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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 433/88

of 17 February 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) 3989/87⁽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 4047/87⁽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 16 February 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 4047/87 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 18 February 1988.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 378, 31. 12. 1987, p. 99.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 17 February 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	10,36	167,15
0712 90 19	10,36	167,15
1001 10 10	65,54	250,45 ⁽¹⁾ ⁽²⁾
1001 10 90	65,54	250,45 ⁽¹⁾ ⁽²⁾
1001 90 91	5,23	184,26
1001 90 99	5,23	184,26
1002 00 00	45,58	161,49 ⁽⁶⁾
1003 00 10	39,26	175,42
1003 00 90	39,26	175,42
1004 00 10	95,79	138,36
1004 00 90	95,79	138,36
1005 10 90	10,36	167,15 ⁽³⁾ ⁽⁴⁾
1005 90 00	10,36	167,15 ⁽³⁾ ⁽⁴⁾
1007 00 90	33,88	175,96 ⁽⁴⁾
1008 10 00	39,26	96,58
1008 20 00	39,26	105,99 ⁽⁴⁾
1008 30 00	39,26	56,14 ⁽⁵⁾
1008 90 10	⁽⁷⁾	⁽⁷⁾
1008 90 90	39,26	56,14
1101 00 00	21,87	272,51
1102 10 00	78,36	240,94
1103 11 10	115,18	401,79
1103 11 90	21,93	292,62

⁽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 Council 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 434/88

of 17 February 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 3989/87⁽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 4048/87⁽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 16 February 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 18 February 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 1.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 378, 31. 12. 1987, p. 102.

ANNEX

to the Commission Regulation of 17 February 1988 fixing the premiums to be added to the import levies on cereals, flour and malt

A. Cereals and flour

CN code	(ECU/tonne)			
	Current 2	1st period 3	2nd period 4	3rd period 5
0709 90 60	0	0	0	0
0712 90 19	0	0	0	0
1001 10 10	0	0	0	0,74
1001 10 90	0	0	0	0,74
1001 90 91	0	0	0	3,49
1001 90 99	0	0	0	3,49
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	0
1004 00 90	0	0	0	0
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	4,88

B. Malt

CN code	(ECU/tonne)				
	Current 2	1st period 3	2nd period 4	3rd period 5	4th period 6
1107 10 11	0	0	0	6,21	6,21
1107 10 19	0	0	0	4,64	4,64
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 435/88**of 16 February 1988****establishing unit values for the determination of the customs value of certain perishable goods**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 19 February 1988.

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

Done at Brussels, 16 February 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	31,00	1 339	244,97	64,02	216,48	5 108	24,06	47 187	71,89	21,49
1.20	0702 00 10 0702 00 90	Tomatoes	111,87	4 833	883,79	230,97	781,01	18 430	86,82	170 239	259,37	77,55
1.30	0703 10 19	Onions (other than seed)	17,50	756	138,27	36,13	122,19	2 883	13,58	26 634	40,57	12,13
1.40	0703 20 00	Garlic	162,83	7 035	1 286,38	336,18	1 136,79	26 825	126,38	247 789	377,52	112,87
1.50	ex 0703 90 00	Leeks	27,65	1 193	218,71	57,11	192,53	4 550	21,48	42 056	64,13	19,24
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	26,32	1 137	207,96	54,34	183,77	4 336	20,43	40 058	61,03	18,24
1.90	ex 0704 90 90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> var. <i>italica</i>)	105,39	4 554	832,64	217,60	735,81	17 363	81,80	160 387	244,36	73,06
1.100	ex 0704 90 90	Chinese cabbage	47,34	2 045	374,00	97,74	330,51	7 799	36,74	72 043	109,76	32,81
1.110	0705 11 10 0705 11 90	Cabbage lettuce (head lettuce)	73,76	3 187	582,77	152,30	515,00	12 153	57,25	112 256	171,03	51,13
1.120	ex 0705 29 00	Endives	43,78	1 891	345,88	90,39	305,66	7 212	33,98	66 625	101,50	30,35
1.130	ex 0706 10 00	Carrots	25,51	1 102	201,54	52,67	178,10	4 203	19,80	38 823	59,14	17,68
1.140	ex 0706 90 90	Radishes	101,45	4 383	801,50	209,46	708,29	16 714	78,74	154 389	235,22	70,33
1.150	0707 00 11 0707 00 19	Cucumbers	93,56	4 042	739,12	193,16	653,17	15 413	72,61	142 374	216,91	64,85
1.160	0708 10 10 0708 10 90	Peas (<i>Pisum sativum</i>)	136,67	5 905	1 079,69	282,17	954,13	22 515	106,07	207 974	316,86	94,74
1.170	0708 20 10 0708 20 90	Beans (<i>Vigna spp.</i> , <i>Phaseolus spp.</i>)	127,30	5 500	1 005,69	262,83	888,74	20 972	98,80	193 721	295,14	88,24
1.180	ex 0708 90 00	Broad beans	35,62	1 539	281,43	73,55	248,70	5 868	27,64	54 211	82,59	24,69
1.190	0709 10 00	Globe artichokes	71,13	3 073	561,99	146,87	496,63	11 719	55,21	108 253	164,93	49,31
1.200		Asparagus										
1.200.1	ex 0709 20 00	— green	485,64	20 984	3 836,54	1 002,65	3 390,39	80 006	376,92	739 012	1 125,94	336,65
1.200.2	ex 0709 20 00	— other	213,45	9 222	1 686,24	440,69	1 490,15	35 164	165,66	324 812	494,87	147,96
1.210	0709 30 00	Aubergines (egg-plants)	102,37	4 423	808,77	211,36	714,71	16 865	79,45	155 789	237,35	70,96
1.220	ex 0709 40 00	Celery stalks and leaves	47,53	2 054	375,54	98,14	331,87	7 831	36,89	72 339	110,21	32,95
1.230	0709 51 30	Chantarelles	380,81	16 444	3 035,75	791,09	2 634,74	60 745	294,66	570 911	890,27	264,14
1.240	0709 60 10	Sweet peppers	75,34	3 255	595,23	155,56	526,01	12 412	58,47	114 656	174,68	52,23
1.250	0709 90 50	Fennel	28,57	1 234	225,70	58,98	199,45	4 706	22,17	43 476	66,24	19,80
1.260	0709 90 70	Courgettes	20,99	907	165,83	43,34	146,55	3 458	16,29	31 944	48,66	14,55
1.270	ex 0714 20 00	Sweet potatoes, whole fresh	93,15	4 020	740,07	191,93	650,53	15 322	72,46	141 750	215,89	64,90
2.10	ex 0802 40 00	Chestnuts (<i>Castanea spp.</i>), fresh	50,95	2 199	403,00	105,23	354,76	8 384	39,58	77 493	118,17	35,46
2.20	ex 0803 00 10	Bananas (other than plantains), fresh	45,77	1 977	361,59	94,50	319,54	7 540	35,52	69 652	106,12	31,72
2.30	ex 0804 30 00	Pineapples, fresh	54,48	2 354	430,39	112,48	380,34	8 975	42,28	82 903	126,31	37,76
2.40	ex 0804 40 10 ex 0804 40 90	Avocados, fresh	131,65	5 688	1 040,05	271,81	919,10	21 689	102,18	200 340	305,23	91,26
2.50	ex 0804 50 00	Guavas and mangoes, fresh	183,12	7 912	1 446,69	378,08	1 278,45	30 168	142,13	278 668	424,57	126,94
2.60		Sweet oranges, fresh :										
2.60.1	0805 10 11 0805 10 21 0805 10 31 0805 10 41	— Sanguines and semi-sanguines	41,62	1 798	328,86	85,94	290,62	6 858	32,30	63 347	96,51	28,85

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	32,60	1 408	257,55	67,31	227,60	5 370	25,30	49 611	75,58	22,59
2.60.3	0805 10 19 0805 10 29 0805 10 39 0805 10 49	— Others	24,44	1 056	193,09	50,46	170,64	4 026	18,97	37 195	56,66	16,94
2.70		Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:										
2.70.1	ex 0805 20 10	Clementines	84,52	3 652	667,70	174,50	590,05	13 924	65,59	128 616	195,95	58,58
2.70.2	ex 0805 20 30	Monreales and Satsumas	53,84	2 326	425,40	111,17	375,93	8 871	41,79	81 943	124,84	37,32
2.70.3	ex 0805 20 50	Mandarins and Wilkings	62,42	2 697	493,19	128,89	435,83	10 284	48,45	95 000	144,74	43,27
2.70.4	ex 0805 20 70 ex 0805 20 90	Tangerines and others	71,79	3 102	567,14	148,21	501,19	11 827	55,71	109 245	166,44	49,76
2.80	ex 0805 30 10	Lemons (<i>Citrus limon</i> , <i>Citrus limonum</i>), fresh	32,83	1 418	259,41	67,79	229,24	5 409	25,48	49 969	76,13	22,76
2.85	ex 0805 30 90	Limes (<i>Citrus aurantifolia</i>), fresh	186,01	8 037	1 469,53	384,05	1 298,64	30 645	144,37	283 068	431,27	128,94
2.90		Grapefruit, fresh:										
2.90.1	ex 0805 40 00	— white	34,85	1 506	275,38	71,97	243,36	5 742	27,05	53 045	80,81	24,16
2.90.2	ex 0805 40 00	— pink	51,79	2 237	409,16	106,93	361,58	8 532	40,19	78 815	120,08	35,90
2.100	0806 10 11 0806 10 15 0806 10 19	Table grapes	203,07	8 774	1 604,31	419,27	1 417,74	33 455	157,61	309 029	470,83	140,77
2.110	0807 10 10	Water-melons	28,08	1 212	224,02	57,91	196,89	4 556	21,77	42 751	65,15	19,38
2.120		Melons (other than water-melons)										
2.120.1	ex 0807 10 90	— Amarillo, Cuper, Honey Dew, Onteniente, Piel de Sapo, Rochet, Tendral	100,23	4 330	791,82	206,93	699,74	16 512	77,79	152 525	232,38	69,48
2.120.2	ex 0807 10 90	— Other	129,77	5 607	1 025,24	267,94	906,02	21 380	100,72	197 487	300,88	89,96
2.130	0808 10 91 0808 10 93 0808 10 99	Apples	48,97	2 116	386,87	101,10	341,88	8 067	38,00	74 520	113,53	33,94
2.140	ex 0808 20 31 ex 0808 20 33 ex 0808 20 35 ex 0808 20 39	Pears (other than the Nashi variety (<i>Pyrus Pyrifolia</i>))	76,47	3 304	604,10	157,87	533,85	12 597	59,35	116 365	177,29	53,00
2.150	0809 10 00	Apricots	121,16	5 229	958,33	250,23	843,61	19 937	94,12	184 276	281,02	84,33
2.160	0809 20 10 0809 20 90	Cherries	115,53	4 978	911,55	240,12	799,31	18 105	89,61	173 756	270,27	80,21
2.170	ex 0809 30 00	Peaches	183,03	7 908	1 446,00	377,90	1 277,84	30 154	142,06	278 535	424,37	126,88
2.180	ex 0809 30 00	Nectarines	125,97	5 443	995,21	260,09	879,47	20 753	97,77	191 702	292,07	87,32
2.190	0809 40 11 0809 40 19	Plums	111,62	4 823	881,81	230,45	779,27	18 389	86,63	169 859	258,79	77,37
2.200	0810 10 10 0810 10 90	Strawberries	342,94	14 818	2 709,22	708,04	2 394,17	56 497	266,16	521 863	795,09	237,72
2.210	0810 40 30	Fruit of the species <i>Vaccinium myrtillus</i>)	155,23	6 688	1 240,23	322,25	1 074,37	24 633	120,26	232 567	362,70	108,08
2.220	0810 90 10	Kiwi fruit (<i>Actinidia chinensis</i> Planch.)	141,62	6 119	1 118,84	292,40	988,73	23 332	109,92	215 517	328,35	98,17
2.230	ex 0810 90 90	Pomegranates	51,26	2 213	406,77	105,84	357,82	8 456	39,85	77 884	118,89	35,56
2.240	ex 0810 90 90	Khakis	81,74	3 532	645,80	168,77	570,70	13 467	63,44	124 397	189,52	56,66
2.250	ex 0810 90 90	Lychees	186,09	8 041	1 470,17	384,22	1 299,20	30 658	144,43	283 191	431,46	129,00

COMMISSION REGULATION (EEC) No 436/88

of 17 February 1988

fixing the export refunds on white sugar and raw sugar exported in the natural 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 3993/87⁽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 the natural 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 amended by Regulation (EEC) No 1467/77⁽⁷⁾; whereas the refund thus calculated for aromatized sugars or for sugars with colouring added 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, following the introduction of the 'combined nomenclature' by Council Regulation (EEC) No 2658/87⁽¹⁰⁾, the nomenclature applicable from 1 January 1988 to export refunds on agricultural products was established by Regulation (CEE) No 3846/87⁽¹¹⁾;

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 to this Regulation;

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 23.

⁽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 162, 1. 7. 1977, p. 6.

⁽⁸⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁹⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽¹⁰⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽¹¹⁾ OJ No L 366, 24. 12. 1987, p. 1.

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

exported in the natural state, shall be as set out in the Annex hereto.

HAS ADOPTED THIS REGULATION:

Article 2

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81 undenatured and

This Regulation shall enter into force on 18 February 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

ANNEX

to the Commission Regulation of 17 February 1988 fixing the export refunds on white sugar and raw sugar exported in the natural state

Product code	(ECU)	
	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	39,42 ⁽¹⁾	0,4285
1701 11 90 300		
1701 11 90 500	36,80 ⁽¹⁾	
1701 11 90 900	⁽²⁾	
1701 12 90 100	39,42 ⁽¹⁾	0,4285
1701 12 90 300		
1701 12 90 500	36,80 ⁽¹⁾	
1701 12 90 900	⁽²⁾	
1701 91 00 000		0,4285
1701 99 10 100	42,85	
1701 99 10 900	40,37	

⁽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 437/88

of 17 February 1988

re-establishing the levying of customs duties on women's or girls' knitted or crocheted suits and ensembles of products of category 74 (order number 40.0740) originating in South Korea to which the preferential tariff arrangements of Council Regulation (EEC) No 3783/87 apply

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

Having regard to Council Regulation (EEC) No 3783/87 of 3 December 1987 concerning the administration of the generalized tariff preferences for 1988 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 4 thereof,

Whereas Article 2 of Regulation (EEC) No 3783/87 provides that preferential tariff treatment shall be accorded, for each category of products subjected in Annexes I and II of Council Regulation No 3782/87⁽²⁾, to individual ceilings, within the limits of quantities specified in column 7 of its Annexes I or II, in respect of certain or each of the countries or territories of origin referred to in column 5 of the same Annexes;

Whereas Article 3 of Regulation (EEC) No 3783/87 provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question once the relevant individual ceilings have been reached at Community level;

Whereas, in respect of women's or girls' knitted or crocheted suits and ensembles of products of category 74 (order number 40.0740) the relevant ceiling amounts to 8 000 pieces;

Whereas on 9 February 1988 imports of the products in question into the Community originating in South Korea, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-introduce the levying of customs duties for the products in question with regard to South Korea,

HAS ADOPTED THIS REGULATION:

Article 1

As from 21 February 1988 the levying of customs duties, suspended in pursuance of Regulation (EEC) No 3782/87, shall be re-established in respect of the following products imported into the Community and originating in South Korea:

Order number	Category (Unit)	CN code	Description
(1)	(2)	(3)	(4)
40.0740	74 (1 000 pieces)	6104 11 00 6104 12 00 6104 13 00 ex 6104 19 00 6104 21 00 6104 22 00 6104 23 00 ex 6104 29 00	Women's or girls' knitted or crocheted suits and ensembles, of wool, of cotton or man-made fibres, excluding ski suits

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, 17 February 1988.

For the Commission

COCKFIELD

Vice-President

⁽¹⁾ OJ No L 367, 28. 12. 1987, p. 58.

⁽²⁾ OJ No L 367, 28. 12. 1987, p. 1.

COMMISSION REGULATION (EEC) No 438/88

from 17 February 1988

re-establishing the levying of customs duties on twines, cordage, ropes and cables of synthetic fibres, products of category 90 (order number 40.0900) originating in South Korea to which the preferential tariff arrangements of Council Regulation (EEC) No 3783/87 apply

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

Having regard to Council Regulation (EEC) No 3783/87 of 3 December 1987 concerning the administration of the generalized tariff preferences for 1988 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 4 thereof,

Whereas Article 2 of Regulation (EEC) No 3783/87 provides that preferential tariff treatment shall be accorded, for each category of products subjected in Annexes I and II of Council Regulation No 3783/87⁽²⁾ to individual ceilings, within the limits of the quantities specified in column 7 of its Annexes I or II, in respect of certain or each of the countries or territories of origin referred to in column 5 of the same Annexes; whereas Article 3 of Regulation (EEC) No 3783/87 provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question once the relevant individual ceilings have been reached at Community level;

Whereas, in respect of twines, cordage, ropes and cables of synthetic fibres, products of category No 90 (order number 40.0900) the relevant ceiling amounts to 13 tonnes;

Whereas on 9 February 1988 imports of the products in question into the Community originating in South Korea, a country covered by preferential arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-introduce the levying of customs duties for the products in question with regard to South Korea,

HAS ADOPTED THIS REGULATION:

Article 1

As from 21 February 1988 the levying of customs duties, suspended in pursuance of Regulation (EEC) No 3782/87, shall be re-established in respect of the following products, imported into the Community and originating in South Korea:

Order number	Category (Unit)	CN code	Description
(1)	(2)	(3)	(4)
40.0900	90 (tonnes)	5607 41 00 5607 49 11 5607 49 19 5607 49 90 5607 50 11 5607 50 19 5607 50 30 5607 50 90	Twine, cordage, ropes and cables, of synthetic fibres, plaited or not

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, 17 February 1988.

For the Commission
COCKFIELD
Vice-President

⁽¹⁾ OJ No L 367, 28. 12. 1987, p. 58.

⁽²⁾ OJ No L 367, 28. 12. 1987, p. 1.

COMMISSION REGULATION (EEC) No 439/88
of 17 February 1988

re-establishing the levying of customs duties on coated textile fabrics, products of category 99 (order number 40.0990) originating in South Korea to which the preferential tariff arrangements of Council Regulation (EEC) No 3783/87 apply

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

Having regard to Council Regulation (EEC) No 3783/87 of 3 December 1987 concerning the administration of the generalized tariff preferences for 1988 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 4 thereof,

Whereas Article 2 of Regulation (EEC) No 3783/87 provides that preferential tariff treatment shall be accorded, for each category of products subjected in Annexes I and II of Council Regulation No 3782/87⁽²⁾ to individual ceilings, within the limits of the quantities specified in column 7 of its Annexes I or II, in respect of certain or each of the countries or territories of origin referred to in column 5 of the same Annexes; whereas Article 3 of Regulation (EEC) No 3783/87 provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question once the relevant individual ceilings have been reached at Community level;

Whereas, in respect of textile fabrics coated, products of category No 99 (order number 40.0990) the relevant ceiling amounts to 17 tonnes;

Whereas on 9 February 1988 imports of the products in question into the Community originating in South Korea, a country covered by preferential tariff arrangements, reached and were charged against that ceiling;

Whereas it is appropriate to re-introduce the levying of customs duties for the products in question with regard to South Korea,

HAS ADOPTED THIS REGULATION:

Article 1

As from 21 February 1988 the levying of customs duties, suspended in pursuance of Regulation (EEC) No 3782/87, shall be re-established in respect of the following products, imported into the Community and originating in South Korea:

Order number	Category (Unit)	CN code	Description
(1)	(2)	(3)	(4)
40.0990	99 (tonnes)	5901 10 00 5901 90 00	Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books and the like; tracing cloth, prepared painting canvas, buckram and similar stiffened textile fabrics of a kind used for hat foundations

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, 17 February 1988.

For the Commission
 COCKFIELD
 Vice-President

⁽¹⁾ OJ No L 367, 28. 12. 1987, p. 58.

⁽²⁾ OJ No L 367, 28. 12. 1987, p. 1.

COMMISSION REGULATION (EEC) No 440/88

of 17 February 1988

re-establishing the levying of customs duties on yarn of combed sheep's or lambs' wool or of combed fine animal hair, products of category 48 (order number 40.0480) and on stockings, socks and sockettes, not knitted or crocheted products of category 88 (order number 40.0880) originating in South Korea to which the preferential tariff arrangements of Council Regulation (EEC) No 3783/87 apply

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3783/87 of 3 December 1987 concerning the administration of the generalized tariff preferences for 1988 in respect of textile products originating in developing countries⁽¹⁾, and in particular Article 4 thereof,

Whereas Article 2 of Regulation (EEC) No 3783/87 provides that preferential tariff treatment shall be accorded, for each category of products subjected in Annexes I and II of Council Regulation No 3782/87⁽²⁾ to individual ceilings, within the limits of the quantities specified in column 7 of its Annexes I or II, in respect of certain or each of the countries or territories of origin referred to in column 5 of the same Annexes; whereas Article 3 of Regulation (EEC) No 3783/87 provides that the levying of customs duties may be re-established at any time in respect of imports of the products in question once the relevant individual ceilings have been reached at Community level;

Whereas, in respect of yarn of combed sheep's or lambs' wool or of combed fine animal hair, of products of cate-

gory 48 (order number 40.0480) stockings, socks and sockettes, not knitted or crocheted of products of category 88 (order number 40.0880) the relevant ceiling amounts respectively to nine and two tonnes;

Whereas on 10 February 1988 imports of the products in question into the Community originating in South Korea, a country covered by preferential tariff arrangements, reached and where charged against that ceiling;

Whereas it is appropriate to re-introduce the levying of customs duties for the products in question with regard to South Korea,

HAS ADOPTED THIS REGULATION:

Article 1

As from 21 February 1988 the levying of customs duties, suspended in pursuance of Regulation (EEC) No 3782/87, shall be re-established in respect of the following products, imported into the Community and originating in South Korea:

Order number	Category (Unit)	CN code	Description
(1)	(2)	(3)	(4)
40.0480	48 (tonnes)	5107 10 10 5107 10 90 5107 20 10 5107 20 30 5107 20 51 5107 20 59 5107 20 91 5107 20 99 5108 20 10 5108 20 90	Yarn of combed sheep's or lambs' wool (worsted yarn) or of combed fine animal hair, not put up for retail sale
40.0880	88 (tonnes)	ex 6209 10 00 ex 6209 20 00 ex 6209 30 00 ex 6209 90 00 6217 10 00 6217 90 00	Stockings, socks and sockettes, not knitted or crocheted, other clothing accessories, other than for babies, other than knitted or crocheted

⁽¹⁾ OJ No L 367, 28. 12. 1987, p. 58.

⁽²⁾ OJ No L 367, 28. 12. 1987, p. 1.

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, 17 February 1988.

For the Commission

COCKFIELD

Vice-President

COMMISSION REGULATION (EEC) No 441/88

of 17 February 1988

laying down detailed rules for applying compulsory distillation as referred to in
Article 39 of Council Regulation (EEC) No 822/87

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine⁽¹⁾, as last amended by Commission Regulation (EEC) No 3992/87⁽²⁾, and in particular Article 39 (9) thereof,

Whereas, as a result of changes in compulsory distillation as provided for in Article 39 of Regulation (EEC) No 822/87 and the consolidation of the Regulation on the common organization of the market in wine, for the sake of clarity Commission Regulation (EEC) No 854/86⁽³⁾ as last amended by Regulation (EEC) No 1410/87⁽⁴⁾ as regards the detailed rules for applying compulsory distillation should be consolidated;

Whereas the distillation operations referred to in Article 39 of Regulation (EEC) No 822/87 must be carried out in accordance with the provisions of Council Regulation (EEC) No 2179/83 of 25 July 1983 laying down general rules for distillation operations involving wine and the by-products of wine-making⁽⁵⁾, as amended by Regulation (EEC) No 2687/84⁽⁶⁾;

Whereas the criteria required to establish a situation of serious imbalance on the market, triggering off compulsory distillation, should be defined;

Whereas, in order to avoid the risk that compulsory distillation leads to inadequate supplies for the following year, it should be made clear that the need to ensure balance for the following year must be taken into account when the quantity for compulsory distillation is fixed;

Whereas, in order to spread the burden of compulsory distillation equitably throughout the Community, the criteria for delimiting production regions with homogeneous characteristics must be defined;

Whereas, in order to take into account the increase in the amount for compulsory distillation in line with yield per hectare, as provided for in Article 39 (4) of Regulation (EEC) No 822/87, provision should be made for a

breakdown of production by region according to yield classes to which percentages of production will be applied to obtain the anticipated quantity for each region;

Whereas, to achieve proper, uniform application of the compulsory distillation measure, the yield to be taken into account and the quantity of wine and products upstream of wine to which the percentage referred to in Article 39 (4) of Regulation (EEC) No 822/87 applies must be made clear; whereas for the 1987/88 wine year for technical production reasons grape musts intended for the production of concentrated musts, whether or not rectified, but not yet processed before 15 March must be included in quantities deductible from that quantity provided that the producer undertakes to process them by 31 August at the latest; whereas Commission Regulation (EEC) No 3929/87 of 17 December 1987 on harvest, production and stock declarations relating to wine-sector products⁽⁷⁾ provides that producers are to declare the quantity of wine and of products upstream of wine and the yields for the quantities obtained;

Whereas the producers to be exempted from compulsory distillation should be defined with a view to bringing down the administrative costs of applying the measure;

Whereas the quantities of table wine obtained by applying the percentages fixed by the Commission to the production of each person subject to the compulsory distillation obligation must be known quickly in order to evaluate the impact of the measure on the market; whereas this may be achieved by requiring each person subject to the compulsory distillation obligation to report the quantities which he must deliver for distillation, while allowing the competent authorities themselves to calculate as a matter of course the quantities for each producer and to notify producers of their obligations;

Whereas the procedure for checking the characteristics of the wine delivered for distillation provided for in Regulation (EEC) No 2179/83 relates to individual deliveries only and does not settle the problem of deliveries carried out jointly by several producers; whereas the latter situation is likely, however, to be encountered frequently in view of the small quantities to be delivered by certain producers subject to the compulsory distillation obligation; whereas, in consequence, provision should be made, in that case and in view of the varying situations applying in the various Member States, for checks on the characteristics of wines delivered to be carried out in accordance with national provisions;

⁽¹⁾ OJ No L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 20.

⁽³⁾ OJ No L 80, 25. 3. 1986, p. 14.

⁽⁴⁾ OJ No L 135, 23. 5. 1987, p. 11.

⁽⁵⁾ OJ No L 212, 3. 8. 1983, p. 1.

⁽⁶⁾ OJ No L 255, 25. 9. 1984, p. 1.

⁽⁷⁾ OJ No L 369, 29. 12. 1987, p. 59.

Whereas the tolerances permitted should be determined so as to facilitate compliance with obligations without entailing unwarranted expenditure for the European Agricultural Guidance and Guarantee Fund (EAGGF);

Whereas, in order to ensure equal treatment for those subject to the obligation, producers who have disposed of their wine before compulsory distillation is triggered off should be permitted to fulfil their obligations; whereas it is also economically justifiable to allow producers whose wine can be disposed of without difficulty on the market on account of its quality to fulfil the obligation without being required to deliver their own wine; whereas, to achieve this result provisions should be made for producers to deliver, or have delivered, wine of other producers;

Whereas, in the absence of a Community definition of rosé wine and for reasons of clarity, it should be made clear that rosé table wines will be treated in the same way as red table wines on account of the close economic relationship existing between them;

Whereas the table wines considered for the purposes of this measure, as being in a close economic relationship with each type of wine should be determined;

Whereas the risk that products of the distillation of certain wines cause disturbance on the market for wine spirits with a designation of origin should be avoided; whereas, to this end, pursuant to Article 3 (2) of Regulation (EEC) No 2179/83, it should be laid down that a product with an alcoholic strength of less than 92 % vol may not be obtained by the direct distillation of such wines;

Whereas certain deadlines must be laid down for completion of the operation by producers and distillers in order to ensure maximum effectiveness of the measure;

Whereas distillers may, in accordance with Article 39 (7) of Regulation (EEC) No 822/87, either receive aid for the product to be distilled or deliver the product of distillation to the intervention agency; whereas the amount of aid must be fixed on the basis of the criteria referred to in Article 16 of Regulation (EEC) No 2179/83 when the measure is triggered off;

Whereas, in accordance with Article 17 of Regulation (EEC) No 2179/83, in order to receive aid, interested parties must submit an application together with certain supporting documents; whereas, to ensure the uniform functioning of the scheme in Member States, deadlines should be laid down for the submission of applications, for the payment of the aid due to distillers and for the submission of evidence that the purchase price has been paid;

Whereas the price to be paid by the intervention agencies for the products delivered to them must be fixed on the basis of the criteria referred to in Article 18 (2) of Regulation (EEC) No 2179/83 when the measure is triggered off;

Whereas the wine which must be delivered for compulsory distillation may be processed into wine fortified for distillation; whereas the provisions applicable to distillation operations should therefore be adopted, in accordance with rules laid down in Articles 25 and 26 of Regulation (EEC) No 2179/83;

Whereas, in order to enable the Commission to gain an overall view of compliance with compulsory distillation obligations, the Member States concerned must keep it regularly informed, on the basis of notifications from distillers, of the progress and results of distillation operations;

Whereas the production structures and administrative difficulties peculiar to Greece justify the introduction, in that Member State in wine years 1987/88 and 1988/89, of compulsory distillation arrangements which, while enabling a result to be obtained which approaches, in terms of quantity, that deriving from the application of the general arrangement limit the measure to producers who have an adequate quantity of table wine available, and authorize the Greek Government itself to fix the percentages of table wine production to be delivered for distillation by the producers concerned; whereas the percentages thus fixed must ensure equal treatment for the parties concerned and must be based on the criteria provided for in Article 39 of Regulation (EEC) No 822/87; whereas Greek producers who are not subject to the compulsory distillation obligation may qualify for the measures provided for in Title III of Regulation (EEC) No 822/87;

Whereas, pursuant to Article 47 of Regulation (EEC) No 822/87, the reference period for exclusion from intervention measures for producers subject to the obligation who have not made delivery should be determined; whereas the application of that Article is without prejudice to the obligation on Member States to apply national penalties necessary to ensure in accordance with Article 79 of Regulation (EEC) No 822/87, the strict non-discriminatory application of compulsory distillation;

Whereas it should be made clear that this Regulation is not applicable in Portugal before the end of the 1989/1990 wine year; whereas persons for whom distillation is compulsory should be prohibited from carrying out the distillation or having it carried out in Portugal;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of (a) and (b) of the second subparagraph of Article 39 (1) of Regulation (EEC) No 822/87 the following definitions shall apply:

- (a) availabilities recorded at the beginning of the wine year :

the quantity equal to the sum of the beginning-of-year stocks and production of table wine and wine suitable for yielding table wine, minus :

- the quantity of table wine and wine lees to be distilled under Article 35 (2) of Regulation (EEC) No 822/87 during the wine year,
- the production and trade losses anticipated for the wine year ;

- (b) normal utilization for the year :

the quantity of table wine equal to the sum of the quantities scheduled to be, during the wine year :

- used for direct human consumption,
- processed into products designated by codes 2205 or 2209 00 of the combined nomenclature,
- exported,

minus the quantity of wine to be imported which is classifiable as table wine.

Article 2

1. The average referred to in (c) of Article 39 (1) of Regulation (EEC) No 822/87 shall be determined by applying the following coefficients to the representative price for each type of table wine :

A I: 25
A II: 1
A III: 0,5
R I: 65
R II: 8,4
R III: 0,1

2. The condition laid down in Article 39 (1) (c) of Regulation (EEC) No 822/87 shall be considered to have been satisfied if, between 1 September and 31 December, the average referred to in paragraph 1 remains, for three consecutive weeks, at less than 82 % of the weighted average of the guide prices for each type of table wine to which the coefficients specified in paragraph 1 have been applied. Representative prices and guide prices shall be expressed in ECU per % vol alcohol. To this end, standard alcoholic strengths of 10 % vol for type A II and A III wines and 10,5 % vol for type R III wines shall be applied. If the representative price for a type of table wine is not available, the representative price used for that type of wine shall be the most recent one available.

Article 3

When the total quantity of table wine subject to compulsory distillation is being fixed, account shall be taken of the need to ensure a level of foreseeable end-of-year stocks which will guarantee that the

availabilities for the following wine year will in any case be sufficient to cover normal utilization.

Article 4

1. The production regions referred to in Article 39 (3) of Regulation (EEC) No 822/87 shall be designated to take account, on the one hand, of production and climatic conditions and, on the other, of the differences existing between Member States in terms of administrative structure and legal requirements, particularly as regards the internal organization of cooperative wineries and producer groups.

The said regions must coincide with administrative units larger than communes and comprise administrative units on which statistics are available for the reference wine years referred to in the second indent of the second subparagraph of Article 39 (3) of Regulation (EEC) No 822/87.

2. In respect of the wine years 1987/88 to 1989/90, the production regions referred to in Article 39 (3) of Regulation (EEC) No 822/87 shall be defined as follows :

- Region 1: the German sections of wine-growing zones A and B,
- Region 2: the wine-growing region of Luxembourg,
- Region 3: the French section of wine-growing zones B, C I (a), C II and C III (b),
- Region 4: wine-growing zone C I (b) and the Italian section of wine-growing zones C II and C III (b),
- Region 5: wine-growing zone C III (a) and the Greek section of wine-growing zone C III (b),
- Region 6: the Spanish section of wine-growing zones C.

3. Average production of table wine and products upstream of table wine in the regions referred to in paragraph 2 in the three consecutive wine years 1981/82, 1982/83 and 1983/84 was as follows :

- Region 1: 1 341 700 hl
- Region 2: 57 300 hl
- Region 3: 40 182 000 hl
- Region 4: 64 163 000 hl
- Region 5: 4 632 000 hl
- Region 6: 27 500 000 hl.

Article 5

1. On the basis of the notifications from the Member States provided for in the first subparagraph of Article 39 (5) of Regulation (EEC) No 822/87, the table wine production of each region shall be classified according to yield class. The definition of such classes shall take account of the quantity of table wine to be distilled in the region in question and the percentage of table wine production in the region which this quantity represents. The abovementioned classes shall be fixed on the basis of the yield classes, laid down in Regulation (EEC) No 3929/87.

2. Where compulsory distillation is introduced, a rising scale shall be fixed for each region based on the yield classes referred to in paragraph 1. The steps in this scale shall be fixed at levels which ensure that, taking into account the foreseeable exemptions under Article 9, the total volume resulting from applying the scale to the quantities falling within each yield class for a given region corresponds to the volume to be distilled in the said region.

Article 6

1. The quantity of a producer's production to be taken into account for the application of this Regulation shall be equal to the sum of the quantities of products in the 'Table wines' column of the production declaration given in Table B of Annex I to Regulation (EEC) No 3929/87: grapes, grape musts, musts in fermentation, new wines still in fermentation, wines suitable for yielding table wine and table wines.

This volume shall be:

- (a) increased by: — the quantity of wine suitable for yielding table wine entered in the 'Wines and other products' column of the abovementioned production declaration,
— the quantity of table wine made before 15 March from products upstream of wine acquired after the date on which a producer lodged his production declaration;
- (b) reduced by the quantity of products upstream of wine (grapes, grape musts, musts in fermentation, new wines still in fermentation, wines suitable for yielding table wines) in the 'Table wines' column and quantities of wine suitable or yielding table wine in the 'Wines and other products' column of the production declaration for which a producer provides proof before 15 March that they have been processed into products other than those entered in the 'Table wines' column of the abovementioned production declaration or that they have been disposed of to a third party before that date.

The proof referred to in (b) shall consist of the relevant entries in the records referred to in Article 14 of Commission Regulation (EEC) No 1153/75⁽¹⁾. To enable the necessary checks to be carried out, producers disposing of products referred to in (b) after lodging their harvest declaration shall notify the name and address of the acquirer, the quantities involved and the date of disposal, to the competent authorities.

In addition, for the 1987/88 wine year, producers may deduct quantities of grape must intended for the preparation of concentrated must or rectified concentrated

must not yet processed by 15 March from the quantity referred to in the first subparagraph provided that they undertake to process them by 31 August. If such processing has not taken place by the latter date, producers must deliver for compulsory distillation, in the form of wine, a quantity resulting from the application of the percentage provided for in Article 8 to the quantity of unprocessed must, plus 20 %. That quantity must be delivered by the date fixed by the competent national authority pursuant to Article 12 (5).

For the purposes of the preceding subparagraph and notwithstanding Article 10 (1) and (2), the notifications referred to in the said provisions may be adjusted up to 15 June 1988. The Member States shall notify the Commission of the quantities adjusted.

2. For each producer who has obtained table wine from the processing and/or downgrading of one of the products entered in the 'Quality wines psr' column of the production declaration, the volume of production to be taken into consideration shall be the sum of all such products used to make that table wine during the period from 1 July preceding the wine year in question to 30 June of that wine year.

3. In the case of a producer who has made table wine from products bought after the final date for lodging his production declaration, the volume of production shall be the total quantity of products employed in vinification before 15 March and entered in the records referred to in Article 14 of Regulation (EEC) No 1153/75.

Article 7

The yield per hectare to be taken into consideration for each producer of table wine shall be the figure given in his grape harvest declaration, as provided for in Regulation (EEC) No 3929/87. Where this declaration is not required the yield shall be that stated on the wine production declaration provided for by that Regulation. In all cases, the yield must include all the grapes produced on the areas worked by the declarant.

However,

- in Member States where a member of a cooperative winery or group is not obliged to submit a harvest declaration, in accordance with Article 1 (2) of Regulation (EEC) No 3929/87, and cooperative wineries or producer groups lodge a single production declaration for all their members, the yield to be taken into consideration shall be that resulting from the weighted average of the yields of each consignment delivered by the members.

This average shall be determined in accordance with the method of calculation set out in the Annex to this Regulation,

⁽¹⁾ OJ No L 113, 1. 5. 1975, p. 1.

- the yield to be taken into consideration for producers who have made table wine by vinification of purchased products shall be that resulting from the weighted average of the yields of each consignment purchased and, where appropriate, the yield of the consignment of his own production.

This average shall be determined in accordance with the method set out in the Annex to this Regulation,

- in the case of a table wine made from grape varieties classified, in respect of the same administrative unit, as both wine grapes and grapes for other uses, the yield to be taken into consideration shall be based on the quantities normally made into wine as referred to in Article 36 (2) of Regulation (EEC) No 822/87,
- where the table wine is obtained from the processing and/or downgrading of one of the products entered in the 'Quality wines psr' column of the production declaration, the yield to be taken into consideration shall be that according to which the quality wine psr in question was obtained. Where the table wine is obtained by processing or downgrading several quality wines psr or a single quality wine psr from several vintages, the yield shall be fixed at a standard rate by the Member State concerned at a level not lower than that recorded for quality wines psr in the area of production in the wine year of distillation.

Article 8

The quantity to be distilled by each producer subject to the obligation shall be calculated by applying to the volume referred to in Article 6 a percentage determined by reference to:

- the yield per hectare relating to the volume of production in question, determined in accordance with Article 7,
- the rising scale established in accordance with Article 5 (2) for the region in which the producer's holding is situated.

Article 9

1. Exemption from the obligation specified in Article 39 of Regulation (EEC) No 822/87 shall be granted to producers who are required, after any deductions under the fourth subparagraph of Article 39 (4) of Regulation (EEC) No 822/87, to deliver a total of less than five hectolitres of table wine for compulsory distillation.

2. Exemption from the obligation specified in Article 39 of Regulation (EEC) No 822/87 shall be granted to producers in Member States whose total wine production is less than 25 000 hectolitres.

Article 10

1. In each wine year during which the compulsory distillation referred to in Article 39 of Regulation (EEC)

No 822/87 is introduced, producers subject to the obligation who have lodged a production declaration as provided for in Regulation (EEC) No 3929/87 shall, in accordance with Article 8, calculate the quantities that they are required to deliver for distillation and shall notify the result to the intervention agency or any other competent authority of the Member State in which their holding is located by 31 March at the latest.

The competent authority shall ascertain whether the quantities in the notification correspond to the quantity which the person making the declaration is required to deliver for distillation.

2. The competent authorities may themselves calculate, in accordance with Article 8, the quantities to be sent for distillation by certain categories of producers and notify them thereof. Such notifications shall be transmitted by 31 March at the latest.

Such notifications may be limited to certain categories of producer provided that the limitation is made on the basis of objective, non-discriminatory criteria.

3. Each producer who has obtained table wine from the processing and/or downgrading of one of the products entered in the 'Quality wines psr' column of the production declaration shall, in accordance with Article 8, calculate the quantities which he must deliver for compulsory distillation.

The producer shall notify the intervention agency or any other competent authority of the Member State on whose territory his holding is located:

- not later than 31 March, of the result of the calculation in respect of the quantities of table wine obtained from 1 July of the previous year to 15 March,
- not later than 15 July, of the result of the calculation in respect of the quantities of table wine obtained from 16 March to 30 June.

4. At the time the notification referred to in this Article is transmitted or received, the producer or, as the case may be, the competent authority shall enter in the registers provided for in Article 71 (2) of Regulation (EEC) No 822/87 the quantities of table wine which must be delivered for distillation.

5. Member States shall compile a summary statement of the figures obtained pursuant to paragraphs 1, 2 and the first indent of paragraph 3 and shall inform the Commission by 15 June of the quantities to be distilled, broken down by the yield classes fixed in accordance with Article 5 (1).

The volumes to be distilled as referred to in the second indent of paragraph 3 shall be notified to the Commission by 15 September.

Article 11

1. Should quantities of wine be transported together to the distillery, the wine's characteristics, including quantity, colour and alcoholic strength, shall be verified in accordance with the provisions adopted by the Member States concerned.

2. No downward tolerance shall apply to the quantity to be delivered for distillation by each producer subject to the obligation calculated in accordance with Article 8.

3. An upward tolerance of 2 % in relation to the quantity referred to in paragraph 2 shall apply:

- to the sum of the quantities of table wine delivered by several producers subject to the obligation, where the application for aid or the application to deliver distillation products to the intervention agency submitted by a distiller concerns the wines corresponding to those producers' obligations,
- to the quantity delivered by each producer subject to the obligation in other cases.

Article 12

1. Persons subject to the obligation specified in Article 39 (4) of Regulation (EEC) No 822/87 may deliver both table wine of their own production and table wine obtained from other producers as referred to in the second indent of Article 2 (1) (a) of Regulation (EEC) No 2179/83.

They may also:

- carry out distillation in their own distillation facilities,
- arrange for distillation to be carried out in the facilities of an approved distiller working under contract.

2. The obligation specified in Article 39 of Regulation (EEC) No 822/87 shall be considered to have been satisfied even if the table wine is delivered by another person who himself produced it.

In such cases, the certificate issued by the distiller pursuant to Article 15 of Regulation (EEC) No 2179/83 shall specify, in addition to the name and address of the producer delivering the wine, the name and address of the producer subject to the compulsory distillation requirement.

The second subparagraph of Article 13 (2) of Regulation (EEC) No 2179/83 shall apply only to producers subject to the obligation specified in Article 39 (4) of Regulation (EEC) No 822/87.

3. Member States shall, in particular for the purposes of applying the first subparagraph of paragraph 1 and

paragraph 2, take the measures necessary to ensure that the quantities of wine delivered in performance of an obligation are those covered by the said obligation.

However, in cases where the wine has been obtained and delivered for distillation in a Member State other than that of the producer subject to the obligation:

- a certificate issued by the authority in the Member States of the producer subject to the obligation, as referred to in Article 10, and attesting that the quantity in question is that covered by the producer's obligation, must be presented to the distiller. A copy of this certificate must be forwarded to the competent authority of the Member State in which distillation takes place,
- the certificate referred to in Article 15 of Regulation (EEC) No 2179/83 shall be authenticated by the competent authority of the Member State in which distillation takes place,
- a copy of this certificate shall be forwarded by the said authority to the authority referred to in the first indent before 25 October of the following wine year.

4. Deliveries of table wine must be made not later than:

- 31 July if delivery is made to a distillery,
- 15 July if delivery is made to a fortifier of wine for distillation.

Deliveries may be made in the fortnight after the above dates. In that case the purchase price for the quantities concerned shall be reduced by an amount equal to 50 % of the aid fixed for the wine year in question. Both the aid and the price of the alcohol which is produced and delivered to the intervention agency shall be reduced by the same amount.

5. The distillation operations referred to in Article 39 of Regulation (EEC) No 822/87 may not be carried out after 31 August.

However, the distillation of wine delivered pursuant to Article 11 (2) or Article 23 of Regulation (EEC) No 2179/83 may be carried out up to the date fixed by the competent national authority, in accordance with the said Articles.

In the circumstances mentioned in the first paragraph of Article 23 of this Regulation, the competent authorities shall set time limits for distillation as necessary.

Distillers shall forward to the intervention agency, not later than the tenth day of each month in respect of the previous month, a statement of the quantities of table wine distilled and the quantities of products obtained by distillation, broken down according to the categories specified in the first subparagraph of Article 3 (1) of Regulation (EEC) No 2179/83.

Article 13

1. The purchase price provided for in Article 39 (6) of Regulation (EEC) No 822/87 shall be fixed at the time when the distillation measure referred to in the same Article becomes applicable.

2. The purchase price referred to in paragraph 1 shall be paid by the distiller to the producer within three months of the day on which each consignment of table wine enters the distillery.

Article 14

1. The provisions of this Regulation relating to red table wine shall apply also to rosé table wine.

2. The provisions of this Regulation relating to a given type of table wine shall apply also to table wine that is in a close economic relationship with that type of table wine. For the purposes of this Regulation, the following shall be considered as being in a close economic relationship with table wine of type :

- A I, white table wine that is not of type A I, A II or A III,
- R I, red table wine with an actual alcoholic strength of less than 12,5 % vol that is not of type R I or R III,
- R II, red table wine with an actual alcoholic strength of more than 15 % vol that is not of type R II or R III.

3. The product of coupage of a wine suitable for yielding white table wine or of a white wine with a wine suitable for yielding a red table wine or with a red table wine, in accordance with Article 125 (1) of the Act of Accession, may be delivered for distillation in Spain. To that end it shall be treated in the same way as a white table wine of type A I.

Article 15

Only products with an alcoholic strength of at least 92 % vol may be obtained by the direct distillation of wines made from grapes of varieties which are classified, simultaneously for the same administrative unit, both as wine grape varieties and as varieties intended for the manufacture of wine spirits.

Article 16

1. Distillers may receive aid in respect of the products obtained by the distillation referred to in Article 39 of Regulation (EEC) No 822/87. The amount of the aid shall be fixed at the time when such distillation becomes applicable.

No aid shall be due for the quantity of alcohol contained in the product obtained by distillation in excess of that

contained in the quantities of wine delivered in compliance with the limits laid down in Article 11 (3).

2. Distillers who wish to receive the aid specified in paragraph 1 shall submit, by 31 October, an application and the documents specified in Article 17 of Regulation (EEC) No 2179/83.

3. The intervention agency shall pay the aid referred to in paragraph 1 within three months of submission of the application and documents referred to in paragraph 2.

The distiller must provide the intervention agency, before 1 February of the following year, with proof that he paid the producer the purchase price for the wine within the time limit laid down in Article 13 (2).

If such proof is not provided before 1 February, the intervention agency shall recover the aid paid. However, if the proof is provided after the expiry of this time limit but before 1 May, the intervention agency shall recover only 20 % of the aid paid.

If it is found that the distiller has not paid the producer the purchase price, the intervention agency shall pay the producer, before 1 June, an amount equal to the aid, if necessary through the intervention agency of his Member State.

Article 17

1. Where the distiller intends to take advantage of the provisions of the second indent of the first subparagraph of Article 39 (7) of Regulation (EEC) No 822/87, delivery to the intervention agency of products with an alcoholic strength of at least 92 % vol shall be made by 31 October or, if Article 11 (2) of Regulation (EEC) No 2179/83 applies, by the date set by the competent national authority.

In the circumstances mentioned in the first subparagraph of Article 23 (1) of this Regulation, the competent authorities shall set time limits for delivery as necessary.

The quantity of alcohol contained in the product delivered by the distiller to the intervention agency in accordance with the second indent of the first subparagraph of Article 39 (7) of Regulation (EEC) No 822/87 may not exceed that contained in the quantities of wine delivered in compliance with the limits laid down in Article 11 (3).

Pursuant to the first indent of the second subparagraph of Article 39 (7) of Regulation (EEC) No 822/87, Member States where the overall volume for compulsory distillation does not exceed 100 000 hectolitres may provide for their intervention agencies not to buy in the product referred to in the first subparagraph.

2. The price to be paid by the intervention agency to the distiller for the product delivered shall be fixed at the time when the distillation referred to in Article 39 of Regulation (EEC) No 822/87 becomes applicable.

If the distiller has received aid under Article 16, the price referred to in the first subparagraph shall be reduced by the amount of that aid.

If the distiller has not received the aid referred to in the second subparagraph, Article 16 (2) shall be applicable *mutatis mutandis*.

3. The prices referred to in paragraph 2 shall be for neutral spirits as defined in the Annex to Regulation (EEC) No 2179/83.

For other alcohol, the prices referred to in paragraph 2 shall be reduced, per % vol of alcohol and per hectolitre, by an amount fixed at the time when the distillation measure referred to in Article 39 of Regulation (EEC) No 822/87 becomes applicable.

4. The price shall be paid by the intervention agency to the distiller within three months of the day on which the alcohol was delivered.

The second, third and fourth subparagraphs of Article 16 (3) shall be applicable *mutatis mutandis*.

Article 18

1. In cases as referred to in Article 26 (1) of Regulation (EEC) No 2179/83 the contract or the declaration of delivery of wine for fortification for distillation shall be submitted for approval to the competent intervention agency by 30 June.

The intervention agency shall notify the producer of the outcome of the approval procedure within 15 days of the date on which the contract or declaration was submitted.

2. Fortification of wine for distillation may not take place after 31 July.

3. The fortified wine may not be distilled until approval of the contract or declaration has been given but must be distilled by 31 August at the latest.

4. The fortifier shall send the intervention agency, by the 10th day of each month, a statement of the quantities of wine delivered to him during the previous month.

5. Fortifiers of wine for distillation shall receive aid. This aid, calculated per hectolitre and per % vol of actual alcohol before the wine's conversion into wine fortified for distillation, shall be fixed at the time when the distillation measure referred to in Article 39 of Regulation (EEC) No 822/87 becomes applicable.

In order to receive the aid the fortifier shall submit the application and the documents specified in Article 17 of Regulation (EEC) No 2179/83 to the competent intervention agency by 31 October.

The aid shall be paid within three months of the date of submission of proof of the lodging of the security referred to in Article 26 (4) of Regulation (EEC) No 2179/83, but in all cases after the date on which the contract or declaration was approved.

6. Subject to Article 23 of Regulation (EEC) No 2179/83 the security shall be released only if, before 1 March of the following year, proof is produced:

- that all the wine covered by the contract or declaration has been distilled, and
- that the purchase price for the wine was paid to the producer within the time limit specified in Article 13 (2),

the security being released in proportion to the quantities in respect of which such proof is produced.

If the proof referred to in the first subparagraph is provided after the date specified in the first subparagraph but before 1 June, the amount to be released shall be 80 % of the security.

If it is found that the fortifier has not paid the producer the purchase price the intervention agency shall, before 1 July, pay the producer an amount equal to the aid, if necessary through the intervention agency of his Member State.

Article 19

1. Member States shall send the Commission, by the 20th day of each month in respect of the previous month, a statement of:

- the quantities of table wine and fortified wine distilled under the distillation operation referred to in Article 39 of Regulation (EEC) No 822/87, broken down by colour,
- the quantities of alcohol delivered to intervention agencies,
- the quantities of wine spirits produced and their alcoholic strength,
- the quantities of other products of at least 52 % vol alcoholic strength for which aid has been requested.

2. Member States shall notify the Commission, by 31 March, of cases where distillers or fortifiers of wine for distillation have not fulfilled their obligations and of the action being taken in consequence.

Article 20

Conversion into national currencies of amounts to be fixed pursuant to this Regulation shall be at the representative rates applying for the wine sector on the date of the entry into force of the Regulation whereby the distillation measure referred to in Article 39 of Regulation (EEC) No 822/87 becomes applicable.

Article 21

For the 1987/88 and 1988/89 wine years, the following provisions shall apply in Greece pursuant to the first subparagraphs of Article 39 (10) of Regulation (EEC) No 822/87:

- (a) The persons subject to the distillation requirement referred to in this Regulation shall be those producers, including wine cooperatives and producers' associations, who have obtained in the course of the wine year a quantity of table wine to be fixed by the Greek authorities before 10 March of the year in question;
- (b) The Greek Government shall set, before 10 March and in accordance with the criteria laid down in Article 39 (4) of Regulation (EEC) No 822/87, the percentages of table wine production that the producers specified in (a) must deliver for distillation, while ensuring equality of treatment of producers subject to the obligation; these percentages must ensure that the quantity distilled in Greece as a whole represents the sum of the quantities to be distilled in that Member State;
- (c) The Greek Government shall notify the Commission, before 15 March, of the measures which it has adopted pursuant to this Article.

Article 22

Pursuant to Article 47 (1) of Regulation (EEC) No 822/87 and without prejudice to Article 11 (2) of Regulation (EEC) No 2179/83, producers shall not be eligible for the intervention measures provided for in Title III of Regulation (EEC) No 822/87 and decided on for the following year if they have carried out no deliveries during the period from 1 March of the wine year in question to:

- 15 August in the case of producers who deliver to a distillery,
- 31 July in the case of producers who deliver to a fortifier of wine for distillation,
- 31 August in the case of producers who make use of the provisions of the second subparagraph of Article 12 (1) of this Regulation.

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

Done at Brussels, 17 February 1988.

Article 23

Expiry of the time limits referred to in Article 12 (4) or, in the case of producers exercising the option provided for in the second subparagraph of Article 12 (1), of the time limits referred to in the first subparagraph of Article 12 (5) or of those fixed by the Member State pursuant to Article 11 of Regulation (EEC) No 2179/83 shall have no bearing whatsoever on the accomplishment of the requirement that the quantities due from each producer be distilled.

After expiry of the said time limits, the purchase price for the quantities delivered and the price of the alcohol which is produced from those quantities and which is delivered to the intervention agency shall be reduced by an amount equal to the aid laid down for that distillation operation in respect of neutral spirits. No aid shall be paid for distillation products which are not delivered to the intervention agency.

Article 24

1. This Regulation shall not be applicable in Portugal until the end of the 1989/90 wine years.
2. Notwithstanding the second indent of Article 12 (1) persons subject to the obligation specified in Article 39 (4) of Regulation (EEC) No 822/87 may not carry out distillation in Portugal during the period laid down in paragraph 1.

Notwithstanding the first and second subparagraphs of Article 12 (2) delivery may not be made during the wine years referred to in paragraph 1 by producers whose production was obtained in Portugal.

Article 25

1. Regulation (EEC) No 854/86 is hereby repealed.
2. References to the Regulation (EEC) No 854/86 shall be construed as references to this Regulation.

Article 26

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

For the Commission

Frans ANDRIESEN

Vice-President

*ANNEX***Method for calculating the weighted average of yields referred to in Article 7 first and second indent**

1. The following formula shall be used for calculating the weighted average (M) referred to in Article 7, the first and second indents:

$$M = \frac{Q}{S} \text{ [hl/ha]}$$

or

$$S = \frac{V_1}{r_1} + \frac{V_2}{r_2} + \frac{V_3}{r_3} + \dots + \frac{V_n}{r_n}$$

V_1 = volume of the first consignment delivered to the cooperative or purchased by the declarant (in hectolitres of wine) as entered in the production declaration.

r_1 = yield fixed in accordance with Article 7, first subparagraph, with which the first consignment was produced (in hectolitres/hectare).

$Q = V_1 + V_2 + V_3 + \dots + V_n$ (in hectolitres of wine).

2. In the case of cooperative wineries and producer groups as referred to in Article 7, first indent, whose total volume of production as referred to in Article 6 (1) is obtained by all the members delivering their entire production, Q represents the total volume of products delivered to the cooperative winery or producer group and S represents the wine-growing area cultivated by all of the members producing the said products.
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COMMISSION REGULATION (EEC) No 442/88

of 17 February 1988

amending Regulations (EEC) No 2315/76 and (EEC) No 2191/81 as regards the sale of butter at a reduced price and the granting of aid for the purchase of butter by non-profit-making institutions and organizations

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EEC) No 3904/87 ⁽²⁾, and in particular Articles 6 (7) and 12 (3) thereof,

Whereas Commission Regulation (EEC) No 2191/81 ⁽³⁾, as last amended by Regulation (EEC) No 2402/86 ⁽⁴⁾, provides for the granting of aid for the purchase of butter by non-profit-making institutions and organizations; whereas, in view of the present situation on the market for butter and the scale of public stocks, the possibility should be reopened of selling butter in public storage to non-profit-making institutions and organizations without suspending the possibility of granting the aid provided for under Regulation (EEC) No 2191/81; whereas Commission Regulation (EEC) No 2315/76 of 24 September 1976 on the sale of butter from public storage ⁽⁵⁾, as last amended by Regulation (EEC) No 3127/87 ⁽⁶⁾, should be amended to that end;

Whereas the selling price of the butter and the terms to be met to obtain that price and the amount of the security to ensure that those terms are fulfilled should be fixed;

Whereas the amount of the aid provided for in Regulation (EEC) No 2191/81 should be fixed once more; whereas on the one hand Article 2 (3) of that Regulation should, in view of the repeal of Council Regulation (EEC) No 1269/79 ⁽⁷⁾ and the reference to the new Council Regulation (EEC) No 3667/83 of 19 December 1983 relating to the continuing of the import of New Zealand butter into the United Kingdom on special terms ⁽⁸⁾, as last amended by Regulation (EEC) No 2335/86 ⁽⁹⁾, be adapted and, on the other hand, in the light of experience gained, the

national determination of the maximum individual quantity should be replaced by a Community maximum limit;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following Article 4a is hereby added to Regulation (EEC) No 2315/76:

Article 4a

1. By way of derogation from Articles 1 and 2, the butter shall be sold at a price equal to the buying-in price applied by the intervention agency at the time the sales contract is concluded minus 30 ECU per 100 kilograms, provided that it is used by non-profit-making institutions and organizations in accordance with Regulation (EEC) No 2191/81 and qualifies for the aid provided for in the said Regulation.

2. The intervention agency shall sell the butter only if, by the date of conclusion of the sales contract at the latest, a security equal to the reduction in the price provided for in paragraph 1 plus 3 ECU is lodged in order to ensure the fulfilment of the principal requirements relating to the taking over of the butter by the recipients and its utilization in accordance with Regulation (EEC) No 2191/81.

Article 2

Regulation (EEC) No 2191/81 is hereby amended as follows:

1. In Article 2:

— in paragraph 1, '178 ECU' is replaced by '165 ECU',

— paragraph 3 is replaced by the following:

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 370, 30. 12. 1987, p. 1.

⁽³⁾ OJ No L 213, 1. 8. 1981, p. 20.

⁽⁴⁾ OJ No L 208, 31. 7. 1986, p. 22.

⁽⁵⁾ OJ No L 261, 25. 9. 1976, p. 12.

⁽⁶⁾ OJ No L 296, 21. 10. 1987, p. 8.

⁽⁷⁾ OJ No L 161, 29. 6. 1979, p. 8.

⁽⁸⁾ OJ No L 366, 8. 12. 1983, p. 16.

⁽⁹⁾ OJ No L 203, 26. 7. 1986, p. 7.

'3. The aid provided for in paragraph 1 may not be granted, in the case of the United Kingdom, at the same time as the reduction in the special levy provided for in Article 3 (1) of Regulation (EEC) No 3667/83.

To that end, the amount of the aid provided for in paragraph 1 shall be reduced by the amount of the said reduction in the special levy.'

2. Article 3 (4) is replaced by the following :

'4. The maximum quantity of butter referred to in paragraph 3 (c) shall be 2 kilograms per month and per consumer in the recipient establishment.'

Article 3

This Regulation shall enter into force on 1 April 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 443/88

of 17 February 1988

amending Regulation (EEC) No 2042/75 on special detailed rules for the application of the system of import and export licences for cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EEC) No 3989/87⁽²⁾,

Having regard to Council Regulation (EEC) No 1418/76 on 21 June 1976 on the common organization of the market in rice⁽³⁾, as last amended by Commission Regulation (EEC) No 3990/87⁽⁴⁾, and in particular Article 10 thereof,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽⁵⁾, as amended by Regulation (EEC) No 3985/87⁽⁶⁾, and in particular Article 15 thereof,

Whereas Regulation (EEC) No 2658/87 established, with effect from 1 January 1988, a combined goods nomenclature based on the harmonized system which will meet the requirements of the Customs Tariff and the nomenclature of goods for the external trade statistics of the Community;

Whereas, as a consequence, it is necessary to express the descriptions of goods and tariff heading numbers which appear in Commission Regulation (EEC) No 2042/75⁽⁷⁾, as last amended by Regulation (EEC) No 1665/87⁽⁸⁾, according to the terms of the combined nomenclature;

Whereas Commission Regulation (EEC) No 3846/87⁽⁹⁾, established, with effect from 1 January 1988, an agricultural product nomenclature for export refunds which includes additional subdivisions to those of the combined nomenclature; whereas it is appropriate to refer to these subdivisions on export certificates for certain products for which specific indications are required; whereas, as a consequence Article 5 of Regulation (EEC) No 2042/75 should be amended;

Whereas major fluctuations in rice prices on the world market are leading to substantial variations in the level of

levies and entail the risk of the speculative abandonment of licences with advance fixing of the levy; whereas in order to avoid that risk, the amount of the security provided for the issue for the said licences should be increased; whereas, as a consequence Article 12 (1) (b) of Regulation (EEC) No 2042/75 should be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2042/75 is hereby amended as follows:

1. Article 5 is replaced by the following:

'Article 5

1. For products falling within CN codes 1102 20 and 1103 13, the applicant may, in his application for an export licence indicate products falling under two contiguous subdivisions of either of the subheadings.

The two subdivisions indicated on the application shall appear on the export licence.

2. For products falling within CN code 2309, excluding 2309 10 70, 2309 90 10, 2309 90 70, 2309 90 91 and 2309 90 99, and containing less than 50 % by weight of milk products, the application for an export licence shall contain:

- in section 7, the description of the product and its cereal content in conformity with the refund nomenclature specified in the Annex to Commission Regulation (EEC) No 3846/87⁽¹⁰⁾
- in section 8, the reference: 'ex 2309'.

The application may contain in section 7 the contiguous cereal content categories referred to in the first indent of the preceding subparagraph.

The details in the application shall appear on the export licence.

⁽¹⁰⁾ OJ No L 366, 24. 12. 1987, p. 1.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 1.

⁽³⁾ OJ No L 166, 25. 6. 1976, p. 1.

⁽⁴⁾ OJ No L 377, 31. 12. 1987, p. 15.

⁽⁵⁾ OJ No L 256, 7. 9. 1987, p. 1.

⁽⁶⁾ OJ No L 376, 31. 12. 1987, p. 1.

⁽⁷⁾ OJ No L 213, 11. 8. 1975, p. 5.

⁽⁸⁾ OJ No L 155, 16. 6. 1987, p. 10.

⁽⁹⁾ OJ No L 366, 24. 12. 1987, p. 1.

2. Article 12 (1) (b) is replaced by the following :

'(b) in the case of import licences with advance fixing of the levy :

- 16 ECU per tonne for products falling within CN codes 0709 90 60, 0712 90 19, 1001 10, 1001 90 91, 1001 90 99, 1002, 1003, 1004, 1005 10 90, 1005 90 00, 1006 10 91,

1006 10 99, 1006 20, 1006 30, 1006 40, 1007 and 1008 ;

— 4 ECU per tonne for other products.'

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, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 444/88

of 17 February 1988

concerning applications for STM licences for milk and milk products submitted during the first 10 days of February 1988

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 574/86 of 28 February 1986 laying down detailed rules for the application of the supplementary trade mechanism (STM)⁽¹⁾, as last amended by Regulation (EEC) No 2159/87⁽²⁾, and in particular Article 6 (4) thereof,

Having regard to Commission Regulation (EEC) No 606/86 of 28 February 1986 laying down detailed rules for applying the supplementary trade mechanism to milk products imported into Spain from the Community of Ten⁽³⁾, as last amended by Regulation (EEC) No 4024/87⁽⁴⁾, and in particular Article 3 (2) thereof,

Whereas pursuant to Article 6 (3) of Regulation (EEC) No 574/86 the Commission has been notified of the applications for STM licences for milk and milk products during the first 10 days of February 1988 ; whereas the necessary provisions regarding the acceptance of the said applications should be adopted,

HAS ADOPTED THIS REGULATION :

Article 1

Applications for STM licences submitted during the first 10 days of February 1988 and notified to the Commission shall be accepted for the tonnages applied for, adjusted by the coefficient set out below in the case of the following products and the categories referred to in Article 2 of Regulation (EEC) No 606/86 :

CN code	Description	Coefficient
ex 0401	Milk and cream, fresh, not concentrated or sweetened :	
ex 0403	— in immediate packings of a net capacity of 3 litres or less	1,00
	— other	1,00
0405 00	Butter and other fats and oils derived from milk	0,12680
ex 0406	Cheese :	
	— Category 1 : Emmentaler, Gruyère	0,39710
	— Category 2 : Roquefort	0,00289
	— Category 3 : Blue-veined cheese	0,07574
	— Category 4 : Processed cheese	0,00242
	— Category 5 : Parmigiano Reggiano, Grana Padano	0,05652
	— Category 6 : Havarti, fat content 60 %	0,02439
	— Category 7 : Edam in balls, Gouda	0,06892
	— Category 8 : Soft ripened cow's milk cheeses	0,00503
	— Category 9 : Cheddar, Chester	0,06487
	— Category 10 : Other	0,04956

⁽¹⁾ OJ No L 57, 1. 3. 1986, p. 1.

⁽²⁾ OJ No L 202, 23. 7. 1987, p. 30.

⁽³⁾ OJ No L 58, 1. 3. 1986, p. 28.

⁽⁴⁾ OJ No L 378, 31. 12. 1987, p. 53.

Article 2

This Regulation shall enter into force on 18 February 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

COMMISSION REGULATION (EEC) No 445/88**of 17 February 1988****fixing the maximum export refund for white sugar for the 40th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 1092/87**

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 3993/87⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 1092/87 of 15 April 1987 on a standing invitation to tender in order 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 1092/87, 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 40th 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

The maximum export refund for the 40th partial invitation to tender for white sugar issued under Regulation (EEC) No 1092/87 is hereby fixed at 42,450 ECU per 100 kilograms.

Article 2

This Regulation shall enter into force on 18 February 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 23.

⁽³⁾ OJ No L 106, 22. 4. 1987, p. 9.

COMMISSION REGULATION (EEC) No 446/88
of 17 February 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 3993/87 ⁽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 2054/87 ⁽³⁾, as last amended by Regulation (EEC) No 427/88 ⁽⁴⁾;

Whereas Council Regulation (EEC) No 2658/87 ⁽⁵⁾ introduced from 1 January 1988 a new combined nomenclature meeting the requirements of both the Common Customs Tariff and the Community's statistics of foreign trade and replacing the previous nomenclature;

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2054/87 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 18 February 1988.

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

Done at Brussels, 17 February 1988.

For the Commission

Frans ANDRIESEN

Vice-President

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 377, 31. 12. 1987, p. 23.

⁽³⁾ OJ No L 192, 11. 7. 1987, p. 38.

⁽⁴⁾ OJ No L 42, 16. 2. 1988, p. 26.

⁽⁵⁾ OJ No L 256, 7. 9. 1987, p. 1.

ANNEX

to the Commission Regulation of 17 February 1988 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy
1701 11 10	40,93 ⁽¹⁾
1701 11 90	40,93 ⁽¹⁾
1701 12 10	40,93 ⁽¹⁾
1701 12 90	40,93 ⁽¹⁾
1701 91 00	49,90
1701 99 10	49,90
1701 99 90	49,90

⁽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 Regulation (EEC) No 837/68.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 December 1987

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.914 — ARG/Unipart)

(Only the English text is authentic)

(88/84/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 Articles 6 and 8 thereof,

Having regard to the notification submitted on 7 July 1986 by Austin Rover Group Limited of Coventry, United Kingdom and Unipart Group Limited of Oxford, United Kingdom, with regard to an agreement relating to the sales of parts for Austin Rover vehicles,

Having regard to the summary of the notification published ⁽²⁾ pursuant to Article 19 (3) of Regulation No 17,

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

Whereas :

and accessories, and to concentrate its sales efforts, so far as sales to the vehicle manufacturer's authorized dealers are concerned, on the products the parties have agreed upon. The agreement flows from the recent separation of ownership of the two parties concerned.

The parties

- (2) Austin Rover Group Limited ('ARG'), a manufacturer of passenger cars and car-derived vans, is an indirectly wholly owned subsidiary of Rover Group (formerly BL) public limited company, a company in which the United Kingdom Government owns nearly all the shares.
- (3) Unipart Group Limited ('Unipart') was formerly also a subsidiary of Rover Group, but a majority of its shares were recently sold to private investors, Rover Group now holding 21,7 %. Unipart has for several years supplied replacement parts and accessories for motor vehicles made by companies in the Rover group and also for those of other manufacturers.

The Agreement

I. THE FACTS

- (1) This proceeding concerns an agreement between a vehicle manufacturer and an independent wholesaler by which the latter undertakes to promote in the place of the manufacturer sales of spare parts

- (4) The notified Agreement, described as 'for the Allocation of Responsibility for the Sales of Parts for Austin Rover Vehicles and for the Provision of Related Services' and hereinafter called 'The Agreement', was concluded on 28 February 1986. The parties agree between themselves on the composition of the ARG spare parts range and, within that context, on the manner in which Unipart shall

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 319, 12. 12. 1986, p. 3.

obtain parts from ARG and from third parties. Unipart continues to be responsible for operating ARG's parts business in so far as it relates to supplying parts to the aftermarket (that is, the market on which parts are sold, separately from vehicles, for attachment on or in existing vehicles by dealers, repairers or vehicle owners) for fitting to ARG vehicles. Unipart will carry out all the functions which that service entails, i.e. quality control, purchasing, warehousing, marketing, selling, order processing, distribution and accounting. Unipart is obliged to achieve competitive levels of efficiency, and this is measured by periodic tests against objective criteria laid down in the Agreement. Its remuneration varies according to the performance it achieves. Unipart will make available the goods which are the subject of the agreement to all re-sellers authorized by ARG in the common market, as well as to those in third countries.

(5) For the purpose of the Agreement and especially of allocating responsibilities between ARG and Unipart, the parts are divided into three categories:

- (a) Unipart Branded Parts consist of fast-selling, highly competitive parts such as sparking plugs and shock-absorbers, which fit ARG vehicles and also others;
- (b) Dual Branded Parts are those parts in the Unipart range that fit ARG vehicles. They bear the marks of both companies and exactly meet ARG's original equipment specifications. For a single application (e.g. the rear brake-linings for a specific ARG model) there may exist, first, not more than one Dual Branded Part, and secondly, one or more Unipart Branded Parts which, while having the same function as a Dual Branded Part, must be to some different specification;
- (c) Austin Rover Branded Parts consist of all other parts made by ARG or by part suppliers to ARG's specification which bear only the Austin Rover mark.

(Reference to part bearing a mark includes a part whose packaging, destined for sale with the part, bears that mark.)

The parties have established detailed lists of the products falling into each category. Individual products may, in general, be changed from one category to another only by agreement between the parties.

(6) The Agreement provides *inter alia* that:

- (a) for the period of the Agreement, ARG will not obtain the services provided by Unipart from any other party, and will supply or authorize the

supply of parts to the aftermarket only through Unipart;

- (b) So far as such parts exist, ARG will recommend only parts bearing its trade mark, and parts bearing both the Unipart and Austin Rover trade marks, for fitting to ARG vehicles;
- (c) Subject to meeting Unipart's qualitative standards, ARG existing authorized dealers will be given the first opportunity of becoming Unipart authorized dealers;
- (d) The whole range of parts required for ARG vehicles has to be made available by and through Unipart.

(7) Responsibilities, risks and revenues are divided according to the three categories.

- (a) Unipart Branded Parts are approved, procured, stocked and sold entirely by Unipart on its own account;
- (b) Dual Branded Parts receive engineering approval from ARG or from Unipart under authority delegated by ARG. Unipart pays ARG a commission on sales, but these are otherwise for Unipart's account. For a limited number of Dual Branded Parts, ARG has the right to determine the non-binding retail prices that Unipart shall recommend to ARG's and Unipart's authorized dealers;
- (c) For Austin Rover Branded Parts, Unipart assumes no entrepreneurial commercial risks, but acts somewhat as if it were ARG's agent and receives a handling commission on sales. ARG gives engineering approvals, decides Unipart's resale prices and the non-binding retail prices to be recommended to ARG's authorized dealers, and takes the profit or loss on the sales effected by Unipart.

(8) Austin Rover Branded Parts may only be supplied to re-sellers within the ARG network. Dual Branded Parts may be supplied to Unipart franchised sites provided that, at those sites, there are no authorized dealerships of a competing vehicle manufacturer; or to other customers with ARG's consent. Unipart Branded Parts may be supplied to any category of customers.

(9) Unipart shall not expand any of the product ranges to which Austin Rover Parts or Dual Branded Parts belong by adding to them any new categories of products, or introduce any new product ranges which include ARG Fit Parts (whether to the original equipment specification or otherwise) without the prior written agreement of ARG, such agreement not to be unreasonably withheld.

- (10) Nothing in the Agreement prevents ARG or Unipart from introducing parts bearing the marks of third parties into their respective areas of primary responsibility (i.e. 'Austin Rover Branded Parts', in the case of ARG, and 'Dual Branded' or 'Unipart Branded Parts' in the case of Unipart) or the marketing of such parts in the same manner as Austin Rover Branded, Dual Branded or Unipart Branded Parts, as the case may be.

- (11) The initial term of the Agreement is specified to be five years from the date of any offer for sale to the public of shares in Unipart, or seven years from the date of signature of the Agreement, whichever is shorter.

The parties expect to renew the contract after the initial term provided they are satisfied with its operation during that period. For the purpose of this proceeding, the relationship embodied in the Agreement is considered as fundamentally a long-term one, albeit subject to revision in detail at the expiry of the initial term.

- (12) By further agreement finally concluded between the parties on 21 November 1986, ARG grants to Unipart a non-exclusive, royalty-free licence to use certain ARG trade marks on goods, other than complete motor vehicles, which meet ARG's specification and standards. This licence agreement is indissolubly linked to the Agreement, to which it is a necessary corollary.

The relevant markets

- (13) To the extent that ARG does not make the components which it needs when assembling new cars, it buys them from suppliers or asks them to make the parts on its account. It likewise procures for itself certain spare parts and accessories. Supply agreements are normally long-term agreements.
- (14) ARG and its importers — some of them affiliated companies — are each responsible for the promotion in a specified territory of sales of ARG products and of services related to them. Each organizes an exclusive and selective dealer distribution system.

The tasks of selling ARG cars, spare parts and accessories and of performing specialized services of all kinds that customers may need, are performed in the United Kingdom, where ARG has a considerable market share, by distributor dealers and retail dealers; distributor dealers are wholesalers that also act as retailers. In the other Member States, most dealers are supplied directly

by the importer. The distribution and servicing agreements oblige all authorized re-sellers to use their best endeavours to sell the spare parts and accessories which ARG or its importer offers. Whilst Unipart formerly carried out the function of supplying parts and accessories to ARG re-sellers as a result of a division of responsibilities within the integrated Rover Group, it now does so under contract on an 'arm's-length' commercial basis.

- (15) Unipart buys parts and accessories from ARG or (chiefly) from other suppliers. Its general business of wholesaling may be considered as falling into three classes:

(a) In relation to ARG's authorized re-sellers, Unipart assumes the functions normally carried out by a vehicle manufacturer in relation to supplies of parts — the stocking, listing and supplying on a regular basis of all the parts needed for the sale, maintenance and repair of current and recent models of the marques concerned;

(b) In relation to Jaguar's authorized re-sellers, Unipart carries out a more limited range of similar services under contract with Jaguar Cars Holdings Limited and Jaguar Cars Limited of Coventry, United Kingdom; that agreement has also been notified to the Commission (Case IV/31.272) but it is not the subject of this proceeding. The agreement between Unipart and Jaguar does not contain provisions analogous to those for Dual Branded Parts; very few 'all-makes' parts are in fact suitable for fitting to Jaguar cars, and consequently there is little potential competition between Unipart's own product range and the parts that it distributes under contract with Jaguar;

(c) In relation to other customers — *viz.* independent wholesalers or retailers, dealers of other marques, or the general public through its own shops — Unipart is a supplier of a broad range of so-called 'all-makes' parts and accessories, consisting generally of the faster-selling parts and often, though not always, of parts capable of being fitted to several different models of one or more marques.

- (16) ARG and Unipart are in general exposed to direct or indirect competition from a large number of parts and components manufacturers, traders and even other vehicle manufacturers who offer ranges of 'all-makes' parts. In the abovementioned sectors of Unipart Branded, Dual Branded and Austin Rover Branded Parts (see above points 5 (a) to (c) and 7 (a) to (c)) the conditions of competition may be characterized as follows:

— dealers, repairers and end-users can obtain parts which are identical with or substitutable, for Unipart Branded Parts from many suppliers throughout the Community,

— most of the Dual Branded Parts are also subject to effective competition from several suppliers. Some of the Austin Rover Branded Parts are available only from ARG or from suppliers and sub-contractors which are licensed by ARG. Only to the extent that Unipart offers, with the consent of ARG, 'captive parts' is the determination of its sales conditions not influenced by effective competition. Captive parts are those which need to be identical with the corresponding components used when the new vehicle is assembled and for which no substitute products are created and offered: generally, parts for which demand is insufficient to induce independent part manufacturers to make them; occasionally, parts protected by patent or other rights.

(17) Unipart has agreements with wholesalers and retailers and also a number of retail shops of its own. The agreements between Unipart and its authorized dealers include exclusivity of supply of Unipart goods within an allotted territory, but no protection of that territory and no exclusivity of purchasing. Unipart authorized dealers, and indeed Unipart's own retail shops, are free to purchase non-Unipart products.

(18) An essential part of the legal and economic context in which the Agreement operates is the fact that ARG operates, with its importers and authorized re-sellers, a Community-wide exclusive and selective distribution system of the kind considered in Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85 (3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements⁽¹⁾.

That distribution system is not the subject of a request from any of the parties concerned for an exemption under Article 85 (3) of the Treaty by individual decision in respect of restrictive clauses which go beyond those already exempted under Regulation (EEC) No 123/85. In the light of Article 3 (4) of that Regulation, it can be assumed that spare parts which compete with those that are the subject of the Agreement in the present case between ARG and Unipart, and match their quality, have access to the ARG distribution system.

(19) In 1986, ARG's shares of the market for passenger cars were as follows:

— United Kingdom: 15,6 %,

— EUR-12: 3,8 %.

In the United Kingdom, ARG has about 440 distributor dealers and 600 retail dealers. ARG's turnover in 1986 amounted to £1 313 million and the Rover Group's turnover was £ 3 412 million.

(20) For the parts aftermarket, on which Unipart operates, there are no authoritative published statistics. Consequently, Unipart's market shares can only be estimated, and that only very approximately. They appear to be substantial in the United Kingdom, but considerably less so in the other Member States. Unipart's total turnover in 1986 was about £ 184 million.

(21) In response to its notice pursuant to Article 19 (3) of Regulation No 17, the Commission received observations from an association of undertakings in the parts-supply sector and from an undertaking which operates retail shops and workshops, principally supplying and fitting 'all-makes' parts for end-users. These observations can be summarized as follows.

(22) The association of undertakings expressed the fear that the provisions for the allocation of trade marks (points 5 and 7 above) might encourage the exploitation of such marks in a manner prejudicial to competition, in that actual and potential competitors for the supply of the parts in question might be disadvantaged in offering them to ARG dealers or to other dealers, repairers or users.

(23) The undertaking pointed out that, while it may now be true that there is widespread competition in the supply of the parts in question (point 16 above), so far as the United Kingdom is concerned, this may cease to be the case in the event of legislation proposed in the Department of Trade and Industry's White Paper of April 1986, which would confer a monopoly on the designers of parts for motor vehicles.

II. LEGAL APPRECIATION

(24) The Agreement between ARG and Unipart is caught by the general prohibition laid down in Article 85 (1) of the EEC Treaty. However, the conditions under which that provision may be declared inapplicable pursuant to Article 85 (3) are fulfilled.

⁽¹⁾ OJ No L 15, 18. 1. 1985, p. 16.

A. Article 85 (1)

- (25) The applicability of Article 85 (1) is not excluded merely because Unipart was formerly a fellow-subsubsidiary, with ARG, of Rover Group plc and the Agreement is connected with the privatization of Unipart. It is true that the transfer of effective ownership of Unipart to private investors is not the subject of an agreement caught by Article 85 (1). However, the obligations upon ARG and Unipart to coordinate their purchasing, quality standards and controls, stockholding, ordering and invoicing, marketing and distribution across a wide range of parts activities (see points 4 to 9 above) determine the competitive stance of the now mutually-independent undertakings over the long-term (see point 11 above) and are not a necessary and inherent part or condition of any such transfer of ownership.
- (26) However, Article 85 (1) is inapplicable in so far as the Agreement provides that Unipart shall promote the sales of Austin Rover Branded Parts for account of ARG and in consideration of a commission from ARG (point 7 (c) above). In this respect, Unipart acts in the role of an agent bearing no entrepreneurial risk (cf. Commission Notice on exclusive dealing contracts with commercial agents⁽¹⁾).
- (27) Otherwise, however, the parties have coordinated their purchasing and sales policies for parts that fit ARG vehicles in such a manner that, as regards the activities assigned to each party, each bears its own entrepreneurial risk (see point 7 (b) above). In this respect, it is irrelevant that Unipart has to make payments to ARG in consideration of ARG's investments which facilitate Unipart's distribution of parts, particularly the establishment of a dealer network for the sale and servicing of ARG vehicles.
- (28) A number of provisions of the Agreement have as their object and effect a restriction of competition within the common market, and are apt to affect trade between Member States (Articles 85 (1)).
- (29) Because Unipart is prevented from entering the field of Dual Branded Parts otherwise than in concert with ARG, Unipart is restricted in its business in a manner that other parts wholesalers that do not belong to a vehicle-manufacturer's single-marque distribution network ('independent wholesalers') are not. Consequently, Unipart is not freely available to act as a wholesaler for parts-makers in so far as they would like to sell through ARG's selected re-sellers (cf. points 7 (b) and 9 above).
- (30) The obligation upon Unipart to supply to the ARG distribution network, and to give preference to, the full range of parts required for ARG vehicles represents a restriction of Unipart's freedom to determine its range of products which fit ARG vehicles in a manner other than that laid down in the Agreement (cf. point 6 (d) above).
- (31) Furthermore, Unipart is prevented from selecting independently the channels of distribution for Dual Branded Parts. It can only distribute such parts through its own authorized dealers (and through certain other defined categories of customer), and not even through them to the extent that the Unipart authorized dealers are also authorized dealers of a vehicle manufacturer other than ARG (see point 8 above). It must offer distribution agreements to ARG's selected vehicle wholesale dealers to the extent that the latter satisfy Unipart's qualitative standards (point 6 (c) above). Unipart may not, without consulting ARG, make alterations within its distribution system that might affect ARG's interests regarding the distribution of Austin Rover and Dual Branded Parts (point 6 (c) above). These restrictions apply to all the ARG-fit parts which belong to the category of Dual Branded Parts and that generally bear both marks. Independent wholesalers that do not belong to either the ARG or the Unipart distribution network cannot obtain those parts directly from Unipart.
- (32) The obligation upon Unipart to transmit to authorized dealers ARG's non-binding recommendation of retail prices of certain Dual Branded Parts (point 7 (b) above) influences the purchasing and sales policies of ARG's dealers and the consumers, and thereby restricts Unipart's freedom to establish its own commercial and pricing structures.
- (33) The obligation upon ARG not itself or through others besides Unipart to offer parts to the aftermarket (point 6 (a) above) and to recommend, as spare parts and accessories for ARG vehicles, only Austin Rover Branded and Dual Branded Parts (point 6 (b) above) limits ARG's scope for competition. ARG dealers that may wish, by buying direct from ARG, to share in the advantages flowing from ARG's mass purchases of original equipment parts and of identical parts destined for the aftermarket, may be disadvantaged. The exclusion from direct trade with ARG of wholesalers that are in competition with Unipart may affect the competitive situation of these 'independents', especially in the field of parts which cannot be substituted by others ('captive parts').

(¹) OJ No 139, 24. 12. 1962, p. 2921/62.

- (34) The Agreement is apt to affect trade between Member States because its provisions appreciably limit the potential sales of numerous parts-makers in all Member States and of their re-sellers. It also determines the structure and conditions of supply of parts to ARG's authorized dealers throughout the Community.

B. Article 85 (3)

- (35) The Agreement is not already exempted from the prohibition contained in Article 85 (1) by virtue of a Commission block-exemption regulation. Neither Regulation (EEC) No 1983/83⁽¹⁾ on exclusive distribution agreements nor Regulation (EEC) No 1984/83⁽²⁾ on exclusive purchasing agreements nor Regulation (EEC) No 123/85 on motor vehicle distribution agreements is applicable. The parties have agreed between themselves restrictions not only on distribution, but also on the constitution of the ARG spare parts range, and a thoroughgoing coordination of purchases of such parts from third parties. Regulation (EEC) No 123/85 is in any event inapplicable, because it only covers agreements for the combined distribution of new motor vehicles and parts therefor.

- (36) However, the conditions for the application of Article 85 (3) are fulfilled in the present case. The vertical assignment of responsibilities agreed between the parties in regard to purchasing, stocking and distribution of parts improves the distribution of goods while allowing the consumer a fair share in the resulting benefit, without (a) imposing on the parties restrictions that are not indispensable for the realization of that object, or (b) affording the possibility of excluding competition for a substantial part of the goods concerned.

- (37) The Agreement makes it possible to realize the benefits of rationalization. The division of responsibilities between the parties results from ARG's decision not to carry on certain activities itself and from Unipart's decision to effect within the ARG dealer network the best possible provision for those parts that are needed for the maintenance, repair and equipment of ARG vehicles, which require ARG and Unipart to agree between themselves as regards the important area of Dual Branded Parts. In particular, the specialization of the parties' fields

of activity allows each to concentrate on the responsibilities assigned to it, without danger to its interests. It ensures that a full range of parts that repairers and consumers need for ARG vehicles can be asked for and supplied within a single distribution network, (cf. points 29 and 30 above). Because of the partial merger of the ARG and Unipart distribution networks, the purchases of the parts that the two parties have selected can be aggregated, to be passed on both to ARG's selected dealers and to Unipart's other outlets. This partial merger of networks also facilitates stockholding with a view to high availability and rapid delivery of parts. Following the separation of Unipart from the Rover group ARG would, if it were not to cooperate with a suitable wholesale undertaking, find itself without any capacity for purchasing, stockholding and distribution of spare parts.

- (38) Because Unipart need fear no competition from ARG (see point 33 above) and purchases of Dual Branded Parts are coordinated between the two parties, Unipart can concentrate its activities entirely on meeting the offers of its competitors — the other vehicle manufacturers, independent parts wholesalers, 'all-makes' suppliers and various distribution channels for the parts-makers.

- (39) The restrictions agreed are indispensable in order to improve the distribution of goods as intended. To remain competitive with other vehicle manufacturers, ARG must make provision for the supply of a full range of parts within its distribution and servicing network. Without Unipart's concentration on the Austin Rover Branded Parts selected by ARG and on the Dual Branded Parts that both parties select jointly, which are the means by which ARG fulfils its obligations towards its authorized dealers, these latter would themselves be unable to carry out their obligations under their distribution and servicing agreements with ARG. However, the ARG dealers have assumed such obligations in accordance with the provisions of Regulation (EEC) No 123/85 (cf. Article 3 (4) and (5) of that Regulation).

Moreover, it is only in respect of parts that fit ARG vehicles that Unipart has given up its freedom of purchase and sale and the unrestricted use of its own marks; others, however, can be sold as Unipart Branded Parts. Outside the ARG distribution system, Unipart is free to distribute parts that compete with Austin Rover Branded or Dual Branded Parts without using those marks, i.e. under its own or its suppliers's marks.

⁽¹⁾ OJ No L 173, 30. 6. 1983, p. 1.

⁽²⁾ OJ No L 173, 30. 6. 1983, p. 5.

- (40) The Agreement will not have the effect of excluding competition for a substantial part of the goods in question. In this field there is strong competition from numerous suppliers (see points 16 to 20 above). In the light of the large number of available wholesalers, manufacturers' representatives and other channels of distribution, the absence of Unipart as a channel of distribution for parts-makers wishing to sell to the ARG dealer network can be accepted.
- (41) It can be expected that consumers will benefit from the benefits realized, because the intensive competitive pressure that exists will ensure that some of those benefits are passed on. Advantages accrue directly to consumers (repairers, users and owners of ARG vehicles) from the increased availability of a complete range of parts for those vehicles. The intensive cooperation between ARG and Unipart ensures the availability on the aftermarket of parts that meet the specifications and safety standards that ARG, the vehicle manufacturer, has set for original components of its vehicles.
- (42) The foregoing appreciation is not affected by the operation of the agreement between Unipart and Jaguar (see point 15 (b) above). Unipart's product range hardly overlaps with that of Jaguar, and the arrangements between them do not involve the coordination of the approval and purchase of parts that arises in the (ARG) Agreement. Unipart's relationship to Jaguar more resembles that of a specialist supplier of the services of warehousing, distribution, accounting, etc. Consequently, there need be no fear of a conflict which might hinder Unipart in realizing the objects of the (ARG) Agreement.
- (43) The observations made to the Commission in response to the publication of the essential content of the Agreement pursuant to Article 19 (3) of Regulation No 17 by interested third parties do not alter the foregoing appreciation of the notified Agreement.
- (44) As to the allocation of marks (point 22 above), the parties to the Agreement have not bound themselves to use only their own product marks. The cooperation between ARG and Unipart in the categories of Austin Rover Branded and Dual Branded Parts does not prevent undertakings that manufacture such parts and supply them to one of the parties to the Agreement from arranging that their own marks shall be placed on those parts, alone or alongside the Austin Rover or Dual Brand marks. Whether they succeed in doing so depends on the result of negotiations with the purchasing party. There is no reason to suppose that because of the cooperation between the parties the resistance to the use of a supplier's mark will be stronger than in the case where the supplier has only the vehicle manufacturer to deal with. The notified Agreement does not improve the negotiating position of the parties to it.
- (45) The Commission is well aware that some vehicle manufacturers have a policy of not allowing the marks of any parts-suppliers to appear in addition to their own. This is a phenomenon that the Commission cannot assess in relation to competition law within the present proceeding; but the Commission reserves the right to examine it separately.
- (46) In the Commission's opinion, there is no special connection between the restrictive effects of the notified Agreement and any new legislation in the United Kingdom by which industrial property rights would be granted in respect of the shape of parts (cf. point 23 above): the question whether the exercise of such property rights need to be constrained by the application of the EEC Treaty competition rules, especially Article 86, falls to be considered not in the present proceeding but in any case in which manufacturers make use of such rights.
- C. Conditions of the exemption**
- (47) Pursuant to Article 6 (1) of Regulation No 17, the exemption can take effect from 7 July 1986. Pursuant to Article 8 (1), it can extend to the initial period of cooperation provided for by the parties, namely, until 28 February 1993.
- (48) In view of the shortness of that period, it is not necessary in the present case to impose on the parties an obligation, by way of conditions attached to the exemption, to submit before 28 February 1993 reports on the operation of the Agreement. If a continuation of the cooperation and a further notification come to be considered, the parties will in any event be obliged to show that the conditions of applicability of Article 85 (3) are still fulfilled,
- HAS ADOPTED THIS DECISION:**
- Article 1*
1. Pursuant to Article 85 (3) of the EEC Treaty, the provisions of Article 85 (1) are hereby declared inapplicable to the Agreement dated 28 February 1986 between Austin Rover Group Limited and Unipart Group Limited.

2. The exemption pursuant to paragraph 1 shall have effect from 7 July 1986 to 28 February 1993.

2. Unipart Group Limited,
Garsington Road,
Cowley,
UK - Oxford OX4 2PG.

Article 2

This Decision is addressed to the following undertakings :

Done at Brussels, 22 December 1987.

1. Austin Rover Group Limited,
Fletchamstead Highway,
Canley,
UK - Coventry CV4 9BD ;

For the Commission
Peter SUTHERLAND
Member of the Commission