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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EEC) No 3468/88

of 7 November 1988

amending Regulation (EEC) No 3796/81 on the common organization of the market in fishery products and amending Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas certain species not at the moment covered by any Community intervention arrangements nonetheless account for a significant proportion of production of fishery products in certain regions; whereas these species make an essential contribution to the incomes of the producers concerned and to the general balance of the market;

Whereas, therefore, in order to foster greater market stability, due account being taken of the characteristics of the products concerned and of the diversity of the circumstances pertaining to their production and marketing, certain of them should be covered by a Community price support scheme;

Whereas, however, regional price disparities for these species do not permit their being covered at present by the existing scheme for the grant of financial compensation to producers' organizations;

Whereas, in the circumstances, an intervention scheme should be introduced that is based on a withdrawal price set by producers' organizations themselves; whereas provision should therefore be made for such organizations

to receive flat-rate aid on certain terms for products that have been the subject of such independent intervention;

Whereas, in order to encourage producers' organizations to adjust their supply to market requirements more effectively, provision should be made for suitable financial co-responsibility on their part and a limit should be set on the quantities for which aid can be given;

Whereas, in order where possible to prevent the destruction of fish withdrawn from the market, it should be possible for aid to be granted for the processing and storage for subsequent human consumption of certain quantities withdrawn;

Whereas, as regards three tuna species, namely albacore, bluefin and bigeye, the marketing characteristics are similar to those of the other species qualifying for the flat-rate aid and provision should be made to include these species as well under this scheme;

Whereas the aid should be made conditional on the observance of common marketing standards;

Whereas the trend of market prices may make it necessary for action to be taken to help harmonize prices in the Community; whereas it should therefore be possible for the grant of flat-rate aid to be made conditional on autonomous withdrawal prices not exceeding a maximum level;

Whereas, where application of the flat-rate aid scheme brings about greater harmonization of prices as a result of changes in the production and marketing of the species concerned, the species in question should be brought within the scope of the financial compensation scheme;

Whereas experience has shown that the conditions for the granting of private storage aid need to be specified in the case of certain products frozen on board and that at the same time the scheme in question needs to be made to comply with the general principles of the other Community intervention schemes;

⁽¹⁾ OJ No C 308, 18. 11. 1987, p. 5.

⁽²⁾ OJ No C 13, 18. 1. 1988, p. 125.

⁽³⁾ OJ No C 319, 30. 11. 1987, p. 37.

Whereas the tuna market is dependent on the pattern of landings of fish and provision should be made for granting private storage aid under certain conditions to the producers' organizations which intervene in order to regulate supply on the Community market;

Whereas, in the case of tuna, in order to rationalize the marketing of a uniform product, the compensatory allowance should be reserved to producers' organizations satisfying certain conditions;

Whereas, in order to assess whether a situation exists on the Community market linked to the trend of prices on the world market in tuna that warrants payment of the compensatory allowance, a check must be made that the drop in Community market prices stems from a drop in import prices;

Whereas, in order to discourage an abnormal increase in tuna production, provision should be made for limits to be laid down within which the allowance may be granted to producers' organizations on the basis of supply conditions recorded on the Community market;

Whereas, in order not to disturb traditional trading patterns, provision should be made for producers' organizations to help finance intervention on the Community market in cases where their production of tuna landed on this market increases;

Whereas therefore Regulation (EEC) No 3796/81⁽¹⁾, as last amended by Regulation (EEC) No 3759/87⁽²⁾, should be amended;

Whereas the tariff nomenclature resulting from the application of Regulation (EEC) No 3796/81 is included in the Common Customs Tariff; whereas consequently, an amendment should be made to the Common Customs Tariff adopted by Regulation (EEC) No 2658/87⁽³⁾, as last amended by Regulation (EEC) No 1858/88⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3796/81 is hereby amended as follows:

1. In the second subparagraph of Article 9 (1):

- in the first indent, the words 'in Annex I (A) and (D)' shall be replaced by 'in Annex I (A) or (D) and in Annex VI';
- in the second indent the words 'but not in Annex I (A) and (D)' shall be replaced by 'but not in Annex I (A) and (D) nor in Annex VI';

2. In Article 13 (1) (a), the figure '5' shall be replaced by the figure '10';

3. The following shall be inserted:

Article 14b

1. For products listed in Annex VI, Member States shall grant flat-rate aid to producers' organizations which practise intervention in accordance with Article 9, on condition that:

- (a) the said organizations determine a withdrawal price, hereinafter called an 'autonomous withdrawal price', before the beginning of the fishing year; the producers' organizations shall apply that price throughout the fishing year, a tolerance of 10 % below and 5 % above being allowed; the price may not, however, exceed 80 % of the weighted average price recorded for the product categories in question in the area of activity of the producer's organizations concerned during the previous three fishing years;
- (b) the products withdrawn meet the standards adopted in accordance with Article 2;
- (c) the indemnity granted to associated producers in respect of the products withdrawn from the market is equal to the autonomous withdrawal price.

2. The flat-rate aid shall be granted for quantities withdrawn from the market on condition that they:

- (a) were put up for sale in accordance with Article 5 (1), and
- (b) were, before withdrawal, put up for sale under conditions to be determined, and
- (c) — are disposed of in a way that does not affect the normal disposal of production or
— are processed and stored. Processing for the purposes of this Article shall be freezing, and filleting or cutting accompanied by freezing.

3. The flat-rate aid shall be granted only for quantities not in excess of 10 % of the annual quantities sold in accordance with Article 5 (1).

The grant of flat-rate aid may be made subject to the condition that the autonomous withdrawal price does not exceed a maximum level fixed in accordance with the procedure laid down in Article 33.

4. The flat-rate aid for quantities:

- (a) dealt with in accordance with the first indent of paragraph 2 (c) shall be 75 % of the withdrawal price applied during the current fishing year;
- (b) dealt with in accordance with the second indent of paragraph 2 (c) may not exceed 50 % of the maximum level referred to in paragraph 1 (a) or exceed the technical costs of processing and storage recorded during the previous fishing year, the highest costs being disregarded.

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 359, 21. 12. 1987, p. 1.

⁽³⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁴⁾ OJ No L 166, 1. 7. 1988, p. 10.

5. The flat-rate aid shall be reduced by the value, fixed at a standard amount, of the product when it is disposed of as specified in the first indent of paragraph 2 (c).

6. The Member States concerned shall introduce a control system ensuring that products for which the flat-rate aid is applied do in fact qualify for it.

For the purposes of this control system, recipients of the flat-rate aid shall keep stock records which meet criteria to be determined. Member States shall communicate to the Commission at intervals to be laid down a table showing average product and category prices recorded at representative wholesale markets or ports.

7. The Council, acting by a qualified majority on a proposal from the Commission, shall decide, depending on the alignment of the prices for the species referred to under this Article, on their inclusion in the list of products in Annex I (A).

8. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 33.

9. The provisions of this Article shall apply for a period of five years following its date of entry into force.

The Commission shall submit to the Council, one year before the end of that period, a report on the functioning of the scheme and in particular on the trend of prices for the products listed in Annex VI. The Council, acting by a qualified majority on a proposal from the Commission, shall decide on appropriate measures before the expiry of the five-year period.';

4. Article 16 shall be replaced by the following:

'Article 16

1. Private storage aid for the products listed in Annexes II and III may be granted to producers' organizations applying Article 5 (1) to production and marketing during the current fishing year if:

(a) the average prices realized for a product offered for sale by the producers' organizations during a significant period to be determined are less than:

- 85 % of the guide price mentioned in Article 15 (1) for the products in Annex II, and
- 95 % of the Community producer price mentioned in Article 17 (1) for the products of Annex III and that

(b) the price situation is likely to persist.

2. The following rules shall apply to the grant of private storage aid:

- the products must have been fished, frozen on board and landed in the Community by a member of a producers' organization;
- the aid shall be restricted to 20 % of the average quantity of the products offered for sale in the Community in accordance with Article 5 during the same period of three fishing years preceding the fishing year in respect of which the aid is granted. Aid may not, however, be granted for more than 20 % of the quantity offered for sale during the period in progress;
- it must have been established, under conditions to be laid down, that the products concerned are Community products;
- the products must be stored for a minimum period and then placed on the Community market again.

3. The amount of the private storage aid may not exceed the sum of technical costs and interest for a maximum period of three months. This amount shall be fixed each month degressively.

4. Detailed rules for the application of this Article, in particular the amount of the private storage aid and the conditions on which it is granted, shall be adopted in accordance with the procedure laid down in Article 33.

5. By way of derogation from paragraphs 1 and 2 and until 31 December 1991, the aid shall also be granted to producers who are established in Greece and do not belong to a producers' organization.';

5. Article 17 shall be replaced by the following:

'Article 17

1. For the products listed in Annex III, a Community producer price shall be fixed before the beginning of each fishing year.

That price shall be valid throughout the Community and shall be fixed for each fishing year.

2. The Community producer price shall be fixed:

- on the basis of the average of the price recorded during the three years preceding the fixing of the price at representative wholesale markets or ports in respect of a significant proportion of Community production and for a product with defined commercial characteristics;
- taking into account trends in production and demand.

In fixing this price, account shall also be taken of the need to :

- take into consideration the flows of supply of the Community canning industry ;
- help support producers' incomes ;
- avoid the formation of surpluses in the Community.

3. The Council, acting by a qualified majority on a proposal from the Commission, shall set the Community producer price referred to in paragraph 1 before the beginning of each fishing year.

4. Member States shall notify the Commission of average monthly prices recorded at representative wholesale markets or ports for products of Community origin as referred to in paragraph 1 which have defined commercial characteristics.

5. For the purpose of paragraph 4 the representative markets and ports of the Member States shall be those where a significant proportion of Community production of tuna is marketed.

6. Detailed rules for the application of this Article, in particular the setting of conversion factors for the various species, sizes and presentations of tuna and a list of the presentative markets and ports referred to in paragraph 4, shall be adopted in accordance with the procedure laid down in Article 33.

Article 17a

1. Within the limits laid down in paragraph 4, an allowance shall be granted to producers' organizations in respect of the products listed in Annex III if it is found, in respect of a given calendar quarter, that

- the average selling price recorded on the Community market, and
- the free-at-frontier price mentioned in Article 21 plus any applicable countervailing charge,

are both lower than a triggering threshold of 93 % of the Community producer price for the product in question.

2. The allowance shall be granted to producers' organizations for quantities of the product in question caught by their members and sold and delivered during the quarter in question to canning industries located within the customs territory of the Community, subject to the conditions and limits laid down in this Article.

3. The allowance may not exceed :

- the difference between the triggering threshold and the average selling price of the product in question recorded on the Community market, or
- a flat-rate amount equivalent to 12 % of the said threshold, or

- for each producers' organization, the difference between that threshold and the average selling price realized by that producers' organization.

4. In the quarter in respect of which the allowance is granted, the total quantities that may be eligible for the allowance shall in no case exceed :

- 62,8 % of the quantities of tuna used by the Community canning industry during that quarter ;
- the average quantities sold and delivered in accordance with paragraph 2 during the equivalent quarter of the three fishing years preceding the one in respect of which the allowance is paid ;
- 110 % of the average quantities sold and delivered in accordance with paragraph 2 during the equivalent quarter of the fishing years 1984-1986.

5. In the light of the trends in Community production and the supply situation in the Community canning industry, the Council, acting by a qualified majority on a proposal from the Commission, shall, before 1 January 1993, determine any necessary amendments to be made to the percentages and the reference period referred to in paragraph 4.

6. Within the limits laid down in paragraph 4, the amount of the allowance granted to each producers' organization shall be equal to :

- the amount laid down in paragraph 3 for quantities of the product in question which have been disposed of in accordance with paragraph 2 and which do not exceed the average quantities sold and delivered under the same conditions by its members in the equivalent quarter in the reference fishing years 1984-1986 ;
- 95 % of the amount laid down in paragraph 3 for quantities of the product in question which exceed the average quantities referred to in the previous indent, up to a limit of 110 % of those quantities ;
- 90 % of the amount laid down in paragraph 3 for quantities of the product in question which exceed those laid down in the previous indent and which are equal to the surplus of the quantities resulting from the allocation among producers' organizations of the quantities eligible for an allowance under paragraph 4.

The allocation shall be made between the producers' organizations concerned proportionately on the basis of their respective production during the equivalent quarter in the fishing year 1984-1986.

7. Producers' organizations shall allocate the allowance granted to their members proportionately on the basis of the quantities produced by them and sold and delivered in accordance with paragraph 2.

The allowance paid by a producers' organization to its member producers shall be increased by a compensatory payment equal to :

- 2,5 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to that amount;
- 5 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to 95 % of that amount;
- 10 % of the amount laid down in paragraph 3 when the amount paid to the producers' organization is equal to 90 % of that amount.

This compensation shall be financed by a fund set up in accordance with Article 9 (3).

8. The storage aid granted under Article 16 shall be deducted from the compensatory allowance for quantities in respect of which it has been paid.

9. The Council, acting by a qualified majority on a proposal from the Commission, shall adopt general rules for the grant of the allowance.

10. Detailed rules for the application of this Article, in particular the amount of the allowance and the rules for its grant, shall be adopted in accordance with the procedure laid down in Article 33;

6. In Article 19(1) the figure 'VI' shall be replaced by 'VII';

7. In Article 26 (2) the figure '14b' shall be inserted after '14a' and the figure '17' shall be replaced by '17a';

8. Annex III shall be replaced by the following:

ANNEX III

Tuna (of the genus *Thunnus*), skipjack or stripe-bellied bonito (*Euthynnus (Katsuwonus) pelamis*) and other species of the genus *Euthynnus*, fresh, chilled or frozen, intended for industrial manufacture of products falling within heading 16.04 and classified under one of the following codes of the Combined Nomenclature:

Description	CN code	
	Fresh or chilled	Frozen
Presented in a form other than those mentioned under heading 0304:		
I. The following species:		
a. Albacore or longfinned tuna (<i>Thunnus alalunga</i>), excluding fresh or chilled,		
1. Weighing more than 10 kg each ⁽¹⁾		0303 41 11, 0303 41 13 and 0303 41 19
2. Weighing not more than 10 kg each ⁽¹⁾		0303 41 11, 0303 41 13 and 0303 41 19
b. Yellowfin tuna (<i>Thunnus albacares</i>),		
1. Weighing more than 10 kg each ⁽¹⁾	0302 32 10	0302 42 11, 0303 42 31 and 0303 42 51
2. Weighing not more than 10 kg each ⁽¹⁾	0302 32 10,	0303 42 19, 0303 42 39, and 0303 42 59
c. Skipjack or stripe-bellied tuna (<i>Euthynnus (Katsuwonus) pelamis</i>)	0302 33 10	0303 43 11, 0303 43 13 and 0303 43 19
d. Bluefin tuna (<i>Thunnus Thynnus</i>), excluding fresh or chilled		0303 49 11, 0303 49 13 and 0303 49 19
e. Other species of the genres <i>Thunnus</i> and <i>Euthynnus</i> with the exception of bigeye tuna (<i>Parathunnus obesus</i>), fresh or chilled	0302 39 10 and 0302 69 21	0303 49 11, 0303 49 13, 0303 49 19, 0303 79 21, 0303 79 23 and 0303 79 29
II. Presented in one of the following ways:		
a. Whole		
b. Gilled and gutted		
c. Other (for example 'heads off')		

⁽¹⁾ Reference to weight applies to whole products;

9. The following Annex shall be inserted:

ANNEX VI

Fresh or chilled products of the following species	Falling within the following CN Codes
1. Dab (<i>Limanda limanda</i>)	0302 29 00
2. Lemon sole (<i>Microstomus kitt</i>)	0302 29 00
3. Albacore or longfinned tuna (<i>Thunnus alalunga</i>)	0302 31 10 0302 31 90
4. Bluefin tuna (<i>Thunnus thynnus</i>)	0302 39 10 0302 39 90
5. Bigeye tuna (<i>Thunnus obesus</i> or <i>Parathunnus</i>)	0302 39 10 0302 39 90
6. Pollack (<i>Pollachius pollachius</i>)	0302 69 51
7. Blue whiting (<i>Micromesistius poutassou</i> or <i>Gadus poutassou</i>)	0302 69 85
8. Pout (<i>Trisopterus luscus</i>)	0302 69 95
9. Bogue (<i>Boops boops</i>)	0302 69 95
10. Picarel (<i>Maena smaris</i>)	0302 69 95
11. Conger (<i>Conger conger</i>)	0302 69 95
12. Gurnard (<i>Trigla spp.</i>)	0302 69 95
13. Horse mackerel (<i>Trachurus spp.</i>)	0302 69 95
14. Mullet (<i>Mugil spp.</i>)	0302 69 95
15. Skate (<i>Raja spp.</i>)	0302 69 95 and 0304 10 99'

10. Annex VI shall become Annex VII.

11. In the text of Chapter 3 of the Common Customs Tariff, which appears in the new Annex VII, in codes 0303 42 11, 0303 42 31 and 0303 42 51, the word 'not' shall be deleted;

12. Annex VII shall become Annex VIII.

Article 2

Regulation (EEC) No 1196/76⁽¹⁾ is hereby repealed.

Article 3

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

However, Article 1 (11) shall apply from the twenty-first day following publication of this Regulation 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, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

⁽¹⁾ OJ No L 133, 22. 5. 1976, p. 1.

COUNCIL REGULATION (EEC) No 3469/88

of 7 November 1988

amending Regulation (EEC) No 2203/82 laying down general rules for the granting of a carry-over premium for certain fishery products

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products⁽¹⁾, as last amended by Regulation (EEC) No 3468/88⁽²⁾, and in particular Article 14 (6) thereof,

Having regard to the proposal from the Commission,

Whereas Article 14 of Regulation (EEC) No 3796/81 provides that, subject to certain conditions, a carry-over premium may be granted in respect of the processing and storage, with a view to human consumption, of some of the products which are listed in Annex I (A) and (D) to the abovementioned Regulation and which have been withdrawn from the market at the Community withdrawal price;

Whereas Regulation (EEC) No 2203/82⁽³⁾ last amended by Regulation (EEC) No 3940/87⁽⁴⁾, determines the species which may qualify for the carry-over premium;

Whereas, because of the special difficulties encountered in the herring and mackerel sector, provision should be made for measures to improve the situation in that sector;

Whereas the processing and storage of herring and mackerel are likely to encourage consumption of these species and to increase the availability of certain qualities of herring for a longer period of the year; whereas it would appear necessary to include the two species in the carry-over premium scheme;

Whereas, therefore, Regulation (EEC) No 2203/82 should be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The following species are hereby added to the Annex to Regulation (EEC) No 2203/82:

CN code	Description	Freshness ⁽¹⁾	Presentation ⁽¹⁾
(a) before 'cod' ex 0302 40 10 and ex 0302 40 90	Herring (<i>Clupea harengus</i>)	E, A	whole
(b) after 'coalfish' ex 0302 64 10 and ex 0302 64 90	Mackerel (<i>Scomber scombrus</i> and <i>scomber japonicus</i>)	E, A	whole

Article 2

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

It shall apply with effect from 1 January 1989.

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

Done at Brussels, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ See page 1 of this Official Journal.

⁽³⁾ OJ No L 235, 10. 8. 1982, p. 4.

⁽⁴⁾ OJ No L 373, 31. 12. 1987, p. 6.

COUNCIL REGULATION (EEC) No 3470/88
of 7 November 1988

amending Regulation (EEC) No 3978/87 allocating, for 1988, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources ⁽¹⁾, as amended by the Act of Accession of Spain and Portugal, and in particular Article 11 thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3978/87 ⁽¹⁾, as amended by Regulation (EEC) No 1929/88 ⁽²⁾ allocates, for 1988, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishery zone around Jan Mayen;

Whereas, in accordance with the procedure provided for in Articles 2 and 3 of the Fisheries Agreement between the European Economic Community and the Kingdom of Norway ⁽³⁾, the parties have had further consultations on their reciprocal fishing rights for 1988, taking account of the need for a rational management of the biological resources and in the light of the latest scientific advice on the state of the stock of North-East Arctic cod;

Whereas these consultations have been concluded and, as a result of the scientific advice, the catch quotas allocated to the Community have to be reduced;

Whereas it is for the Council, pursuant to Article 3 of Regulation (EEC) No 170/83, to determine the conditions subject to which these catch quotas may be used by Community fishermen;

Whereas, to ensure efficient management of the catch possibilities available, they should be allocated among the Member States as quotas in accordance with Article 4 of Regulation (EEC) No 170/83,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 3978/87, the figures relating to cod in ICES-divisions I, II are hereby replaced by those set out in the Annex 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*.

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

Done at Brussels, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

⁽¹⁾ OJ No L 24, 27. 1. 1983, p. 1.

⁽²⁾ OJ No L 375, 31. 12. 1987, p. 35.

⁽³⁾ OJ No L 170, 2. 7. 1988, p. 1.

⁽⁴⁾ OJ No L 226, 29. 8. 1980, p. 48.

ANNEX

Allocation for 1988 of Community catch quotas in Norwegian waters

(in live weight tonnes)

Species	ICES-divisions	Community catch quotas	Quotas allocated to Member States	
Cod	I, II	10 570	France	1 675
			Germany	1 820
			United Kingdom	7 075

COUNCIL REGULATION (EEC) No 3471/88

of 7 November 1988

amending Regulation (EEC) No 3979/87 laying down for 1988, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources⁽¹⁾, as amended by the Act of Accession of Spain and Portugal, and in particular Article 11 thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 3979/87⁽²⁾ lays down, for 1988, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway;

Whereas, in accordance with the procedure provided for in Articles 2 and 3 of the Fisheries Agreement between the European Economic Community and the Kingdom of Norway⁽³⁾, the Community and Norway have held further consultations concerning mutual fishing rights in 1988 and the management of common biological resources;

Whereas, these consultations have been concluded and as a result the delegations agreed to recommend to their

respective authorities that certain Norwegian catch quotas for 1988 should be adapted;

Whereas, pursuant to the terms of Article 3 of Regulation (EEC) No 170/83, it is for the Council to fix the total catches allocated to third countries and to lay down the specific conditions under which such catches must be taken,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 3979/87, the figures relating to mackerel (ICES VIa + VIIId, e, f, h, + IIa) and herring (ICES IV a, b) are hereby replaced by those set out in the Annex 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*.

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

Done at Brussels, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

⁽¹⁾ OJ No L 24, 27. 1. 1983, p. 1.

⁽²⁾ OJ No L 375, 31. 12. 1987, p. 37.

⁽³⁾ OJ No L 226, 29. 8. 1980, p. 48.

ANNEX

Norwegian catch quotas for 1988

(in live weight tonnes)

Species	Area within which fishing is authorized	Quantity
Mackerel	ICES VI a (1) + VII d, e, f, h + II a	19 000
Herring	ICES IV a, b	56 000 (10)

COUNCIL REGULATION (EEC) No 3472/88**of 7 November 1988****amending Regulation (EEC) No 3977/87 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1988 and certain conditions under which they may be fished**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources ⁽¹⁾, as amended by the Act of Accession of Spain and Portugal, and in particular Article 11 thereof,

Having regard to the proposal from the Commission,

Whereas under the terms of Article 3 of Regulation (EEC) No 170/83 it is incumbent upon the Council to establish the total allowable catches (TACs) by stock or group of stocks, the share available to the Community and the specific conditions under which these catches must be taken; whereas under Article 4 of the same Regulation, the share available to the Community is allocated among the Member States;

Whereas Regulation (EEC) No 3977/87 ⁽¹⁾, as last amended by Regulation (EEC) No 3286/88 ⁽²⁾ fixes, for certain fish stocks and groups of fish stocks, the TACs for

1988 and certain conditions under which they may be fished;

Whereas, taking account of the latest scientific advice, the TAC of cod in ICES divisions VII b, c, d, e, f, g, h, j, k, VIII, IX and X and CECAF division 34.1.1. (EC zone) may be increased,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to this Regulation shall replace the corresponding elements of the Annex to Regulation (EEC) No 3977/87.

Article 2

This Regulation shall enter into force on the day following that 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, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

⁽¹⁾ OJ No L 24, 27. 1. 1983, p. 1.

⁽²⁾ OJ No L 375, 31. 12. 1987, p. 1.

⁽³⁾ OJ No L 292, 26. 10. 1988, p. 3.

ANEXO / BILAG / ANHANG / ΠΑΡΑΡΤΗΜΑ / ANNEX / ANNEXE / ALLEGATO / BIJLAGE / ANEXO

Especie / Art / Art / Είδος / Species / Espèce / Specie / Soort / Espécie	Zona / Område / Bereich / Ζώνη / Zone / Zone / Zona / Sector / Zona	TAC	Estado miembro / Medlemsstat / Mitgliedstaat / Κράτος μέλος / Member State / État membre / Stato membro / Lid-Staat / Estado-membro	Cuota / Kvote / Quote / Ποσόστωση / Quota / Quota / Contingente / Quota / Quota
(1)	(2)	(3)	(4)	(5)
Bacalao / Torsk / Kabeljau / Γάδος / Cod / Cabillaud / Merluzzo bianco / Kabeljauw / Bacalhau (<i>Gadus morhua</i>)	VII b, c, d, e, f, g, h, j, k, VIII, IX, X; COPACE 34.1.1. (1)	23 900	België/Belgique Danmark Deutschland Ελλάδα España France Ireland Italia Luxembourg Nederland Portugal United Kingdom CEE/EØF/EWG/EOK/EEC/EEG	1 060 18 270 2 440 150 1 980 23 900

COUNCIL REGULATION (EEC) No 3473/88**of 7 November 1988****on the organization of a labour force sample survey in the Spring of 1989**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 213 thereof,

Having regard to the draft Regulation submitted by the Commission,

Whereas in order to carry out the tasks which are assigned to it by the Treaty, and in particular by Articles 2, 92, 117, 118, 122 and 123 thereof, the Commission must be acquainted with the situation and developments in employment and unemployment;

Whereas the statistical information available in each of the Member States does not provide a suitable basis for comparison, particularly because of the differences between the laws, rules and administrative practices of the Member States on which those statistics are based;

Whereas the best method of ascertaining the level and the structure of employment and unemployment consists in carrying out harmonized and synchronized Community labour force sample survey, as has been done regularly in the past;

Whereas in a period of continuing and increasing difficulties on the labour market and of structural changes in the employment sector, fully up-to-date information must be made available;

Whereas only the repetition in 1989 of the survey carried out in 1983, 1984, 1985, 1986 and 1987 will enable this information to be obtained.

HAS ADOPTED THIS REGULATION:

Article 1

In the Spring of 1989 the Statistical Office of the European Communities shall conduct a labour force sample survey for the Commission based on a sample of households in each of the Member States.

Article 2

The survey shall be carried out in each of the Member States in a sample of households having their residence in the territory of those States at the time of the survey. The Member States shall take measures to prevent double counting of persons with more than one residence.

The information shall be collected for each member of the households included in the sample. In cases where

one member of a household provides information for other members, this shall be clearly indicated.

Article 3

The sample shall compromise between 60 000 and 100 000 households in Germany, France, Italy, the United Kingdom and Spain, between 30 000 and 50 000 in Belgium, the Netherlands, Ireland, Greece and Portugal, between 15 000 and 30 000 in Denmark and approximately 10 000 in Luxembourg.

Article 4

The survey shall cover:

- (a) the individual characteristics of all members of the household questioned, namely: sex, age, marital status, nationality, type of household in which the person is living and surveyed, type of family relationship within the household. The members of one household shall be identified by a joint serial number and a code designating the State and region in which the household is questioned;
- (b) situation with regard to economic activity of these persons at the time of the survey and characteristics of their work as follows: occupation, status, economic activity, number of hours usually and actually worked and reasons for any difference between the two; full or part-time work, permanent or temporary work and any paid second job;
- (c) attempts to find work, with, in particular the following information: the type and extent of the work sought, the conditions and reasons, methods and length of time spent seeking work, whether unemployment benefit or aid is being received; the situation directly preceding the start of the search for work and the availability for work or the reasons for not being available;
- (d) the highest level of education or training completed: the type and purpose of educational and training courses in which persons aged from 14 to 49 have recently taken part;
- (e) work experience of persons of working age without work including the characteristics of the last job and the time of, and reasons for, its coming to an end;
- (f) the situation of the members of the household one year before the present survey, including: country and region of residence, position with regard to economic activity and, if employed, economic activity and occupational status of the job held.

Article 5

The information shall be gathered by the statistical services of the Member States on the basis of the list of questions drawn up by the Commission in cooperation with the competent services of the Member States.

The Commission shall determine, in collaboration with the Member States, the details of the survey, in particular the starting and closing dates and the deadlines for transmission of the results. The statistical services of the Member States shall ensure the representative nature of the sample according to practice in the Member States, which may, in certain cases, make the provision of replies compulsory. They shall also ensure that at least a quarter of the survey units are taken from the 1988 survey and that a proportion of at least a quarter may form part of a subsequent survey. These two groups shall be identified by a code.

Article 6

The Member States shall endeavour to ensure that the information requested is furnished truthfully and in its entirety within the period specified. They shall ensure that the survey provides a reliable foundation for a

comparative analysis at Community level as well as at the level of the Member States and certain regions. The statistical services of the Member States shall forward to the Statistical Office of the European Communities the results of the survey, duly checked, for each person questioned, without any indication of name or address.

Article 7

Items of information relating to individuals provided in the context of the survey may be used for statistical purposes only. They may not be used for fiscal or other purposes and may not be communicated to third parties.

The Member States and the Commission shall take the requisite steps to penalize any infringement of the obligation under the first paragraph to preserve the confidentiality of the information gathered.

Article 8

The Member States shall receive a contribution towards the conduct of the survey. The amount of the contribution shall be set off against the appropriations provided for this purpose in the budget of the European Communities.

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

Done at Brussels, 7 November 1988.

For the Council

The President

P. ROUMELIOTIS

COMMISSION REGULATION (EEC) No 3474/88

of 9 November 1988

opening a standing invitation to tender for the export of 300 000 tonnes of barley held by the United Kingdom 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 on 20 October 1988 the United Kingdom notified the Commission that it wished to put up for sale for export to third countries 300 000 tonnes of barley held by its intervention agency; whereas it is possible to accede to that request;

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 United Kingdom 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 barley held by it.

Article 2

1. The invitation to tender shall cover a maximum of 300 000 tonnes of barley to be exported to all third countries.
2. The regions in which the 300 000 tonnes of barley are stored are stated in Annex I to this Regulation.

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 third month following.

Article 4

1. The time limit for submission of tenders under the first partial invitation to tender shall expire on 16 November 1988 at 1 p.m. (Brussels time).
2. The time limit for submission of tenders under the subsequent partial invitations to tender shall expire each Wednesday at 1 p.m. (Brussels time).
3. The last partial invitation to tender shall expire on 21 December 1988.
4. The tenders shall be lodged with the United Kingdom intervention agency.

Article 5

The United Kingdom 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 to this Regulation.

Article 6

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, 9 November 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
North	206 000
Midlands	92 000
South	2 000

ANNEX II

Standing invitation to tender for the export of 300 000 tonnes of barley held by the United Kingdom intervention agency

(Regulation (EEC) No 3474/88)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) ⁽¹⁾	Price increases (+) or reductions (—) (ECU/tonne) p.m.	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 3475/88

of 9 November 1988

abolishing the countervailing charge on cucumbers originating in Spain (except the Canary Islands)

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 Commission Regulation (EEC) No 3142/88⁽³⁾, as last amended by Regulation (EEC) No 3431/88⁽⁴⁾, introduced a countervailing charge on cucumbers originating in Spain (except the Canary Islands);

Whereas Article 25 of Regulation (EEC) No 1035/72 on the introduction of countervailing charges applies to a

given product only during the period in respect of which a reference price has been fixed for that product; whereas Commission Regulation (EEC) No 297/88⁽⁵⁾ fixed the reference prices for cucumbers up to 10 November 1988; whereas Regulation (EEC) No 3142/88 should therefore be repealed with effect from 11 November 1988,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3142/88 is hereby repealed.

Article 2

This Regulation shall enter into force on 11 November 1988.

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

Done at Brussels, 9 November 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 280, 13. 10. 1988, p. 18.

⁽⁴⁾ OJ No L 301, 4. 11. 1988, p. 59.

⁽⁵⁾ OJ No L 30, 2. 2. 1988, p. 12.

COMMISSION REGULATION (EEC) No 3476/88

of 9 November 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 8 November 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 10 November 1988.

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

Done at Brussels, 9 November 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 9 November 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	127,43
0712 90 19	0,00	127,43
1001 10 10	29,07	182,73 ⁽¹⁾ ⁽²⁾
1001 10 90	29,07	182,73 ⁽¹⁾ ⁽²⁾
1001 90 91	0,00	125,73
1001 90 99	0,00	125,73
1002 00 00	33,13	115,62 ⁽⁶⁾
1003 00 10	26,87	119,67
1003 00 90	26,87	119,67
1004 00 10	83,03	59,02
1004 00 90	83,03	59,02
1005 10 90	0,00	127,43 ⁽³⁾ ⁽⁷⁾
1005 90 00	0,00	127,43 ⁽³⁾ ⁽⁷⁾
1007 00 90	21,52	139,31 ⁽⁴⁾
1008 10 00	26,87	39,43
1008 20 00	26,87	98,71 ⁽⁴⁾
1008 30 00	26,87	0,00 ⁽⁵⁾
1008 90 10	(7)	(7)
1008 90 90	26,87	0,00
1101 00 00	2,95	189,70
1102 10 00	60,06	175,55
1103 11 10	58,31	295,76
1103 11 90	3,91	204,15

⁽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 3477/88

of 9 November 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 8 November 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 10 November 1988.

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

Done at Brussels, 9 November 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 9 November 1988 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	Current	1st period	2nd period	3rd period
	11	12	1	2
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0
1001 10 90	0	0	0	0
1001 90 91	0	0	0	5,56
1001 90 99	0	0	0	5,56
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	1,53	1,53	9,21
1004 00 90	0	1,53	1,53	9,21
1005 10 90	0	0	0	0
1005 90 00	0	0	0	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	7,78

B. Malt

CN code	Current	1st period	2nd period	3rd period	4th period
	11	12	1	2	3
1107 10 11	0	0	0	9,90	9,90
1107 10 19	0	0	0	7,39	7,39
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 3478/88**of 8 November 1988****establishing unit values for the determination of the customs value of certain perishable goods**

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 Commission Regulation (EEC) No 1577/81 of 12 June 1981 establishing a system of simplified procedures for the determination of the customs value of certain perishable goods ⁽¹⁾, as last amended by Regulation (EEC) No 3773/87 ⁽²⁾, and in particular Article 1 thereof,

Whereas Article 1 of Regulation (EEC) No 1577/81 provides that the Commission shall periodically establish unit values for the products referred to in the classification in the Annex;

Whereas the result of applying the rules and criteria laid down in that same Regulation to the elements communi-

cated to the Commission in accordance with Article 1 (2) of that Regulation is that the unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 1 (1) of Regulation (EEC) No 1577/81 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 November 1988.

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

Done at Brussels, 8 November 1988.

For the Commission

COCKFIELD

Vice-President

⁽¹⁾ OJ No L 154, 13. 6. 1981, p. 26.

⁽²⁾ OJ No L 355, 17. 12. 1987, p. 19.

ANNEX

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
1.10	0701 90 51 0701 90 59	New potatoes	18,66	811	147,08	38,71	130,48	3 098	14,41	28 738	43,65	12,49
1.20	0702 00 10 0702 00 90	Tomatoes	36,65	1 593	293,08	76,01	259,43	6 254	28,44	56 514	85,72	24,00
1.30	0703 10 19	Onions (other than sets)	8,60	373	68,77	17,83	60,87	1 467	6,67	13 260	20,11	5,63
1.40	0703 20 00	Garlic	176,56	7 675	1 411,88	366,18	1 249,77	30 127	137,03	272 248	412,97	115,61
1.50	ex 0703 90 00	Leeks	24,81	1 078	197,15	51,51	174,74	4 100	19,27	38 215	57,81	16,44
1.60	ex 0704 10 10 ex 0704 10 90	Cauliflowers	24,64	1 063	194,92	50,89	171,59	4 055	19,14	37 482	57,16	17,15
1.70	0704 20 00	Brussels sprouts	44,76	1 931	355,63	92,23	312,60	7 362	34,82	68 116	103,74	31,19
1.80	0704 90 10	White cabbages and red cabbages	23,04	1 001	183,06	47,82	162,25	3 807	17,89	35 484	53,68	15,26
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	140,27	6 120	1 109,52	292,45	985,60	23 439	108,69	215 776	330,18	91,32
1.100	ex 0704 90 90	Chinese cabbage	18,95	823	151,54	39,30	134,14	3 233	14,70	29 222	44,32	12,41
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	60,53	2 631	484,02	125,53	428,44	10 328	46,97	93 332	141,57	39,63
1.120	ex 0705 29 00	Endives	91,00	3 955	723,03	188,90	640,84	15 038	70,68	140 150	212,02	60,29
1.130	ex 0706 10 00	Carrots	21,56	937	170,68	44,80	151,01	3 583	16,69	33 191	50,50	14,33
1.140	ex 0706 90 90	Radishes	100,89	4 386	806,81	209,25	714,17	17 216	78,31	155 575	235,99	66,06
1.150	0707 00 11 0707 00 19	Cucumbers	61,73	2 683	493,66	128,03	436,98	10 534	47,91	95 191	144,39	40,42
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	313,82	13 643	2 509,47	650,85	2 221,33	53 548	243,57	483 891	734,01	205,49
1.170	0708 20 10 0708 20 90	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.)	90,72	3 944	725,48	188,15	642,18	15 480	70,41	139 891	212,20	59,40
1.180	ex 0708 90 00	Broad beans	48,85	2 122	387,72	101,69	343,94	8 151	38,04	75 454	113,88	32,05
1.190	0709 10 00	Globe artichokes	82,78	3 596	657,05	172,33	582,85	13 814	64,46	127 867	192,99	54,32
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	381,23	16 573	3 048,49	790,64	2 698,46	65 050	295,88	587 828	891,67	249,64
1.200.2	ex 0709 20 00	— other	314,28	13 662	2 513,11	651,79	2 224,55	53 626	243,92	484 593	735,08	205,79
1.210	0709 30 00	Aubergines (egg-plants)	61,11	2 656	488,71	126,75	432,60	10 428	47,43	94 237	142,94	40,02
1.220	ex 0709 40 00	Celery stalks and leaves	73,33	3 187	578,02	152,13	512,77	12 178	56,65	112 937	171,54	49,10
1.230	0709 51 30	Chantarelles	660,65	28 685	5 250,36	1 368,47	4 657,88	110 953	510,76	1 022 231	1 542,93	437,30
1.240	0709 60 10	Sweet peppers	51,49	2 238	411,75	106,79	364,47	8 786	39,96	79 396	120,43	33,71
1.250	0709 90 50	Fennel	32,53	1 412	259,53	67,57	229,50	5 422	25,30	50 234	75,81	21,40
1.260	0709 90 70	Courgettes	46,92	2 040	375,25	97,32	332,17	8 007	36,42	72 359	109,76	30,72
1.270	ex 0714 20 00	Sweet potatoes, whole fresh	80,46	3 492	642,60	166,59	569,60	13 712	62,43	124 290	187,89	52,97
2.10	ex 0802 40 00	Chestnuts (<i>Castanea</i> spp.), fresh	105,81	4 600	846,10	219,44	748,95	18 054	82,12	163 150	247,48	69,28
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	40,48	1 760	323,76	83,97	286,59	6 908	31,42	62 430	94,70	26,51
2.30	ex 0804 30 00	Pineapples, fresh	39,83	1 731	318,51	82,61	281,94	6 796	30,91	61 418	93,16	26,08
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	142,45	6 193	1 139,13	295,44	1 008,33	24 307	110,56	219 655	333,19	93,28
2.50	ex 0804 50 00	Guavas and mangoes, fresh	229,90	9 994	1 838,40	476,80	1 627,31	39 228	178,43	354 491	537,72	150,54
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	29,72	1 297	236,91	61,89	209,89	4 956	23,08	45 908	69,88	19,22

Code	CN code	Description	Amount of unit values per 100 kg net									
			ECU	Bfrs/Lfrs	Dkr	DM	FF	Dr	£ Irl	Lit	Fl	£
2.60.2	0805 10 15 0805 10 25 0805 10 35 0805 10 45	— Navels, Navelines, Navelates, Salustianas, Vernas, Valencia lates, Maltese, Shamoutis, Ovalis, Trovita and Hamlins	43,11	1 874	344,77	89,41	305,18	7 356	33,46	66 481	100,84	28,23
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	25,95	1 128	207,51	53,82	183,68	4 428	20,14	40 014	60,69	16,99
2.70		Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:										
2.70.1	ex 0805 20 10	— Clementines	63,71	2 770	509,52	132,14	451,02	10 872	49,45	98 249	149,03	41,72
2.70.2	ex 0805 20 30	— Monreales and Satsumas	42,73	1 857	341,71	88,62	302,47	7 291	33,16	65 890	99,94	27,98
2.70.3	ex 0805 20 50	— Mandarins and Wilkings	71,31	3 113	568,29	148,47	503,48	11 890	55,37	110 122	167,62	46,11
2.70.4	ex 0805 20 70 ex 0805 20 90	— Tangerines and others	38,59	1 678	308,64	80,04	273,20	6 586	29,95	59 514	90,27	25,27
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	52,13	2 266	416,89	108,12	369,02	8 895	40,46	80 387	121,93	34,13
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	176,38	7 667	1 410,40	365,79	1 248,46	30 095	136,89	271 962	412,54	115,49
2.90		Grapefruit, fresh:										
2.90.1	ex 0805 40 00	— white	48,10	2 091	384,62	99,75	340,46	8 207	37,33	74 166	112,50	31,49
2.90.2	ex 0805 40 00	— pink	74,54	3 240	596,11	154,60	527,66	12 720	57,85	114 946	174,36	48,81
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	64,60	2 808	516,60	133,98	457,28	11 023	50,14	99 613	151,10	42,30
2.110	0807 10 10	Water-melons	13,01	565	103,78	26,98	91,95	2 192	10,05	20 118	30,42	8,53
2.120		Melons (other than water-melons)										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey Dew, Onteniente, Piel de Sapo, Rochet, Tendral	38,89	1 690	310,98	80,65	275,27	6 635	30,18	59 966	90,96	25,46
2.120.2	ex 0807 10 90	— Other	76,48	3 324	611,57	158,61	541,35	13 050	59,35	117 927	178,88	50,08
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	32,16	1 398	257,21	66,70	227,67	5 488	24,96	49 596	75,23	21,06
2.140	ex 0808 20 31 ex 0808 20 33 ex 0808 20 35 ex 0808 20 39	Pears (other than the Nashi variety (<i>Pyrus Pyrifolia</i>))	42,36	1 841	338,76	87,85	299,86	7 228	32,88	65 321	99,08	27,74
2.150	0809 10 00	Apricots	31,51	1 376	251,17	65,62	222,52	5 255	24,47	48 671	74,08	20,38
2.160	0809 20 10 0809 20 90	Cherries	119,73	5 203	943,71	248,38	837,19	19 882	92,50	184 388	280,06	80,17
2.170	ex 0809 30 00	Peaches	247,85	10 775	1 981,93	514,02	1 754,36	42 291	192,36	382 168	579,71	162,30
2.180	ex 0809 30 00	Nectarines	62,60	2 731	495,21	130,52	439,90	10 461	48,51	96 306	147,36	40,75
2.190	0809 40 11 0809 40 19	Plums	195,12	8 482	1 560,27	404,66	1 381,11	33 293	151,44	300 860	456,37	127,76
2.200	0810 10 10 0810 10 90	Strawberries	74,37	3 231	588,08	154,51	521,09	12 373	57,61	114 685	173,62	49,49
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>	357,04	15 521	2 855,05	740,47	2 527,22	60 922	277,11	550 527	835,09	233,79
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	141,96	6 171	1 135,22	294,42	1 004,87	24 223	110,18	218 900	332,05	92,96
2.230	ex 0810 90 90	Pomegranates	52,94	2 301	423,35	109,79	374,74	9 033	41,09	81 633	123,82	34,66
2.240	ex 0810 90 90	Khakis	50,00	2 173	395,68	103,86	350,09	8 307	38,70	76 945	117,09	33,24
2.250	ex 0810 90 90	Lychees	259,53	11 278	2 066,46	537,59	1 828,41	43 683	200,54	402 032	606,67	171,50

COMMISSION REGULATION (EEC) No 3479/88

of 9 November 1988

amending Regulation (EEC) No 2720/88 fixing the buying-in prices, aid and certain other amounts applicable for the 1988/89 wine year to intervention measures in the wine sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(ECU/%/vol/h)

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 822/87 of 16 March 1987 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EEC) No 2964/88 ⁽²⁾, and in particular Articles 35 (8), 36 (6), 38 (5), 41 (10), 42 (6), 44, 45 (9) and 46 (5) thereof,

Whereas the amounts in the column headed 'Spain' in Annex V to Commission Regulation (EEC) No 2720/88 ⁽³⁾ do not correspond to the result of the calculations laid down to determine them; whereas they must therefore be replaced by the correct amounts; whereas it should also be specified at the same time in order to avoid any ambiguity that all the amounts in the columns headed 'Spain' in the various Annexes relate to wine obtained from grapes produced in Spain;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2720/88 is hereby amended as follows:

1. The following Article is inserted:

'Article 6a

The amounts set out in the columns headed "Spain" in the Annexes hereto relate to products obtained from grapes harvested in Spain.'

2. In Annex V, the amounts in the columns headed 'Spain' are replaced by the following:

	Spain
Buying-in price:	
— Type A I ⁽¹⁾	1,77
— Type A II	3,97
— Type A III	4,54
— Type R I and II ⁽¹⁾	1,95
— Type R III	2,90
Intervention agency:	
Aid:	
(a) to distillation:	
1. Neutral spirits:	
— Type A I	1,27
— Type A II	3,50
— Type A III	4,08
— Type R I and R II	1,45
— Type R III	2,41
2. Spirits distilled from wine and raw spirits:	
— Type A I	1,16
— Type A II	3,39
— Type A III	3,97
— Type R I and R II	1,34
— Type R III	2,30
(b) to the fortification of wine for distillation:	
— Type A I	1,13
— Type A II	3,33
— Type A III	3,90
— Type R I and R II	1,31
— Type R III	2,26

⁽¹⁾ And table wine in a close economic relationship with these types of table wine.'

Article 2

Contracts concluded on the basis of the amounts set out in Regulation (EEC) No 2720/88 prior to amendment and presented for approval to the intervention agency shall be either:

- cancelled on application by the producers, or
- considered as concluded using the new amounts as a basis.

Article 3

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

It shall apply from 1 September 1988.

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 269, 29. 9. 1988, p. 5.

⁽³⁾ OJ No L 241, 1. 9. 1988, p. 79.

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

Done at Brussels, 9 November 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 3480/88**of 9 November 1988****amending Regulation (EEC) No 1618/81 fixing the basic products which do not qualify for advance payment of export refunds**

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 16 (6) thereof, and to the corresponding provisions of the other Regulations on the common organization of the market in agricultural products,

Having regard to Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products ⁽³⁾, as amended by Regulation (EEC) No 2026/83 ⁽⁴⁾,

Whereas Article 4 (2) of Regulation (EEC) No 565/80 applies to processed products and to goods obtained from basic products, provided that inward processing arrangements are not excluded for comparable products;

Whereas by Council Regulation (EEC) No 2236/88 of 19 July 1988 suspending Regulation (EEC) No 866/84 laying down special measures concerning the exclusion of milk products from inward processing arrangements and from certain usual forms of handling ⁽⁵⁾, the Council authorized recourse to inward processing arrangements until the end of the 1988/89 marketing year for the products in question and whereas the refund for such products may accordingly be paid in advance for the period indicated;

Whereas Commission Regulation (EEC) No 1618/81 ⁽⁶⁾, as amended by Regulation (EEC) No 2880/84 ⁽⁷⁾, should therefore be updated and milk products should be deleted from the list of basic products not eligible under those arrangements;

Whereas by Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and

on the Common Customs Tariff ⁽⁸⁾, as last amended by Regulation (EEC) No 3174/88 ⁽⁹⁾, the Council introduced a new nomenclature of goods; whereas Regulation (EEC) No 1618/81 should therefore be adapted accordingly;

Whereas the measures provided for in this Regulation are in accordance with the opinions of all the management committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1618/84 is hereby amended as follows:

1. Article 1 is replaced by the following:

Article 1

The basic products which shall not qualify under the arrangements referred to in Article 4 of Regulation (EEC) No 565/80 are listed in the Annex hereto.

However, such basic products shall be excluded only where they are intended for use in the processing of the products mentioned:

- (a) in Annex A to Regulation (EEC) No 2727/75, excluding products covered by CN code 2309 referred to therein;
- (b) in Article 1 (1) (c) of Council Regulation (EEC) No 1418/76 ⁽⁸⁾.

⁽⁸⁾ OJ No L 166, 25. 6. 1976, p. 1.

2. The Annex is replaced by the Annex hereto.

Article 2

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

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.
⁽²⁾ OJ No L 197, 26. 7. 1988, p. 16.
⁽³⁾ OJ No L 62, 7. 3. 1980, p. 5.
⁽⁴⁾ OJ No L 199, 22. 7. 1983, p. 12.
⁽⁵⁾ OJ No L 197, 26. 7. 1988, p. 38.
⁽⁶⁾ OJ No L 160, 18. 6. 1981, p. 17.
⁽⁷⁾ OJ No L 272, 13. 10. 1984, p. 15.

⁽⁸⁾ OJ No L 256, 7. 9. 1987, p. 1.
⁽⁹⁾ OJ No L 298, 31. 10. 1988, p. 1.

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

Done at Brussels, 9 November 1988.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

ANNEX

CN code	Description
1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced or kibbled), except rice of heading No 1006; germ of cereals, whole, rolled, flaked or ground:
1104 30	— Germ of cereals, whole, rolled, flaked or ground
1106	Flour and meal of the dried leguminous vegetables of heading No 0713, of sago or of roots or tubers of heading No 0714; flour, meal and powder of the products of Chapter 8:
1106 20	— Flour and meal of sago, roots or tubers of heading No 0714:
	— — Other:
1106 20 91	— — — For the manufacture of starches
1106 20 99	— — — Other:
1109 00 00	Wheat gluten, whether or not dried
2302	Bran, sharps and other residues, whether or not in the form of pellets derived from the sifting, milling or other working of cereals or of leguminous plants:
2302 10	— Of maize (corn)
2302 20	— Of rice
2302 30	— Of wheat
2302 40	— Of other cereals
2303	Residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets:
2303 10	— Residues of starch manufacture and similar residues:
	— — Residues from the manufacture of starch from maize (excluding concentrated steeping liquors), of a protein content, calculated on the dry product:
2303 10 11	— — — Exceeding 40% by weight

COMMISSION REGULATION (EEC) No 3481/88

of 9 November 1988

altering the import levies on products processed from cereals and rice

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 14 (4) thereof,

Having regard to Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice ⁽³⁾, as last amended by Regulation (EEC) No 2229/88 ⁽⁴⁾, and in particular Article 12 (4) thereof,

Having regard to Council Regulation 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 ⁽⁵⁾, as last amended by Regulation (EEC) No 1636/87 ⁽⁶⁾, and in particular Article 3 thereof,

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on products processed from cereals and rice were fixed by Commission Regulation (EEC) No 3384/88 ⁽⁷⁾, as last amended by Regulation (EEC) No 3450/88 ⁽⁸⁾;

Whereas Council Regulation (EEC) No 1906/87 ⁽⁹⁾ as amended by Council Regulation (EEC) No 2744/75 ⁽¹⁰⁾ as regards products falling within CN codes 2302 10, 2302 20, 2302 30 and 2302 40;

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 over 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 8 November 1988;

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

Whereas the levy on the basic product as last fixed differs from the average levy by more than 3,02 ECU per tonne of basic product; whereas, pursuant to Article 1 of Commission Regulation (EEC) No 1579/74 ⁽¹¹⁾, as last amended by Regulation (EEC) No 1740/78 ⁽¹²⁾, the levies at present in force must therefore 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 processed from cereals and rice covered by Regulation (EEC) No 2744/75 as fixed in the Annex to amended Regulation (EEC) No 3384/88 are hereby altered to the amounts set out in the Annex.

Article 2

This Regulation shall enter into force on 10 November 1988.

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

Done at Brussels, 9 November 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 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 197, 26. 7. 1988, p. 30.

⁽⁵⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁶⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁷⁾ OJ No L 299, 1. 11. 1988, p. 1.

⁽⁸⁾ OJ No L 302, 5. 11. 1988, p. 28.

⁽⁹⁾ OJ No L 182, 3. 7. 1987, p. 49.

⁽¹⁰⁾ OJ No L 281, 1. 11. 1975, p. 65.

⁽¹¹⁾ OJ No L 168, 25. 6. 1974, p. 7.

⁽¹²⁾ OJ No L 202, 26. 7. 1978, p. 8.

ANNEX

to the Commission Regulation of 9 November 1988 altering the import levies on products processed from cereals and rice

(ECU/tonne)

CN code	Import levies	
	Third countries (other than ACP or OCT)	ACP or OCT
0714 10 10	123,37	118,54 ⁽¹⁾
0714 10 90	120,35 ⁽¹⁾	118,54 ⁽¹⁾ ⁽²⁾
0714 90 10	120,35 ⁽¹⁾	118,54 ⁽¹⁾ ⁽²⁾
1102 90 10 ⁽²⁾	222,67	216,63
1103 19 30 ⁽²⁾	222,67	216,63
1103 29 20 ⁽²⁾	222,67	216,63
1104 11 10 ⁽²⁾	125,78	122,76
1104 11 90 ⁽²⁾	246,74	240,70
1104 21 10 ⁽²⁾	195,58	192,56
1104 21 30 ⁽²⁾	195,58	192,56
1104 21 50 ⁽²⁾	306,92	300,88
1104 21 90 ⁽²⁾	125,78	122,76
1106 20 10	123,37	116,72 ⁽³⁾
1107 10 91	225,10 ⁽⁴⁾	214,22
1107 10 99	170,95	160,07
1107 20 00	197,42 ⁽⁴⁾	186,54

⁽¹⁾ This levy is limited to 6 % of the value for customs purposes, subject to certain conditions.

⁽²⁾ For the purpose of distinguishing between products falling within heading Nos 1101, 1102, 1103 and 1104 and those falling within subheadings 2302 10, 2302 20, 2302 30 and 2302 40, products falling within heading Nos 1101, 1102, 1103 and 1104 shall be those meeting the following specifications:

- a starch content (determined by the modified Ewert polarimetric method), referred to dry matter, exceeding 45 % by weight,
- an ash content, by weight, referred to dry matter (after deduction of any added minerals), not exceeding 1,6 % for rice, 2,5 % for wheat, 3 % for barley, 4 % for buckwheat, 5 % for oats and 2 % for other cereals.

Germ of cereals, whole, rolled, flaked or ground, falls in all cases within heading Nos 1103 and 1104.

⁽⁴⁾ In accordance with Regulation (EEC) No 1180/77 this levy is reduced by 5,44 ECU/tonne for products originating in Turkey.

⁽³⁾ In accordance with Regulation (EEC) No 486/85 the levy shall not be charged on the following products originating in the African, Caribbean and Pacific States and in the overseas countries and territories:

- arrow-root falling within subheading 0714 90 10,
- flours and meal of arrow-root falling within subheading 1106 20,
- arrow-root starch falling within subheading 1108 19 90.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 October 1988

relating to a proceeding pursuant to Article 85 of the EEC Treaty
(Case No IV/32.173 — Continental/Michelin)

(Only the French and German texts are authentic)

(88/555/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 EEC Treaty⁽¹⁾, as last amended by the Act of Accession of Spain and Portugal, and in particular Articles 2, 4, 6 and 8 thereof,

Having regard to the application for negative clearance or exemption, filed on 27 October 1986 by Continental Gummi-werke AG, Hanover, Federal Republic of Germany (hereinafter referred to as 'Continental'), and by the Compagnie Générale des Établissements Michelin, Michelin et Cie, Clermont-Ferrand, France (hereinafter referred to as 'Michelin'), of the cooperation agreement concluded by them on 4 November 1983 for the development of a new run-flat tyre/wheel system,

Having published a summary of the agreement and of the notification in accordance with Article 19 (3) of Regulation No 17⁽²⁾,

Having consulted the Advisory Committee on Restrictive Practices and Dominant Positions,

Whereas :

I. THE FACTS

A. The procedure

- (1) On 27 October 1986, Continental and Michelin notified the Commission of a cooperation agreement entered into by them on 4 November 1983 on the development of a new run-flat tyre/wheel system for passenger car tyres. Pursuant to Article 2 of Regulation No 17, they applied for

negative clearance or, alternatively, exemption under Article 85 (3) of the Treaty.

B. The undertakings concerned

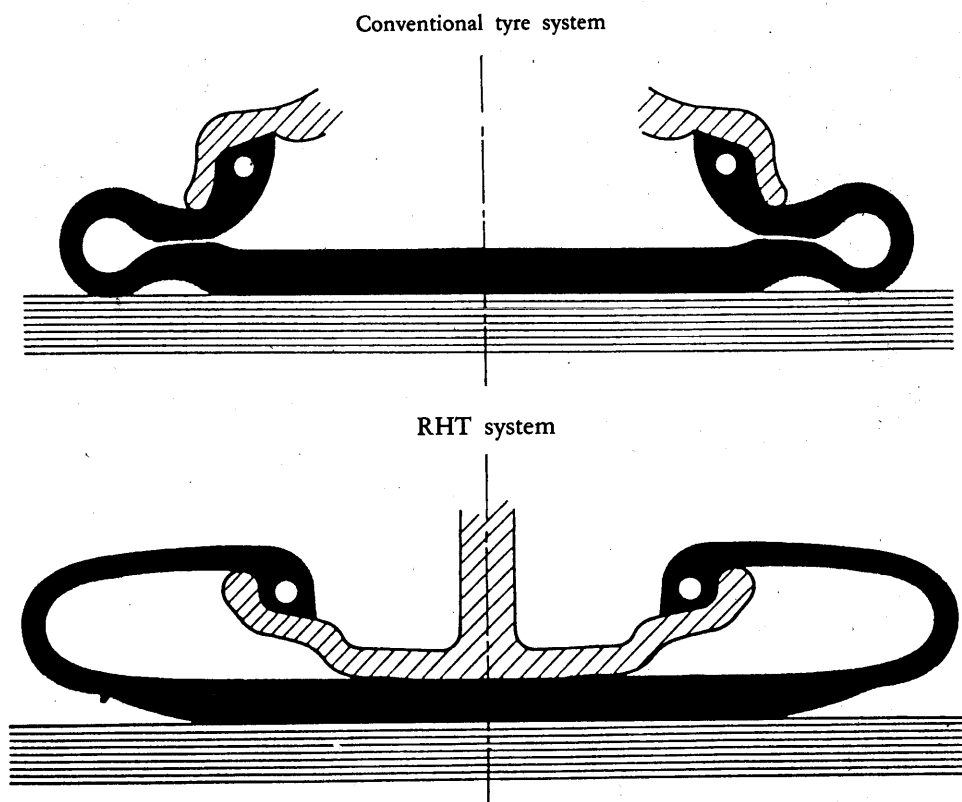
- (2) Continental Gummi-Werke AG is a major tyre manufacturer whose head office is situated in Hanover, Federal Republic of Germany. It has subsidiaries within and outside the Community. Continental has since 1979 acquired three other tyre manufacturers: in 1979, the European Uniroyal companies (now 'Uniroyal Englebert'), whose head offices are situated in Aachen, Federal Republic of Germany, Herstal, Belgium, and Clairoux, France (group shareholding of 100 %); in 1985, Semperit Reifen AG, whose head office is situated in Vienna, Austria (group shareholding of 75 %); and in 1987, General Tire Inc., whose head office is situated in Akron, Ohio, USA (group shareholding of 100 %). With the acquisition of General Tire, Continental has become one of the largest tyre manufacturers in the world.
- (3) The Michelin Group owned by the parent company Compagnie Générale des Établissements Michelin, Michelin et Cie, whose head office is situated in Clermont-Ferrand, France, is according to its own figures the second largest tyre manufacturer in the world after Goodyear, USA. It has subsidiaries within and outside the Community. The Group also owns Kléber (Pneumatiques Kléber, group shareholding of 92,9 %).

C. The product

- (4) Continental has since 1979 been working on the development of a new tyre/wheel system. Under the new system, in contrast to previous systems, the tyre engages radially the inner periphery rather than the outer periphery of the rim.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 129, 18. 5. 1988, p. 4.



The tyre therefore — in contrast to the present system — grips the rim from the outside and hooks up behind the radially inward projecting rim flanges. The system is therefore known as the reversed hooking tyre system or RHT system. Its main advantage compared with the present system is that, in the event of a puncture, the new tyre is pressed against the supporting surface of the rim and continues to run on it when flat without the side-wall of the tyre touching the road surface. In the case of conventional tyres, such contact of the side-walls of the tyre when flat with the road surface, together with the friction between the side-walls within the tyre, would quickly lead to the tyre's destruction. With the new system, the driver can continue to drive for several hundred kilometres at reduced speed with a flat tyre. This development potentially makes it possible to dispense with the spare wheel.

The parties also claim that the novel construction of the tyre and rim might offer other advantages compared with the traditional system.

These include :

- reduced weight due to dispensing with the spare wheel,
- more room for mounting the brakes,
- improved ride.

The development of the RHT system is at present restricted to passenger car tyres.

D. The market

- (5) The tyre market is worldwide. It is covered by a relatively small number of suppliers. A total of 84 % of all sales is accounted for by 10 groups of

firms. In 1987, Michelin held second position on the world market and Continental fourth position. Michelin estimates its share of the world market at 18 %, while Continental estimates its world market share at 4 %. Within the European Community, Michelin (including Kléber) is the largest and Continental the second largest supplier. Michelin's share of the Community market for passenger car tyres may be estimated at [...] ⁽¹⁾ and Continental's share at [...].

- (6) Sales of car tyres can be subdivided into two groups: sales to the motor-vehicle industry for fitting to new cars (original equipment) and sales to the tyre trade for the replacement of worn tyres (replacement equipment). The parties estimate that some 40 % of all tyres are sold as initial equipment and 60 % as replacement tyres.

E. The agreement notified

- (7) The purpose of the cooperation agreement was, during an initial stage, to assess the RHT system developed by Continental in terms of its characteristics, qualities and performance in comparison with current radial tyres, both under normal rolling conditions and while flat. Should such assessment be successful, the purpose of the agreement was, during a second stage, to develop RHT tyres further

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

on the basis of the tyre developed by Continental. In cooperation with customers and in accordance with their needs, a joint system of tyre size standardization and physical tolerances of RHT tyres is to be established.

The parties have agreed to unlimited exchange of information only with regard to the mounting systems, architecture and geometry of the new tyre.

Exchange of information is limited :

- in the case of the rim, to its geometric definition,
- in the case of component parts, to the physical characteristics of the compounds utilized,
- in the case of tests, to the testing methods and results,
- in the case of manufacturing methods, to the basic principles of the manufacturing processes for the tyre bead area.

Information is not in principle exchanged on the formula or the methods of refinement of the compounds utilized in perfecting the RHT. Information is to be provided here only if the other party is otherwise unable to develop and manufacture the RHT.

When the agreement was notified, the parties were at the second stage of cooperation. Following comparison of their respective technical knowledge (patents and know-how), they have been working on a division-of-labour basis on the development of the RHT system. Since the agreement was concluded (on 4 November 1983), a large number of joint meetings has taken place.

- (8) With regard to the development of the RHT system during the present second stage of cooperation and the joint assessment of results, the agreement contains the following further provisions :

1. *Length of cooperation*

The cooperation is to continue until the completion of the first RHT and for five years thereafter following the year in which the RHT has been marketed by one of the parties. The cooperation is subsequently automatically renewed for additional periods of one year unless terminated by one of the parties by the furnishing of six months prior written notice to the other party.

During the first four years following the conclusion of the agreement, the results of the cooperation are to be periodically reviewed in order to determine whether it should be continued, modified or terminated. Should one of the parties then decide to terminate the

cooperation, the other party may continue to utilize the other's patents and know-how. If one of the parties terminates the cooperation because it has developed a new tyre with better run-flat characteristics, that party must offer to revise the agreement with the other party so that the new technology may be incorporated in it.

2. *Extension of the scope of cooperation*

The agreement may be extended to include the development of the RHT for other categories of tyres. For such categories of tyres the time limit for the period of cooperation will commence on the date of the decision to extend the scope of cooperation. Although the relevant decisions were supposed to have been made by 1 April 1988, the Commission has not received any information on any extension of the scope of cooperation.

3. *Joint exploitation of patents and know-how*

It is provided that each party shall remain the owner of its own work product and all improvements thereto made in the course of the cooperation. Where results are developed from mutually conceived ideas, the respective research and development managers of each party shall decide on a case-by-case basis who will be the owner of the rights deriving therefrom. The agreement provides for the setting-up of a common entity by 1 April 1986 in a country to be agreed upon. Although the common entity has not as yet been set up, the parties still intend to do so, and its legal form is still being examined.

Each party is to hold an equal interest in the common entity, and its decisions are to be taken by mutual agreement. The research and development managers of each of the parties are to be co-executive directors of the common entity. As defined in the agreement, the common entity's sole function is the exploitation of patents and know-how. Once it has been set up, it is to have the following tasks :

- it will be the sole and exclusive agent for the patents and know-how as long as one of the patents remains valid in any country,
- it will ensure the collection and distribution of the royalties paid by third parties for the patents and know-how.

As defined in the agreement, patents means all patents and patent applications existing at the time the agreement was concluded and any future patents and patent applications relating to the cooperation and specifically needed for the manufacture, use and sale of the RHT in any country.

As defined in the agreement, know-how means any confidential information developed or acquired (with a right to disclose) by either party prior to or during the term of the agreement, relating to the cooperation and specifically needed for the manufacture, use and sale of the RHT in any country.

4. *Grant of licences*

The common entity will grant licences in the following cases :

- a worldwide, non-exclusive licence covering all of the patents and know-how resulting from the cooperation is to be granted to either party if it decides to undertake the industrial manufacture of the RHT during the term of the agreement or thereafter,
- a non-exclusive licence covering all of the patents and know-how resulting from the cooperation will be granted upon request by one of the parties and after consultation with the other party to any other tyre manufacturer for the manufacture and sale of RHT tyres,
- a similar licence will be granted at Continental's request to its current licensees,
- each of the parties may grant any of the abovementioned licensees its know-how, information and technical assistance not covered by the agreement upon such terms and conditions as that party and the other manufacturer may agree. In such cases, the common entity may at that party's request act as the collection agent.

5. *Infringement of patents and confidentiality*

The parties will provide mutual assistance in action against patent infringements, with the common entity paying for the expenses incurred.

The parties are required to keep confidential all technical information exchanged between them or their affiliates for a period of five years after the expiry of the agreement. Nevertheless, the party benefiting from such information will be released from the obligation of confidentiality if it can establish its own prior knowledge thereof, if the information was already public knowledge or if it has become public knowledge due to acts of third parties not involving the benefiting party.

6. *Commercial development*

The parties are not subject to any restrictions in deciding whether or not to market the RHT or any of the component parts of the system. However, they are required to advise the other

party six months in advance, if the RHT is to be marketed.

The parties will coordinate their positions in presenting the RHT to all official authorities for their approval.

The parties are free in their choice of motor vehicle manufacturer(s) and the conditions on which they will present and sell the RHT; however, they agree to coordinate the technical presentation of the RHT to motor vehicle manufacturers.

Cooperation in the commercial development of the RHT will continue for two years following the year in which the RHT is first marketed by one of the parties.

F. *The parties' submissions*

- (9) The parties have essentially put forward two arguments to justify their cooperation, namely the need for further technical development of Continental's prototype to the manufacturing stage and the fact that an individual tyre manufacturer cannot on its own introduce a new system such as the RHT-system on to the market, since the motor-vehicle industry strictly avoids becoming dependent on a single tyre manufacturer so as not to risk its own production being brought to a standstill in the event of disruptions in supplies by that single supplier. The industry's concern always to have at least two sources of supply is, it is argued, particularly great in the case of the RHT, since the motor vehicle industry would have to adapt to the new tyre/wheel system in the construction of its cars.

In this connection, the parties have stated that they will offer licences on reasonable terms to all interested competitors. They add that the purchasing power of the motor vehicle industry is so great that in practice they would not do otherwise since it will probably be insisted upon by the industry.

- (10) With regard to the further technical development of the prototype, the parties have pointed to the many problems arising from the new system of hooking the tyre to the rim. In addition to the construction of the rim itself, these involve finding solutions to construction-related changes in the running characteristics of the new tyre which make it equal or indeed superior to the conventional radial tyre.

The parties have cited the following areas of work as examples of their continuing cooperation :

- alignment of non-flat quality standards for the RHT,
- optimization of rim contour and of possible solutions for the bead of the tyre with regard to contour and structure,

- methods for measuring and criteria for assessing the tyre uniformity and ways of perfecting it,
- assessment and improvement of the performance qualities of the tyre under normal rolling conditions and when flat,
- standardization of tyre, rim, valve and cover strips,
- procedure for mounting the tyre on the rim.

Continuing cooperation is also justified by reference to the work to be carried out jointly with the motor vehicle manufacturers to adapt vehicles to both partners' tyres and by the fact that both partners will, even after the RHT has been developed, remain responsible for solving problems that will arise only once the new tyre has entered into day-to-day use.

With regard to the large number of technical problems, the parties have stated that it was doubtful from the outset whether Continental would have been able to solve such problems at all or at least without considerable loss of time and that cooperation was therefore appropriate with a partner that could provide the project with the necessary impetus on the basis of its technical development potential.

- (11) Lastly, the partners emphasize that their cooperation is restricted to the areas which are directly connected with the development of the new wheel/tyre system and that they will otherwise remain competitors. This means that, while the RHT tyres ultimately manufactured by them will be based on the same system and must satisfy the technical requirements of the system, they will otherwise differ from one another in terms of compounds, profile and non-system-related structure, as do current radial tyres of different makes.

G. Comments from third parties

Comments were received from third parties in response to the summary of the notified cooperation agreement published in accordance with Article 19 (3) of Regulation No 17. The subsidiaries of Goodyear and Firestone within the Community spoke of the market power enjoyed by Continental and Michelin and feared that they would not be granted licences or only belatedly. Firestone also expressed concern that it would suffer from the establishment of standards for the new tyre system if it were not promptly informed about them.

In view of the parties' statements concerning licences (see 9 above), these fears appear groundless.

It is also true that Michelin and Continental, together with Goodyear, Firestone and all the other important tyre manufacturers are members of the

European Tyre and Rim Technical Organization (ETRTO), based in Brussels. ETRTO establishes standards for tyres, rims and valves. Continental has already notified four sizes of the new tyre and, with the agreement of other members, these have been published in the 1988 ETRTO Standards Manual.

II. LEGAL ASSESSMENT

A. Article 85 (1)

Agreement between undertakings

- (12) Continental and Michelin are undertakings within the meaning of Article 85 (1), and the cooperation agreement is an agreement within the meaning of that provision.

Restrictions of competition

- (13) Through the agreement, Continental and Michelin have given precedence to cooperation for the development of the RHT rather than to the separate development by each of them of their own run-flat tyre. Article 3.3.4 of the agreement reads as follows: 'Should the Cooperation be terminated by one Party in accordance with Article 3.3.2 due to the development by that Party of a new technology having better prospects for run-flat characteristics, that Party shall offer to revise this Agreement with the other Party so that such technology may be incorporated herein under similar and reasonable terms.'

Although Michelin has stated that the group has for years been working on the development of run-flat tyres that have led to systems competing with the RHT, the agreement has not so far been extended to include any such system. The Commission concludes from this not only that Michelin has in the mean time concentrated on the joint development of the RHT system because it is technically superior to its own systems on which it has been working, but also that both partners are in practice agreed to concentrate on the development of the RHT and to abandon the development of their own systems. This involves a restriction of their freedom of action.

- (14) On the other hand, the partners have pointed out that their cooperation is restricted to the development of the RHT system and that, on the basis of that system, they will market competing tyres under their own trade marks that will show significant differences in important respects, such as the rubber mixture, the profile and width of the tread, and the strength of the side walls.

The Commission considers that the cooperation limited to the RHT system has the effect of restricting competition, since the motor-vehicle industry is restricted in its choice to a single tyre/wheel systems, whereas, if these two partners with their strong market positions had proceeded separately, the motor vehicle industry could have selected from among the competing run-flat tyre systems that might then have been available the one which they considered most suitable for themselves.

- (15) The joint exploitation of patents and know-how is to be carried out through a common entity in which each party holds an equal interest and which is to act as their sole and exclusive agent for patents and know-how as long as one of the patents remains valid in any country (Article 3.5.1). Its decisions will be taken by mutual agreement. Although the common entity has not yet been set up, the parties are sticking to their intention to do so.

Though the exclusive commitment to the common entity, the parties lose their freedom to grant licences independently to third parties. This remains true, even if, under Article 3.5.3, the common entity is entitled, upon request by one of the parties and after consultation with the other party, to grant patent and know-how licences for the manufacture and sale of RHT tyres to any other tyre manufacturer. Even if, as emphasized by the parties, the consultation requirement does not mean that the other party can prevent the grant of a licence, the Commission must assume from the way in which the common entity is to work that the grant of licences to third parties will in practice be based on agreement between the parties. Consequently, the joint exploitation of patents and know-how by the common entity constitutes a restriction of competition.

- (16) Lastly, although they will distribute their own makes of RHT in competition with one another, Continental and Michelin will not be completely free in marketing the product during the initial stage. In section IV of the agreement, the parties have undertaken to advise the other party six months in advance of any decision to market the RHT and to coordinate their positions in presenting the RHT to all official authorities and to the motor vehicle manufacturers.
- (17) The following provisions of the agreement are not to be regarded as restrictions of competition:
- the requirement to provide mutual support in action against patent infringements (Article 3.5.5),
 - the requirement to keep secret all technical information exchanged between them or their affiliates.

Effect on trade between Member States

- (18) Until such time as the cooperation between the parties is extended to include another type of tyre, the relevant product market is the market for car tyres. For the purposes of this decision, the Commission is starting from the assumption that conventional radial tyres are equivalent to the RHT and therefore interchangeable with it. Although the new RHT system goes beyond the limits for achieving genuine technological progress set by the construction of conventional radial tyres and therefore offers new development possibilities resulting in the advantages listed in the facts (point 4), it will for the foreseeable future have to compete with conventional radial tyres. It will be up to motor-vehicle manufacturers to decide whether and in respect of which models they will introduce the new system.
- (19) The relevant geographical market is the whole of the Community. Michelin is the leading tyre manufacturer in the Community, ahead of Continental. On the submarket for car tyres, both together had a market share of some 46 % in 1986. Their market shares in the individual Member States in 1986 were as follows:

Market shares of Continental and Michelin in car tyres in 1986

Country	Continental group	Michelin group	Both groups
Federal Republic of Germany	[...]	[...]	[...]
Belgium/Luxembourg	[...]	[...]	[...]
Denmark	[...]	[...]	[...]
Spain	[...]	[...]	[...]
France	[...]	[...]	[...]
Greece	[...]	[...]	[...]
Italy	[...]	[...]	[...]
Netherlands	[...]	[...]	[...]
Portugal	[...]	[...]	[...]
United Kingdom	[...]	[...]	[...]
Ireland	[...]	[...]	[...]

As may be seen, the two groups together accounted for almost half of the market for current car tyres in 1986 in the Federal Republic of Germany, Belgium and Luxembourg, Denmark and the Netherlands. In Spain and France, Michelin accounted for half of the market.

- (20) It is to be expected that the market position of both groups will strengthen further if the RHT system is successfully introduced. Continental and Michelin are endeavouring separately, on the basis of the technical potential of the jointly developed RHT system, to discover the particular type of construction and material which will give their own make of RHT superior running characteristics. They are thereby creating for themselves a lead which the other tyre manufacturers will not be able to catch up with even if, as anticipated, they receive licences for patent and know-how deriving from the cooperation and from the period before the conclusion of the cooperation agreement and for know-how not falling within the scope of the agreement. Such other tyre manufacturers would probably enter the market with their own fully developed RHT only when the RHT of the Continental and Michelin groups was well established on the market and accepted by motor vehicle purchasers as final consumers to such an extent that they would express a preference for the mounting of such tyres. The RHT is a new product which can change the tyre market as a whole. Because of the lead they would enjoy, such changes would work to the advantage of Continental and Michelin. It can therefore be assumed that the pattern of sales of tyres would be appreciably altered in favour of these two groups.

The agreement is therefore liable to affect trade between Member States.

B. Article 85 (3)

- (21) Under Commission Regulation (EEC) No 418/85 of 19 December 1985 on the application of Article 85 (3) to categories of research and development agreements⁽¹⁾, the provisions of Article 85 (1) were declared inapplicable to such categories of agreements subject to the conditions specified in the Regulation.

Under Article 3 (2) of the Regulation, the block exemption cannot be applied to the cooperation agreement between Continental and Michelin because the car tyres manufactured by the parties to the agreement account for more than 20 % of all car tyres manufactured in the common market. The Commission must therefore examine whether the agreement may be granted an exemption by individual decision, such a decision having to take account not only of the criteria specified in Article 85 (3), but also in particular of world competition and the particular circumstances prevailing in the manufacture of high-technology products (10th recital of Regulation (EEC) No 418/85).

- (22) Examination of the cooperation agreement under Article 85 (3) produced the following results:

Improved production of goods and promotion of technical progress

- (23) It is beyond dispute that joint research is permissible even between partners having strong market positions⁽²⁾.

However, in view of the relatively late notification of the agreement (three years after its entry into force) and the fact that, at the time the agreement was concluded, Continental had already developed a new tyre/wheel system, the Commission had to ask itself whether joint rather than individual research was at all necessary here.

The parties have convinced the Commission on this point that, on the basis of Continental's prototype, it was only joint research and development which had made possible a tyre/wheel system appropriate for industrial manufacture and that further work was still required. Such work relates to improvement to the running characteristics of the RHT in general, which are different to those of conventional tyres, and in particular to its safety when running flat, inspection procedures for mass production of the tyres, the further development and improvement of production facilities for the tyres themselves and of equipment and products for tyre maintenance. Other joint measures are involved in the introduction of the RHT system among motor-vehicle manufacturers, since the system requires changes in the construction of motor vehicles.

- (24) The parties have also justified the need for cooperation on the grounds that Continental would not on its own have been able to solve the numerous technical problems involved, or would have been able to do so only with a considerable delay in time. The Commission may leave open the question of whether this argument is valid from an economic point of view, since, in the course of its contacts with the two parties and on the basis of the examples and explanations given by them, it has reached the conviction that the cooperation with Michelin has substantially enriched the project. For example, an appropriate rim for industrial mass production was selected only during the course of the joint research and development.

Nor does the Commission deny the advantages for safety of the RHT deriving from the practical testing of the new system by both parties.

⁽¹⁾ OJ No L 53, 22. 2. 1985, p. 5.

⁽²⁾ Commission Decision 72/41/EEC — Henkel/Colgate, OJ No L 14, 18. 1. 1972, p. 14.

- (25) The need for cooperation is shown lastly by the argument put forward by the parties that one producer alone could not introduce such a tyre system in the motor-vehicle industry, since motor-vehicle manufacturers always wish to collaborate with at least two tyre producers, so as to avoid supply bottle-necks. Since the new system must first be accepted by the motor-vehicle industry and since such acceptance is dependent on motor-vehicle manufacturers adapting to the new system in the construction of their cars, the result would not have been any different if Continental had developed the RHT alone and had then granted a licence to Michelin. Quite apart from the fact that Continental would thus have lost the advantages of cooperation, the introduction of the RHT among motor-vehicle manufacturers would have been possible only together with one or more licensees. In the particular circumstances involved in this case, therefore, no objection can be made to the fact that, despite the effects on competition described above, Continental preferred cooperation with Michelin to the granting of a licence.

- (26) The design of the RHT has overcome the limits inherent in conventional radial tyres and therefore offers advantages which would not have been achieved with the old system. Cooperation on its development therefore contributes to improving the production of goods and to promoting technical progress.

Consumers' share of the advantages resulting from the agreement

- (27) The introduction of a run-flat tyre is in the interests of consumers. Such a tyre also allows more room for the braking system, and it has better handling characteristics on road surfaces. These qualities of the RHT system considerably increase the personal safety of the individual car driver. The avoidance of traffic accidents is in the private and the public interest.

Continental's cooperation with Michelin ensures the introduction of a fully developed product. Since both groups represent tyre brands that are widely used, the new system has better prospects of establishing itself generally on the motor-vehicle market in a few years.

Indispensability of the agreements to the attainment of these objectives

Length of cooperation

- (28) The parties have justified the length of the cooperation on research and development (five years following the year in which the RHT is first

marketed, with automatic renewal for additional periods of one year unless the agreement is terminated by the furnishing of six months prior notice) by the fact that the problems arising in daily use during the first few years would have to be solved jointly in the interests of road safety.

The length of cooperation in respect of the commercial introduction of the RHT on to the market was originally the same as the period for joint research and development. Following negotiations with the Commission, the parties have in the mean time reduced the period to two years following the first introduction of the RHT on to the market. In so far as the cooperation involves the establishment of standards, the provision for renewal of the cooperation is intended, according to the parties, to ensure that one of the parties is not able to gain competitive advantages for itself by exercising unilateral influence on the standard. The parties explain the requirement that either partner must inform the other six months before any introduction of the RHT on to the market as reflecting their desire not to be taken by surprise by any such introduction.

- (29) In assessing the length of cooperation in the technical and commercial area, account must be taken of the fact that Article 3 of Regulation (EEC) No 418/85 limits the exemption of such cooperation between non-competing undertakings or between competitors with a combined market share of under 20 % to the duration of the research and development programme and, where the results are jointly exploited, to an initial further period of five years from the time the contract products are first put on the market within the common market. In the case of competitors having a strong market position, cooperation must, because of the larger impact on competition, be restricted particularly strictly to the period essential for the implementation of the programme.

The Commission considers that the setting of the length of cooperation on the commercial introduction of the RHT at two years is now in line with these principles.

- (30) The Commission considers the length of cooperation provided for with regard to research and development to be appropriate. In reaching this view, it has taken account of the fact that, in the day-to-day use of the RHT, problems may arise which ought to be solved jointly not only because of the producers' liability, but also in the interests of general road safety. The Commission has also taken into consideration the fact that, under the agreement, cooperation is restricted to those areas which are directly connected with the development of the

RHT system and that Continental and Michelin will otherwise remain competitors. This has also allowed it to accept the automatic renewal of the cooperation agreement with the possibility of termination by giving prior notice. It is to be assumed that Continental and Michelin will limit the joint development of the RHT to the period which is absolutely necessary, since it is in their commercial interests to market the RHT in competition with one another.

(31) In the light of such interests, both partners must be allowed, through minimum coordination requirements during the initial stage of marketing and in the establishment of uniform standards (which are moreover in the interests of the consumer) to attempt to lay down starting conditions which are the same for both, so as to ensure that their development work is rewarded. The Commission therefore considers that the length of cooperation in this area now provided for by them is appropriate.

(32) Complementing the jointly pursued research and development, joint exploitation of patents and know-how by the common entity is also essential. Such exploitation may also include exploitation of patents and know-how that existed before the agreement was concluded. According to the definition given in the agreement, what is involved is only technical knowledge connected with the cooperation and needed for the manufacture, use or sale of the RHT in any country. This restriction falls within the framework of the block exemption for joint exploitation under Regulation (EEC) No 418/85, on which individual exemption decisions should also directly base themselves, at least as far as the definition of basic concepts such as that involved here is concerned.

As defined in Article 1 (2) (d), exploitation of results means 'the manufacture of the contract products or the application of the contract processes or the assignment or licensing of intellectual property rights or the communication of know-how required for such manufacture or application'. Under Article 2 (d), the exemption provided for in Article 1 applies on condition that the joint exploitation relates to results which are decisive for the manufacture of the contract products or the application of the contract processes. As stated in the seventh recital, the individual forms of joint exploitation may relate only to products or processes for which the use of the results of the research and development is decisive. All these formulations do not exclude the joint exploitation of technical knowledge that existed

before the cooperation began if, as argued by the two parties here, it has become a component part of the joint development to such an extent that it is necessary for the manufacture, use or sale of the RHT. Such technical knowledge has become a part of the contract processes and contract products within the meaning of the definitions given in Article 1 (2) (b) and (c) of Regulation (EEC) No 418/85.

(33) The Commission has also examined whether the life span of the common entity (as long as a patent is valid in any country) and the procedure for licensing third parties (grant of licence by the common entity upon request by one party and after consultation with the other party) are indispensable to the attainment of the objectives of the cooperation.

(34) The life span of the common entity is extended automatically each time a new patent arising from the cooperation is included, without the common entity being able to be dissolved, for example annually. This arrangement runs counter to those which the Commission considers to be automatically exemptable in its block exemption regulations: under the provisions of Article 3 of Regulation (EEC) No 418/85, joint exploitation by undertakings that are in competition with one another may be exempted for a period of more than five years only if the contract products and substitutes account for no more than 20 % of the market for all such products. Continental and Michelin are at present already well above this market share. In the area of patent licensing agreements, moreover, the Commission has opposed the automatic extension of the duration of a licensing agreement whenever a new patent of the licensor is included in it (Article 3 (2) of Commission Regulation (EEC) No 2349/84 of 23 July 1984 on the application of Article 85 (3) of the Treaty to certain categories of patent licensing agreements⁽¹⁾).

On the other hand, the common entity deals only with the handling of the award of patent and know-how licences, so that what is involved in this case is an administrative body.

(35) According to its terms of reference, the common entity deals with only the last aspect of the exploitation of results as defined in Article 1 (2) (d) of Regulation (EEC) No 418/85, namely the licensing of intellectual property rights and the communication of know-how. The coordination of the grant of licences in respect of the whole of the technical

⁽¹⁾ OJ No L 219, 16. 8. 1984, p. 15.

knowledge necessary for the manufacture of the RHT means a simplification of administrative procedures for licensees. It also ensures the correct distribution between the two parties of the royalties arising from the agreement. In contrast to the joint manufacture of contract products (which the parties to the agreement do not want), this form of exploitation is merely the economic correlative to the (exemptable) joint research and development. It appears therefore appropriate to grant a longer exemption for the common entity.

Lack of exclusion of competition

- (36) The agreement does not on the basis of the above afford the possibility of eliminating competition in respect of a substantial part of the products in question. In the first place, under the agreement between the parties, competition is eliminated only in respect of the system, but not in respect of the other construction features of the RHT. The RHT tyres produced by Michelin will therefore be in competition with those produced by Continental. Furthermore, both parties will remain in unrestricted competition with one another in conventional radial tyres. Lastly, competition will continue to exist with all the other tyre manufacturers. This competition will continue in both conventional and RHT tyres since the parties will offer licences to all interested competitors on reasonable terms (see 9 above). Nor is it certain, at this very early stage, if and when RHT tyres will replace conventional systems. In any event, the partners and their competitors are all members of ETRTO and so participate in the establishment of standards for tyres, rims and valves.

C. Article 8 of Regulation No 17

- (37) Article 8 (1) of Regulation No 17 provides that a decision in application of Article 85 (3) of the Treaty shall be issued for a specified period and that conditions and obligations may be attached thereto.

Period of validity of the exemption

- (38) The period of validity of the exemption must be based on the duration of the various forms of cooperation between Continental and Michelin dealt with in this Decision. In determining the relevant periods, reference must be made to the day on which the first RHT was marketed. On the basis of the information available, the Commission is assuming that this will be no later than 1 January

1989. Furthermore, the exemption covers only car tyres. It therefore appears appropriate to grant an exemption under Article 8 (1) of Regulation No 17 applying from the day of notification, 27 October 1986, and running from 1 January 1989:

- for a period of 10 years until 31 December 1998 for the cooperation in research and development,
- for a period of two years until 31 December 1990 for the cooperation with regard to commercial development (section IV of the agreement),
- and for a period of 20 years until 31 December 2008 for the activity of the common entity.

Extension of the cooperation

- (39) The parties have not as yet extended the cooperation to other tyre categories. The Commission cannot at this stage comment on any extension, since assessment must be based on other market situations and other technical circumstances depending on the tyre category to which the cooperation is extended. The decision must therefore include the obligation pursuant to Article 8 (1) that the parties must without delay inform the Commission of any extension of the cooperation.
- (40) In view of the importance in the market of the partners, the Commission considers it appropriate to impose the reporting requirements set out in Article 2 of the Decision,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) shall not apply during the following periods to the cooperation agreement on the development of a new run-flat tyre/wheel system concluded between Continental and Michelin on 4 November 1983, the exemption being restricted to car tyres:

- from 27 October 1986 to 31 December 1998 in the case of the cooperation in research and development,
- from 27 October 1986 to 31 December 1990 in the case of the cooperation with regard to commercial development (IV of the agreement),
- from 27 October 1986 to 31 December 2008 in the case of the activity of the common entity.

Article 2

Continental and Michelin shall inform the Commission :

1. without delay, of any extension of the cooperation to other tyre categories and all instances of licences granted or refused to third parties ;
2. every two years, beginning on 31 December 1989, on the evolution of the present cooperation.

These obligations shall remain in force for the duration of the exemption granted in respect of the common entity, until 31 December 2008.

Article 3

This Decision is addressed to :

1. Continental Gummi-Werke AG,
Königsworther Platz 1,
D-3000 Hanover 1 ;
2. Companie Générale des Etablissements Michelin,
place des Carmes Déchaux,
F-63040 Clermont-Ferrand Cedex.

Done at Brussels, 11 October 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION DECISION

of 31 October 1988

amending Decision 88/554/EEC of 19 October 1988 on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland and Zimbabwe

(88/556/EEC)

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 486/85 of 26 February 1985 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States or in the overseas countries and territories ⁽¹⁾, as last amended by Regulation (EEC) No 1821/87 ⁽²⁾, and in particular Article 22 thereof,

Having regard to Council Regulation (EEC) No 2377/80 of 4 September 1980 on special detailed rules for the application of the system of import and export licences in the beef and veal sector ⁽³⁾, as last amended by Regulation (EEC) No 3182/88 ⁽⁴⁾, and in particular Article 15 (6) (b) (i) thereof,

Whereas Commission Decision 88/554/EEC ⁽⁵⁾ provides mistakenly that the Netherlands are to issue licences for 320 tonnes originating in Botswana where the application related to 220 tonnes originating in Botswana and 100 tonnes originating in Zimbabwe; whereas the Decision in question should be amended,

HAS ADOPTED THIS DECISION:

Article 1

Decision 88/554/EEC is amended as follows:

1. In Article 1, the Section relating to the Netherlands is replaced by:

'The Netherlands:

- 220,0 tonnes originating in Botswana,
- 100,0 tonnes originating in Zimbabwe.'

2. In Article 2, the following amounts relating to Botswana and Zimbabwe are respectively replaced by:

- '— Botswana: 12 763,724 tonnes,
- Zimbabwe: 847,0 tonnes.'

Article 2

This Decision is addressed to the Member States with the exception of Portugal.

Done at Brussels, 31 October 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 61, 1. 3. 1985, p. 4.

⁽²⁾ OJ No L 172, 30. 6. 1987, p. 102.

⁽³⁾ OJ No L 241, 13. 9. 1980, p. 5.

⁽⁴⁾ OJ No L 283, 18. 10. 1988, p. 13.

⁽⁵⁾ OJ No L 303, 8. 11. 1988, p. 35.