council Regulation (EEC) No 2253/88 amending Regulation (EEC) No 822/87 on the common organization of the market in wine

(Official Journal of the European Communities No L 198 of 26 July 1988)

On page 37 in Article 1 (4) (b) the following text should be inserted in Article 35 (2) as the third subparagraph :

'Should these percentages not be reached, those subject to the obligation must deliver a quantity of wine from their own production ensuring compliance with these percentages.'

Corrigendum to Council Regulation (EEC) No 2268/88 of 19 July 1988 fixing, for the 1988 harvest, the norm and intervention prices and the premiums granted to purchasers of leaf tobacco, the derived intervention prices for baled tobacco, the reference qualities, the production areas and the guaranteed maximum quantities and amending Regulation (EEC) No 1975/87

(Official Journal of the European Communities No L 199 of 26 July 1988)

On page 21 in Article 6 :

the following paragraph shall be added to this Article :

'Article 4 shall apply as from 3 July 1987.'

On page 21 in Article 4 :

for: 'Veneto, Toscana, Molise, Campania, Lazio and Pouglie',

read: 'Veneto, Tuscany, Molise, Campania, Lazio and Apulia'.

On page 41 in Annex IV in the fourth column headed 'Intervention Price' opposite Serial No 13 the figure should read '2,768'.
