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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 298/89

of 6 February 1989

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) No 166/89⁽²⁾, and in particular Article 13 (5) thereof,

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

Having regard to the opinion of the Monetary Committee,

Whereas the import levies on cereals, wheat and rye flour, and wheat groats and meal were fixed by Commission Regulation (EEC) No 2401/88⁽⁵⁾ and subsequent amending Regulations;

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

- in the case of currencies which are maintained in relation to each other at any given moment within a band of 2,25 %, a rate of exchange based on their central

rate, multiplied by the corrective factor provided for in the last paragraph of Article 3 (1) of Regulation (EEC) No 1676/85,

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

Whereas these exchange rates being those recorded on 3 February 1989;

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

Whereas it follows from applying the detailed rules contained in Regulation (EEC) No 2401/88 to today's offer prices and quotations known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The import levies to be charged on products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 2727/75 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 7 February 1989.

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 20, 25. 1. 1989, p. 16.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 205, 30. 7. 1988, p. 96.

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

Done at Brussels, 6 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

ANNEX

to the Commission Regulation of 6 February 1989 fixing the import levies on cereals and on wheat or rye flour, groats and meal

CN code	Levies	
	Portugal	Third country
0709 90 60	20,50	123,98
0712 90 19	20,50	123,98
1001 10 10	53,13	166,90 ⁽¹⁾ ⁽²⁾
1001 10 90	53,13	166,90 ⁽¹⁾ ⁽²⁾
1001 90 91	14,94	113,74
1001 90 99	14,94	113,74
1002 00 00	58,63	109,93 ⁽³⁾
1003 00 10	49,19	117,22
1003 00 90	49,19	117,22
1004 00 10	40,25	71,01
1004 00 90	40,25	71,01
1005 10 90	20,50	123,98 ⁽²⁾ ⁽³⁾
1005 90 00	20,50	123,98 ⁽²⁾ ⁽³⁾
1007 00 90	43,84	135,97 ⁽⁴⁾
1008 10 00	49,19	21,18
1008 20 00	49,19	71,85 ⁽⁴⁾
1008 30 00	49,19	0,00 ⁽⁵⁾
1008 90 10	(7)	(7)
1008 90 90	49,19	0,00
1101 00 00	35,10	173,42
1102 10 00	96,27	168,09
1103 11 10	95,80	271,18
1103 11 90	36,65	186,03

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

⁽²⁾ In accordance with Regulation (EEC) No 486/85 the levies are not applied to imports into the French overseas departments of products originating in the African, Caribbean and Pacific States or in the 'overseas countries and territories'.

⁽³⁾ Where maize originating in the ACP or OCT is imported into the Community the levy is reduced by ECU 1,81/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 ECU 0,60/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 (OJ No L 142, 9. 6. 1977, p. 10) and Commission Regulation (EEC) No 2622/71 (OJ No L 271, 10. 12. 1971, p. 22).

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

COMMISSION REGULATION (EEC) No 299/89

of 6 February 1989

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 Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals⁽¹⁾, as last amended by Regulation (EEC) No 166/89⁽²⁾, and in particular Article 15 (6) thereof,

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

Having regard to the opinion of the Monetary Committee,

Whereas the premiums to be added to the levies on cereals and malt were fixed by Commission Regulation (EEC) No 2402/88⁽⁵⁾ and subsequent amending Regulations;

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

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

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

Whereas these exchange rates being those recorded on 3 February 1989;

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 7 February 1989.

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

Done at Brussels, 6 February 1989.

For the Commission:

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 281, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 20, 25. 1. 1989, p. 16.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 205, 30. 7. 1988, p. 99.

ANNEX

to the Commission Regulation of 6 February 1989 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	7,96
1001 10 90	0	0	0	7,96
1001 90 91	0	0	0	3,22
1001 90 99	0	0	0	3,22
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	4,51

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	5,73	5,73
1107 10 19	0	0	0	4,28	4,28
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 300/89
of 6 February 1989
fixing the export refunds on milk and milk products

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 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 1109/88 ⁽²⁾, and in particular Article 17 (5) thereof,

Having regard to the opinion of the Monetary Committee,

Whereas Article 17 of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 876/68 of 28 June 1968 laying down general rules for granting export refunds on milk and milk products and criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EEC) No 1344/86 ⁽⁴⁾, provides that when the refunds on the products listed in Article 1 of Regulation (EEC) No 804/68, exported in the natural state, are being fixed account must be taken of:

- the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,
- marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,
- the aims of the common organization of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,

— the need to avoid disturbances on the Community market, and

— the economic aspect of the proposed exports;

Whereas Article 3(1) of Regulation (EEC) No 876/68 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

- (a) prices ruling on third country markets;
- (b) the most favourable prices in third countries of destination for third country imports;
- (c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and
- (d) free-at-Community-frontier offer prices;

Whereas Article 4 of Regulation (EEC) No 876/68 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of Regulation (EEC) No 804/68 according to destination;

Whereas Article 5(1) of Regulation (EEC) No 876/68 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas, in accordance with Article 2 of Commission Regulation (EEC) No 1098/68 of 27 July 1968 on detailed rules for the application of export refunds on milk and milk products ⁽⁵⁾, as last amended by Regulation (EEC) No 222/88 ⁽⁶⁾, the refund granted for milk products containing added sugar is equal to the sum of the two components, one of which is intended to take account of the quantity of milk products and the other is intended to take account of the quantity of added sucrose; whereas, however, the latter component is applied only if the added sucrose was produced from sugar beet or cane harvested in the Community;

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 110, 29. 4. 1988, p. 27.

⁽³⁾ OJ No L 155, 3. 7. 1968, p. 1.

⁽⁴⁾ OJ No L 119, 8. 5. 1986, p. 36.

⁽⁵⁾ OJ No L 184, 29. 7. 1968, p. 10.

⁽⁶⁾ OJ No L 28, 1. 2. 1988, p. 1.

Whereas, for products falling within subheadings ex 0402 99 11, ex 0402 99 19, ex 0404 90 51, ex 0404 90 53, ex 0404 90 91 and ex 0404 90 93 of the combined nomenclature, with a fat content by weight not exceeding 9,5 % and a non-fatty milk content in the dry matter equal to or greater than 15 % by weight, the former abovementioned component is fixed for 100 kilograms of the whole product; whereas, for the other products containing added sugar falling within headings 0402 and 0404, that component is calculated by multiplying the basic amount by the milk products content of the product concerned; whereas that basic amount is equal to the refund to be fixed for one kilogram of milk products contained in the whole product;

Whereas the second component is calculated by multiplying the sucrose content of the product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1 (1) (d) of Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 2306/88⁽²⁾;

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⁽³⁾, as last amended by Regulation (EEC) No 1636/87⁽⁴⁾,
- 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 level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no

refund for cheeses of a free-at-frontier value less than 140 ECU/100 kg;

Whereas Commission Regulation (EEC) No 896/84⁽⁵⁾, as last amended by Regulation (EEC) No 222/88, laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for the possibility of varying refunds according to the date of manufacture of the products;

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

Whereas, pursuant to Article 275 of the Act of Accession of Spain and Portugal, refunds may be granted in the case of exports to Portugal; whereas, in the light of the situation and the level of prices no refund should be fixed in the case of exports to Portugal;

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

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex.
2. There shall be no refunds for exports to Zone E for products falling within heading Nos 0401, 0402, 0403, 0404, 0405 and 2309 of the combined nomenclature.
3. There shall be no refunds for exports to Portugal, including the Azores and Madeira for milk and milk products listed in Article 1 of Regulation (EEC) No 804/68.

Article 2

This Regulation shall enter into force on 7 February 1989.

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

Done at Brussels, 6 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 201, 27. 7. 1988, p. 65.

⁽³⁾ OJ No L 164, 24. 6. 1985, p. 1.

⁽⁴⁾ OJ No L 153, 13. 6. 1987, p. 1.

⁽⁵⁾ OJ No L 91, 1. 4. 1984, p. 71.

ANNEX

to the Commission Regulation of 6 February 1989 fixing the export refunds on milk and milk products

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0401 10 10 000		5,64
0401 10 90 000		5,64
0401 20 11 100		5,64
0401 20 11 500		9,08
0401 20 19 100		5,64
0401 20 19 500		9,08
0401 20 91 100		12,31
0401 20 91 500		14,46
0401 20 99 100		12,31
0401 20 99 500		14,46
0401 30 11 100		18,77
0401 30 11 400		29,32
0401 30 11 700		44,39
0401 30 19 100		18,77
0401 30 19 400		29,32
0401 30 19 700		44,39
0401 30 31 100		53,00
0401 30 31 400		83,14
0401 30 31 700		91,75
0401 30 39 100		53,00
0401 30 39 400		83,14
0401 30 39 700		91,75
0401 30 91 100		104,67
0401 30 91 400		154,19
0401 30 91 700		180,02
0401 30 99 100		104,67
0401 30 99 400		154,19
0401 30 99 700		180,02
0402 10 11 000		62,00
0402 10 19 000		62,00
0402 10 91 000		0,6200
0402 10 99 000		0,6200
0402 21 11 200		62,00
0402 21 11 300		96,31
0402 21 11 500		102,84
0402 21 11 900		112,06
0402 21 17 000		62,00
0402 21 19 300		96,31
0402 21 19 500		102,84
0402 21 19 900		112,06
0402 21 91 100		113,05
0402 21 91 200		113,99
0402 21 91 300		115,71
0402 21 91 400		125,81
0402 21 91 500		129,25
0402 21 91 600		142,31
0402 21 91 700		150,25
0402 21 91 900		159,00
0402 21 99 100		113,05

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0402 21 99 200		113,99
0402 21 99 300		115,71
0402 21 99 400		125,81
0402 21 99 500		129,25
0402 21 99 600		142,31
0402 21 99 700		150,25
0402 21 99 900		159,00
0402 29 15 200		0,6200
0402 29 15 300		0,9631
0402 29 15 500		1,0284
0402 29 15 900		1,1206
0402 29 19 200		0,6200
0402 29 19 300		0,9631
0402 29 19 500		1,0284
0402 29 19 900		1,1206
0402 29 91 100		1,1305
0402 29 91 500		1,2581
0402 29 99 100		1,1305
0402 29 99 500		1,2581
0402 91 11 110		5,64
0402 91 11 120		12,31
0402 91 11 310		19,86
0402 91 11 350		25,09
0402 91 11 370		31,42
0402 91 19 110		5,64
0402 91 19 120		12,31
0402 91 19 310		19,86
0402 91 19 350		25,09
0402 91 19 370		31,42
0402 91 31 100		25,01
0402 91 31 300		37,13
0402 91 39 100		25,01
0402 91 39 300		37,13
0402 91 51 000		29,32
0402 91 59 000		29,32
0402 91 91 000		104,67
0402 91 99 000		104,67
0402 99 11 110		0,0564
0402 99 11 130		0,1231
0402 99 11 150		0,2056
0402 99 11 310		22,91
0402 99 11 330		28,25
0402 99 11 350		38,70
0402 99 19 110		0,0564
0402 99 19 130		0,1231
0402 99 19 150		0,2056
0402 99 19 310		22,91
0402 99 19 330		28,25
0402 99 19 350		38,70
0402 99 31 110		0,2717
0402 99 31 150		40,42
0402 99 31 300		0,5300
0402 99 31 500		0,9175
0402 99 39 110		0,2717
0402 99 39 150		40,42
0402 99 39 300		0,5300

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0402 99 39 500		0,9175
0402 99 91 000		1,0467
0402 99 99 000		1,0467
0403 10 11 100		5,64
0403 10 11 300		9,08
0403 10 13 000		12,31
0403 10 19 000		18,77
0403 10 31 100		0,0564
0403 10 31 300		0,0908
0403 10 33 000		0,1231
0403 10 39 000		0,1877
0403 90 11 000		62,00
0403 90 13 000		62,00
0403 90 19 000		113,05
0403 90 31 000		0,6200
0403 90 33 000		0,6200
0403 90 39 000		1,1305
0403 90 51 100		5,64
0403 90 51 300		9,08
0403 90 53 000		12,31
0403 90 59 110		18,77
0403 90 59 140		29,32
0403 90 59 170		44,39
0403 90 59 310		53,00
0403 90 59 340		83,14
0403 90 59 370		91,75
0403 90 59 510		104,67
0403 90 59 540		154,19
0403 90 59 570		180,02
0403 90 61 100		0,0564
0403 90 61 300		0,0908
0403 90 63 000		0,1231
0403 90 69 000		0,1877
0404 90 11 100		62,00
0404 90 11 910		5,64
0404 90 11 950		19,86
0404 90 13 120		62,00
0404 90 13 130		96,31
0404 90 13 140		102,84
0404 90 13 150		112,06
0404 90 13 911		5,64
0404 90 13 913		12,31
0404 90 13 915		18,77
0404 90 13 917		29,32
0404 90 13 919		44,39
0404 90 13 931		19,86
0404 90 13 933		25,09
0404 90 13 935		31,42
0404 90 13 937		37,13
0404 90 13 939		38,87
0404 90 19 110		113,05
0404 90 19 115		113,99
0404 90 19 120		115,71
0404 90 19 130		125,81
0404 90 19 135		129,25

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 19 150		142,31
0404 90 19 160		150,25
0404 90 19 180		159,00
0404 90 19 900		—
0404 90 31 100		62,00
0404 90 31 910		5,64
0404 90 31 950		19,86
0404 90 33 120		62,00
0404 90 33 130		96,31
0404 90 33 140		102,84
0404 90 33 150		112,06
0404 90 33 911		5,64
0404 90 33 913		12,31
0404 90 33 915		18,77
0404 90 33 917		29,32
0404 90 33 919		44,39
0404 90 33 931		19,86
0404 90 33 933		25,09
0404 90 33 935		31,42
0404 90 33 937		37,13
0404 90 33 939		38,87
0404 90 39 110		113,05
0404 90 39 115		113,99
0404 90 39 120		115,71
0404 90 39 130		125,81
0404 90 39 150		129,25
0404 90 39 900		—
0404 90 51 100		0,6200
0404 90 51 910		0,0564
0404 90 51 950		22,91
0404 90 53 110		0,6200
0404 90 53 130		0,9631
0404 90 53 150		1,0284
0404 90 53 170		1,1206
0404 90 53 911		0,0564
0404 90 53 913		0,1231
0404 90 53 915		0,1877
0404 90 53 917		0,2932
0404 90 53 919		0,4439
0404 90 53 931		22,91
0404 90 53 933		28,25
0404 90 53 935		38,70
0404 90 53 937		40,42
0404 90 53 939		—
0404 90 59 130		1,1305
0404 90 59 150		1,2581
0404 90 59 930		0,6377
0404 90 59 950		0,9175
0404 90 59 990		1,0467
0404 90 91 100		0,6200
0404 90 91 910		0,0564
0404 90 91 950		22,91
0404 90 93 110		0,6200
0404 90 93 130		0,9631
0404 90 93 150		1,0284

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0404 90 93 170		1,1206
0404 90 93 911		0,0564
0404 90 93 913		0,1231
0404 90 93 915		0,1877
0404 90 93 917		0,2932
0404 90 93 919		0,4439
0404 90 93 931		22,91
0404 90 93 933		28,25
0404 90 93 935		38,70
0404 90 93 937		40,42
0404 90 93 939		—
0404 90 99 130		1,1305
0404 90 99 150		1,2581
0404 90 99 930		0,6377
0404 90 99 950		0,9175
0404 90 99 990		1,0467
0405 00 10 100		—
0405 00 10 200		139,88
0405 00 10 300		175,98
0405 00 10 500		180,49
0405 00 10 700		185,00
0405 00 90 100		185,00
0405 00 90 900		232,00
0406 10 10 000		—
0406 10 90 000		—
0406 20 90 100		—
0406 20 90 913	028	—
	032	—
	400	75,00
	404	—
	...	87,74
0406 20 90 915	028	—
	032	—
	400	100,00
	404	—
	...	116,99
0406 20 90 917	028	—
	032	—
	400	106,25
	404	—
	...	124,30
0406 20 90 919	028	—
	032	—
	400	118,75
	404	—
	...	138,92
0406 20 90 990		—
0406 30 31 100		—
0406 30 31 300	028	—
	032	—
	036	—
	038	—
	400	15,41
	404	—
	...	23,26

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 31 500	028	—
	032	—
	036	—
	038	—
	400	33,48
	404	—
	...	50,52
0406 30 31 710	028	—
	032	—
	036	—
	038	—
	400	33,48
	404	—
	...	50,52
0406 30 31 730	028	—
	032	—
	036	—
	038	—
	400	49,14
	404	—
	...	74,16
0406 30 31 910	028	—
	032	—
	036	—
	038	—
	400	33,48
	404	—
	...	50,52
0406 30 31 930	028	—
	032	—
	036	—
	038	—
	400	49,14
	404	—
	...	74,16
0406 30 31 950	028	—
	032	—
	036	—
	038	—
	400	71,56
	404	—
	...	108,00
0406 30 39 100	—	—
0406 30 39 300	028	—
	032	—
	036	—
	038	—
	400	33,48
	404	20,00
	...	50,52

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 30 39 500	028	—
	032	—
	036	—
	038	—
	400	49,14
	404	28,00
	...	74,16
0406 30 39 700	028	—
	032	—
	036	—
	038	—
	400	71,56
	404	—
	...	108,00
0406 30 39 930	028	—
	032	—
	036	—
	038	—
	400	71,56
	404	—
	...	108,00
0406 30 39 950	028	—
	032	—
	036	—
	038	—
	400	87,34
	404	—
	...	131,82
0406 30 90 000	028	—
	032	—
	036	—
	038	—
	400	87,34
	404	—
	...	131,82
0406 40 00 100	028	—
0406 40 00 900	032	—
	038	—
	400	65,00
	404	—
	...	131,51
	028	—
0406 90 13 000	032	—
	036	—
	038	—
	400	96,00
	404	—
	...	164,34
	028	—
0406 90 15 100	032	—
	036	—
	038	—
	400	96,00
	404	—
	...	164,34
	028	—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 15 900		—
0406 90 17 100	028	—
	032	—
	036	—
	038	—
	400	96,00
	404	—
	...	164,34
0406 90 17 900		—
0406 90 21 100		—
0406 90 21 900	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	156,68
0406 90 23 100		—
0406 90 23 900	028	—
	032	—
	036	—
	038	—
	400	50,00
	404	—
	...	140,35
0406 90 25 100		—
0406 90 25 900	028	—
	032	—
	036	—
	038	—
	400	50,00
	404	—
	...	140,35
0406 90 27 100		—
0406 90 27 900	028	—
	032	—
	036	—
	038	—
	400	43,18
	404	—
	...	119,71
0406 90 31 111		—
0406 90 31 119	028	—
	032	—
	036	—
	038	15,00
	400	48,06
	404	16,00
	...	93,27

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 31 151	028	—
	032	—
	036	—
	038	—
	400	44,92
	404	14,96
	...	87,18
0406 90 31 159		—
0406 90 31 900		—
0406 90 33 111		—
0406 90 33 119	028	—
	032	—
	036	—
	038	15,00
	400	48,06
	404	16,00
	...	93,27
0406 90 33 151	028	—
	032	—
	036	—
	038	—
	400	44,92
	404	14,96
	...	87,18
0406 90 33 159		—
0406 90 33 911		—
0406 90 33 919	028	—
	032	—
	036	—
	038	15,00
	400	48,06
	404	16,00
	...	93,27
0406 90 33 951	028	—
	032	—
	036	—
	038	—
	400	44,92
	404	14,96
	...	87,18
0406 90 33 959		—
0406 90 35 110		—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 35 190	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	163,54
0406 90 35 910		—
0406 90 35 990	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	135,00
0406 90 61 000	028	—
	032	—
	036	90,00
	400	170,00
	404	140,00
	...	190,00
0406 90 63 100	028	—
	032	—
	036	105,03
	400	220,00
	404	160,00
	...	217,12
0406 90 63 900	028	—
	032	—
	036	70,00
	400	130,00
	404	80,00
	...	170,00
0406 90 69 100		—
0406 90 69 910	028	—
	032	—
	036	70,00
	400	130,00
	404	80,00
	...	170,00
0406 90 69 990		—
0406 90 71 100		—
0406 90 71 930	028	13,50
	032	13,50
	036	—
	038	—
	400	40,26
	404	—
	...	91,15

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 71 950	028	20,00
	032	20,00
	036	—
	038	—
	400	44,39
	404	—
	...	100,50
0406 90 71 970	028	24,00
	032	24,00
	036	—
	038	—
	400	50,45
	404	—
	...	114,22
0406 90 71 991	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	135,00
0406 90 71 995	028	27,50
	032	27,50
	036	—
	038	—
	400	50,00
	404	—
	...	140,35
0406 90 71 999		—
0406 90 73 100		—
0406 90 73 900	028	—
	032	—
	036	42,66
	400	160,00
	404	120,00
	...	156,00
0406 90 75 100		—
0406 90 75 900	028	—
	032	—
	036	—
	400	50,00
	404	—
	...	130,96
0406 90 77 100	028	24,00
	032	24,00
	036	—
	038	—
	400	45,21
	404	—
	...	114,22

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 77 300	028	—
	032	—
	036	—
	038	—
	400	50,00
	404	—
	...	140,35
0406 90 77 500	028	—
	032	—
	036	—
	038	—
	400	60,00
	404	—
	...	140,35
0406 90 79 100		—
0406 90 79 900	028	—
	032	—
	036	—
	038	—
	400	43,18
	404	—
	...	119,71
0406 90 81 100		—
0406 90 81 900	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	135,00
0406 90 83 100		—
0406 90 83 910		—
0406 90 83 950	028	—
	032	—
	400	30,02
	404	—
	...	50,97
0406 90 83 990	028	—
	032	—
	400	30,02
	404	—
	...	50,97
0406 90 85 100		—
0406 90 85 910	028	—
	032	—
	036	42,67
	400	160,00
	404	90,00
	...	163,54

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 85 991	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	135,00
0406 90 85 995	028	27,50
	032	27,50
	036	—
	038	—
	400	50,00
	404	—
	...	140,35
0406 90 85 999		—
0406 90 89 100	028	13,50
	032	13,50
	036	—
	038	—
	400	40,26
	404	—
	...	91,15
0406 90 89 200	028	20,00
	032	20,00
	036	—
	038	—
	400	44,39
	404	—
	...	100,50
0406 90 89 300	028	24,00
	032	24,00
	036	—
	038	—
	400	50,45
	404	—
	...	114,22
0406 90 89 910		—
0406 90 89 951	028	—
	032	—
	036	42,66
	400	160,00
	404	90,00
	...	156,00
0406 90 89 959	028	—
	032	—
	036	—
	038	—
	400	100,00
	404	—
	...	135,00

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
0406 90 89 971	028	27,50
	032	27,50
	036	—
	038	—
	400	59,00
	404	—
	...	140,35
0406 90 89 972	028	—
	032	—
	400	30,02
	404	—
	...	50,97
0406 90 89 979	028	27,50
	032	27,50
	036	—
	038	—
	400	59,00
	404	—
	...	140,35
0406 90 89 990		—
0406 90 91 100		—
0406 90 91 300	028	—
	032	—
	036	—
	038	—
	400	18,09
	404	—
	...	21,46
0406 90 91 510	028	—
	032	—
	036	—
	038	—
	400	31,72
	404	—
	...	37,62
0406 90 91 550	028	—
	032	—
	036	—
	038	—
	400	38,62
	404	—
	...	45,81
0406 90 91 900		—
0406 90 93 000		—
0406 90 97 000		—
0406 90 99 000		—
2309 10 15 010		—
2309 10 15 100		—
2309 10 15 200		—
2309 10 15 300		—
2309 10 15 400		—
2309 10 15 500		—
2309 10 15 700		—

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund
2309 10 15 900		—
2309 10 19 010		—
2309 10 19 100		—
2309 10 19 200		—
2309 10 19 300		—
2309 10 19 400		—
2309 10 19 500		—
2309 10 19 600		—
2309 10 19 700		—
2309 10 19 800		—
2309 10 19 900		—
2309 10 70 010		—
2309 10 70 100		18,60
2309 10 70 200		24,80
2309 10 70 300		31,00
2309 10 70 500		37,20
2309 10 70 600		43,40
2309 10 70 700		49,60
2309 10 70 800		54,56
2309 10 70 900		—
2309 90 35 010		—
2309 90 35 100		—
2309 90 35 200		—
2309 90 35 300		—
2309 90 35 400		—
2309 90 35 500		—
2309 90 35 700		—
2309 90 35 900		—
2309 90 39 010		—
2309 90 39 100		—
2309 90 39 200		—
2309 90 39 300		—
2309 90 39 400		—
2309 90 39 500		—
2309 90 39 600		—
2309 90 39 700		—
2309 90 39 800		—
2309 90 39 900		—
2309 90 70 010		—
2309 90 70 100		18,60
2309 90 70 200		24,80
2309 90 70 300		31,00
2309 90 70 500		37,20
2309 90 70 600		43,40
2309 90 70 700		49,60
2309 90 70 800		54,56
2309 90 70 900		—

(¹) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EEC) No 3639/86 (OJ No L 336, 29. 11. 1986, p. 46).

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by ***.

Where no destination is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1 (2) and (3).

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 as amended (OJ No L 366, 24. 12. 1987, p. 1).

COMMISSION REGULATION (EEC) No 301/89

of 6 February 1989

on the supply of various consignments of cereals as food aid

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

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

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

Whereas following the taking of a number of decisions on the allocation of food aid the Commission has allocated to certain countries and beneficiary organizations 27 000 tonnes of cereals;

Whereas it is necessary to provide for the carrying-out of this measure in accordance with the rules laid down by

Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid ⁽⁴⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 6 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 370, 30. 12. 1986, p. 1.

⁽²⁾ OJ No L 168, 1. 7. 1988, p. 7.

⁽³⁾ OJ No L 136, 26. 5. 1987, p. 1.

⁽⁴⁾ OJ No L 204, 25. 7. 1987, p. 1.

ANNEX I

1. **Operation No (1):** 1189/87
2. **Programme:** 1988
3. **Recipient:** Peru
4. **Representative of the recipient (2):** Oficina Nacional de Apoyo Alimentario (ONAA), Natalio Sánchez, n° 220, Piso 14, Jesus Maria, Lima, Perú; tel. 24 24 64
5. **Place or country of destination:** Peru
6. **Product to be mobilized:** common wheat
7. **Characteristics and quality of the goods (3) (7):**
See list published in OJ No C 216, 14. 8. 1987, p. 3 (under II.A.1)
Specific characteristics: protein content 11 % minimum
8. **Total quantity:** 4 000 tonnes
9. **Number of lots:** one
10. **Packaging and marking (4):**
See list published in OJ No C 216, 14. 8. 1987, p. 3 (under II.B.1c):
'ACCIÓN N° 1189/88 / TRIGO TIERNO / DONACIÓN DE LA COMUNIDAD ECONÓMICA EUROPEA A PERÚ / DISTRIBUCIÓN GRATUITA'
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at port of landing — landed
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** Callao
16. **Address of the warehouse and, if appropriate, port of landing:** —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 5 to 31. 3. 1989
18. **Deadline for the supply:** 30. 4. 1989
19. **Procedure for determining the costs of supply:** tendering
20. **Date of expiry of the period allowed for submission of tenders:** 12 noon on 21. 2. 1989
21. **In the case of a second invitation to tender:**
 - (a) deadline for the submission of tenders: 12 noon on 28. 2. 1989
 - (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 10 to 31. 3. 1989
 - (c) deadline for the supply: 30. 4. 1989
22. **Amount of the tendering security:** ECU 5 per tonne
23. **Amount of the delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders (5):**
Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, bâtiment Loi 120, bureau 7/58 200, rue de la Loi, B-1049 Bruxelles; telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer (6):**
Refund applicable on 31. 1. 1989 fixed by Commission Regulation (EEC) No 4067/88 in OJ No L 356, 24. 12. 1988, p. 62

ANNEX II

1. **Operation No⁽¹⁾**: 1188/88
2. **Programme**: 1988
3. **Recipient**: Peru
4. **Representative of the recipient⁽²⁾**: Ambassade du Pérou, 179, avenue de Tervuren, B-1040 Bruxelles;
tel 733 33 19, telex 24577 AMB Pérou
5. **Place or country of destination**: Peru
6. **Product to be mobilized**: durum wheat
7. **Characteristics and quality of the goods⁽³⁾ (7)**:
See list published in OJ No C 216, 14. 8. 1987, p. 3 (under II.A.2)
8. **Total quantity**: 8 000 tonnes
9. **Number of lots**: one
10. **Packaging**: in bulk
11. **Method of mobilization**: the Community market
12. **Stage of supply**: free at port of landing — landed
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: Callao
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage**: 5 to 31. 3. 1989
18. **Deadline for the supply**: 30. 4. 1989
19. **Procedure for determining the costs of supply**: tendering
20. **Date of expiry of the period allowed for submission of tenders**: 21. 2. 1989, at 12 noon
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 28. 2. 1989, at 12 noon
 - (b) period for making the goods available at the port of shipment: 10 to 31. 3. 1989
 - (c) deadline for the supply: 30. 4. 1989
22. **Amount of the tendering security**: ECU 5 per tonne
23. **Amount of the delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders⁽⁵⁾**:

Bureau de l'aide alimentaire,
à l'attention de Monsieur N. Arend,
bâtiment Loi 120, bureau 7/58,
200, rue de la Loi,
B-1049 Bruxelles;
telex AGREC 22037 B
25. **Refund payable on request by the successful tenderer⁽⁶⁾**:

Refund applicable on 31. 2. 1989 fixed by Commission Regulation (EEC) No 4067/88 in OJ No L 356,
24. 12. 1988, p. 62

ANNEX III

1. **Operation No (¹):** 9/89, 10/89 and 11/89
2. **Programme:** 1988
3. **Recipient:** Algeria
4. **Representative of the recipient (²):** Croissant rouge algérien, Comité National, 15 bis, Bld Mohamed V, Alger — Dr Mouloud Belaouane — telex 52914 HILAL — ALGER, tel. 61 07 41
5. **Place or country of destination:** Algeria
6. **Product to be mobilized:** durum wheat semolina
7. **Characteristics and quality of the goods (³):**
 - durum wheat semolina of sound and fair merchantable quality and free of pests:
 - granularity using a sieving test: the semolina shall pass through a sieve of 0,187 aperture size (with a maximum of 10 % remaining in the sieve)
 - moisture content: maximum 14,5 %
 - percentage dry matter:
 - ash: minimum 0,70 to maximum 0,85
 - cellulose: minimum 0,20 to maximum 0,45
8. **Total quantity:** 9 450 tonnes (15 000 tonnes of cereals)
9. **Number of lots:** three
 - Lot A: 3 150 tonnes (Operation No 9/89)
 - Lot B: 3 150 tonnes (Operation No 10/89)
 - Lot C: 3 150 tonnes (Operation No 11/89)
10. **Packaging and marking (⁴):** see list published in OJ No C 216, 14. 8. 1987, p. 3 (under II.B.2(d))
 - marking on the bags in letters at least 5 cm high:
 - A — 3 150 tonnes: 'ACTION N° 9/89 / SEMOULE DE BLÉ DUR / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE À L'ALGÉRIE'
 - B — 3 150 tonnes: 'ACTION N° 10/89 / SEMOULE DE BLÉ DUR / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE À L'ALGÉRIE'
 - C — 3 150 tonnes: 'ACTION N° 11/89 / SEMOULE DE BLÉ DUR / DON DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE À L'ALGÉRIE'
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at destination
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** Dépôt central du Croissant Rouge algérien, Diar es Saada, Alger
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 1 to 30. 3. 1989
18. **Deadline for the supply:** 15. 4. 1989
19. **Procedure for determining the costs of supply:** tendering
20. **Date of expiry of the period allowed for submission of tenders:** 21. 2. 1989, at 12 noon

21. In the case of a second invitation to tender :

- (a) deadline for the submission of tenders : 7. 3. 1989 at 12 noon
- (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage : 10 to 31. 3. 1989
- (c) deadline for the supply : 15. 4. 1989

22. Amount of the tendering security : ECU 5 per tonne**23. Amount of the delivery security : 10 % of the amount of the tender in ecus****24. Address for submission of tenders (°) :**

Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, bâtiment Loi 120, bureau 7/58, 200, rue de la Loi, B-1049 Bruxelles ; telex AGREC 22037 B

25. Refund payable on request by the successful tenderer (°) : refund applicable on 31. 1. 1989, fixed by Commission Regulation (EEC) No 4067/88 in OJ No L 356, 24. 12. 1988, p. 62**Notes :**

(°) The operation number is to be quoted in all correspondence.

(°) Commission delegate to contact by the successful tenderer :

I + II : M. Boselli, Délégation CEE, Quinta Bienvenida, Calle Colibri, Valle Arriba, Apartado 67076, Las Américas 1061, Caracas ; telex 66067 EURAL DZ.

III : M. J-P. Jesse, 36 rue Arezki, Hydra, 16300 Algiers ; tel. 59 08 22, telex 27298 COMEU VC.

(°) The successful tenderer shall supply to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.

The radioactivity certificate must indicate the caesium-134 and -137 levels.

(°) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

(°) In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of this Annex, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferably :

- either by porter at the office referred to in point 24 of this Annex,
- or by telecopier on one of the following numbers in Brussels :
 - 235 01 32,
 - 236 10 97,
 - 235 01 30,
 - 236 20 05.

(°) Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987) is applicable as regards the export refund and, where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of this Annex.

(°) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents :

- phytosanitary certificate,
- certificate of origin.

COMMISSION REGULATION (EEC) No 302/89

of 6 February 1989

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

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

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

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

Whereas Commission Regulation (EEC) No 258/89⁽³⁾ introduced a countervailing charge on fresh lemons originating in Spain (except the Canary Islands);

Whereas the present trend of prices for these products on the representative markets referred to in Commission Regulation (EEC) No 2118/74⁽⁴⁾, as last amended by Regulation (EEC) No 3811/85⁽⁵⁾, recorded or calculated in accordance with the provisions of Article 5 of that Regulation, indicates that the application of the first subparagraph of Article 26 (1) of Regulation (EEC) No 1035/72 would result in the countervailing charge being

fixed at zero; whereas the conditions specified in the second indent of Article 26 (1) of Regulation (EEC) No 1035/72 are therefore fulfilled and the countervailing charge on imports of these products originating in Spain (except the Canary Islands) can be abolished;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 258/89 is hereby repealed.

Article 2

This Regulation shall enter into force on 7 February 1989.

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

Done at Brussels, 6 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽²⁾ OJ No L 198, 26. 7. 1988, p. 1.

⁽³⁾ OJ No L 30, 1. 2. 1989, p. 56.

⁽⁴⁾ OJ No L 220, 10. 8. 1974, p. 20.

⁽⁵⁾ OJ No L 368, 31. 12. 1985, p. 1.

COMMISSION REGULATION (EEC) No 303/89**of 6 February 1989****fixing the import levies on white sugar and raw sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

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

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

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 2336/88 ⁽³⁾, as last amended by Regulation (EEC) No 267/89 ⁽⁴⁾;

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

mation known to the Commission that the levies at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 7 February 1989.

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

Done at Brussels, 6 February 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 201, 27. 7. 1988, p. 65.

⁽³⁾ OJ No L 203, 28. 7. 1988, p. 22.

⁽⁴⁾ OJ No L 31, 2. 2. 1989, p. 16.

ANNEX

to the Commission Regulation of 6 February 1989 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)	
CN code	Levy
1701 11 10	36,80 ⁽¹⁾
1701 11 90	36,80 ⁽¹⁾
1701 12 10	36,80 ⁽¹⁾
1701 12 90	36,80 ⁽¹⁾
1701 91 00	43,49
1701 99 10	43,49
1701 99 90	43,49 ⁽²⁾

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

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 December 1988

relating to a proceeding under Article 85 of the EEC Treaty
(IV/31.697, Charles Jourdan)

(Only the French text is authentic)

(89/94/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 application for negative clearance and the notification submitted on 5 November 1985 by Société Anonyme des Chaussures Seducta Charles Jourdan et Fils, 1 Boulevard Voltaire, F-26017 Romans, Charles Jourdan Holding AG, Spielhof 3, CH-8750 Glarus and Société Anonyme Xavier Danaud, Zone Industrielle de Charnas, F-07100 Annonay, in respect of a network of standard-form franchise and franchise-corner distribution agreements covering or intended to cover the Member States,

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

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

Whereas :

I. THE FACTS

A. The undertaking

(1) Charles Jourdan Holding AG is a company constituted under Swiss law whose registered office is situated at Spielhof 3, 8750 Glarus (Switzerland).

It is itself owned by the Swiss holding company Portland Cement Werke (PCW). Charles Jourdan AG with its affiliates, hereinafter referred to as the Charles Jourdan Group, owns, in whole or in part, a large number of companies in France, in the rest of the Community and outside the Community. These include in particular 'Société Anonyme des Chaussures Seducta Charles Jourdan et Fils' and 'Société Anonyme Xavier Danaud', which, together with Charles Jourdan AG, have notified the agreements which are the subject of this Decision.

— Société Anonyme des Chaussures Seducta Charles Jourdan et Fils notified the franchise and franchise-corner agreements relating to the Charles Jourdan trade mark (shoes and handbags) in France,

— Société Anonyme Xavier Danaud notified the franchise agreements covering the Xavier Danaud trade marks (shoes and handbags) in France and the franchise-corner agreements covering the Xavier Danaud trade mark (shoes and handbags) in France,

— Charles Jourdan Holding AG notified the franchise agreements covering the Charles Jourdan trade mark (shoes and handbags) and the Xavier Danaud trade mark (shoes and handbags) outside France.

(2) The Charles Jourdan Group mainly manufactures and distributes shoes and leather goods (some 80 % of its turnover) and handbags (9 % of its turnover). It also distributes ready-to-wear clothing and accessories under its own trade mark, and these account for the remainder of its turnover.

⁽¹⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ No C 220, 24. 8. 1988, p. 2.

In 1984, the Group achieved 55 % of its turnover in France and sold 1 685 000 pairs of shoes and 136 000 handbags. In 1987 the Group sold 1,1 million pairs of shoes.

The Group's turnover amounted to FF 896 943 000 in 1984 and FF 941 774 000 in 1985. In 1987 the turnover amounted to about FF 700 000 000.

The turnover of Portland Cement Werke amounted to SwF 568 000 000 in 1985.

B. The product and the market

- (3) The Group's main activity is the production and sale of shoes, in particular medium and top quality shoes. The articles in the middle of the range lie roughly within a retail price range of FF 400 to FF 700, while the top quality articles cost over FF 700. On the basis of this distinction, although approximate, articles bearing the Seducta trade mark may be regarded as top category and those bearing the Charles Jourdan, Christian Dior or Xavier Danaud trade marks as falling within the second category. A proportion of the Group's shoe production (around 10 %) is subcontracted. The shoe trade marks distributed by the Charles Jourdan Group are Charles Jourdan, Seducta, Christian Dior and Xavier Danaud.

Another of the Group's activities is the production, partly through subcontracting, and the sale of leather goods (handbags, but also belts, luggage, gloves, etc.).

The accessories marketed by the group are generally produced through subcontracting. These include umbrellas, scarves, glasses, perfumes, tights, socks, ties, hats, watches, pens and jewellery. They are designed by the Charles Jourdan Group's stylists.

Lastly, the Charles Jourdan Group distributes under its trade mark a collection of ready-to-wear clothing for men and women that is produced entirely through subcontracting.

- (4) The shoe market:

Community production amounted to some 1 200 million pairs of shoes in 1986, almost half of which were manufactured in Italy and some 200 million of which were manufactured in France. In 1986, Community imports amounted to 345 million pairs and exports to 260 million pairs. In the case of France, manufacturers exported a quarter of their production, but more than one in every two pairs of shoes (54 %) worn in France is imported.

The Community market, and in particular the French market, is therefore amply open to exports and imports.

There are a large number of smaller producers: out of a total of 423 French firms in 1982, only 15 employed more than 500 persons. However, the latter firms accounted for 25 % of total French production, with Eram and GEP heading the field.

Charles Jourdan's European competitors in the production of top-of-the-range shoes include Bally, Kelian, Carel, Manfield, Pinet, Clergerie, Maud Frison and Céline.

Its European competitors in the production of middle-of-the-range shoes include Mirelli, France Arno, Salamander, Heyraud, Raoul and DRESSOIR.

Competition from producers within the Community (Italy and Spain), though also from non-Community countries (Hong Kong, Taiwan, Singapore and South Korea), is very strong.

These comments also apply to distribution, where competition is fierce not only among sales outlets, but also among distribution networks.

In France, the bulk of footwear products is still distributed by independent retailers. Some independent retailers have formed themselves into joint buying pools (e.g. Cédaf, UCF, etc.) or operate on a franchise basis (e.g. Eram, GEP, Labelle, Charles Jourdan).

Shoes are also sold through the subsidiaries of manufacturing firms (e.g. Bata, Bally, Eram, Myris, André and Charles Jourdan) and purely distributive firms (e.g. Raoul, France Arno and Manfield).

Lastly, shoes are also sold through a number of non-specialist outlets, such as supermarkets, mail order firms and department stores.

In the case of leather goods the number of individual French and European manufacturers is even larger, since this sector includes craft industry as well as industry proper. Competition from Asian countries is very keen in the case of medium quality products. Distribution is widely scattered amongst specialized shops, bazaars, supermarkets, etc.

In the case of leather goods, the Charles Jourdan Group is the third largest French producer.

- (5) The Charles Jourdan Group's share of the French shoe market as a whole is around 1 %. Its share of the Community market is negligible.

However, if one takes the market in medium and top quality shoes, the Group's market share may be estimated at nearly 10 % of the French market and around 2 % of the Community market. This market definition is not rigorous but it allows non-leather shoes and cheap shoes to be excluded.

The market share of the other products marketed by the group is insignificant both in France and at the Community level.

C. Distribution of the Group's products

- (6) The distribution of the Charles Jourdan Group's products has to meet a number of requirements specific to the products and to the Group. Firstly, it is carried out by traders capable of dealing with a demanding clientele having above-average purchasing power. Secondly, close links are kept up between retailers and the Group so as to maintain a uniform style and approach to customers.

- (7) Distribution is carried out through four types of shops :

- branches : these are owned and managed by the Group and display the Charles Jourdan or Xavier Danaud shop sign. They constitute the shop window of the group's activities. In general, they also market all the products in the Charles Jourdan range
- franchised shops : these are independent of the Group, but have signed a franchise distribution agreement with it, allowing them to display the Charles Jourdan or Xavier Danaud shop sign on the outside of their shop premises in respect of the whole of the shop and allocating them a specified territory,
- franchise-corner retailers : these are independent traders who have signed a distribution agreement with the Group, allowing them to represent the Charles Jourdan or Xavier Danaud trade marks within a specified territory in a separate part of the shop premises, the articles in question being in competition with those of other brands. The shop sign must be displayed within the shop and not on the outside, as in the case of franchised shops.

Because of the franchise-corner retailer's more limited commitment to the Group compared with franchised retailers, there is a difference in the rights and duties of each of the partners. The franchise-corner formula, which combines certain characteristics of franchise retailing and conventional retailing, is intended either, if chosen by the retailer, to allow the franchise-

corner retailer to maintain greater independence from the group or, if chosen by the Group, to test the franchise-corner retailer's personal and professional capacity before giving him a franchise,

- traditional retailers : they have no legal link with the Group apart from agreements to sell articles bearing the trade mark. Such retailers are selected by the Charles Jourdan Group on the basis of objective considerations, namely the shop in which the activity is carried out, the quality of the products distributed and the retailer himself, his competence and reputation.

D. Main features of the standard-form agreements notified

- (8) *Procedure for choosing the Group's franchisees and franchise-corner retailers*

The agreements are concluded *intuitu personae* on the basis of the candidate's personal and professional qualities. The agreement may not be transferred to a third party without the approval of the Group. Any manager employed to run a shop must be approved in advance by the Group.

- (9) *Legal independence of franchisees and franchise-corner retailers*

Franchisees and franchise-corner retailers are the owners of, and legally and financially responsible for, their businesses and fittings.

However, any change in the geographical location or in the internal or external fittings of the shop must be approved in advance by the Group.

- (10) *Exclusive territory*

Each agreement defines the exact territory of the franchisee or franchise-corner retailer.

Within the franchisee's territory, the franchisee is allowed to operate his shop, under the external shop sign of one of the Group's trade marks and may distribute the relevant products only on the premises defined in the agreement.

Within the franchise-corner retailer's territory, the franchise-corner retailer is allowed to operate part of his shop under the internal shop sign of one of the Group's trade marks and may distribute the relevant products only on the premises defined in the agreement. There may be several traditional retailers and/or franchise-corner retailers within the territory of a franchisee. However, there cannot be more than one franchisee within one and the same territory.

(11) *Transfer of know-how from the Charles Jourdan Group to franchisees and franchise-corner retailers*

Franchisees receive know-how and continuous assistance from the Charles Jourdan Group in the following areas :

- purchasing (season's collection ; standard order ; trends ; colours and materials in fashion), with information being provided to the retailer on the latest fashion trends,
- supply of the general decoration concept, with help being provided on the decoration or redecoration of the shop,
- establishment and maintenance of stock and management information, with assistance being provided on the internal management of the shop,
- provision of information on the sale of products in the 'affiliates and franchisees' networks, with information being given on the business activity of sales outlets distributing the same products,
- advertising, with material help or advice being provided on the advertising policy of franchisees.

The know-how thus made available is primarily commercial although it also covers management aspects. It is substantial and gives the trader a clear advantage over competitors. It is this, in addition to the prestige of the trade mark, which prompts actual or would-be independent traders to conclude such agreements with the Charles Jourdan Group.

Franchise-corner retailers only receive information on purchasing and fashion trends from the Charles Jourdan Group. Such information is both more limited and covers fewer fields than that provided for franchisees. No provision is made for management assistance.

All the information supplied to franchisees or franchise-corner retailers is confidential.

(12) *Industrial property rights*

The Charles Jourdan Group remains the owner of its registered trade marks and of its designs, trade names, signs, emblems, symbols and other distinctive commercial marks. It alone may decide on the use made of them.

(13) *Right of inspection by the Charles Jourdan Group*

Franchisees and franchise-corner retailers must make their accounts available to the Group and must each month send in a statement of sales and quantities sold for the previous month. They must allow inspections to be carried out of their staff and business premises, including premises for storage. The inspection may also relate to whether the franchisee is meeting the quality standards associated with the name and reputation of the goods.

(14) *Financial obligations to the Charles Jourdan Group*

In exchange for the franchisor supplying the general decoration concept, the overall building plan, samples of materials, the specification, and the assistance of the decorator, the franchisee has to pay an entry fee of FF 20 000 to FF 30 000 depending on the trade mark involved. The costs of fitting out and equipping the shop are borne by the franchisee or the franchise-corner retailer. No entry fee is required from franchise-corner retailers, who have to pay only a guarantee deposit.

In return for the rights granted and the services supplied, the franchisee must also pay the franchisor, depending on the trade mark involved, a franchise fee of 1,5 or 2 % of the total amount of net sales, excluding tax, for the shop. In the case of franchise-corner retailers, the fee is set at 1 % of the shop's total sales, excluding tax. In practice, at least 50 % of such sales are accounted for by products bearing the Group's trade marks.

(15) *Non-competition clause*

In the case of franchise agreements, the non-competition clause prohibits the franchisee from operating within the allocated territory any other shop franchised by companies other than those of the Charles Jourdan Group, unless such other shop sells articles which because of their price and style cannot be regarded as competing with Charles Jourdan products.

Within the shop itself, the franchisee may distribute only products bearing the trade marks covered by the agreement and the Group's other trade marks. The franchisee may, however, be authorized by the Group to distribute other articles originating outside the Group.

In the case of agreements with franchise-corner retailers, there is a clause prohibiting them from displaying or selling products which, because of their trade mark, name or presentation, would be likely to detract from the Charles Jourdan Group's brand image.

Upon expiry of the agreements, the trader is not subject to any restrictions in his subsequent activities. Where a franchised shop is to be sold, the first offer must be made to the franchisor, who has a period of one month in which to decide whether to buy it.

(16) *Supply arrangements*

The trader may obtain direct supplies of products bearing the Charles Jourdan Group's trade marks either from the group itself, or from a Group branch shop, or from another member of the network, whether such a member is a franchisee or franchise-corner retailer, or even from a traditional retailer of products bearing the Group's trade

marks, whether or not such suppliers are established in the same Member State. As a general rule, cross-supplies between distributors of products bearing the Group's trade marks are allowed, provided that the principal activity of the franchisee or franchise-corner retailer is not that of wholesaler. This possibility was granted to these Charles Jourdan Group retailers at the Commission's request.

(17) *Purchase prices*

Within one and the same Member State purchase prices are the same for all franchisees, franchise-corner retailers and traditional retailers. However, quantity rebates may be granted.

Variations in purchase prices from one Member State to another are due to the costs of distribution, transit, exchange, etc. involved in export operations.

(18) *Selling prices*

The Charles Jourdan Group draws up price lists every season. The price lists are intended for guidance purposes and retailers are not required to abide by them. This freedom for retailers to determine their selling prices was expressly specified in the agreements at the Commission's request.

(19) *Duration of the agreements*

All the agreements are concluded for an initial term of five years.

(20) *Termination of the agreements*

The Charles Jourdan Group may terminate a franchise agreement or an agreement with a franchise-corner retailer if the trader's assets are placed in the hands of the receiver or the trader goes into liquidation, if the shop is transferred to other premises or altered, or if sales are insufficient. In the event of breach of any of the clauses of the agreements, the Charles Jourdan Group or its partner, the franchisee or the franchise-corner retailer, may terminate the contract.

(21) *Effects of termination or expiry of the agreement*

Franchisees or franchise-corner retailers are not subject to any restrictions on the exercise of their future activities. They may continue to distribute similar or competing products within the same geographical area and in the same shop.

They are merely required to remove all shop signs and advertising displays from their shops, to modify the fittings associated with the activity of franchisee or franchise-corner retailer and to hand over to the Charles Jourdan Group all printed

matter, labels, packing materials, etc. bearing the trade marks, excluding any supplies necessary for the disposal for remaining merchandise in stock.

(22) *Observations from third parties*

The Commission received no observations following its publication of a notice in accordance with Article 19 (3) of Regulation No 17.

II. LEGAL ASSESSMENT

A. Article 85 (1)

(23) Through the standard-form distribution agreements notified, the Charles Jourdan Group :

— grants to its franchisees and franchise-corner retailers, within a territory specified in the agreement, the exclusive right to use in a retail shop its identifications (shop signs, trade mark, business name) and its designs and models for the purposes of selling. This results in a uniform presentation of the products marketed within the network. The exclusive right applies to the shop sign on the outside of the shop and to the shop sign inside the shop in the case of franchise-corner retailers,

— transfers to its franchisees and its franchise-corner retailers know-how consisting of a body of commercial and management knowledge previously tried and tested by the Charles Jourdan Group itself and not divulged to third parties and of continuous assistance. The technical and business know-how is updated in the light of the results of the experience acquired by the Charles Jourdan Group.

(24) The Charles Jourdan Group is able to develop a coherent and efficient sales network without massive investments, while at the same time maintaining control over the activity of the sales outlets.

This formula allows franchise retailers not already experienced in the distribution of articles bearing the trade mark to benefit from the franchisor's know-how and experienced franchise retailers, in addition to this advantage, to concentrate all their efforts on marketing the products of the Charles Jourdan Group, whose reputation is enough to guarantee them a clientele.

The formula enables franchise-corner retailers to benefit from the Group's know-how and from the reputation of the Charles Jourdan Group's trade marks, while at the same time maintaining a large degree of business autonomy thanks to the distribution of competing trade marks in their shops.

- (25) The standard-form franchise agreements or franchise-corner retailer agreements which the Charles Jourdan Group has signed or intends to sign with its franchisees or franchise-corner retailers are agreements between undertakings within the meaning of Article 85, the Charles Jourdan Group and each of its partners remaining independent undertakings.

(a) *Clauses not covered by Article 85 (1)*

Franchise agreements

- (26) The Court of Justice in the Pronuptia judgment⁽¹⁾, and the Commission in the Pronuptia⁽²⁾, Yves Rocher⁽³⁾ and Computerland⁽⁴⁾ Decisions, took the view that clauses which are essential to prevent the know-how supplied and assistance provided by the franchisor from benefiting competitors and clauses which provide for the control that is essential for preserving the common identity and reputation of the network, operating under the shop sign do not constitute restrictions of competition within the meaning of Article 85 (1).

- (27) The clauses that are essential to prevent the know-how made available from benefiting competitors are the following:

- the clause providing for non-competition during the term of the agreement prohibits the franchisee from operating any other franchised shop within the allocated territory, unless such other shop sells products that are unrelated to the products of the Charles Jourdan Group. This clause is justified for the franchisee by the fact that the know-how provided could easily be used for the benefit of other products and other trade marks under another franchise system. The franchisee is not bound by any non-competition clause once the agreement has expired. Such a non-competition clause would not be justified first as the know-how provided includes a large element of general commercial techniques, and second, as this type of franchise is primarily granted to retailers who are already experienced in selling shoes,
- the provision prohibiting the franchisee from transferring its franchise contract, subletting its shop, setting up a sub-franchise, placing its business under management by a third party or appointing a salaried shop manager without the

express approval of the Charles Jourdan Group enables the Charles Jourdan Group to ensure that the franchisee possesses the professional qualities necessary for the exercise of its functions, but also that persons not belonging to the Charles Jourdan network do not benefit from the advantages inherent in the distribution system being examined here.

- (28) The clauses that provide for the control essential to preserve the common identity and reputation of the network trading under the franchisor's name are as follows:

- obligation on the franchisee to carry on his business activity from premises fitted out according to the indications and advice of the group. This makes it possible to ensure the consistency, commercial homogeneity and reputation of the sales outlets of the Charles Jourdan Group's network,
- obligation on the franchisee to cooperate with the Charles Jourdan Group. This obligation relates principally to advertising, which must be carried out in agreement with the Charles Jourdan Group so as to maintain the Group's brand image and the quality of the management of the sales outlet, so as to prevent bad management from harming the interests of the trade marks represented,
- ban on the franchisee reselling the Charles Jourdan Group's goods to traders other than franchisees, franchise-corner retailers or retailers supplied by the Group. This clause is intended to maintain the unity of the network and the link, in the consumer's mind, between the Charles Jourdan Group's product and the place where it is sold,
- obligation on the franchisee unless otherwise authorized by the Group, in view of the nature of the products concerned (fashion goods) and in order to preserve the consistency of the brand image, to order the goods connected with the essential object of the franchise business exclusively from the Charles Jourdan Group or from suppliers designated by it. The franchisee may purchase the goods in question from any other franchisee, franchise-corner retailer or traditional retailer belonging to the Charles Jourdan network,
- obligation on the franchisee to submit to checks by the Charles Jourdan Group. The Group's right of scrutiny of the management of its retailers is a counterpart to the responsibilities delegated by the Charles Jourdan Group to its partners.

⁽¹⁾ Case 161/84 *Pronuptia* [1986] ECR 353.

⁽²⁾ OJ No L 13, 15. 1. 1987, p. 39.

⁽³⁾ OJ No L 8, 10. 1. 1987, p. 49.

⁽⁴⁾ OJ No L 222, 10. 8. 1987, p. 12.

- (29) As regards retail prices, which are only recommended, it should be emphasized that the mere communication of recommended prices by the group to its retailers cannot be regarded as restricting competition, provided that it does not result in concerted practices between retailers in the network or between retailers and the Charles Jourdan Group.

- (30) The lack of any obligation on the Group to define and abide by selection criteria in choosing its franchisees is due to the desire to establish an integrated and interdependent distribution network to which each trader, with his professional and personal capacities, has chosen to belong. The continuous assistance which the franchisee receives during the term of the agreement implies a significant involvement of the Group's representatives with each of the traders. The members of the distribution network must therefore be limited in number. Consequently, the Group can of its own accord choose the traders which seem to it most suitable for maintaining the cohesion of the network.

Franchise-corner retailer agreements

- (31) The clauses not covered by Article 85(1) are firstly those which provide the Group with the essential control needed to preserve the common identity and reputation of the network symbolized by the shop sign within the shop: the franchise-corner retailer must carry out his activity in the part fitted out in accordance with the Group's directives. He must also cooperate with the Group in matters of advertising and management. He cannot purchase the goods from or resell the goods to traders other than those who are already members of the Group's distribution network. Lastly, the franchise-corner retailer must submit to checks by the Charles Jourdan Group.

The franchise-corner retailer is not subject to any non-competition obligation. Nevertheless he cannot display or sell in his shop products liable to detract from the Charles Jourdan Group's brand image. He is free to market other trade marks. This clause is justified by the quality of the Charles Jourdan Group's products, necessitating proper presentation. In view of the highly competitive situation in the sector, this restriction is not likely to have any significant effect on competition.

The agreement is automatically terminated in the event of transfer, management by a third party, control of the company by a third party or appointment of a salaried shop manager without the express approval of the Charles Jourdan Group, so

as to ensure that the franchise-corner retailer has the necessary qualities and the advantages of the formula do not benefit a third party.

(b) *Clauses covered by Article 85(1)*

Franchise agreements

- (32) The clauses that involve market sharing between the Charles Jourdan Group and its partners or between its partners themselves constitute restrictions of competition within the meaning of Article 85(1). This applies to:

— the exclusivity granted to the franchisee to operate under the franchisor's trade marks in a given sales area,

and

— the obligation on the franchisee to carry on his business activity exclusively from the premises approved for that purpose.

The combined effect of these clauses is to afford each franchisee relative protection against competition from other franchisees within its sales area. However, such protection is restricted by the fact that, while there may be only one franchisee within a given area, there may be several franchise-corner retailers and traditional retailers within the area.

- (33) The franchise agreements may affect trade between Member States as they constitute the basis of a network which is bound to spread over the whole Community and as the franchisees are not allowed to become established in another Member State.

Franchise-corner retailer agreements

- (34) The exclusive right to display an internal shop sign within the shop, does not, within the territory, exclude either branch shops or franchise shops, which have, in addition, an external shop sign. Nor does such exclusive right exclude the display of Charles Jourdan Group trade marks in traditional retail shops. The contracts only restrict the retailer a little and, on a highly competitive market, offer very limited protection against competition within the network.

- (35) Since, in addition, the number of franchise-corner retailers was very low on the date when the agreements were notified and since the number of franchise-corner retailers is not, according to the Charles Jourdan Group, going to increase significantly, they are not likely to affect trade between Member States, or significantly to prevent, restrict or distort competition within the common market. The provisions of Article 85(1) do not therefore apply to the franchise-corner agreements.

B. Article 85 (3)

(36) Commission Regulation (EEC) No 1983/83 ⁽¹⁾ on the block exemption of exclusive distribution agreements does not apply to the standard-form franchise agreements in question, since their legal nature is different ⁽²⁾. In addition to being distribution agreements they are agreements under which the franchisor grants the franchisee the right to operate a shop using an original and evolving distribution formula. It should therefore be examined whether the agreements in question are eligible for individual exemption under Article 85 (3).

(37) Through the combined effect of their provisions as a whole, the standard-form franchise agreements governing the Charles Jourdan distribution network contribute to improving the distribution of the products concerned within the meaning of Article 85 (3). They enable :

- the Charles Jourdan Group to extend its distribution network without carrying out investment in the material fitting out of new branches, investment which it would perhaps otherwise not be able to carry out, or to carry out as rapidly, since it is the prospective franchisees which are responsible for the necessary investment,
- the Charles Jourdan Group to make available to consumers a distribution network which is uniform in the business methods used and the range of products offered. Such uniformity makes it possible to rationalize business methods by standardizing them,
- the Charles Jourdan Group, given the close and direct links which it has with its partners, to be rapidly informed by them of any changes in consumers' habits and tastes and thus to be able to take account of this in its forward plans on sales and production,
- the franchisee, who enjoys exclusive rights to use the external shop sign within the allocated territory, to concentrate his sales efforts on that territory and on the Group's trade marks,
- the franchisee to enjoy the commercial benefits of the brand image of the products and the tried and tested know-how and continuous assistance of the Charles Jourdan Group.

(38) The agreements governing the Charles Jourdan distribution network allow consumers a fair share

of the benefit resulting from these improvements in distribution :

- consumers can acquire products from the Charles Jourdan Group's range in a larger number of sales outlets and countries,
- the know-how transmitted and the assistance provided by the Group to its partners ensure that consumers receive high-quality service,
- the fact that the retailers remain the owners of their businesses ensures commercial dynamism and diligence on the part of the trader.

The pressure of competition within the sector and the freedom which consumers have to purchase the products at any shop within the network will tend to force franchisees to pass on to consumers a reasonable share of the advantages resulting from the rationalization of distribution.

(39) The Charles Jourdan Group's standard-form agreements do not contain restrictions that are not indispensable to the attainment of the said benefits. The restrictive clauses that provide for some territorial exclusivity may be considered, in the circumstances, to be indispensable in that few prospective franchisees would be willing to undertake the necessary investment, to pay an initial lump-sum fee or a guarantee deposit and to pay royalties in proportion to their turnover in order to belong to such a distribution system, if they did not enjoy some territorial protection against competition from other franchisees and from the Charles Jourdan Group itself. It should be noted that the franchisees are free to buy and sell the relevant products among themselves or to sell them to and buy them from other independent retailers of the trade mark.

(40) The Charles Jourdan standard-form agreements and the system resulting from their implementation are not such as to afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question. With regard to producers and distributors that are competitors of the Charles Jourdan Group, the Charles Jourdan network cannot produce any significant horizontal anti-competitive effects outside of the trade mark, given the dispersal of the supply of products both at production level and at distribution level.

(41) The production and distribution of Charles Jourdan Group shoes, which is the Group's main activity, account for only a modest share of the French market and an even smaller share of the Community market. On the submarket for medium and top quality shoes, the Charles Jourdan Group accounts for some 10 % of the French total and only around 2 % of the Community market. Its turnover, which amounted to less than FF 1 000

⁽¹⁾ OJ No L 173, 30. 6. 1983, p. 1.

⁽²⁾ Grounds 15 and 33 of Case 161/84 *Pronuptia*.

million in 1985, is relatively modest compared with that of its European competitors. In addition, the footwear market, like the market for leather goods, accessories or ready-to-wear clothing is buoyant and very keenly competitive.

- (42) The franchisees are, in addition, in competition with one another, since they are allowed to sell to any consumer resident within or outside the allotted territory and to any other franchisee, franchise-corner retailer or retailer of the trade mark, subject to the condition of not acting as a wholesaler by way of principal activity. Furthermore, they are entirely free to set their selling prices. The distribution network, which covers several different systems of marketing, creates a healthy rivalry between retailers, thus allowing the consumer the widest choice and hence the best purchasing conditions.

Lastly, there is no provision for any no-competition clause upon expiry or after termination of the agreements, and this enables any franchisee to continue to carry on his business activity in his own shop without any restriction once he has ended his relationship with the Group.

- (43) All the conditions for the application of Article 85(3) are thus met.
- (44) The exemption decision will take effect as from the date on which the most recent amendments were made to the standard-form agreements, i.e. 17 December 1986. Exemption may be granted for a period of 10 years. This period seems justified given the limited restriction of competition resulting from the agreements and the competitive context in question,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 85(3) of the EEC Treaty, the provisions of Article 85(1) are hereby declared inapplicable for

the period from 17 December 1986 to 16 December 1996 to the standard-form of retail franchise agreements which the Charles Jourdan Group concludes with its franchisees in the Community.

Article 2

Pursuant to Article 2 of Regulation No 17, the Commission hereby certifies that there are no grounds under Article 85(1) of the Treaty for action in respect of the standard-form 'franchise-corner retailer' agreements which the Charles Jourdan Group concludes with its 'franchise-corner retailers'.

Article 3

This Decision is addressed to:

1. La Société des Chaussures Seducta Charles Jourdan et Fils,
1 boulevard Voltaire,
F-26071 Romans
2. Charles Jourdan Holding AG,
Spielhof 3,
CH-8750 Glarus
3. La Société Xavier Danaud,
Zone Industrielle de Charnas,
F-07100 Annonay

Done at Brussels, 2 December 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EEC) No 4002/88 of 21 December 1988 amending Regulation (EEC) No 53/88 laying down certain detailed rules for the application of the supplementary trade mechanism to wine sector products

(Official Journal of the European Communities No L 254 of 22 December 1988)

Page 36, Article 1, in the tables under (a) and (b), column 'CN-code':

for: '2009 60';

read: '2009 60'.

Corrigendum to Commission Regulation (EEC) No 217/89 of 27 January 1989 fixing the refunds applicable for February 1989 to cereal and rice sector products supplied as Community and national food aid

(Official Journal of the European Communities No L 25 of 28 January 1989)

Page 75, in the Annex, column 'Product code':

for: '1006 90 94 100',

read: '1006 30 94 100'.
