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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 3633/88

of 23 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 22 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 24 November 1988.

(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.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

to the Commission Regulation of 23 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	136,45
0712 90 19	0,00	136,45
1001 10 10	30,88	185,69 (1) (5)
1001 10 90	30,88	185,69 (1) (5)
1001 90 91	0,00	132,03
1001 90 99	0,00	132,03
1002 00 00	34,32	118,59 (6)
1003 00 10	28,09	123,08
1003 00 90	28,09	123,08
1004 00 10	83,90	71,63
1004 00 90	83,90	71,63
1005 10 90	0,00	136,45 (2) (3)
1005 90 00	0,00	136,45 (2) (3)
1007 00 90	22,78	141,05 (4)
1008 10 00	28,09	44,76
1008 20 00	28,09	117,10 (4)
1008 30 00	28,09	0,00 (5)
1008 90 10	(7)	(7)
1008 90 90	28,09	0,00
1101 00 00	0,77	198,52
1102 10 00	61,73	180,64
1103 11 10	61,12	301,07
1103 11 90	1,55	213,68

(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 3634/88

of 23 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 22 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 24 November 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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[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 23 November 1988 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

(ECU/tonne)

CN code	Current 11	1st period 12	2nd period 1	3rd period 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	5,63
1001 90 99	0	0	0	5,63
1002 00 00	0	0	0	0
1003 00 10	0	0	0	0
1003 00 90	0	0	0	0
1004 00 10	0	0	0	3,74
1004 00 90	0	0	0	3,74
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	7,88

B. Malt

(ECU/tonne)

CN code	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3
1107 10 11	0	0	0	10,02	10,02
1107 10 19	0	0	0	7,49	7,49
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 3635/88

of 23 November 1988

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EEC) No 2306/88 [2], and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar [3], as last amended by Regulation (EEC) No 1489/76 [4], provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 3 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar [5]; whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar [6], as last amended by Regulation (EEC) No 1714/88 [7]; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination;

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

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

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 [8], as last amended by Regulation (EEC) No 1636/87 [9],

— 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 the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

Whereas it follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81 undenatured and exported in their unaltered state shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 November 1988.

(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 201, 27. 7. 1988, p. 65.
(3) OJ No L 143, 25. 6. 1968, p. 6.
(4) OJ No L 167, 26. 6. 1976, p. 13.
(5) OJ No L 89, 10. 4. 1968, p. 3.
(6) OJ No L 50, 4. 3. 1970, p. 1.
(7) OJ No L 152, 18. 6. 1988, p. 23.
(8) OJ No L 164, 24. 6. 1985, p. 1.
(9) OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

ANNEX

to the Commission Regulation of 23 November 1988 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

(ECU)

Product code	Amount of refund	
	per 100 kg	per percentage point of sucrose content and per 100 kg net of the product in question
1701 11 90 100	34,96 (1)	
1701 11 90 910	33,98 (1)	
1701 11 90 950	(2)	
1701 12 90 100	34,96 (1)	
1701 12 90 910	33,98 (1)	
1701 12 90 950	(2)	
1701 91 00 000		0,3801
1701 99 10 100	38,01	
1701 99 10 910	38,48	
1701 99 10 950	38,48	
1701 99 90 100		0,3801

(1) Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

(2) Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

COMMISSION REGULATION (EEC) No 3636/88

of 22 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 communicated 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 25 November 1988.

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

Done at Brussels, 22 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	52,75	2 291	422,04	109,31	373,66	9 080	40,95	81 319	123,24	34,65
1.30	0703 10 19	Onions (other than sets)	9,65	419	77,20	19,99	68,35	1 661	7,49	14 874	22,54	6,33
1.40	0703 20 00	Garlic	154,48	6 709	1 235,81	320,09	1 094,14	26 589	119,92	238 116	360,86	101,47
1.50	ex 0703 90 00	Leeks	33,74	1 465	269,90	69,90	238,96	5 807	26,19	52 004	78,81	22,16
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	29,30	1 272	234,38	60,70	207,51	5 043	22,74	45 161	68,44	19,24
1.90	ex 0704 90 90	Sprouting broccoli or calabrese *(Brassica oleracea var. italica)*	132,07	5 735	1 056,50	273,65	935,38	22 731	102,52	203 566	308,50	86,75
1.100	ex 0704 90 90	Chinese cabbage	29,65	1 287	237,21	61,44	210,01	5 103	23,01	45 705	69,26	19,47
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	87,78	3 812	702,21	181,88	621,71	15 108	68,14	135 303	205,05	57,66
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	101,01	4 386	808,03	209,29	715,40	17 385	78,41	155 692	235,95	66,35
1.150	0707 00 11 0707 00 19	Cucumbers	57,01	2 476	456,07	118,13	403,79	9 812	44,25	87 877	133,17	37,44
1.160	0708 10 10 0708 10 90	Peas *(Pisum sativum)*	269,33	11 696	2 154,47	558,05	1 907,49	46 355	209,07	415 124	629,12	176,91
1.170	0708 20 10 0708 20 90	Beans *(Vigna spp., Phaseolus spp.)*	85,95	3 732	687,60	178,10	608,77	14 794	66,72	132 487	200,78	56,46
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	90,18	3 916	721,40	186,85	638,70	15 521	70,00	138 999	210,65	59,23
1.200		Asparagus :										
1.200.1	ex 0709 20 00	— green	507,49	22 039	4 059,66	1 051,52	3 594,26	87 347	393,95	782 215	1 185,46	333,34
1.200.2	ex 0709 20 00	— other	272,56	11 837	2 180,34	564,75	1 930,39	46 912	211,58	420 108	636,68	179,03
1.210	0709 30 00	Aubergines (egg-plants)	79,83	3 467	638,66	165,42	565,45	13 741	61,97	123 058	186,49	52,44
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	57,22	2 485	457,74	118,56	405,26	9 848	44,42	88 197	133,66	37,58
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	46,55	2 021	372,38	96,45	329,69	8 012	36,13	71 750	108,73	30,57
1.270	ex 0714 20 00	Sweet potatoes, whole fresh	109,28	4 745	874,19	226,43	773,98	18 809	84,83	168 440	255,27	71,78
2.10	ex 0802 40 00	Chestnuts *(Castanea spp.)*, fresh	91,63	3 979	733,00	189,86	648,97	15 771	71,13	141 234	214,04	60,18
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	26,69	1 159	213,53	55,31	189,05	4 594	20,72	41 144	62,35	17,53
2.30	ex 0804 30 00	Pineapples, fresh	38,46	1 670	307,69	79,69	272,42	6 620	29,85	59 287	89,85	25,26
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	143,21	6 219	1 145,61	296,73	1 014,28	24 649	111,17	220 737	334,53	94,06
2.50	ex 0804 50 00	Guavas and mangoes, fresh	251,79	10 934	2 014,18	521,71	1 783,28	43 337	195,46	388 093	588,16	165,39
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	38,25	1 661	306,00	79,26	270,92	6 584	29,69	58 961	89,35	25,12
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	23,00	998	183,98	47,65	162,89	3 958	17,85	35 450	53,72	15,10
2.70		Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:										
2.70.1	ex 0805 20 10	— Clementines	52,63	2 285	421,01	109,04	372,74	9 058	40,85	81 120	122,93	34,57
2.70.2	ex 0805 20 30	— Monreales and Satsumas	36,49	1 584	291,91	75,61	258,44	6 280	28,32	56 245	85,24	23,96
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 *(Citrus limon, Citrus limonum)*, fresh	43,13	1 873	345,08	89,38	305,52	7 424	33,48	66 491	100,76	28,33
2.85	ex 0805 30 90	Limes *(Citrus aurantifolia)*, fresh	95,46	4 146	763,68	197,80	676,13	16 431	74,10	147 145	223,00	62,70
2.90		Grapefruit, fresh:										
2.90.1	ex 0805 40 00	— white	44,67	1 940	357,34	92,55	316,37	7 688	34,67	68 852	104,34	29,34
2.90.2	ex 0805 40 00	— pink	68,00	2 953	544,02	140,91	481,66	11 705	52,79	104 823	158,86	44,67
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	72,99	3 170	583,93	151,24	516,99	12 563	56,66	112 512	170,51	47,94
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	40,71	1 768	325,68	84,35	288,35	7 007	31,60	62 753	95,10	26,74
2.120.2	ex 0807 10 90	— Other	121,47	5 275	971,75	251,70	860,35	20 908	94,30	187 236	283,76	79,79
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	46,30	2 011	370,43	95,94	327,96	7 970	35,94	71 375	108,17	30,41
2.140	ex 0808 20 31 ex 0808 20 33 ex 0808 20 35 ex 0808 20 39	Pears (other than the Nashi variety *(Pyrus Pyrifolia)*)	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	213,13	9 256	1 704,97	441,62	1 509,51	36 684	165,45	328 514	497,86	139,99
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	347,39	15 086	2 778,91	719,79	2 460,33	59 791	269,67	535 440	811,46	228,18
2.210	0810 40 30	Fruit of the species *Vaccinium myrtillus*	296,30	12 867	2 370,24	613,93	2 098,52	50 998	230,01	456 698	692,13	194,62
2.220	0810 90 10	Kiwi fruit *(Actinidia chinensis* Planch.)	149,48	6 492	1 195,82	309,74	1 058,73	25 729	116,04	230 411	349,19	98,19
2.230	ex 0810 90 90	Pomegranates	50,84	2 208	406,71	105,34	360,09	8 750	39,46	78 366	118,76	33,39
2.240	ex 0810 90 90	Khakis	90,94	3 949	727,47	188,42	644,07	15 652	70,59	140 169	212,43	59,73
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 3637/88
of 22 November 1988
concerning the stopping of fishing for cod by vessels flying the flag of Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities [1], as amended by Regulation (EEC) No 3483/88 [2] and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 3978/87 of 15 December 1987 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 [3], as last amended by Regulation (EEC) No 3470/88 [4], provides for cod quotas for 1988 ;

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

Whereas, according to the information communicated to the Commission, catches of cod in the waters of ICES divisions I, II (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany have reached to quota allocated for 1988 ; whereas Germany has prohibited fishing for this stock as from 18 November 1988 ; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION :

Article 1

Catches of cod in the waters of ICES divisions I, II (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany are deemed to have exhausted the quota allocated to Germany for 1988.

Fishing for cod in the waters of ICES divisions I, II (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the above-mentioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 18 November 1988.

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

Done at Brussels, 22 November 1988.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

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(1) OJ No L 207, 29. 7. 1987, p. 1.
(2) OJ No L 306, 11. 11. 1988, p. 2.
(3) OJ No L 375, 31. 12. 1987, p. 35.
(4) OJ No L 305, 10. 11. 1988, p. 8.

COMMISSION REGULATION (EEC) No 3638/88

of 22 November 1988

concerning the stopping of fishing for hake by vessels flying the flag of Belgium

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities [1], as amended by Regulation (EEC) No 3483/88 [2], and in particular Article 11 (3) thereof,

Whereas Council Regulation (EEC) No 3977/87 of 21 December 1987, fixing, for certain fish stocks and groups of fish stocks, total allowable catches for 1988 and certain conditions under which they may be fished [3], as last amended by Regulation (EEC) No 3472/88 [4], provides for hake quotas for 1988;

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

Whereas, according to the information communicated to the Commission, catches of hake in the waters of ICES divisions II a (EC-zone), and IV (EC-zone) by vessels flying the flag of Belgium or registered in Belgium have reached the quota allocated for 1988; whereas Belgium has prohibited fishing for this stock as from 17 November 1988; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of hake in the waters of ICES divisions II a (EC-zone) and IV (EC-zone) by vessels flying the flag of Belgium or registered in Belgium are deemed to have exhausted the quota allocated to Belgium for 1988.

Fishing for hake in the waters of ICES divisions II a (EC-zone) and IV (EC-zone) by vessels flying the flag of Belgium or registered in Belgium is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 17 November 1988.

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

Done at Brussels, 22 November 1988.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

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(1) OJ No L 207, 29. 7. 1987, p. 1.
(2) OJ No L 306, 11. 11. 1988, p. 2.
(3) OJ No L 375, 31. 12. 1987, p. 1.
(4) OJ No L 305, 10. 11. 1988, p. 12.

COMMISSION REGULATION (EEC) No 3639/88

of 23 November 1988

amending certain selling prices of beef and veal offered for sale by the intervention agencies under Regulation (EEC) No 2374/79

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (1), as last amended by Regulation (EEC) No 2248/88 (2), and in particular Article 7 (3) thereof,

Whereas Commission Regulation (EEC) No 2374/79 (3), as last amended by Regulation (EEC) No 2932/88 (4), fixes certain selling prices for beef and veal taken over by the intervention agencies before 1 January 1988 ; whereas the situation regarding these stocks is such that this date should be replaced by 1 June 1988 ; whereas it appears necessary to put on sale forequarters held by the Italian intervention agency ;

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

HAS ADOPTED THIS REGULATION :

Article 1

Regulation (EEC) No 2374/79 is hereby modified as follows :

1. In Article 4 '1 January 1988' is replaced by '1 June 1988' ;
2. Annex I is replaced by 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, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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(1) OJ No L 148, 28. 6. 1968, p. 24.
(2) OJ No L 198, 26. 7. 1988, p. 24.
(3) OJ No L 272, 30. 10. 1979, p. 16.
(4) OJ No L 264, 24. 9. 1988, p. 28.

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

Categoría A: Canales de animales jóvenes sin castrar de menos de dos años,
Categoría C: Canales de animales machos castrados.

Kategori A: Slagtekroppe af unge ikke kastrerede handyr på under to år,
Kategori C: Slagtekroppe af kastrerede handyr.

Kategorie A: Schlachtkörper von jungen männlichen nicht kastrierten Tieren von weniger als 2 Jahren,
Kategorie C: Schlachtkörper von männlichen kastrierten Tieren.

Κατηγορία A: Σφάγια νεαρών μη ευνουχισμένων αρρένων ζώων κάτω των 2 ετών,
Κατηγορία C: Σφάγια ευνουχισμένων αρρένων ζώων.

Category A: Carcases of uncastrated young male animals of less than two years of age,
Category C: Carcases of castrated male animals.

Catégorie A: Carcasses de jeunes animaux mâles non castrés de moins de 2 ans,
Catégorie C: Carcasses d'animaux mâles castrés.

Categoria A: Carcasse di giovani animali maschi non castrati di età inferiore a 2 anni,
Categoria C: Carcasse di animali maschi castrati.

Categorie A: Geslachte niet-gecastreerde jonge mannelijke dieren minder dan 2 jaar oud,
Categorie C: Geslachte gecastreerde mannelijke dieren.

Categoria A: Carcaças de jovens animais machos não castrados de menos de dois anos,
Categoria C: Carcaças de animais machos castrados.

Precio de venta expresado en ECU por 100 kg (1)
Salgspris i ECU pr. 100 kg (1)
Verkaufspreise in ECU je 100 kg (1)
Τιμή πωλήσεως σε ECU ανά 100 kg (1)
Selling price in ECU per 100 kg (1)
Prix de vente en écus par 100 kilogrammes (1)
Prezzi di vendita in ECU per 100 kg (1)
Verkoopprijzen in Ecu per 100 kg (1)
Preço de venda expresso em ECU por 100 kg (1)

BUNDESREPUBLIK DEUTSCHLAND

Hinterviertel, gerade Schnittführung mit 5 Rippen, stammend von:

Bullen A / Kategorie A, Klassen U und R	150,000

BELGIQUE/BELGIË

— *Quartiers arrière, découpe droite à 5 côtes, provenant des:*

— *Achtervoeten, recht afgesneden op 5 ribben, afkomstig van:*

Taureaux 55 % / Stieren 55 % / Catégorie A, classe R, O / Categorie A, klasse R, O	150,000
Catégorie C, classe R, O / Categorie C, klasse R, O	150,000

— *Quartiers arrière, découpe à 8 côtes, dite « pistola », provenant des:*

— *Achtervoeten, „pistola"-snit op 8 ribben afkomstig van:*

Taureaux 55 % / Stieren 55 % / Catégorie A, classe R, O / Categorie A, klasse R, O	150,000
Catégorie C, classe R, O / Categorie C, klasse R, O	150,000

(1) En caso de que los productos estén almacenados fuera del Estado miembro al que pertenezca el organismo de intervención poseedor, estos precios se ajustarán con arreglo a lo dispuesto en el Reglamento (CEE) nº 1805/77.

(1) Såfremt produkterne er oplagrede uden for den medlemsstat, hvor det interventionsorgan, der ligger inde med produkterne, er hjemmehørende, tilpasses disse priser i overensstemmelse med bestemmelserne i forordning (EØF) nr. 1805/77.

(1) Falls die Lagerung der Erzeugnisse außerhalb des für die betreffende Interventionsstelle zuständigen Mitgliedstaats erfolgt, werden diese Preise gemäß den Vorschriften der Verordnung (EWG) Nr. 1805/77 angepaßt.

(1) Στην περίπτωση που τα προϊόντα αποθεματοποιούνται εκτός του κράτους μέλους στο οποίο υπάγεται ο οργανισμός παρεμβάσεως που τα κατέχει, οι τιμές αυτές προσαρμόζονται σύμφωνα με τις διατάξεις του κανονισμού (ΕΟΚ) αριθ. 1805/77.

(1) Where the products are stored outside the Member State where the intervention agency responsible for them is situated, these prices shall be adjusted in accordance with Regulation (EEC) No 1805/77.

(1) Au cas où les produits sont stockés en dehors de l'État membre dont relève l'organisme d'intervention détenteur, ces prix sont ajustés conformément aux dispositions du règlement (CEE) nº 1805/77.

(1) Qualora i prodotti siano immagazzinati fuori dello Stato membro da cui dipende l'organismo d'intervento detentore, detti prezzi vengono ritoccati in conformità del disposto del regolamento (CEE) n. 1805/77.

(1) Ingeval de produkten zijn opgeslagen buiten de Lid-Staat waaronder het interventiebureau dat deze produkten onder zich heeft ressorteert, worden deze prijzen aangepast overeenkomstig de bepalingen van Verordening (EEG) nr. 1805/77.

(1) No caso de os produtos estarem armazenados fora do Estado-membro de que depende o organismo de intervenção detentor, estes preços serão ajustados conforme o disposto no Regulamento (CEE) nº 1805/77.

DANMARK

— *Bagfjerdinger, udskåret med 8 ribben, såkaldte »pistoler«, af:*	
Kategori C, klasse R og O	150,000
Kategori A, klasse R og O	150,000
— *Bagfjerdinger, lige udskåret med 5 ribben af:*	
Kategori C, klasse R og O	150,000
Kategori A, klasse R og O	150,000

ESPAÑA

— *Cuartos traseros, corte recto a 6 costillas:*	150,000
— *Cuartos traseros, corte recto a 5 costillas, provenientes de:*	
Categoría A, clases U, R y O	150 000
— *Cuartos traseros, corte recto a 8 costillas, provenientes de:*	
Categoría A, clases U, R y O	150 000

FRANCE

Quartiers arrière, découpe à 8 côtes, dite « pistola », provenant des:	
Bœufs U et R / Catégorie C, classes U et R	150,000
Bœufs O / Catégorie C, classe O	150,000
Jeunes bovins U et R / Catégorie A, classes U et R	150,000
Jeunes bovins O / Catégorie A, classe O	150,000

IRELAND

— *Hindquarters, straight cut at third rib, from:*	
Steers 1 & 2 / Category C, classes U, R and O	150,000
— *Hindquarters, 'pistola' cut at eighth rib, from:*	
Steers 1 & 2 / Category C, classes U, R and O	150,000

ITALIA

— *Quarti posteriori, taglio a 8 costole, detto pistola, provenienti dai:*	
Vitelloni 1 / Categoria A, classi U, R e O	150,000
Vitelloni 2	150,000
— *Quarti posteriori, taglio a 8 costole, detto pistola, provenienti dai:*	
Vitelloni 1	150,000
Vitelloni 2 / Categoria A, classi U, R e O	150,000
— *Quarti anteriori provenienti dai:*	
Categoria A, classi U, R e O	100,000
Categoria A, classi U, R e O	100,000

NEDERLAND

Achtervoeten, recht afgesneden op 5 ribben, afkomstig van:	
Stieren, 1e kwaliteit / Categorie A, klasse R	150,000

UNITED KINGDOM

A. Great Britain

— *Hindquarters, straight cut at third rib, from:*	
Steers M & H / Category C, classes U, R and O	150,000
— *Hindquarters, 'pistola' cut at eighth rib, from:*	
Steers M & H / Category C, classes U, R and O	150,000

B. Northern Ireland

— *Hindquarters, straight cut at third rib, from:*	
Steers L/M, L/H & T / Category C, classes U, R and O	150,000
— *Hindquarters, 'pistola' cut at eighth rib, from:*	
Steers L/M, L/H & T / Category C, classes U, R and O	150,000

COMMISSION REGULATION (EEC) No 3640/88

of 23 November 1988

amending Regulation (EEC) No 3330/88 as regards the supply of common wheat flour to the Republic of Bolivia as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Whereas by Annex I to Regulation (EEC) No 3330/88 [3], the Commission issued an invitation to tender for the supply of 9 490 tonnes of common wheat flour in three lots free at destination in Bolivia; whereas, in order to improve the conditions of competition in the invitation to tender, provision should be made for the second submission of tenders for packaging more widely used on the market,

HAS ADOPTED THIS REGULATION:

Article 1

In point 10 of Annex I to Regulation (EEC) No 3330/88, '(under II B 2 (e))' is hereby replaced by '(under II B 2 (b))'.

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, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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(1) OJ No L 370, 30. 12. 1986, p. 1.
(2) OJ No L 168, 1. 7. 1988, p. 7.
(3) OJ No L 295, 28. 10. 1988, p. 21.

COMMISSION REGULATION (EEC) No 3641/88

of 23 November 1988

fixing the specific levies on beef and veal from Portugal

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 and in particular Article 272 thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal [1], as last amended by Regulation (EEC) No 2248/88 [2], and in particular Articles 10 (1), 11 (1) and 12 (8) thereof,

Whereas in accordance with Article 272 (1) and (2) of the Act of Accession the arrangements applicable, during the first stage, by the Community as constituted at 31 December 1985 in respect of imports of products from Portugal must be those that it applied to Portugal before accession, account being taken of any price alignment that may have taken place during the first stage; whereas the levies in question should therefore be fixed;

Whereas Commission Regulation (EEC) No 588/86 [3], as last amended by Regulation (EEC) No 3305/88 [4], lays down detailed implementing rules and fixes the specific levies applicable to trade in beef and veal in the case of Portugal;

Whereas, in the light of the arrangements set out in Regulation (EEC) No 588/86, the specific levies applicable in respect of the beef and veal imports concerned should be as shown in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific levies applicable in the case of imports from Portugal into the Community as constituted at 31 December 1985 shall be as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 December 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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(1) OJ No L 148, 28. 6. 1968, p. 24.
(2) OJ No L 198, 26. 7. 1988, p. 24.
(3) OJ No L 57, 1. 3. 1986, p. 45.
(4) OJ No L 293, 27. 10. 1988, p. 37.

ANNEX

Special levies on imports of beef and veal from Portugal

(ECU/100 kg)

CN code	Amount of the special levies
0102 90 10	36,38
0102 90 31	36,38
0102 90 33	36,38
0102 90 35	36,38
0102 90 37	36,38
0201 10 10	68,64
0201 10 90	68,64
0201 20 11	68,64
0201 20 19	68,64
0201 20 31	54,91
0201 20 39	54,91
0201 20 51	82,37
0201 20 59	82,37
0201 20 90	102,96
0201 30	118,06
0202 10 00	61,78
0202 20 10	61,78
0202 20 30	49,42
0202 20 50	76,88
0202 20 90	92,66
0202 30 10	76,88
0202 30 50	76,88
0202 30 90	106,39
0206 10 95	118,06
0206 29 91	106,39
0210 20 10	102,96
0210 20 90	118,06
0210 90 41	118,06
0210 90 90	118,06
1602 50 10	118,06
1602 90 61	118,06

COMMISSION REGULATION (EEC) No 3642/88

of 23 November 1988

amending Regulation (EEC) No 3083/73 on the communication of the information necessary for implementing Council Regulation (EEC) No 2358/71 on the common organization of the market in seeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2358/71 of 26 October 1971 on the common organization of the market in seeds [1], as last amended by Regulation (EEC) No 3997/87 [2], and in particular Article 9 thereof,

Whereas Commission Regulation (EEC) No 3083/73 [3], as last amended by Regulation (EEC) No 2811/86 [4], specifies the information which the Member States must forward to the Commission and the deadlines for such notification ; whereas it is provided that information on the issue of import licences for hybrid maize is to be notified once a month ; whereas, as that frequency does not permit the foreseeable quantity of imports to be known in good time and does not allow measures which the market trend could require to be taken, the dates for the forwarding of the information should be adjusted ;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Mangement-Committee for Seeds,

HAS ADOPTED THIS REGULATION :

Article 1

The Annex to Regulation (EEC) No 3083/73 is hereby amended as follows :

1. The entries opposite 10 are replaced by :

'Number	Nature of information	Date by which the information must be supplied
10	Information relating to the issue of import licences : [9]	
	— for hybrid maize	the 10th, 20th, and last day of each month
	— for hybrid sorghum	the 10th of each month'

2. The introductory sentence and the first indent in footnote [9] are replaced by the following :

'The following information is to be supplied as shown below :

— issue of import licences for hybrid maize per 100 kilograms,

— issue of import licences for hybrid sorghum in ... (month) per 100 kilograms.'

Article 2

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

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

(1) OJ No L 246, 5. 11. 1971, p. 1.
(2) OJ No L 377, 31. 12. 1987, p. 37.
(3) OJ No L 314, 15. 11. 1973, p. 20.
(4) OJ No L 260, 12. 9. 1986, p. 8.

COMMISSION REGULATION (EEC) No 3643/88

of 23 November 1988

derogating for the 1988/89 marketing year from Regulation (EEC) No 1562/85 laying down detailed rules for the application of measures to encourage the processing of oranges and the marketing of products processed from lemons as regards the conversion rate to be applied to the minimum price to be paid to the producer and the financial compensation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2601/69 of 18 December 1969 laying down special measures to encourage the processing of certain varieties of oranges (1), as last amended by Regulation (EEC) No 2241/88 (2), and in particular Articles 2 (3) and 3 (2) thereof,

Having regard to Council Regulation (EEC) No 1035/77 of 17 May 1977 laying down special measures to encourage the marketing of products processed from lemons (3), as last amended by Regulation (EEC) No 1353/86 (4), and in particular Article 3 thereof,

Having regard to Council Regulation (EEC) No 1676/85 of 11 June 1985 on the value of the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (5), as last amended by Regulation (EEC) No 1636/87 (6), and in particular Article 5 (3) thereof,

Whereas the representative rates currently applicable were fixed by Council Regulation (EEC) No 1678/85 (7), as last amended by Regulation (EEC) No 2185/88 (8), and whereas pursuant to that Regulation, changes in certain representative rates applicable to oranges and lemons will occur on 1 January 1989;

Whereas that change will fully concern intervention operations from 1 January 1989 under Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (9), as last amended by Regulation (EEC) No 2238/88 (10);

Whereas Article 11 of Commission Regulation (EEC) No 1562/85 (11), as last amended by Regulation (EEC) No 1715/86 (12), provides that the conversion rate to be applied to the minimum price to be paid to the producer is to be that in force on 1 December for lemons delivered to the industry in the period 1 December to 31 May and that in force on 1 October for oranges delivered to the industry throughout the marketing year; whereas, in order to avoid disruption of the market from 1 January 1989 owing in particular to distortion of competition between products which may be sold for processing and those which may be withdrawn for which the new representative rates apply on 1 January 1989, account should be taken of the fact that for quantities delivered to the processing industry from 1 January 1989 in respect of the 1988/89 marketing year, the conversion rate to be applied to the minimum price is to be that in force on 1 January 1989; whereas owing to the link existing between financial compensation and the minimum price to be paid to the producer, the operative event for the former, for quantities delivered to the processing industry from 1 January 1989 in respect of the 1988/89 marketing year, must be deemed to have occurred on 1 January 1989;

Whereas, to enable operators to take account of these changes, the final date for concluding contracts for the processing of lemons must be adopted for products to be delivered from 1 January 1989;

Whereas, in order to ensure adequate monitoring of the measures laid down, applications for financial compensation on the one hand and administrative notification on the other must make a distinction according to whether the quantities of oranges or lemons are delivered to the industry, in respect of the 1988/89 marketing year in 1988 or 1989;

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

HAS ADOPTED THIS REGULATION:

Article 1

Notwithstanding Article 7 (1) of Regulation (EEC) No 1562/85, processing contracts relating to the delivery of lemons to the industry in the period 1 January to 31 May 1989 shall be concluded before 20 January 1989.

(1) OJ No L 324, 27. 12. 1969, p. 21.
(2) OJ No L 198, 26. 7. 1988, p. 11.
(3) OJ No L 125, 19. 5. 1977, p. 3.
(4) OJ No L 119, 8. 5. 1986, p. 53.
(5) OJ No L 164, 24. 6. 1985, p. 1.
(6) OJ No L 153, 13. 6. 1987, p. 1.
(7) OJ No L 164, 24. 6. 1985, p. 11.
(8) OJ No L 195, 23. 7. 1988, p. 1.
(9) OJ No L 118, 20. 5. 1972, p. 1.
(10) OJ No L 198, 26. 7. 1988, p. 1.
(11) OJ No L 152, 11. 6. 1985, p. 5.
(12) OJ No L 149, 3. 6. 1986, p. 19.

Article 2

Notwithstanding Article 11 of Regulation (EEC) No 1562/85, for quantities of oranges and lemons delivered to the industry from 1 January 1989, in respect of the 1988/89 marketing year:

— the operative event for entitlement to financial compensation shall be deemed to have occured on 1 January 1989,

— the conversion rate to be applied to the minimum price shall be the representative rate in force on 1 January 1989.

Article 3

1. In the information supplied pursuant to Article 13 of Regulation (EEC) No 1562/85 in support of applications for financial compensation in respect of the 1988/89 marketing year, a distinction shall be made between processing operations relating:

— on the one hand to quantities of oranges or lemons delivered in 1988,

and

— on the other hand to quantities of oranges or lemons delivered in 1989.

2. Pursuant to Article 20 of Regulation (EEC) No 1562/85 notifications by the Member States for the 1988/89 marketing year shall reflect the distinctions referred to in paragraph 1.

Article 4

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, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

COMMISSION REGULATION (EEC) No 3644/88

of 23 November 1988

fixing for the 1988/89 marketing year the minimum price for selling blood oranges, withdrawn from the market, to processing industries

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 2238/88 [2], and in particular Article 21 (4) thereof,

Whereas Article 2 of Commission Regulation (EEC) No 2448/77 of 8 November 1977 laying down conditions for the disposal of oranges withdrawn from the market to the processing industry, and amending Regulation (EEC) No 1687/76 [3], as last amended by Regulation (EEC) No 713/87 [4], provides that the minimum selling price is to be fixed before the start of each marketing year, taking account of the industry's normal supply price for the product concerned;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 1988/89 marketing year, the minimum selling price referred to in Article 2 of Regulation (EEC) No 2448/77 shall be 52,42 ECU per tonne net, ex warehouse in which the goods are stored.

Article 2

This Regulation shall enter into force on 1 December 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

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 285, 9. 11. 1977, p. 5.
[4] OJ No L 70, 13. 3. 1987, p. 21.

COMMISSION REGULATION (EEC) No 3645/88

of 23 November 1988

fixing the maximum export refund for white sugar for the 30th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 1035/88

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EEC) No 2306/88 [2], and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 1035/88 of 18 April 1988 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [3], requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 1035/88, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 30th partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 30th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 1035/88 the maximum amount of the export refund is fixed at 41,277 ECU/100 kilograms.

Article 2

This Regulation shall enter into force on 24 November 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 201, 27. 7. 1988, p. 65.
[3] OJ No L 102, 21. 4. 1988, p. 14.

COMMISSION REGULATION (EEC) No 3646/88
of 23 November 1988
fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 2336/88 [3], as last amended by Regulation (EEC) No 3606/88 [4];

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2336/88 to the information known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 November 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 201, 27. 7. 1988, p. 65.
[3] OJ No L 203, 28. 7. 1988, p. 22.
[4] OJ No L 313, 19. 11. 1988, p. 33.

ANNEX

to the Commission Regulation of 23 November 1988 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	36,52 (1)
1701 11 90	36,52 (1)
1701 12 10	36,52 (1)
1701 12 90	36,52 (1)
1701 91 00	45,01
1701 99 10	45,01
1701 99 90	45,01 (2)

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

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

COMMISSION REGULATION (EEC) No 3647/88
of 23 November 1988
fixing the amount of the subsidy on oil seeds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Having regard to Council Regulation (EEC) No 1678/85 of 11 June 1985 fixing the conversion rates to be applied in agriculture [3], as last amended by Regulation (EEC) No 3355/88 [4],

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

Having regard to the opinion of the Monetary Committee,

Whereas the amount of the subsidy referred to in Article 27 of Regulation No 136/66/EEC was fixed by Commission Regulation (EEC) No 3398/88 [7], as last amended by Regulation (EEC) No 3579/88 [8];

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 3398/88 to the information known to the Commission that the amount of the subsidy at present in force should be altered to the amount set out in the Annexes hereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

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

Article 2

This Regulation shall enter into force on 24 November 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 197, 26. 7. 1988, p. 1.
[3] OJ No L 164, 24. 6. 1985, p. 11.
[4] OJ No L 296, 29. 10. 1988, p. 17.
[5] OJ No L 167, 25. 7. 1972, p. 9.
[6] OJ No L 197, 26. 7. 1988, p. 10.
[7] OJ No L 299, 1. 11. 1988, p. 41.
[8] OJ No L 312, 18. 11. 1988, p. 19.
[9] OJ No L 266, 28. 9. 1983, p. 1.
[10] OJ No L 53, 1. 3. 1986, p. 47.
[11] OJ No L 183, 3. 7. 1987, p. 18.

ANNEX I

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

(amounts per 100 kg)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
1. Gross aids (ECU):						
— Spain	0,580	0,580	0,580	0,580	0,580	0,580
— Portugal	0,000	0,000	0,000	0,000	0,000	0,000
— Other Member States	19,519	19,686	19,929	19,696	19,862	20,029
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	46,47	46,87	47,44	46,95	47,35	48,01
— Netherlands (Fl)	51,84	52,29	52,93	52,32	52,76	53,44
— BLEU (Bfrs/Lfrs)	933,94	941,94	962,31	951,06	959,07	967,14
— France (FF)	138,69	139,89	145,95	144,04	145,27	146,50
— Denmark (Dkr)	167,52	168,96	174,49	172,38	173,84	175,30
— Ireland (£ Irl)	15,410	15,543	16,232	16,020	16,156	16,293
— United Kingdom (£)	11,264	11,363	12,263	12,046	12,150	12,161
— Italy (Lit)	28 708	28 958	30 749	30 203	30 462	30 393
— Greece (Dr)	2 056,17	2 058,97	2 060,63	1 971,17	1 989,70	1 918,18
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	89,44	89,44	89,44	89,44	89,44	89,44
— in another Member State (Pta)	2 904,57	2 930,36	2 957,82	2 909,29	2 934,78	2 920,30
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00	0,00
— in another Member State (Esc)	4 220,69	4 251,44	4 278,97	4 212,03	4 242,34	4 208,92

ANNEX II

Aids to colza and rape seed 'double zero'

(amounts per 100 kg)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
1. Gross aids (ECU):						
— Spain	3,080	3,080	3,080	3,080	3,080	3,080
— Portugal	2,500	2,500	2,500	2,500	2,500	2,500
— Other Member States	22,019	22,186	22,429	22,196	22,362	22,529
2. Final aids:						
(a) Seed harvested and processed in:						
— Federal Republic of Germany (DM)	52,37	52,77	53,34	52,86	53,25	53,91
— Netherlands (Fl)	58,46	58,91	59,55	58,94	59,38	60,06
— BLEU (Bfrs/Lfrs)	1 054,11	1 062,11	1 083,03	1 071,78	1 079,79	1 087,86
— France (FF)	157,38	158,58	164,91	163,00	164,23	165,46
— Denmark (Dkr)	189,41	190,85	196,59	194,49	195,94	197,41
— Ireland (£ Irl)	17,488	17,621	18,342	18,129	18,266	18,403
— United Kingdom (£)	12,904	13,004	13,951	13,734	13,838	13,849
— Italy (Lit)	32 700	32 951	34 837	34 291	34 549	34 481
— Greece (Dr)	2 428,17	2 430,97	2 432,63	2 343,17	2 361,70	2 290,18
(b) Seed harvested in Spain and processed:						
— in Spain (Pta)	474,98	474,98	474,98	474,98	474,98	474,98
— in another Member State (Pta)	3 290,10	3 315,89	3 343,36	3 294,82	3 320,31	3 305,83
(c) Seed harvested in Portugal and processed:						
— in Portugal (Esc)	470,02	470,02	470,02	470,02	470,02	470,02
— in another Member State (Esc)	4 690,70	4 721,46	4 748,99	4 682,04	4 712,36	4 678,94

ANNEX III

Aids to sunflower seed

(amounts per 100 kg)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3
1. Gross aids (ECU):					
— Spain	5,170	5,170	5,170	5,170	5,170
— Portugal	0,000	0,000	0,000	0,000	0,000
— Other Member States	23,917	24,195	24,532	23,910	24,288
2. Final aids:					
(a) Seed harvested and processed in (1):					
— Federal Republic of Germany (DM)	56,86	57,52	58,32	56,92	57,81
— Netherlands (Fl)	63,49	64,23	65,12	63,48	64,48
— BLEU (Bfrs/Lfrs)	1 145,23	1 158,58	1 184,57	1 154,54	1 172,79
— France (FF)	171,39	173,44	180,75	175,78	178,65
— Denmark (Dkr)	205,94	208,36	215,15	209,57	212,91
— Ireland (£ Irl)	19,045	19,273	20,105	19,551	19,870
— United Kingdom (£)	14,111	14,287	15,347	14,838	15,095
— Italy (Lit)	35 669	36 104	38 238	37 009	37 630
— Greece (Dr)	2 689,16	2 710,55	2 727,29	2 557,96	2 615,57
(b) Seed harvested in Spain and processed:					
— in Spain (Pta)	797,28	797,28	797,28	797,28	797,28
— in another Member State (Pta)	3 613,77	3 656,66	3 698,42	3 589,28	3 647,60
(c) Seed harvested in Portugal and processed:					
— in Portugal (Esc)	0,00	0,00	0,00	0,00	0,00
— in Spain (Esc)	6 768,81	6 822,26	6 869,22	6 721,99	6 795,38
— in another Member State (Esc)	6 572,89	6 624,80	6 670,39	6 527,43	6 598,69
3. Compensatory aids:					
— in Spain (Pta)	3 561,43	3 604,32	3 645,53	3 535,29	3 593,61
4. Special aid:					
— in Portugal (Esc)	6 572,89	6 624,80	6 670,39	6 527,43	6 598,69

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

ANNEX IV

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

(value of 1 ECU)

	Current 11	1st period 12	2nd period 1	3rd period 2	4th period 3	5th period 4
DM	2,071960	2,067800	2,063460	2,059360	2,059360	2,047840
Fl	2,334830	2,331220	2,327140	2,323460	2,323460	2,312780
Bfrs/Lfrs	43,463400	43,462600	43,453200	43,452299	43,452299	43,437400
FF	7,081830	7,086650	7,092770	7,099050	7,099050	7,116110
Dkr	8,002340	8,006870	8,011070	8,018620	8,018620	8,041710
£Irl	0,775360	0,775858	0,776469	0,777077	0,777077	0,778714
£	0,656635	0,658152	0,659822	0,661272	0,661272	0,665787
Lit	1 542,62	1 548,45	1 554,48	1 559,93	1 559,93	1 575,29
Dr	171,29800	173,13200	175,04100	176,78600	176,78600	181,93000
Esc	172,40900	173,26200	174,12800	175,05900	175,05900	177,99900
Pta	136,59900	137,11200	137,73800	138,29100	138,29100	140,04600

COMMISSION REGULATION (EEC) No 3648/88

of 23 November 1988

derogating from the quality standard for citrus fruit

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables ([1]), as last amended by Regulation (EEC) No 2238/88 ([2]), and in particular Article 2 (3) thereof;

Whereas Commission Regulation (EEC) No 379/71 ([3]) laid down quality standards for citrus fruit, which are contained in the Annex to that Regulation;

Whereas, in view of the development of marketing, certain provisions as formulated at present relating to packaging may lead to confusion; whereas steps should be taken to remedy this situation pending a full revision of the standard;

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

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Regulation (EEC) No 379/71, until 15 July 1989, the last subparagraph under B ('Packaging') in item V ('Packaging and presentation') of the Annex thereto is hereby replaced by the following:

'The package, or bulk consignment for produce dispatched in bulk, must be free from any foreign matter; however, a presentation where a short twig with some green leaves adheres to the fruit is allowed.'

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, 23 November 1988.

For the Commission

Frans ANDRIESSEN

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 45, 24. 2. 1971, p. 1.

COMMISSION REGULATION (EEC) No 3649/88
of 23 November 1988
introducing a countervailing charge on tomatoes originating in Morocco

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 subpargraph of Article 27 (2) thereof,

Whereas Article 25a (1) of Regulation (EEC) No 1035/72 provides that, if the entry price of a product imported from a non-member country is alternatively above and below the reference price for five to seven consecutive market days a countervailing charge is introduced in respect of that non-member country, save in exceptional cases; whereas that charge is introduced when three entry prices fall below the reference price and one of those entry prices is at least 0,6 ECU below the reference price; whereas that charge is equal to the difference between the reference price and the last available entry price by at least 0,6 ECU below the reference price;

Whereas Commission Regulation (EEC) No 723/88 of 18 March 1988 fixing for the 1988/89 marketing year the reference prices for tomatoes [3] fixed the reference price for products of class I at 45,73 ECU per 100 kilograms net for the month of November 1988;

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

Whereas, in accordance with Article 3 (1) of Commission Regulation (EEC) No 2118/74 [4], as last amended by Regulation (EEC) No 3811/85 [5], the prices to be taken into consideration must be recorded on the representative markets or, in certain circumstances, on other markets;

Whereas for tomatoes originating in Morocco the entry prices calculated in this way have for five consecutive market days been alternatively above and below the reference price; whereas two of these entry prices are at least 0,6 ECU below the reference prices; whereas a countervailing charge should therefore be introduced for these tomatoes;

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

— in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Council Regulation (EEC) No 1676/85 [6], as last amended by Regulation (EEC) No 1636/87 [7],

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

HAS ADOPTED THIS REGULATION:

Article 1

A countervailing charge of 3,83 ECU per 100 kilograms net is applied to tomatoes (CN code 0702 00) originating in Morocco.

Article 2

This Regulation shall enter into force on 25 November 1988.

Subject to the provisions of the second subparagraph of Article 26 (2) of Regulation (EEC) No 1035/72, this Regulation shall be applicable until 30 November 1988.

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 198, 26. 7. 1988, p. 1.
(3) OJ No L 74, 19. 3. 1988, p. 51.
(4) OJ No L 220, 10. 8. 1974, p. 20.
(5) OJ No L 368, 31. 12. 1985, p. 1.
(6) OJ No L 164, 24. 6. 1985, p. 1.
(7) OJ No L 153, 13. 6. 1987, p. 1.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

COMMISSION REGULATION (EEC) No 3650/88

of 23 November 1988

abolishing the countervailing charge on fresh lemons 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 3581/88 [3] introduced a countervailing charge on fresh lemons originating in Spain (except the Canary Islands);

Whereas the present trend of prices for these products on the representative markets referred to in Commission Regulation (EEC) No 2118/74 [4], as last amended by Regulation (EEC) No 3811/85 [5], recorded or calculated in accordance with the provisions of Article 5 of that Regulation, indicates that the application of the first subparagraph of Article 26 (1) of Regulation (EEC) No 1035/72 would result in the countervailing charge being fixed at zero; whereas the conditions specified in the second indent of Article 26 (1) of Regulation (EEC) No 1035/72 are therefore fulfilled and the countervailing charge on imports of these products originating in Spain (except the Canary Islands) can be abolished;

Whereas, pursuant to Article 136 (2) of the Act of Accession of Spain and Portugal, the arrangements applicable to trade between, on the one hand, a new Member State and, on the other, the Community as constituted at 31 December 1985, must be those which were applicable before accession,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 3581/88 is hereby repealed.

Article 2

This Regulation shall enter into force on 24 November 1988.

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

Done at Brussels, 23 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President

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(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 198, 26. 7. 1988, p. 1.
(3) OJ No L 312, 18. 11. 1988, p. 25.
(4) OJ No L 220, 10. 8. 1974, p. 20.
(5) OJ No L 368, 31. 12. 1985, p. 1.

COUNCIL REGULATION (EEC) No 3651/88

of 23 November 1988

imposing a definitive anti-dumping duty on imports of serial-impact dot-matrix printers originating in Japan

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [1], and in particular Article 12 thereof,

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

Whereas :

A. Provisional measures

(1) The Commission, by Regulation (EEC) No 1418/88 [2], imposed a provisional anti-dumping duty on imports of serial-impact dot-matrix printers originating in Japan. That duty was extended for a maximum period of two months by Regulation (EEC) No 2943/88 [3].

B. Subsequent procedure

(2) Following the imposition of the provisional anti-dumping duty, all exporters and a number of independent importers as well as the complainant Community industry requested, and were granted, an opportunity to be heard by the Commission. They also made written submissions making known their views on the findings.

(3) Upon request, parties were also informed of the essential facts and considerations on the basis of which it was intended to recommend the imposition of definitive duties and the definitive collection of amounts secured by way of a provisional duty. They were also granted a period within which they could make representations subsequent to the disclosure given. Their comments were considered and, where appropriate, the Commission's findings were adjusted to take account of them.

(4) In addition to the investigations leading to the preliminary determinations, the Commission carried out further investigations at the premises of all the complainant companies.

C Product under consideration and like product

(5) In its provisional findings, the Commission concluded that the products under consideration are serial-impact do-matrix printers which print dots by electronically activated needles on a print medium (SIDM printers). Further, the Commission found that all Community-produced SIDM printers form one like product to all SIDM printers exported from Japan, with the exception of special purpose printers (recitals 7 and 31 of Commission Regulation (EEC) No 1418/88, hereinafter referred to as the 'Commission Regulation').

These conclusions were contested by exporters and importers. Firstly, the argument was maintained that no single market for SIDM printers existed and that their clear dividing lines could be drawn between the different market segments, as defined in terms of end-uses by a study of Ernst & Whinney Conseil, i.e. a low-, or mid-letter quality and a high-end segment. Therefore, it was argued that at least four or five different like products should be determined and, cnsequently, four or five different dumping and injury determinations should be established. Secondly, some exporters and one importer argued that specific printer models should be excluded from the like product definition because of their unique specifications, their exclusive design, their specific software and/or their specific application and use.

(a) *Arguments concerning the like product definition*

(6) The Commission took all these arguments into consideration. It found that it was not contested that all SIDM printers on the Community market (about 800 models) were based on the same impact technology and their basic physical and technical characteristics were identical. On the other hand, it is obvious that the numerous printer models on the market differ in physical technical specifications, interfaces, softwares, weight, size, quality, features and accessories.

(7) The printer market is, moreover, characterized by the fact that the dot-matrix printer technology, and the different physical and technical characteristics of the SIDM printers, their size, weight, specifications and features are subject to rapid developments and changes. In this respect, the German market research company IMV Info-Marketing Verlagsgesellschaft für Bürosysteme, Düsseldorf (hereinafter referred to as IMV

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[1] OJ No L 209, 2. 8. 1988, p. 1.
[2] OJ No L 130, 26. 5. 1988, p. 12.
[3] OJ No L 264, 24. 9. 1988, p. 56.

Info-Marketing), confirmed a present market trend to decentralize printing facilities i.e. to substitute heavy-duty printers by several lessdurable, lighter, smaller and less expensive printers. The relation between price and performance of these substitute printers is, according to IMV Info-Marketing, constantly improving.

(8) As far as the application and use of the printers is concerned, no new arguments were advanced by the exporters against the like product definition in the Commission Regulation. In particular, no new aspects were supplied on the basis of which clear dividing lines among the products concerned, in terms of distinct characteristics aud uses, could be found. In such circumstances, the Commission considered that, when faced with a spectrum or continuum of products where there are no clear distinctions among these products, it would be arbitrary, open to circumvention and probably unworkable to separate the products into a number of separate articles or series of like products.

(9) In the light of the evidence presented, the Council confirms the Commission's provisional findings (recitals 11 to 17 of the Commission Regulation) that the SIDM printer market in the Community is best considered as a series of products with no clearly defined boundaries between them. SIDM printers which, regardless of their differences, have the same basic physical and technical characteristics and the same basic application and use, have therefore to be considered as being like products.

(b) *Arguments concerning specific printer models*

(10) As far as the requests to exclude specific printer models are concerned, Seikosha argued that its printer SBP10, because of its print speed and its other qualities, could not be considered a like product to the other SIDM printers on the Community market. The Commission did, however, not consider that high print speed and quality differences distinguish the SBP10 printer as a separate product from other fast printing SIDM printers. Indeed, only such technical or quality differences which have the effect that the use, the application or the consumers' perception distinguish fundamentally a given printer from the other SIDM printers are likely to render a SIDM printer 'unlike'. Although it is true that, at present, the high speed of the SBP10, measured in characters per second (cps) is not equalled by any Community produced SIDM printer, the cps figure does not give an accurate figure of a printer's speed on typical texts. If the throughout of the SBP10 is compared to those of the Europrint models, the difference is not such as to distinguish this printer fundamentally from the Community printer models.

(11) An exporter (Hitachi Ltd) and an importer (Apple Computer International) submitted that they export and import respectively, into the Community, SIDM printers for use within either the exporter's mainframe or the importer's computer system. These printers form an integral part of these computer systems, have unique specifications designed for the respective computer system's requirements and cannot be used othjer than as a part of these systems. The importer (Apple), which is not a SIDM manufacturer could, however, also purchase its system printers from Community printer manufacturers while the exporter (Hitachi) is itself a SIDM printer manufacturer and exports and sells its printers only as part of its mainframe computer system.

(12) In the light of these arguments, the Commission found that it is not unusual that SIDM printers are specifically designed and manufactured for a particular computer system. Since SIDM printers cannot be used as a stand-alone product but have to be connected to a computer, they always form part of a system. The basic physical and technical characteristics and the application and use of these specifically designed and manufactured printers remain similar to other SIDM printers not exclusively designed and manufactured for a given computer system. Furthermore, the products under consideration are serial-impact dot-matrix needle printers and not computer systems. Therefore, SIDM printers which form an integral part of, and are exclusively dedicated to, a computer system supplied by the manufacturer and/or the exporter of the printer in question, and which are only impported and sold within such a computer system, cannot be considered as being similar to the Community-manufactured SIDM printers. The mere fact, however, that printers are exclusively designed and manufactured for a computer system of an importer, without forming an integral part of and being imported together with such a computer system, cannot be considered sufficient to render these printers unlike to Community-manufactured SIDM printers.

(13) Epson argued that its compact mini printer models 15011, 160, 180 and 183 are designed for use with the Epson PX16 and HX20 portable computers and the EHT hand held computers, are not like products to the Community manufacturers' printer models.

As regards this argument, the Commission found, on the one hand, that these printers do not have the basic physical and technical characteristics of SIDM needle printers. These compact

mini-printers are line impact dot-matrix printers and print line to line rather than character by character. Furthermore, they use only paper with a width smaller than that used by other SIDM printers. Thirdly, these printers are hand held, light weight portable printers for the specific needs of portable data printouts.

(14) In contrast, the Community-produced SIDM printers which are the subject of these proceedings are at least desk-top printers and not perceived as portable printers for use in a portable pocket computer system. For these reasons, the Commission considers these printers as being different from the Community-produced SIDM needle printers. The Council confirms this finding and concludes that these printers fall outside the scope of the products under consideration.

(15) As far as requests for exceptions for other printer models are concerned, these have been dealt with in recitals 24 to 29 of the Commission Regulation. Since no new arguments were submitted in this respect. the Council confirms the Commission's provisional conclusions.

(16) In the light of the findings presented in the Commission Regulation (recitals 11 to 31), and of the considerations set out above, the Council concludes that SIDM printers are sufficiently all to be considered as one like product in the context of this proceeding. Consequently, all Community produced SIDM printers are like products to those exported from Japan, with the exception of special-purpose printers, printers forming an integral part of a computer system and imported and sold together with this system, and hand held pocket printers.

D. Normal value

(17) Normal value for those products subject to the provisional duty was, for the purpose of definitive findings, generally established on the basis of the methods used for the provisional determination of, dumping, taking into account new evidence submitted by the parties concerned.

(18) One exporter claimed that the normal value established for certain of its sales on the domestic market should take account of the value of certain goods which, it alleged, were given as a form of rebate on the price paid for for the product under consideration. It was, however, established that these rebates were given only on accessories and were, accordingly, not directly linked to the sales under consideration.

(19) Certain exporters continued to request that account be taken, for the purposes of establishing normal value by means of domestic prices, of transfer prices between related companies or sales branches of these exporters on the Japanese market. The Commission, however, continued to consider such an approach as inappropriate for the reasons indicated in recitals 33, 39 and 40 of the Commission Regulation and this is confirmed by the Council.

(20) Some exporters objected to the elimination of certain sales, or sales channels, from the calculation of normal value where it was based on domestic prices on the grounds that these sales were in fact made in the ordinary course of trade. However, the Commission was satisfied that, where such elimination occurred, the sales had been made in substantial quantities during the reference period and at prices which did not permit recovery in the normal course of trade of all costs reasonably allocated and within the reference period as provided for in Article 2 (4) of Regulation (EEC) No 2423/88. This conclusion is confirmed by the Council.

For the purposes of definitive findings, the Council confirms that normal values, in such circumstances and in cases where the remaining sales, i.e. those considered to be in the normal course of trade comprised less than 5 % of the volume of exports of the particular model concerned to the Community, were established by means of constructed values.

(21) As regards the method of constructing normal values and in particular the amounts of selling, administrative and other general expenses and profit, one exporter claimed that since it had no sales of the product under consideration on the domestic market the selling, administrative and other general expenses and profit of its relatively few sales of other, unrelated, products should form the basis of the appropriate figure to be allocated for these expenses and profit to the constructed value of the products under consideration.

The Commission, however, saw no reason to change its view, as stated in recital 36 of the Commission Regulation, and this is confirmed by the Council, that the fact that a particular exporter does not sell the product concerned, and accordingly, does not have a sales organization on its domestic market, should not alter the basis for estimating selling, administrative and other general expenses and profit in the construction of that exporter's normal value. Furthermore, Article 2 (3) (b) (ii) of Regulation (EEC) No 2433/88 now confirms that, in such circumstances, such expenses and profit shall be calculated by reference to the expenses incurred and the profit realized by other producers or exporters in the country of origin or export on profitable sales of the like product.

(22) Certain exporters objected to an allocation, in constructing their normal values, on the basis of the sales, administrative and other general expenses and profit realized by other producers or exporters on their profitable sales of the like product in Japan. In these cases, the exporters concerned had not sold, in the normal course of trade, 5 % or more of the volume of exports of the particular model concerned to the Community and, in these circumstances, in accordance with the Commission's normal practice, normal value was constructed as provided for by Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88. One of the exporting companies, which had not disputed the Commission's preliminary findings on the 5 % rule, later argued that it had sold the like product in sufficient quantities in the domestic market for the selling, administrative and other general expenses and profit for these sales to be taken into consideration in the calculation of constructed normal values. Insufficient evidence of this assertion was, however, submitted and, accordingly the Council confirms the Commission's preliminary findings.

The Council therefore confirms the Commission's position, that, in these circumstances, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, the amount of selling, general and administrative costs and profit should be calculated with reference to the expenses incurred and the profit realised by other exporters on their profitable sales of the like product on the Japanese market.

(23) Another exporter argued that an allocation should not be made to include certain selling, administrative and other general expenses of subsidiary or related distributor companies. However, the Commission considers and the Council confirms that in order to include all costs incurred in the constructed normal value, in accordance with Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, appropriate account must be taken of such costs.

(24) As regards profit, certain exporters argued that the figure included in their normal values was excessive. However, where an individual figure could be calculated for an exporter then that figure, i.e. the actual profit realized on profitable sales, was used in constructing normal value.

(25) Some exporters also argued that by restricting the calculation to sales of machines in the normal course of trade and thereby eliminating certain sales at a loss an artificially high profit margin was obtained. In addition, it was argued that certain sales at a loss should be considered in the normal course of trade being normal commercial practice in the dot-matrix printer business. The Commission rejected this view since the provisions of Article 2 (4) of Regulation (EEC) No 2423/88 provide that in such circumstances normal value shall be determined on the basis of the reamining, i.e. profitable, sales only.

(26) For those exporters for which the information available was insufficient to make this calculation or who traded at a loss or who did not make sales, or sufficient sales, of comparable products on the domestic market, in view of the variety of profit margins found, a weighted average profit margin for like products of the other exporters for which appropriate information was available was applied.

This weighted average profit margin was calculated to be 37 %.

The method adopted by the Commission concerning the inclusion of profit in constructed normal values is entirely in line with that laid down in Article 2 (3) (b) (ii) of Regulation (EEC) No 2423/88, and accordingly the Council confirms the Commission's findings.

(27) As regards sales of the product concerned to independent customers which resold the product under their own brand names (OEMs), one exporter continued to claim that normal values should be based on a weighted average of all sales in the ordinary course of trade on the Japanese market, i.e. a weighted average of both own-brand sales and OEM sales. On this point, the Council confirms the Commission's position as stated in recital 38 of the Commission Regulation. In addition, the Council considers that, while all serial-impact dot-matrix printers should be considered like products within the meaning of Article 2 (12) of Regulation (EEC) No 2423/88 (see recitals 5 to 9 of this Regulation) to establish a single normal value for all models of the product concerned would not allow a fair comparison with export prices as it required by Articles 2 (9) and 2 (10) of Regulation (EEC) No 2423/88. In order for such a fair comparison to be carried out, normal values were established for each model and comparison made with the export price of the same or most closely resembling model. Such an approach is in line with that adopted for the calculation of the injury threshold, where for purposes of arriving at levels of price undercutting, only identical or similar models were compared.

(28) The Council also confirms the Commission's position as regards certain selling, administrative and other general expenses incurred by sales companies or departments in Japan as stated in recitals 39 and 40 of the Commission Regulation.

E. Export price

(29) With regard to exports by Japanese producers directly to independent importers in the Community, export prices were determined on the basis of the prices actually paid or payable for the product sold.

(30) In other cases, exports were made to subsidiary companies which imported the product into the Community. In such cases it was considered appropriate, in view of the relationship between exporter and importer, that export prices be constructed on the basis of prices at which the imported product was first resold to an independent buyer. Discounts, rebates and the values of free goods directly linked to a sale under consideration were deducted from the price to the independent customer and suitable adjustment was made to take account of all costs incurred between importation and resale, including all duties and taxes.

(31) In addition, a number of sales to independent customers in the Community were made by exporters' subsidiary companies either in or outside the Community. In some such cases, it appeared that although the related company was not the formal importer it assumed certain functions of, and bore certain costs normally incurred by, an importer. It took orders, purchased the product form the exporter and resold, to, *inter alia,* unrelated customers. These customers were generally distributors of the product concerned in areas, in which the exporter did not have a subsidiary company importing and distributing the products. Sales by some exporters were also made to an independent customer in the Community via more than one of the exporter's subsidiaries. In all such cases except one, both subsidiaries were situated within the Community and for the exception, one subsidiary was located inside and one outside the Community. In these cases, the costs normally incurred by an importer were incurred by both the subsidiaries of the exporters concerned. In all instances, there was a price paid by one subsidiary to the exporters and a higher price paid by the second to the first subsidiary. It was claimed that, in all such circumstances, the export price actually paid or payable in terms of Article 2 (8) (a) of Regulation (EEC) No 2423/88 should be that invoiced by whichever subsidiary sells to independent customers in the Community.

The Commission considers that, in these circumstances, the products were sold for export to the Community by the exporter in Japan to a subsidiary located either inside or outside the Community. These subsidiaries, whether formally importing the product or not, assume functions typical of an importing subsidiary. Given the relationship between the exporter and its subsidiary, the export price, in such cases, considered to be a transfer price, is therefore rejected as unreliable. Accordingly, the export price had to be constructed on the basis of the price at which the product was first sold to an independent buyer, allowance being made for all costs incurred by the subsidiary or subsidiaries in question, as provided for by Article 2 (8) (b) of Regulation (EEC) No 2423/88.

(32) The Council confirms the Commission's findings on establishing export prices as set out in recitals 45 to 49 of the Commission Regulation.

F. Comparison

(33) For the purpose of a fair comparison between normal value and export prices, the Commission took account, where appropriate, of differences affecting price comparability, such as differences in physical characteristics, and differences in selling costs, where claims of a direct relationship of these differences to the sales under consideration could be satisfactorily demonstrated. This was the case in respect of differences in credit terms, warranties, commissions, salaries paid to salesmen, packing, transport, insurance, handling and anciliary costs.

(34) Normal value and export prices, the latter based on both prices paid and constructed export prices, were compared at the same level of trade. The prices or constructed values to which adjustments were made were established at the level of exporting companies' domestic sales companies or sales organizations. Export prices were established ex export sales company or sales organization.

(35) One exporter continued to claim an allowance for differences in quantities sold domestically from those sold for export to the Community. The claim was based on an alleged cost difference resulting from differences in volume of production. However, no additional evidence to that available for the provisional findings was supplied regarding savings in the cost of producing different quantities. The Council therefore confirms the Commission's finding that the claim should be rejected.

(36) The Council also confirms the Commission's findings on comparison of normal value and export price as set out in recitals 52 and 54 to 56 of the Commission Regulation.

G. Dumping margin

(37) Normal value for each of the models of each exporter was compared with export prices of comparable models on a transaction-by-transaction basis. The examination of the facts shows the existence of dumping in respect of imports of dot-matrix printers originating in Japan from all the Japanese exporters investigated, the margin of dumping being equal to the amount by which the normal value as established exceeds the price for export ot the Community.

(38) The margins of dumping varied according to the exporter, and expressed as a percentage of cif Community frontier values the weighted average margins were as follows:

Alps Electrical Co Ltd	6,1 %
Brother Industries Ltd	39,6 %
Citizen Watch Co Ltd	43,3 %
Copal Co Ltd	18,6 %
Fujitsu Ltd	86,0 %
Japan Business Computer Co Ltd	22,4 %
Juki Corporation (previously Tokyo Juki)	80,0 %
Nakajima Ltd	12,0 %
NEC Corporation	67,5 %
OKI Electric Industry Co Ltd	8,1 %
Seiko Epson Corporation	29,7 %
Seikosha Co ltd	73,0 %
Shinwa Digital Industry Co Ltd	9,5 %
Star Micronics Co Ltd	13,6 %
Tokyo Electric Co Ltd	4,8 %

(39) For those exporters which neither replied to the Commission's questionnaire, nor otherwise made themselves known, dumping was determined on the basis of the facts available in accordance with the provisions of Article 7 (7) (b) of Regulation (EEC) No 2423/88.

In this connection the Commission considered that the results of its investigation provided the most appropriate basis for determination of the margin of dumping and that it would create an opportunity for circumvention of the duty to hold that the dumping margin for these exporters way any lower than the highest dumping margin of 86 % determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use this latter dumping margin for this group of exporters.

As regards the company which refused to cooperate with the Commission during the preliminary investigation, the circumstances remained unchanged up to the final examination of the facts and accordingly the Council confirmed that it would be appropriate that definitive findings for this company should also be made on the basis of the facts available, i.e. the results of the investigation.

(40) It was considered that, in this case, it would also create an opportunity for circumvention of the duty and would constitute a bonus for non-cooperation to hold that the dumping margin for this exporter was any lower than the highest dumping margin determined with regard to an exporter who had cooperated in the investigation. For these reasons it is considered appropriate to use the highest dumping margin for this company.

H. Community industry

(41) The Commission interpreted the term 'Community industry' as referring to the four Community producers that are members of Europrint (see recital 69 of Commission Regulation). This conclusion was based on the consideration that the four Europrint members manufactured about 65 % of the total Community output of SIDM printers, ie. a major proportion of the total Community production of the like product, and that the reasons which led three Europrint members to import SIDM printers from Japan, as well as the volume, value and other circumstances of these imports could be taken as legitimate measures of self defence (see recitals 63 to 67 of the Commission Regulation).

(42) With regard to this conclusion, some exporters argued, firstly, that there was no need for the three producers to import Japanese SIDM printers and to offer a full range of printers, secondly, that these imports inflicted injury on the importing producers because these SIDM printers are like products to the producer's own manufactured SIDM printers, and, thirdly, that the amount and the growth of those imports show that such imports surpassed the limits of what could reasonably be defined as a measure of mere self-defence.

(43) As to the first argument, it should be recalled, in the first place, that all three Community producers manufactured similar types of printers before they decided. In the years 1984 to 1986, to subsitute these own produced printers by low-price printers of Japanese origin. The three producers, thefore, did not increase their range of printers merely, but replaced own-produced printers by Japanese models. Secondly, it is obvious that potential clients are more inclined to buy office automation equipment from a supplier who offes a full range of printers. The three Community producers can therefore not be criticized for their decision to continue to offer a full range of SIDW printer models.

Thirdly, it is not contested that the main reason for these imports is the fact that, because of the low price level of the printer market caused by imports from Japan, the costs of development and production of such substitute new printer models incurred by the free companies would not have been recovered within a reasonable time.

(44) The exporters second argument confuses two different issues, namely the determination of the like product and the question whether the imported models are in direct competition to the importers's own manufactured printers. For the purposes of defining the like product, the fact that no clear dividing lines between the different products can be drawn is, in the opinion of the Council, sufficient to determine that, in general, all SIDW needle printers form one like product. This lack of clear dividing lines does, however, not mean that the Community producers inflicted injury on themselves by importing these printers, Since the majority of Japanese exporters sell printer models in the different market segments and offer a full range of printer models, there cannot be any question of self-inflicted injury when their Community competitors try, by these imports, also to offer such a range of printer models.

(45) As far as the third argument is concerned, the Commission revlewed the import figures of three producers during the investigation period. It found that these imports represented respectively 10,68 %, 28,9 % and 47,4 % of the total production of these producers. In this respect, the Commission considered that these imported printers all belonged to the low end of the market (as defined by the study of Ernst and Whinney Conseil). This market segment is the most important of the printer market and has recently grown significantly faster than the total market. In addition, the Community producers wished to regain their market shares lost by abandoning their own production in this sector. The volume, value and growth of these imports can, therefore, not be considered as being disproportionate to their own production levels.

(46) In the light of the foregoing, and for the reasons and circumstances which led the Community producers to import Japanese SIDW printers (see recitals 63 to 67 of the Commission Regulation), the Council concludes that the imports of SIDM printers from Japan by the Europrint members have to be considered as reasonable measures of self-defence. Consequently, the three Europrint members should not be excluded from the Community producers representing the Community industry.

I. **Injury**

(a) *Volume and market shares of dumped imports*

(47) In its provisional findings, the Commission established that the market share held by Japanese exporters in the Community had increased from 49 % in 1983 to 73 % in 1986. While the total SIDM printer market grew from 800 000 units in 1983 to 2 093 000 units in 1986, i.e., a growth of 162 %, the Japanese market share shows growth from 390 000 units in 1983 to 1 522 000 units in 1986, a growth of 290 %. The Commission also found a considerable increase of the Japanese market presence in the different market segments defined in terms of print speed by some market research companies (IDC and Data quest) and referred to in the study of Ernst and Whinney Conseil, between 1983 and 1986. In the low end segment, the Japanese exporters share increased from 65 % to 88 %, and the Community Industry's decreased from 24 % to 7 %. In the medium market segment, the Japanese exporters' share increased from 46 % to 65 %, and the Community Industry's decreased from 34 % to 25 %. In the high market segment, the Japanese exporters share increased from 4 % to 47 % and the Community industry's decreased from 6 % to 28 %. Ernst and Whinney Conseil commented on this development that the EEC manufacturers were, in the low end segment, the least successful and resorted to Japanese OEW sales to cover this range of products under their brand names.

(48) With respect to the figures concerning the low end segment, the exporters argued that the market share of the Community industry should be adjusted because of the OEM-imports of the three

Europrint members. The imported printers of these producers are sold under their own brand name. According to the exporters, the market share of the Community industry was therefore significantly under-estimated. The Council considers, however, that for these so called OEM imports, the Community producers act more as distributors of Japanese SIDM printers than as manufacturers. No adjustment is therefore justified.

(b) *Prices*

(aa) *Price depression*

(49) Based on the Ernst and Whinney Conseil study, the Commission found the unit price trend of the total SIDM printer market in the Community during 1983 to 1986 showed an overall decrease of between 25 % and 35 %. The price decrease was considerably higher in the low and high end segment than in the medium segment. These different price decrease factors are consistent with the considerable increase in relative terms of the Japanese exporter's market share in the low and high end segments. The Community industry had also to follow this price depression trend.

(bb) *Price undercutting*

(50) As far as price undercutting is concerned, the Commission established a detailed price undercutting study concerning the Japanese exporters' prices and those of the Community manufacturers. In both cases to the first unrelated buyer.

Firstly, representative SIDM printer models of the four Europrint members were selected. The SIDM printer models treated as representative accounted for about 68 % of the total sales of all models of the Community industry within the Community. As a second step, on the basis of a model comparison study supplied by IMV Info-Marketing and in close collaboration with it, the SIDM printer models of the Japanese exporters most similar to the Europrint member models, as far as technical specifications, features, speed, application and use was concerned, were determined. These selected Japanese printer models accounted for about 65 % of all Japanese exporters' sales during the period of investigation in the Community. Thirdly, the net weighted average prices of these comparable printer models in France, Germany, Italy and the United Kingdom were compared, in the OEM, distributor, dealer and the end-user sales channels.

(51) Where no corresponding price in the different sales channels were found, adjustments were made (25 % between dealer and distributor's sales channels). When the Commission was satisfied that important technical or physical differences had a considerable impact on the consumer's perception of the printers and on prices, adequate adjustments were made of the printer models were excluded from the comparison. Additional adjustments were made for differences in the weight of the compared printer models (for difference between 50 % and 74 % : 10 % price adjustments, for differences between 75 % and 99 % : 20 % price adjustment).

(52) Some exporters argued that the adjustments for weight differences were too low and that additional adjustments should be made for differences in durability of the printers (i.e., for 'mean time between fallure' and the print head life). Another exporter argued that differences in the costs of production between his SIDM printers and the Community printers should be taken into account.

The Commission could, however, not accept these arguments. As far as the weight differences are concerned, the market research institutes. IMV Info-Marketing and Ernst and Whinney Conseil, stated that weight differences should, but only to a certain degree, be taken into account for price comparison purposes. While IMV Info-Marketing stated that a precise weight adjustment was impossible, Ernst and Whinney Conseil submitted a formula for calculating such adjustments. However, this organization also admitted that the formula was based on assumptions and estimations and not on precise, reliable and verifiable data. The heavier weight of a printer might also be the consequence of out-dated production techniques and does, therefore, not necessarilly result in higher quality or better consumer appreciation. Under these circumstances, only limited weight adjustments were considered appropriate. As far as adjustments for durability are concerned, the Commission found, based on the advice of IMV Info-Marketing, that these differences, when they exist at all, are not quantifiable, Moreover, no commonly accepted standards exist for measuring these differences. No adjustments were therefore granted. The Council confirms these findings of the Commission.

(53) The price comparison showed that all but three Japanese exporters had, on average, undercut the prices of comparable models of the Community manufacturers. The weighted average price undercutting ranged from 3,93 % to 43,42 %. Of the three non-undercutting exporters, two had either exported very low quantities or sold through specific customers, or both. All three sold at prices, which, if applied to the comparable printer models

of the Community industry, would not have permitted a reasonable return on sales.

In these circumstances, the Council concludes that the prices of the dumped imports undercut significantly the prices of comparable Community produced SIDM printers.

(c) *Other relevant economic factors*

(54) In its provisional findings (see recitals 83 to 87 of the Commission Regulation) the Commission found that capacity, production and the sales of SIDM printers of the Community industry increased between 1983 and 1986. Capacity utilization remained, however, stable at about 70 %. During the same period, the Community producer's stocks of unsold SIDM printers increased more rapidly than their sales. Moreover, while in 1984 the complainant Community industry as a whole had an weighted average return on sales on their own SIDM printer production of about 9 %, the weighted average return on such sales for the period under investigation was around 1 %. In this context. it should be noted that from 1984 to 1987 (first three months) the average production costs for SIDM printers of the Community industry decreased. Nevertheless, the Community industry suffered a growing decline in profitability. Moreover, the Community producers invested more to reduce their costs of production than in new capacity. Finally, they have been forced to scale down their research and development expenditure on printers which is substantially below that of their main Japanese rivals.

(d) *Conclusions*

(55) In recitals 88 to 92 of the Commission Regulation, the reasons are specified which led the Commission to conclude that the Community SIDM printer industry experienced material injury. Indeed, the figures concerning the SIDM printer market in general show a steady increase of demand, and consequently, a continuously growing market. In contrast, the figures concerning the Community manufacturers show that their performance did not follow the market trends with their presence in the market declining considerably, Woreover, the dramatic drop in their profitability leads the Council to consider that the Community industry remained at a low and still declining level of financial performance and suffered material injury.

J. Causation of injury by the dumped imports

(56) The Commission concluded in recital 108 of its Regulation that the volume of the dumped imports, their market penetration, and the prices at which the dumped SIDM printers had been offered, taken in isolation, caused material injury to the Community industry.

(57) With regard to this conclusion, the exporters and importers raised, effectively, two arguments, firstly, that the Commission failed to show the specific injurious effect of the dumped imports of each of the CJPRINT members and, secondly, that the difficult market situation of the Community industry was either self-inflicted or caused by other factors such as low-priced non-dumped imports from third countries other than Japan. In this respect, the exporters argued further that the Community producers had a long history of conservative market behavlour which was inappropriate in the fast developing printer market, that they applied the wrong market strategies (i.e., a niche market strategy), that they were unwilling to devote sufficient resources to necessary research and development investments, and, in the end, that they were only suffering from their own high cost structures.

(58) The Council cannot accept these arguments. As to the first argument, it should be noted that Article 4 (1) of Regulation (EEC) No 2423/88 requires a determination that the injury was caused by dumped imports. This provision which refers to all dumped imports cannot be interpreted in such a narrow way that the injurious effects of the sales of each exporter, taken in isolation, have to be determined. Such an individual injury determination would, in the vast majority of cases, be impossible and, thus, render Regulation (EEC) No 2423/88 unworkable. Furthermore, dumped exports which, looked at in isolation, did not cause material injury, would fall outside any anti-dumping proceeding, while their cumulative effect might well have considerable injurious effects. In accordance with the objectives of Regulation (EEC) No 2423/88, the overall effect of the imports on Community industry should be examined and adequate measures taken in respect of all exporters, even if the volume of their exports, taken on an individual basis, is of little importance (see judgment of the Court of 5 October 1988, Case No 294/86, Technointorg v. Commission, of the European Communities not yet published). The Council considers, therefore, that the injurious effects of the dumped imports of all exporters concerned have to be assessed on a cumulative basis and not separately for each exporter.

(59) As to the second argument, further investigation by the Commission has shown that the marketing strategies and the OEM imports of the Community industry were substantially influenced by the low-price imports of Japanese printers since 1983. Indeed, on the one hand, the price level for SIDM printers on the Community market decreased constantly since the increase of the imports of SIDM printers from Japan and, on the other hand, the costs of the Community producers, despite considerable efforts, did not proportionally follow this price decrease. The Community industry can therefore not be criticized, either for looking to market segments in which there was low-price elasticity, at least for a certain time period, and where low-priced Japanese imports did not yet have a high market penetration or for importing low priced SIDM printers from Japan. The investigation showed, further, that the marketing strategies of the Community industry were mainly influenced by the lack of financial resources due to reduced profitability which was itself the result of the low priced dumped imports. Finally, as far as the quality argument is concerned, the Japanese exporters insisted, for the purposes of the determination of price undercutting, that the Community produced printers are, in general, of equal, if not of superior quality, to comparable printers of Japanese orgin.

(60) It was also argued by certain exporters, that imports of low-priced SIDM printers from third countries other than Japan had a significant negative effect on the market and on the price level. According to the information supplied by these exporters, the effects of these imports were, however, restricted to one member state and became substantial only after the end of the period under investigation. They can, therefore not have had the injurious impact on the Community market claimed by the exporters. Moreover, the Council is of the opinion, in keeping with the case law of the court (see Judgment of 5 October 1988, Canon v. Council, joint Cases No 277/85 and No 300/85, not yet published) that findings of injury are not confined to cases where dumping is the principal cause and accordingly that responsibility for injury is attributable to the exporters, even if the losses resultant from dumping are just a part of a greater injury arising from other factors. Finally, the fact that a Community producer is facing difficulties attributable to causes other than dumping is not a reason to deprive that producer of all protection against the injury caused by dumping.

(61) In conclusion, the Council confirms the Commission's findings that the volume of the dumped imports, their market penetration, the prices at which the dumped printers have been offered in the Community, and the losses and loss of profit suffered by the Community industry caused material injury to the Community industry.

K. Community interest

(62) In its provisional findings, the Commission considered the position of the Community printer industry, the processing industry, printer dealers and end-users. For the reasons given in recitals 109 to 120 of the Commission Regulation, it concluded that it was in the overriding interest of the Community that injury due to dumping be eliminated.

(63) The exporters contested these conclusions, with in essence, three arguments. Firstly, they argued that the four Europrint members each form part of bigger industrial conglomerates which have sufficient resources to make the necessary investments for future generations of printer technology, to increase their marketing efforts and to reduce their costs of production. Secondly, the processing industry, the distributors and dealers, but above all the end-users would suffer from duty inflated printer prices. Thirdly, any duty imposed on Japanese origin SIDM printers would only serve to protect the higher cost structure of Community producers. One exporter in particular stressed that it had made a substantial return of sales of its SIDM printers in the Community. Since independent studies had shown that the costs of manufacture of the Europrint models are higher than the comparable models of this exporter (even on the assumption of similar production quantities and conditions), anti-dumping duties would become an instrument to protect the decision of the Community producers to make more cost expensive models than the said exporter. Anti-dumping measures would, therefore, have a clear protection effect which cannot be in the interest of the Community.

(64) As to the first argument, it should be noted that, as the Commission already indicated in its Regulation, the fact that all Europrint members from part of a bigger company will not put them into a position to take up the technological challenge of improving the present SIDM technology or, even less, of developing new non-impact technologies. Experience has shown that even overall profitable companies are not inclined to invest for long in low-performance or loss-making departments of their business.

Such investments are the more unlikely as they will involve considerable financial amounts with the risk of no or small return. Similar considerations are valid for increases of marketing efforts or investments to reduce costs of production. The Council therefore confirms the Commission's findings that, without protection from unfair trade practices, the Community industry would fall further behind in the SIDM printer market, and consequently in the development of new printer technology. Since printers and computers are closely connected, the abandoning of, or substantial cuts in, the production of printers would also seriously effect the electronic data-processing industry in the Community.

(65) As far as the processing industry, the distributors, dealers and the end-users are concerned, it should be borne in mind that the possible net increase of costs for the users of SIDM printers, due to the amount of duty, would represent only a relatively small proportion of the total operating costs of the users of SIDM printers. In addition, the previous price advantages originated from unfair business practices and there cannot be any guarantee of, or justification for, allowing these unfair low prices to persist. Moreover, these interests have to be weighed against the multiple consequences in the Community, including those of unemployment, of not offering protection to the Community industry and thus putting at risk the continued existence of a viable European manufacturing industry of SIDM printers. Indeed, the short-term advantages of low prices are by far outweighed by the long-term disadvantages of losing a Community-based printer manufacturing industry. For these reasons, the Council considers that it is in the Community interest to protect a SIDM printer manufacturing capacity in the Community.

(66) As to the cost argument, it should be noted that the Community manufacturers had already reduced their manufacturing costs during recent years. It has, however, also to be noted that the steady decline in profitability as a consequence of reduced sales in the face of huge quantities of dumped imports prevented the Community manufacturers from improving their cost structure to the necessary degree and to build more cost-efficient SIDM printers. Also after the imposition of duties the Community industry will continue to be exposed to price and quality competition. The Council is of the opinion that Community interests are effectively protected by the measures against dumped imports, even if an anti-dumping duty does not result in insulating the complainant industry from competition from other Community producers or from other third countries who are not engaged in dumping (see Judgment of the Court of 5 October 1988, Case No 250/85, Brother v. Council of the European Communities, not yet published). The re-establishment of such a fair competitive situation will allow the Community industry to benefit, as Japanese exporters did in the past, from increased economies of scale, thus allowing intesified research and development efforts, the establishment of new production methods and, finally, the further reduction of manufacturing costs. It can also be expected that the processing industry, the printer trade, end-users and consumers will benefit from such an improvement in the Community industry's economic conditions. Therefore, the Council is of the opinion that anti-dumping duties which do not exceed the amount which is necessary to remove the injury, will not have the protectionist effect claimed by the exporters.

(67) As to other arguments raised by the exporters or importers, they have been already dealt with in detail in the Commission's provisional findings.

No new arguments have been submitted in this respect. Therefore, for the abovementioned reasons and for those expressed in recitals 103 to 120 of the Commission Regulation, the Council concludes that it is in the overriding interest of the Community that the injury due to dumping be eliminated and that the Community industry be accorded protection against dumped imports of SIDM printers from Japan.

L. Duty

(68) In order to eliminate the injury suffered by the Community producers, they should be permitted to increase substantially the selling prices of their own produced SIDM printers without losing, perhaps even regaining, their market share in the Community. Consequently, the duty should be such as to eliminate the price undercutting of each Japanese SIDM printer exporter and to allow the Commu-

nity producers to increase their prices in order to achieve an adequate return on sales. Indeed, in a market situation where prices are already depressed by dumped imports (see recitals 49 to 53), it is not sufficient to eliminate only the price undercutting but the duty has also to guarantee a reasonable return on sales for the Community industry.

(a) *The method of calculation*

(69) For the purposes of the duty calculation and as far as the elimination of price undercutting is concerned, the Commission established the weighted average price undercutting margin for each exporter (see recital 53). The average price level of each Japanese exporter calculated on the basis of the models compared was then compared with the average Community industry's price level, indexed at 100.

(70) As far as the return on sales of SIDM printers in the Community is concerned, the Commission took the view that the profit rate of about 9 % of the Community industry in the year 1984 was not appropriate for this calculation since the profitability in this year was influenced by the adoption by the Community producers of the IBM emulation. In this respect a return on sales before tax for SIDM printers of 12 % was considered to be an appropriate minimum for the Community industry. This return should cover additional costs of research and development, additional costs to improve the marketing and advertising efforts and the additional costs of the appropriate financing in the Community. These additional efforts should enable the Community producers to regain lost market presence and to make up the leeway in SIDM and non-impact print technology. In this context, account was taken of the average return of the Community producers on their sales of SIDM printers (own production) in the Community during the period under investigation (1 %).

In view of the foregoing, a net profit factor was calculated representing the difference between the average actual prices of the Community industry and a target price which would enable the Community industry to achieve a 12 % return on sales. This net profit factor is 12,5, and the target price of the Community industry had consequently be fixed at 112,5 (the average Community industry's price level being 100).

(71) In order to calculate for each Japanese exporter an individual injury factor (injury threshold), the individual price undercutting margin was added to the net profit factor. This injury threshold is the price increase necessary for the elimination of injury by each exporter. For those exporters where no price undercutting was found, the difference between the average selling price for the Japanese models and the target price for the calculation, the same methods as explained in recitals 50 and 51 was applied. It was found that all three exporters sold their models for less than the target prices of the comparable Community models, the difference between the weighted average selling price of the exporter and the target price for the Community producers being the injury threshold for each of these exporters.

(72) In order to establish the rate of duty to be imposed, the individual injury threshold referred to in recital 71 has to be expressed as a percentage of the cif value of the imports. To do this, for each exporter the weighted average selling price of its sales to the first unrelated buyer, used for the purpose of establishing price undercutting (see recital 50), has been compared with the average cif value of these sales. The individual injury threshold was then expressed as a percentage of the weighted average resale price of each exporter at cif level. The result of this calculation is the price increase at the Community frontier necessary to remove the injury caused by each exporter.

(b) *Arguments of the exporters*

(73) Some exporters argued that the calculation of the injury threshold and the duty should not be made on an individual and exporter-specific basis but should be established on a global and equal basis for all exporters on the basis that, since the existence of the injury is determined on a global and cumulative basis and price undercutting is only one potential cause of injury, and individual duty calculation based alone on price undercutting and target profit is not adequate.

As regards this argument, it has to be noted that injury can be determined on the basis of numerous factors. When assessing whether a duty below the dumping margin established would be adequate to remove the injury, difficult and complex economic appreciations are necessary which imply invevitably a certain use of discretion. In this context, the Council is of the opinion that in this case the effects of dumping resulted substantially in the

Japanese exporters seiling at lower prices than the Community industry. The reference to price undercutting and the use of a target price, at which the Community industry would have sold had the dumping not occurred are therefore, in the opinion of the Council, proper means to establich the extent of the injury. Since the price undercutting margins were individually calculable and varied considerable, the Council is of the opinion that in the present case the amount of the price undercutting of one exporter should not be used for the duty calculation of another exporter.

(74) Some exporters argued that when calculating the duty, the Commission should take account of the fact that a high difference between the lowest and the highest duty established might force the exporters with high dumping duties out of the Community market. This might reduce competition and benefit only the Japanese exporters with low dumping duties.

The Commission could not accept this argument. Firstly, it has to be noted that it is based only on conjecture. Secondly, the Commission considered that it is in the Community's interest to re-established a fair competitive situation. The Council confirms this view.

Consequently, anti-dumping duties should neither have a protectionist effect for the Community industry nor cause any undue handicap for the Japanese exporters. They are designed to re-establish and protect fair and workable competition rather than to protect individual competitors. If, therefore, some exporters' position on the market suffers after the imposition of anti-dumping duties, then this is only the consequence of their inability to face a fair and workable competitive market situation.

(75) On the basis of these considerations, the Council confirms the Commission's position that it would not be in the Community's interest to mitigate the consequences of the unfair business practices of the exporters concerned and, in the end, to insulate them from the effects of a normal commercial market situation and workable competition.

In conclusion, and on the basis of the duty calculation method as described in recitals 69 to 71 as provided for in Article 13 (3) of Regulation (EEC) No 2423/88, the Council considers it appropriate that the amount of the duty to be imposed should be the following:

Alps Electrical Co. Ltd	6,1 %
Brother Industsries Ltd	35,1 %
Citizen Watch Co. Ltd	37,4 %
Copal Co. Ltd	18,6 %
Fujitsu Ltd	47,0 %
Japan Business Computer Co. Ltd	6,4 %
Juki Corporation (previously Tokyo Juki)	27,9 %
Nakajima	12,0 %
Nec Corporation	32,9 %
Oki Electric Industry Co. Ltd	8,1 %
Seiko Epson Corporation	25,7 %
Seikosha Co. Ltd	36,9 %
Shinwa Digital Industry Co. Ltd	9,5 %
Star Micronics Co. Ltd	13,6 %
Tokyo Electric Co. Ltd	4,8 %

(76) For those which neither replied to the Commission questionnaire, nor otherwise made themselves known or refused full access to information deemed to be necessary by the Commission for its verification of the company's records, the Council considers it appropriate to impose the highest duty calculated, i.e. 47 %. Indeed, it would constitute a bonus for non-cooperation to hold that the duties for these exporters were any lower than the highest anti-dumping duty determined.

(77) The definitive anti-dumping should apply to all models of SIDM printers from Japan with the following exceptions: firstly, SIDM printers used in bank machines, automated teller machines, electric cash registers, point-of-sales machines, calculators, ticket-issuing machines and receipt-issuing machines which have only one pitch and/or magnetic-stripe readers and/or automatic page-turner drives; secondly, SIDM printers which form an integral part of, and are exclusively dedicated to a computer system supplied by the manufacturer and/or exporter of the printers in question and which are imported or sold only within such a computer system; thirdly, hand-held portable SIDM printers which are designed for use within portable and/or hand/held computers, which are line-impact dot-matrix printers and are exclusively used for portable data printouts.

M. Collection of provisional duty

(78) In view of the size of the dumping margins found and the seriousness of the injury caused to the Community industry, the Council considers it necessary that amounts should be collected by way of provisional anti-dumping duties, either in full or to a maximum of the duty definitively imposed in those cases where the definitive duty is less than the provisional duty. Provisional anti-dumping duties collected or securities received for SIDM printers which are not covered by the definitive anit-dumping duties should be released,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of serial-impact dot-matrix needle printers falling within CN code ex 8471 92 90 and originating in Japan.

2. The rate of duty shall be 47,0 % of the net free-at-Community-frontier price before duty, with the exception of imports of the products specified in paragraph 1 which are sold for export to the Community by the following companies, the rate of duty applicable to which is set out below:

Alps Electrical Co. Ltd	6,1 %
Brother Industries Ltd	35,1 %
Citizen Watch Co. Ltd	37,4 %
Copal Co. Ltd	18,6 %
Japan Business Computer Co. Ltd	6,4 %
Juki Corporation	27,9 %
Nakajima All Precision Co. Ltd	12,0 %
Nec Corporation	32,9 %
Oki Electric Industry Co. Ltd	8,1 %
Seiko Epson Corporation	25,7 %
Seikosha Co. Ltd	36,9 %
Shinwa Digital Industry Co. Ltd	9,5 %
Star Micronics Co. Ltd	13,6 %
Tokyo Electric Co. Ltd	4,8 %

3. The duty specified in this Article shall not apply to those products described in paragraph 1 which have the following specifications:

— serial-impact dot-matrix needle printers used in bank machines, automated teller machines, electric cash registers, point-of-sales machines, calculators, ticket-issuing machines and receipt-issuing machines which have only one pitch and/or magnetic-stripe readers and/or automatic page-turner drives,

— serial-impact dot-matrix needle printers which form an integral part of, and are exclusively dedicated to a computer system supplied by the manufacturer and/or exporter of the printers in question, and which are imported and/or sold only within such a computer system,

— hand-held and portable SIDM needle printers which are designed for use within portable and/or hand-held computers, and which are line-impact dot-matrix printers and exclusively used for portable data printouts.

Article 2

The amounts secured by way of provisional anti-dumping duty under Regulation (EEC) No 1418/88 shall be collected at the rates of duty definitively imposed where the definitive rate of duty is lower than the provisional anti-dumping duty and at the rates of provisional duty in all other cases. Secured amounts which are not covered by the rates of duty definitively imposed shall be released.

Article3

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, 23 November 1988.

For the Council

The President

Th. PANGALOS

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 November 1988

relating to a proceeding under Article 86 of the EEC Treaty

(IV/32.318, London European — Sabena)

(Only the French and Dutch texts are authentic)

(88/589/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Article 3 thereof,

Having regard to the complaint dated 22 April 1987 made to the Commission pursuant to Article 3 of Regulation No 17 by London European Airways PLC, of Luton International Airport, Bedfordshire LU2 9LY, United Kingdom, that Sabena, Belgian World Airlines, 35 rue Cardinal Mercier, B-1000 Brussels, had infringed Article 86,

Having regard to the Commission decision of 6 May 1987 to initiate proceedings in this case,

Having given Sabena the opportunity of being heard on the matters to which the Commission has taken objection in accordance with Article 19 (1) of Regulation No 17 and with Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19 (1) and (2) of Council Regulation No 17 [2],

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

Whereas :

I. THE FACTS

Introduction

(1) This decision arises from an application pursuant to Article 3 of Regulation No 17 by London European Airways PLC, hereinafter referred to as 'London European', a private British airline company. London European alleged that Sabena, Belgian World Airlines, hereinafter referred to as 'Sabena', had infringed Article 86 of the EEC Treaty by abusing its dominant position on the computerized ticket reservations market in Belgium. London European also applied for an interim-measures decision.

The alleged abusive conduct involved the refusal by Sabena to grant London European access to its Saphir computer reservation system which is managed by Sabena. London European claimed that Sabena, by refusing to grant access to the Saphir system, was using its power on the ticket reservations market to impose minimum air fares on London European, or was attempting to make entry to the Saphir system subject to acceptance by London European of services which had no connection with the reservation system.

(1) OJ No 13, 21. 1. 1962, p. 204/62.
(2) OJ No 127, 20. 8. 1963, p. 2268/63.

(2) The behaviour of which London European complained allegedly started at the beginning of 1987 when representatives of London European and Sabena met in order to discuss the question of London European's access to the Saphir system and, as an auxiliary issue, the terms of a ground handling contract with Sabena for London European aircraft. The complainants alleged that at these meetings Sabena had refused access to the Saphir system on the ground that London European's tariff on the Brussels-Luton route was too low. London European was also allegedly told that Sabena would grant access to the Saphir system provided that London European agreed to give the ground handling contract to Sabena.

(3) In April 1987, the Commission carried out an investigation at Sabena pursuant to Article 14 (3) of Regulation No 17. On completing the investigation, it informed Sabena that it intended to issue an interim-measures decision. At the same time, however, the Commission indicated to Sabena that if it were to change its position as regards the admission of London European to Saphir, an interim-measures decision would no longer be necessary and its cooperative attitude could then be taken into favourable consideration in the course of the proceeding under Article 86 of the EEC Treaty. Some weeks later, Sabena informed the Commission of its decision to accept London European into the Saphir reservation system on normal non-discriminatory commercial terms to be agreed on between the companies.

The undertakings

(4) Sabena is an airline company, a majority of whose authorized capital is owned by the Belgian State. Its main activity is the provision of air transport services. Apart from providing transport services as such, Sabena provides other services which do not as such involve the provision of a transport service. Two examples of this are the aircraft ground handling service and the Saphir computerized reservation service. In 1986, Sabena had a turnover of Bfrs 39 000 million (896 million ECU) and a net profit of Bfrs 146 million (3,35 million ECU).

(5) London European is a privately owned company registered in the United Kingdom. It currently operates a twice-daily service (except Saturdays) between Luton and Brussels and Luton and Amsterdam.

The Saphir system

(6) The Saphir system is a computerized system which allows travel agents to consult the flight schedules, fares and seat availability of airlines included in the system, and to make reservations. This system eliminates the need for travel agents to telephone the company concerned for each booking. Reservations are made directly by the agency on the basis of data provided by the system.

(7) Saphir is the Belgian version of the Alpha-3 system developed by Air France. Sabena is the sole manager of the system and alone has the power to grant or refuse access to the system. The system is operated on a principle of reciprocity. Sabena gives other companies access to its system free of charge provided they reciprocate in like manner. Where such reciprocity is not possible, as in the case in point, Sabena charges a fee to the company using the system.

The commercial conduct of Sabena towards London European

(8) During the investigation carried out on 30 April 1987 pursuant to Article 14 (3) of Regulation No 17 on the premises of Sabena, documents relating to the meetings between Sabena and London European representatives were found in the files of the senior staff responsible. The salient points of the documents are as follows:

(9) At a meeting held in London at the beginning of March 1987, Mr Verdonck, a Sabena representative, informed (note of 6 March 1987) the London European representatives that 'unless it was in Sabena's commercial and positive interest to collaborate (whether by London European changing its tariffs to the IATA rate, through a major interline agreement or a handling contract), Sabena would not authorize the inclusion of London European in its reservation system or access to its system'. 'Should a common interest emerge, we *could* (underlined in the text) consider granting access to Saphir but at the cost of approximately 75 Belgian francs per sector reserved'. In a preceding paragraph Mr Verdonck had noted that: 'this company (London European) thus represents a potential danger for traffic ex Belgium' and that London European fares ex Belgium were half those of Sabena. The note continued as follows: 'they (London European) have pratically nothing to offer SN, as their tariff structure and limited timetable virtually rule out any possibility of interline connections via BRU. In order to penetrate the Belgian market, it is virtually essential that they be

included in Saphir, and that is the only form of cooperation they are seeking'.

In a reply to the abovementioned note, Mr Van Gulck (Sabena-Brussels) reported that he had also met the London European representatives and had given them the same information.

(10) In a note dated 20 March 1987, Mr Verdonck stated that 'the London European representatives have again been informed by us that without a handling contract, they have no chance of being listed in Saphir'. The final price proposed by Sabena for the services provided by the Saphir system was Bfrs 75 per sector reserved. The note also specifies that, in view of London European's fares, it is in Sabena's interests to try to offset possible passenger losses by means of a handling contract and the income provided by Saphir; Mr Verdonck ends by stressing that the Saphir contract and the handling contract must be linked.

In a note dated 31 March 1987, Mr Verdonck repeats that the two contracts (handling and Saphir) 'are linked, no agreement on one without the other'.

In a telegram dated 1 April 1987 from Mr Colleman (Sabena-Brussels) to Mr Verdonck, the Sabena position has hardened: 'At meeting on 31 March it was decided to refuse LEA access to Saphir. Stop. Possible handling contract does not affect this position'.

The position is confirmed in a note of 8 April 1987 from Mr Dekker (Sabena-Brussels): 'I confirm that I maintained our decision not to accept London European in our distribution and reservation system in Belgium'. 'NB: they will probably give the handling to Belgavia'.

In a note dated 9 April 1987, a member of Sabena's legal department states that Sabena's conduct could, in his opinion, give rise to Commission penalties on the basis of Article 86 of the EEC Treaty.

(11) In addition, Sabena had established a similar policy in respect of other companies, even though the policy does not seem to have been implemented. Thus, in a note of 18 February 1987 analysing a request for access to the system submitted by another company, Mr Verdonck indicates that only if the handling were given to Sabena would the latter consider the possibility of allowing that other company to list its services in Saphir, subject to a fee. In a note dated 5 March 1987, Mr Godderis (Sabena-Brussels) confirms that no support would be lent to that other company because it had given its handling contract to the other company.

(12) In a note dated 13 March 1987 concerning the access of another carrier to the Saphir system, Mr Verdonck confirms Sabena's position: 'we should only allow them (access) if there is a related commercial advantage such as a handling contract, interline traffic, etc. Even then, the price of Bfrs 75 should be increased or decreased in function of the advantage expected from other areas'.

II. LEGAL ASSESSMENT

The relevant market

(a) *The relevant product market*

(13) In order to determine whether Sabena occupies a dominant position within the meaning of Article 86, it is necessary first to define the relevant market. This constitutes all substitute products existing in a given geographic area in which the conditions of competition are sufficiently uniform to enable the economic power of the undertakings in question to be judged.

(14) The Commission notes that all the major airlines in Europe have developed or concluded agreements on access to a computerized reservation system. Although as matters stand, other non-computerized methods of reserving seats still exist, computer reservation will in the near future replace all other forms of reservation. The advantages of a computerized system (speed, quantity of data, immediate reservation and issue of ticket, constantly up-dated information, etc.) are such that the other services still in existence cannot be regarded as equivalent, e.g. the consultation by travel agencies of schedules and tariffs or telephoned reservations through airlines. Although London European itself referred to the latter form of reservation in promoting its Brussels-Luton service, its insistence on gaining access to the Saphir system shows that such access is essential for a company wishing to compete with companies already on the market. Reservations by telephone can, however, still serve as a back-up system, especially for companies with few flights and lower fares than their competitors. Nonetheless, the ability to offer customers a computerized reservation service is an important feature of a marketing policy.

(15) The originality of the product in question is due to its situation, halfway between the travel agencies and the airlines. It is in the interests of the latter, and in London European's in the present case, to ensure their flights are displayed in a reservation system so that travel agencies using the system can offer the flights to their customers.

The market in question thus comprises two facets: the market for the provision of computerized reservation services by an operator of such systems to one or more air transport undertakings; second, the market for the supply of such systems by that operator to travel agencies. This is why when examining whether Sabena holds a dominant position on the market for the provision of computerized reservation services it is necessary to consider both the market share of the Saphir system in relation to other computerized reservation systems and that share in relation to the supply of the system to travel agencies.

(b) *The relevant geographical market*

(16) The geographical market to be taken into consideration is the Belgian market. It is on this territory that customers residing in Belgium reserve their air tickets. Transactions are conducted in one currency, the Belgian franc, and the travel agents operate in a single market, the Belgian national market.

The Commission and the Court of Justice have expressely recognized that 'the territories of both large and medium-sized countries' (1) constitute a substantial part of the common market. It can therefore be inferred that the territory in question meets the criterion of substantiatily.

The Commission therefore concludes that for the purposes of Article 86 the relevant market is that for the provision of computerized flight reservation services in Belgium.

Regulation No 17

(17) As regards the applicability of Regulation No 17 to computerized flight reservation systems, it should be noted that the scope of application of this Regulation is limited by Council Regulation (EEC) No 141/62 (2) only, and not by the provisions of Council Regulation (EEC) No 3975/87 of (EEC) No 3976/87 (3).

Article 1 of Regulation (EEC) No 141/62 excludes the application of Regulation (EEC) No 17 to dominant positions on the transport market.

This provision, since it is a limitation of the scope of Regulation No 17, must be interpreted strictly. There is therefore no doubt that activities ancillary to the transport market as such do not fall within this exception and therefore fall within the scope of Regulation No 17.

(18) It is necessary to examine whether the market as defined above falls within the scope of application of Regulation No 17.

(19) Since the relevant market comprises two parts, the matter can easily be resolved as regards the relationship between an operator of a computerized reservation system and travel agencies. It is clear that Regulation No 17 is applicable on this market. It is well established that the services provided by a travel agent do not comprise the provision of transport itself (4). Therefore travel agents do not provide a service which relates to the transport market as required by Regulation No 141/62 in order to avoid the application of Regulation No 17.

(20) As regards the second part of the market, Regulation No 17 is also applicable for similar reasons.

Although the provision of ticket reservation services is in many instances connected with the provision of air transport services, it is only indirectly connected and does not consist in the provision of air transport as such. One can clearly conceive of an air transport service being provided without a prior reservation, if seats are available. The sole purpose of a reservation is to ensure that a traveller leaves when he wishes, but it can certainly be separated from the transport service proper. As in many other sectors, the selling of tickets is separate from the service attached to the ticket.

Furthermore, the fact that airlines have themselves developed their own reservation systems does not mean that reservations are indissociable from transportation. There is nothing to prevent a company having no links with airline companies from developing and marketing a system.

(1) For Belgium, see in particular Case 127/73, BRT - SABAM, [1974] ECR 313.
(2) OJ No L 124, 28. 11. 1962, p. 2751/62.
(3) OJ No L 374, 31. 12. 1987, pp. 1 and 9.

(4) See Council Directive 82/470/EEC of 29 June 1982 on measures designed to facilitate the effective exercise of freedom of establishment and of freedom to provide services in respect of the activities of self-employed persons in certain services incidental to transport and travel agencies and in storage warehousing (OJ No L 213, 21. 7. 1982, p. 1).

While it is true that reservations are an integral part of marketing air transport services, the marketing is not in itself a transport service.

Commission Decision 85/121/EEC ([1]) (Olympic Airways Case), which specifies that ground handling services are not as such air transport services and thus come under Regulation No 17 supports the conclusion reached by the Commission in the present case. In the same way as handling services provided on the ground before and after the transport takes place, the provision of a reservation service prior to the actual provision of transportation cannot be regarded as forming part of the transport market; it therefore falls within the scope of Regulation No 17.

(21) It must also be remembered that at the time when the events which are the subject of this decision took place, Regulation (EEC) No 3976/87 had not yet been adopted. Yet an analysis of the origin of this Regulation reinforces the view of the Commission that Regulation No 17 is applicable to computerized reservation services.

In its proposal of 8 July 1984 ([2]) for an amendment to Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 85 (3) of the Treaty to categories of agreements, decisions and concerted practices ([3]), the Commission adopted the principle that computerized reservations systems do not fall within the scope of Article 1 of Regulation No 141/62 and are already convered by Regulation No 17. The explanatory memorandum to the proposal clearly states that agreements on ticket reservations and the issue of tickets are not of a purely technical nature and are already covered by Regulation No 17. In addition, the recitals of the abovementioned proposal place agreements on computer reservation systems on the same footing as those relating to technical and other operations carried out on the ground in airports.

This Commission position is reflected in the first recital of Regulation (EEC) No 3976/87. The recital draws a clear distinction between agreements directly related to the provision of air transport services and those not directly related. The former are covered by Regulation (EEC) No 3975/87 and the latter by Regulation No 17.

(22) The fact that Article 2 (1) of Regulation (EEC) No 3976/87 empowers the Commission to adopt block exemption regulations 'without prejudice to the application of Regulation (EEC) No 3975/87' does not mean that all the activities listed in Article 2 (2) of Regulation (EEC) No 3976/87 fall within the scope of Regulation (EEC) No 3975/87. The purpose of Regulation (EEC) No 3976/87 is to specify the areas where the Commission may grant block exemptions. These areas relate to air transport as such as well as to services ancillary thereto.

These two categories of service are found in a single regulation only for the purposes of that regulation, which does not affect the scope of Regulations No 17 and No 141/62 in relation to individual cases. As regards the latter, Regulation (EEC) No 3975/87 applies to air transport as such while Regulation No 17 will remain applicable to all other areas which do not consist of the provision of transport services as such.

Moreover, this reasoning is confirmed in Commission Regulation (EEC) No 2672/88 of 26 July 1988 relating to the application of Article 85 (3) of the EEC Treaty to categories of agreements between undertakings relating to computerized reservation systems for air transport services ([4]). The penultimate recital of the Regulation states that agreements exempted automatically by virtue of that Regulation do not have to be notified to the Commission pursuant to Regulation No 17.

Furthermore, the scope of Regulations No 17 and No 141/62 is not affected by Article 6 of Regulation (EEC) No 3976/87 which provides for consulation of the Advisory Committee established by Article 8 (3) of Regulation (EEC) No 3975/87 before publication of the draft regulation as well as before its adoption. Article 6 of Regulation (EEC) No 3976/87 does not affect in any way the procedures laid down in Regulation No 17 for the investigation of infringements of the processing of requests for individual exemption or negative clearance inareas which do not relate directly to the transport sector.

([1]) OJ No L 46, 15. 2. 1985, p. 51.
([2]) Bull. EC 7/8-1986, point 2.1.211.
([3]) OJ No L 285, 29. 12. 1971, p. 46.
([4]) OJ No L 239, 30. 8. 1988, p. 13.

Existence of a dominant position

(23) It must then be assessed whether Sabena holds a dominant position both in the market for the provision of computerzed services by an operator of such services to travel agencies and in that of the provision of such services to other air transport companies.

(24) As regards the former market Sabena estimates the market share held by Saphir at between 40 and 50 %.

Although the Court has ruled that a 45 % share does not automatically entail control of the market, it is necessary to assess the degree of control in relation to the strength and number of competitors [1], whilst the ratio of market shares held by the undertaking concerned to those held by its competitors is also a reliable indicator [2].

There are five other computerized systems in Belgium, used by no more than some 20 agencies. The fact that 118 agencies use the Saphir system can be regarded as proof of Sabena's pre-eminent strength in the market for the provision of such services to travel agents.

(25) It also emerged that, between June and September 1987, 47 % of seats reserved in Belgium on Brussels-Luton flights were reserved through the Saphir system. This high percentage clearly shows that the success of the Brussels-Luton flights did indeed depend on London European having access to the Saphir system.

(26) In the latter market, Sabena manifestly holds a dominant position as all airlines operating in Brussels (with two exceptions) are listed in the Saphir system. This means that Sabena had always given access to its system to any company which requested access. It is also a clear indication of the capital importance of such access for all companies seeking to operate competitively on the Belgian market.

The fact that two airlines operating in Brussels are not included in the Saphir system simply means that they have their own marketing policy which does not require access to the system, chiefly for reasons of cost.

(27) On the basis of the above considerations, the Commission considers that at the material time Sabena occupied a dominant position in the Belgian market for the provision of computerized reservation services.

Abuse of dominant position

(28) The question whether the behaviour of Sabena constituted one or several abuses of this dominant position may be analysed as follows:

(29) The conduct of Sabena can be viewed, first, as a means of placing indirect pressure on London European to fix a higher level of fares than, as an independent air carrier, it had planned on the basis of its costs structure and commercial strategy. As the conduct in question aimed to produce an artificial increase in fares, it is totally incompatible with a system of free competition.

(30) It should be noted that the conduct of Sabena can equally be construed as a desire to limit production, markets or technical development to the prejudice of consumers (Article 86 (b)), since Sabena's refusal could have result in London European abandoning its plan to open a route between Brussels and Luton.

(31) Finally, the two contracts, Saphir and handling, are not connected: the computer reservation contract enables travel agencies to obtain transport services for passengers as quickly and efficiently as possible. The handling contract involves ground assistance for aircraft.

One of the reasons for Sabena's refusal is thus clearly the fact that it makes the conclusion of a Saphir contract subject to the conclusion by London European of a handling contract which is not related to the subject matter of the first contract. This behaviour therefore constitutes an abusive practice expressly covered by Article 86 (d).

Effect on trade between Member States

(32) The refusal in question has an effect on the flow of trade between Member States. First, the abusive behaviour was implemented by a Belgian company against an undertaking in another Member State. Second, the behaviour was intended to produce anti-competitive effects on the Brussels-London route, since Sabena and London European did not originally enjoy the same reservation facilities. In addition, the fact that London European could not gain access to the Saphir system was liable to

[1] United Brands Judgment, Case 27/76, [1978] ECR 287, paragraph 112.
[2] Hoffman La Roche Judgment, Case 85/76, [1979] ECR 461.

prevent it from operating on the route in question. This elimiantion of London European as a competitor can thus directly and potentially affect trading conditions between Member States since, although reservations are made locally, they involve an intra-Community transaction, namely, air transport between Brussels and Luton.

(33) In any event, the case-law of the Court of Justice is very clear on the question of an undertaking in a dominant position which endeavours to eliminate a competitor. In the Zoja judgment (1) the Court ruled that Article 86 was aimed at practices which undermine a system of effective competition. It is obvious that the structure of competition on the Brussels-London route would have been different if London European had not had full access to that market.

Conclusion

(34) On the basis of the considerations set out above, the Commission concludes that Sabena has infringed Article 86 of the EEC Treaty in that, holding a dominant position on the market for the supply of computerized reservation services in Belgium, it abused that dominant position on that market by refusing to grant London European access to the Saphir system on the grounds that the latter's fares were too low and that London European had entrusted the handling of its aircraft to a company other than Sabena. Trade between Member States has been affected by Sabena's abuse of its dominant position.

Remedies

(35) To the extent that, following the intervention of the Commission, Sabena granted London Euorpean access to its Saphir system, it is no longer necessary for the Commission to require it to bring to an end the infringement referred to in Article 3 of Regulation No 17.

(36) Under Article 15 of Regulation No 17, infringements of Article 86 may be sanctioned by fines of up to one million ECU or 10 % of the turnover of the undertaking in the preceding business year, whichever is the greater. Regard must be had to both the gravity and the duration of the infringmeent.

(37) The Commission considers that the infringement committed is of a particularly serious nature. It consisted in the present case in the refusal to grant a small competitor access to a computerized reservation system in order to deter it from operating on a given route, to impede its actual operation and marketing of the service and to dissuade it from thus introducing an element of competition. By taking this action, Sabena was flouting one of the fundamental objectives of the Treaty, namely the creation of a common market between Member States. The seriousness of the infringement is heightened by the fact that Sabena's behaviour formed part of a well-established company strategy in this area. The fact that it does not appear to have applied it to other airlines is merely due to the fact that the opportunity did not arise. It does not detract from the fact that Sabena applied it to London European (2).

(36) The infringement was committed deliberately and Sabena could not have been unaware that it was infringing the rules of competition: on 9 April 1987, a member of its legal department stated that, in this opinion, its behaviour could give rise to penalties imposed by the Commission pursuant to Article 86.

(39) As regards the duration of the infringement, the Commission considers that it was indeed relatively short. Although it is uncertain whether the infringement would have lasted longer if the Commission had not acted, it is a fact that, on 25 May 1987, Sabena decided to admit London European to the Saphir system. As the decision to refuse London European access to the Saphir system had been taken on 1 April 1987, the infringement lasted barely two months. The fairly short duration of the infringement is therefore taken into account in determining the amount of the fine.

(40) Lastly, the fact that the Commission in applying Regulation No 17 for the first time to the market for the supply of computerized reservation systems also justifies the imposition of a moderate fine,

HAS ADOPTED THIS DECISION:

Article 1

Sabena, Belgian World Airlines, infringed Article 86 of the EEC Treaty by pursuing against London European a course of conduct intended to deter the latter from operating on the Brussels-Luton route and/or hamper its plans to open the route by refusing to grant it access to the Saphir system on the grounds that:

— the tariffs quoted by London European were too low,

— London European had not entrusted the ground handling of its aircraft to Sabena.

Article 2

A fine of 100 000 ECU, is hereby imposed on Sabena. This fine shall be paid, within three months of the date of

(1) Joined Cases 6 and 7/73, [1974] ECR 223; see also United Brands Judgment referred to above.

(2) See notes dated 18 February and 13 March 1987.

notification of this Decision either in Belgian francs to the account of the Commission of the European Communities, No 426-4403001-52 at the Kredietbank, Agence Schuman, Rond-Point Schuman 2, B-1040 Brussels, or in ECU to account No 426-4403003-52 at the same bank.

On expiry of that period interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ECU operations on the first working day of the month in which this Decision was adopted, plus 3,5 percentage points, that is, 10,75 %.

Should payment be made in the national currency of the addressee, the exchange rate applicable shall be that prevailing on the day preceding payment.

Article 3

This Decision is addressed to:

Sabena, Belgian World Airlines,
35 rue Cardinal Mercier,
B-1000 Brussels.

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

Done at Brussels, 4 November 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission

COMMISSION RECOMMENDATION

of 17 November 1988

concerning payment systems, and in particular the relationship between cardholder and card issuer

(88/590/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the second indent of Article 155 thereof,

Whereas one of the main objectives of the Community is to complete not later than 1992 the internal market, of which payment systems are essential parts;

Whereas paragraph 18 of the Annex to the Council resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy [1], indicated that the protection of the economic interests of consumers should be based on the following principles [2]: (i) that purchasers of goods and services should be protected against standard contracts, and in particular against the exclusion of essential rights in contracts, (ii) that the consumer should be protected against damage to his economic interests caused by unsatisfactory services, and (iii) that the presentation and promotion of goods and services, including financial services, should not be designed to mislead, either directly or indirectly, the person to whom they are offered or by whom they have been requested; whereas paragraph 24 in the Annex to the said preliminary programme specified that the protection of the consumer against unfair commercial practices, *inter alia,* as regards terms of contracts, is to be given priority treatment in implementing that programme;

Whereas the Commission's White Paper on 'Completing the Internal Market' [3], communicated to the Council in June 1985, referred in paragraph 121 to new technologies which will transform the European marketing and distribution system and engender a need for adequate consumer protection, and further referred in paragraph 122 to electronic banking, payment cards and videotex;

Whereas the Commission's policy document entitled 'A New Impetus for Consumer Protection Policy', communicated to the Council in July 1985 [4] which was the subject of a Council resolution adopted on 23 June 1986 [5] referred in paragraph 34 to electronic fund transfer and announced in the timetable contained in the Annex thereto a proposal for a directive on that matter, for adoption by the Council in 1989; whereas it is appropriate to accelerate financial consumer protection in the field of payment systems and certain other services available to consumers; whereas the forms of financial service, including financial self-service, and the means of purchasing goods and services which are now in use in market places in Member States (some of them even in the homes of consumers) are furnished upon divergent terms of contract and of consumer protection from one Member State to another;

Whereas there has been much change in recent years in the types of financial service available to and used by consumers, particularly as regards payment methods and as regards the purchasing of goods and services; whereas new forms thereof have emerged and are continuing to develop;

Whereas the various terms of contract currently used in this field in Member States are not only divergent from one to another (and indeed within any one Member State) but also in some cases disadvantageous to the consumer; whereas more effective protection of consumers can be achieved by the use of common terms which are to apply to all these forms of financial service;

Whereas the consumer should receive adequate information concerning the terms of contract, including the fees and other costs, if any, payable by the consumer for these services, and concerning his rights and obligations under the contract; whereas this information should include an unequivocal statement of the extent of the consumer's obligations as holder (hereinafter called 'contracting holder') of a card or other device enabling him to make payments in favour of third persons, as well as to perform certain financial services for himself;

Whereas the protection of the consumer as a contracting holder is further improved if such contracts are made in writing and contain certain minimum particulars concerning the contractual terms, including an indication of the period within which his operations will normally be credited, debited or invoiced;

Whereas no payment device, whether in the form of a plastic card or otherwise, should be dispatched to a member of the public except in response to an application from such person; whereas the contract concluded between that person and the issuer of the payment device should not be binding before the applicant has received the device and also knows the applicable terms of contract;

(1) OJ No C 92, 25. 4. 1975, p. 1.
(2) Confirmed in paragraph 28 of the second programme (OJ No C 133, 3. 6. 1981, p. 1).
(3) COM(85) 310 final, 14. 6. 1985.
(4) COM(85) 314 final, 27. 6. 1985.
(5) OJ No C 167, 5. 7. 1986, p. 1.

Whereas, given the nature of the technology currently used in the field of payment devices, including both the manufacture and use of them, it is essential that operations effected by means of them should be the subject of records in order that operations can be traced and errors can be rectified; whereas the contracting holder has no means of access to those records, and consequently the burden of proof to show that an operation was accurately recorded and entered into the accounts and was not affected by technical breakdown or other deficiency should lie upon the person who under a contract furnishes the payment device to him, namely the issuer;

Whereas payment instructions communicated electronically by a contracting holder should be irrevocable, so that a payment made thereby shall not be reversed; whereas the contracting holder should be supplied with a record of the operations he effects by means of a payment device;

Whereas common rules need to specified concerning the issuer's liability for non-execution or for defective execution of a contracting holder's payment instructions and allied operations, and for transactions which have not been authorized by the contracting holder, subject always to the contracting holder's own obligations in the case of lost, stolen or copied payment devices;

Whereas common terms of contract need also to be specified concerning the consequences to the contracting holder if he loses his payment device or it is stolen from him or copied;

Whereas for the purpose of ensuring that electronic payment networks can function and payment devices be used internationally, it is necessary that certain minimum data relating to a contracting holder can be transmitted across forntiers, but subject to certain ocnditions;

Whereas the Commission will monitor the implementation of this recommendation, and if, after 12 months, it finds the implementation unsatisfactory, the Commission will take appropriate measures,

RECOMMENDS:

That not later than 12 months after the date hereof:

1. issuers of payment devices and system providers conduct their activities in accordance with the provisions contained in the Annex hereto;
2. Member States ensure, in order to facilitate the operations referred to in the Annex, that data relating to contracting holders may be transmitted, but that the data transmitted shall be kept:
   - to the requisite minimum, and
   - confidential by all persons to whose knowledge they are brought in the course of such operations.

Done at Brussels, 17 November 1988.

For the Commission

Grigoris VARFIS

Member of the Commission

ANNEX

1. This Annex applies to the following operations:

   — electronic payment involving the use of a card, in particular at point of sale,

   — the withdrawing of banknotes, the depositing of banknotes and cheques, and connected operations, at electronic devices such as cash dispensing machines and automated teller machines,

   — non-electronic payment by card, including processes for which a signature is required and a voucher is produced, but not including cards whose sole function is to guarantee payment made by cheque,

   — electronic payment effected by a member of the public without the use of a card, such as home banking.

2. For the purposes of this Annex the following definitions apply:

   'Payment device': a card or some other means enabling its user to effect operations of the kind specified in paragraph 1.

   'Issuer': a person who, in the course of his business, makes available to a member of the public a payment device pursuant to a contract concluded with him.

   'System provider': a person who makes available a financial product under a specific trade name, and usually with a network, thus enabling payment devices to be used for the operations aforesaid.

   'Contracting holder': a person who, pursuant to a contract concluded between him and an issuer, holds a payment device.

   'Company-specific card': a card issued by a retailer to his client, or by a group of retailers to their clients, in order to allow or facilitate, without giving access to a bank account, payment for purchases of goods or services exclusively from the issuing retailer or retailers, or from retailers who under contract accept the card.

3.1. Each issuer shall draw up full and fair terms of contract, in writing, to govern the issuing and use of the payment devices he issues.

3.2. Those terms of contract shall be expressed:

   — in easily understandable words and in so clear a form that they are easy to read,

   — in the language or languages which are ordinarily used for such or similar purposes in the regions where the terms of contract are offered.

3.3. The terms of contract shall specify the basis of calculation of the amount of the charges (including interest), if any, which the contracting holder must pay to the issuer.

3.4. The terms of contract shall specify:

   — whether the debiting or crediting of operations will be instantaneous and, if not, the period of time within which this will be done,

   — for those operations which lead to invoicing of the contracting cardholder, the period of time within which this will be done;

3.5. The terms of contract shall not be altered except by agreement between the parties; however, such agreement shall be deemd to exist where the issuer proposes an amendment to the contract terms and the contracting holder, having received notice thereof, continues to make use of the payment device.

4.1. The terms of contract shall put the contracting holder under obligation *vis-à-vis* the issuer:

   (a) to take all reasonable steps to keep safe the payment device and the means (such as a personal identification number or code) which enable it to be used;

   (b) to notify the issuer or a central agency without undue delay after becoming aware:

      — of the loss or theft or copying of the payment device or of the means which enable it to be used;

      — of the recording on the contracting holder's account of any unauthorized transaction;

      — of any error or other irregularity in the maintaining of that account by the issuer.

   (c) not to record on the payment device the contracting holder's personal identification number or code, if any, nor to record those things on anything which he usually keeps or carries with the payment device, particularly if they are likely to be lost or stolen or copied together;

   (d) not to countermand an order which he has given by means of his payment device.

4.2. The terms of contract shall state that provided the contracting holder complies with the obligations imposed upon him pursuant to subparagraphs (a), (b) first indent, and (c) of paragraph 4.1, and otherwise does not act with extreme negligence, or fraudulently, in the circumstances in which he uses his payment device he shall not, after notification, be liable for damage arising from such use.

4.3. The terms of contract shall put the issuer under obligation *vis-à-vis* the contracting holder not to disclose the contracting holder's personal identification number or code or similar confidential data, if any, except to the contracting holder himself.

5. No payment device shall be dispatched to a member of the public except in response to an application from such person ; and the contract between the issuer and the contracting holder shall be regarded as having been concluded at the time when the applicant receives the payment device and a copy of the terms of contract accepted by him.

6.1. In relation to the operations referred to in paragraph 1, issuers shall keep, or cause to be kept, internal records which are sufficiently substantial to enable operations to be traced and errors to be rectified. To this end, issuers shall make the requisite arrangements with the system providers, as necessary ;

6.2. In any dispute with a contracting holder concerning an operation referred to in the first, second and fourth indents of paragraph 1 and relating to liability for an unauthorized electronic fund transfer, the burden of proof shall be upon the issuer to show that the operation was accurately recorded and accurately entered into accounts and was not affected by technical breakdown or other deficiency.

6.3. The contracting holder, if he so requests, shall be supplied with a record of each of his operations, instantaneously or shortly after he has completed it ; however in the case of payment at point of sale the till receipt supplied by the retailer at the time of purchase and containing the references to the payment device shall satisfy the requirements of this provision.

7.1. *Vis-à-vis* a contracting holder the issuer shall be liable, subject to paragraphs 4 and 8 :

— for the non-execution or defective execution of the contracting holder's operations as referred to in paragraphe 1, even if an operation is initiated at electronic devices which are not under the issuer's direct or exclusive control,

— for operations not authorized by the contracting holder.

7.2. Save as stated in paragraph 7.3 the liability indicated in the paragraph 7.1 shall be limited as follows :

— in the case of non-execution or defective execution of an operation, the amount of the liability shall be limited to the amount of the unexecuted or defectively executed operation,

— in the case of an unauthorized operation, the amount of the liability shall extend to the sum required to restore the contracting holder to the position he was in before the unauthorized operation took place.

7.3. Any further financial consequences, and, in particular, questions concerning the extent of the damage for which compensation is to be paid, shall be governed by the law applicable to the contract concluded between the issuer and the contracting holder.

8.1. Each issuer shall provide means whereby his customers may at any time of the day or night notify the loss, theft or copying of their payment devices ; but in the case of company-specific cards these means of notification need only be made available during the issuer's hours of business ;

8.2. Once the contracting holder has notified the issuer or a central agency, as required by paragraph 4.1 (b), the contracting holder shall not thereafter be liable ; but this provision shall not apply if the contracting holder acted with extreme negligence or fraudulently.

8.3. The contracting holder shall bear the loss sustained, up to the time of notification, in consequence of the loss, theft or copying of the payment device, but only up to the equivalent of 150 ecus for each event, except where he acted with extreme negligence or fraudulently.

8.4. The issuer, upon receipt of notification, shall be under obligation, even if the contracting holder acted with extreme negligence or fraudulently, to take all action open to him to stop any further use of the payment device.