II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 March 1992

relating to a proceeding pursuant to Article 85 of the EEC Treaty

(IV/32.290 — Newitt/Dunlop Slazenger International and Others)

(Only the English and Dutch texts are authentic)

(92/261/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 3, 15 and 16 thereof,

Having regard to the application submitted on 18 March 1987 by Newitt & Co. Ltd (United Kingdom) requesting the Commission to find, pursuant to Article 3 of Regulation No 17, that Dunlop Slazenger International Ltd (United Kingdom) and some of its exclusive distributors had infringed Article 85 of the Treaty,

Having regard to the decision taken by the Commission, on 7 May 1990, to initiate proceedings in this case,

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

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

Whereas :

A. THE FACTS

I. The parties

1. *DSI and the BTR group*

(1) Dunlop Slazenger International Ltd (DSI) is a company incorporated under British law and controlled by the BTR plc group, whose activities cover many different sectors. DSI is concerned with the group's activities relating to the manufacture and distribution of sports goods and is engaged in such activities worldwide. Its turnover was £ 114 million in 1988 (ECU 172 million). The turnover of the BTR group as a whole was £ 5 473 million (ECU 8 242 million).

2. *Newitt*

(2) Newitt & Co. Ltd (Newitt) is also a company incorporated under British law and is a wholesaler and retailer of sports goods. Its turnover in 1988 was £ 3,7 million (ECU 5,8 million). Up to 1986, Newitt was one of the main parallell exporters, if not the main parallel exporter, of DSI products.

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

3. *All Weather Sports*

(3) All Weather Sports BV (AWS) was, at the time of the facts described, DSI's exclusive distributor for the Dunlop brand in the Benelux countries. Its turnover in 1988 was Hfl 30 million (ECU 13 million). In 1989, AWS was purchased by its management from the group Bührmann-Tetterode Nederland BV, which controlled it, and took the name All Weather Sports Benelux BV.

4. *Pinguin Sports*

(4) Pinguin Sports BV (Pinguin) was, at the time of the facts described, DSI's exclusive distributor for the Slazenger brand in the Netherlands. In 1987, its turnover in Slazenger products amounted to some Hfl 2,4 million (ECU 1 million).

II. Newitt's Complaint

(5) On 18 March 1987, Newitt complained to the Commission that DSI had, by means of various measures, notably prices, impeded exports of tennis-balls and squash-balls to other Member States in order to protect its exclusive distribution network in such other Member States.

Newitt claimed that DSI, which had a dominant position in the market for tennis and squash-balls and was acting in order to ensure compliance with its distribution agreements, was infringement both Article 85 and Article 86 of the Treaty.

III. The main products and their markets

1. *Tennis balls*

(6) The tennis-balls market is oligopolistic. Five manufacturers accounted for some 90 % of the Community market in 1989 (see Annex 1.1) (1) : DSI (some 39 % : 28 % accounted for by Dunlop and 11 % by Slazenger), Dunlop France (19 %) (2), Penn (some 16 %), Tretorn (some 11 %) and Wilson (some 6 %). Since sales by Tretorn and Dunlop France are virtually confined to Europe, the main producers at world level (1986) are Wilson (some 30 %), Penn (some 24 %) and DSI (some 21 %). Wilson and Penn share most of the US market, while DSI leads the European market by a considerable margin.

(7) Although there are some technological barriers to entry, the oligopolistic nature of the tennis-balls market appears to be due more to barriers of an economic nature and to the importance of the brand image of the products. This latter type of obstacle, which is difficult to overcome in introducing a new name into the market, is kept at a high level by means of systematic and expensive sponsoring of major tournaments by the manufacturers and by means of the widespread use of the system of 'official' recognition of tennis balls by federations, such recognition being conferred on the basis of financial contributions from manufacturers and/or their official distributors.

2. *Squash-balls*

(8) The structure of the squash-balls market is characterized by the dominance, and virtual monopoly in certain countries, of DSI, its share of the Community market being 60 to 70 % (1986). Its share is 80 % in the United Kingdom, 85 % in Ireland and 90 % in Spain (see Annex 1.2). Its only real competitor as regards squash-balls is Elastomer Technology Pty (Australia), which manufactures Merco balls and holds approximately 11 % of the Community market.

3. *Other products*

(9) DSI manufactures and/or distributes a very large variety of sports equipment, including clothes and shoes. Most of these products are less homogeneous and the number of manufacturers much greater, and competition is consequently stronger. In the case of some articles, such as tennis-rackets and golfing equipment, however, concentration is greater, and DSI is among the leading manufacturers in the case of all such goods.

IV. DSI's Distribution system

1. *Distribution network*

(10) DSI has no appointed distributor in the United Kingdom. It does business direct with retailers or, in certain segments of the market, sells through a limited number of wholesalers. In the other Member States, DSI has a network of exclusive distributors, albeit different ones for the Dunlop and Slazenger brands, or operates through other group companies.

2. *Distribution agreements*

(11) Though they sometimes differ formally, DSI's distribution agreements are broadly similar in the types of obligation they impose. Thus, as regards territorial representation, all the agreements are exclusive distribution agreements, and the differences between 'exclusive distributor', 'prin-

(1) These figures apply only to what are known as 'first-grade tennis-balls', i.e. top quality balls used in matches and competitions, though these are also the ones most commonly used in general.

(2) Controlled by the Japanese Sumitomo group.

cipal distributor' and 'representative' are essentially terminological. All the distributors concerned are allocated a territory in which they hold the exclusive distribution rights for the Dunlop or Slazenger brands and outside which they may not engage in active selling. Under the written terms of the agreements, however, there is no prohibition on passive selling or any absolute territorial protection. For the rest, the other terms of the agreements are along the usual lines of standard exclusive distribution agreements.

3. *Pricing policy*

(12) DSI has two price-lists for all its products, one for the UK market (trade price-list) and one for the export market (export price-list), the latter generally offering lower prices.

Annex 2 provides an overview of the extent of the differences between the two lists, for the most representative tennis- and squash-balls, in the period 1982 to 1989.

This shows that export prices, with one or two exceptions, are consistently lower than UK domestic prices for both tennis- and squash-balls. The extent of the price differences varies, however, from year to year and is much greater for squash balls (between 15 and 30 %) than for tennis balls (from 3 to 15 %).

A similar analysis of a sample of other DSI products (tennis- and squash-rackets, ping-pong bats, balls and tables, sports bags) shows that UK domestic prices for these products are also usually, despite fairly large variations and excluding 1985, appreciably higher than export prices. The disparities, of the order of 15 to 30 %, can in some cases reach nearly 50 %.

DSI's exclusive distributors in the Community are charged the export prices less (according to information provided by DSI in reply to a request for information) a standard 20 % discount. It has emerged in fact that the discount is generally much larger: 25 to 45 % (1).

V. Barriers erected by DSI against the export of its products

Summary

(13) Since 1977 at least, DSI has pursued a commercial policy which in general prohibits all exports. Since 1985 at least, DSI has erected a series of specific barriers to the export of certain of its products — principally but not exclusively tennis-balls and tennis-rackets — to other Member States, notably the Benelux countries, in collaboration with its exclusive distributors in those countries, for the purpose of protecting its distribution network from all parallel imports.

(14) The barriers consisted of:

— a ban on exporting without DSI's agreement,

— specific refusals to fill orders,

— pricing measures against UK dealers to prevent them from exporting at competitive rates,

— buying back low-price parallel exports to prevent them from undermining the prices of DSI's official distribution network,

— marking of products to identify their origin and final destination,

— using tennis federation labels to promote DSI's official distribution network only.

(15) The measures taken were applied mainly (but not solely) to Newitt. They were not, however, necessarily aimed at Newitt, since the identity of the exporter was not always known at the outset. Furthermore, the measures should be viewed in the context of DSI's general policy of prohibiting all exports to countries where it has an exclusive distributor.

1. *Export ban*

(16) It is evident that, for many years, Dunlop has sold its products to UK wholesalers only on condition that they were not exported. A letter dated 14 December 1977 from Dunlop Sports Company (whose assets were taken over by DSI) to Newitt contains the following statements:

'May I emphasize that this offer is made on the understanding that the goods offered by you will be through your normal retail premises and not for export in bulk to overseas without our prior permission or to other outlets within the UK for resale by companies with whom Dunlop Sports Company do not have a trading account.'

(1) See recital 34 below and Annex 2.

In practice, however, such exports were tolerated — at least as regards the complainant — over a long period, with Dunlop confining itself, according to Newitt, to issuing a number of formal protests, though without taking any specific action. As from 1985/86, DSI changed its attitude: pressure was brought to bear on Newitt, and concrete action was taken.

(17) On 5 August 1985, though it accepted an order from Newitt, DSI added in the letter confirming the order:

'I would confirm our export policy as quite simply not allowing shipments to any world market where we have local legal distributor agreements where to supply via a third party would be both a breach of contract and poor commercial practice. In essence all European markets are covered by such agreements.'

(18) At a meeting on 12 May 1986, DSI informed Newitt of the complaints made by AWS, its exclusive distributor for Dunlop products in the Benelux countries ([1]), concerning parallel imports of Dunlop products and announced its intention of putting an end to such practices. By letter dated 16 June 1986 to Newitt, DSI specified the measures taken to prevent all parallel exports:

1. all direct exporting of Dunlop and Slazenger products was prohibited, except products specifically agreed by DSI;

2. in the event that Newitt received any export enquiries, these should be passed on to DSI for individual consideration. In certain circumstances, orders could be dealt with directly by DSI, with a commission for Newitt. A subsequent letter ([2]) stated, however, that this type of operation could normally involve only third countries, such as 'the African markets';

3. the export account opened for Newitt on DSI's books was closed. All sales to Newitt were to take place through the UK sales account and would be handled by the UK sales office (and would thus be invoiced on the basis of UK domestic prices).

The letter also suggested that a further meeting be held to discuss other ways in which DSI 'could achieve greater control of unwelcome cross-frontier trading within Europe, particularly those from the UK in Holland, France and Germany'.

([1]) See recital 3 above.
([2]) Letter dated 15 October 1986 to Newitt.

2. *Refusal to supply*

(19) In October 1986, DSI refused to supply two large orders by Newitt for tennis-balls (57 000 dozen worth a total value of some £ 270 000) intended for dispatch to France, reiterating its policy on exports and the 'considerable difficulties' which it had experienced with 'substantial quantities' of balls sold by Newitt in France and re-exported to the Netherlands and Belgium.

(20) Faced with the obstacles erected by DSI to the export of its products, Newitt sought alternative sources of supply. A source for tennis-balls was found in the United States. DSI attempted to identify the source of such supplies ([3]).

At the same time, DSI put pressure on Newitt by deciding, in June 1987, to place an embargo on deliveries to it. However, although it acknowledges that such a measure was taken — because DSI had reached the view that Newitt was no longer respecting 'the position' of its distributors in Europe — BTR, the DSI holding company, denies that there was ever any question of making the ban permanent and total ([4]).

(21) Up to the end of 1987, Newitt managed to obtain supplies of tennis-balls from DSI's US subsidiary. From January 1988, however, that company stopped supplies to Newitt 'due to adjusted policy' ([5]).

3. *Pricing measures*

3.1. Changes in price-lists and discounts granted to UK wholesalers

(22) DSI's abovementioned letter dated 16 June 1986 prohibiting Newitt from exporting again without its approval also announced a change in the prices charged and discounts granted to Newitt for squash-balls, namely a switch from the export

([3]) See recital 33 below.
([4]) Letter dated 3 September 1987 from BTR to Newitt's solicitors.
([5]) Telex sent on 1 February 1989 by Dunlop USA to Newitt.

price-list (substantially cheaper [1]), to which Newitt had had access since 1978) with a 20 % discount to the domestic price-list with a 15 % discount. These changes meant that Newitt's purchasing prices jumped sharply, by some 27 % for coloured squash-balls and by some 54 % for black squash-balls.

(23) Similar price and discount changes affected tennis-balls in 1986 to 1987. Having previously been charged export prices minus a discount of 20 % in principle in 1985 and 16,5 % in 1986, Newitt was charged UK domestic prices minus a discount of 15 %, subsequently negotiated to 20 %, and then reduced to 17,5 % in 1988. The impact of these measures compared to the prices charged to a number of DSI's exclusive distributors is illustrated in Annex 3. The prices charged Newitt, which were between 0 and 10 % higher than those charged such distributors, gradually rose to become 25 to 40 % higher (Annex 3.3).

(24) In the letter dated 3 September 1987 already referred to above, while proposing to Newitt the resumption of normal business relations following the embargo imposed on some or all of its orders, BTR specified that Newitt would be entitled to export prices only for 'specific' export orders to 'named' customers, with discounts that would take account of the 'responsibilities' borne in the relevant territory by DIS's distributors there.

3.2. Measures to support exclusive distributors

(25) In certain cases, DSI backed up the pricing measures described above by taking specific measures to support some of its exclusive distributors (*ad hoc* price reductions, compensation for inadequate profit margins, etc.) in order to keep the ratio of prices charged the exclusive distribution network to prices charged UK exporters sufficiently low to prevent the latter from exporting again [2].

4. *Buying-back of parallel exports*

(26) In 1985 and 1986, parallel imports of Dunlop Max 200 G rackets were put on sale at low prices by two Dutch chains of shops. Following complaints by AWS, DSI undertook to contribute financially to the total buying-back of these rackets by AWS (250 rackets) by compensating its exclusive distributor for the difference between the buy-back price paid by the latter to the shops in question and the price AWS would normally have paid for the rackets from DSI. The operation was followed by a widespread advertising and promotion campaign supported financially by DSI which was aimed at publicizing the buy-back and thus re-establishing the retail trade's confidence in DSI's distribution network. The first buy-back was apparently followed by a second, at the end of 1986, of 200 new Max 200 G models sold by Kwantum.

5. *Marking of products*

5.1. Identification codes

(27) It is also apparent that DSI started to place identification codes on some of its products, such as tennis-rackets, to enable it to identify the origins of parallel imports and take appropriate measures to 'eliminate' them [3].

5.2. Marks

(28) For the same purpose, DSI placed special marks on its tennis-ball tins. It was this process which, according to the complainant, allowed DSI to identify the final destination of the tennis-balls which it had sold it.

6. *Use of tennis federation labels for exclusive distributors only*

(29) The technical approval of tennis-balls takes place at International Tennis Federation level. Any ball meeting the technical standards laid down by the ITF may be approved, subject to payment of a fixed amount to cover the costs of tests and analyses. Approved balls are designated as 'first-grade tennis-balls' and thus recognized as suitable for use in all tournaments and matches.

However, most of the national tennis federations apply what might be termed a second level of approval or selection, based on purely financial criteria. In return for payment of a fixed amount or, in some cases, on the basis of negotiations or even bidding procedures, one or more brands of tennis-ball may be labelled as 'official balls' of individual national federations, or as 'official balls' of major

[1] See recital 12 above.
[2] See recitals 34 and 35 below.
[3] See in particular the telex sent on 10 March 1986 by DSI to AWS.

tournaments organized by them (such as Wimbledon and Roland Garros). The label may be placed on the tins or even printed on the balls. The label 'official balls' may in many cases include the description of the balls as being 'selected' or 'recommended' by the federations.

In addition to the promotional advantage which use of this label represents, these 'official' balls will generally be the only ones that can be used in competitions organized by the federations.

In response to the parallel imports flooding the Dutch market, DSI decided in 1986 to print the label 'KNLTB official' on its 'Fort' balls (KNLTB being the initials of the Dutch tennis federation) (1), and to place a sticker bearing the same message on its new tins, adding the following legend 'the only approved and recommended tennis-ball' (meaning approved and recommended by the KNLTB), it being understood that such balls and tins were to be supplied only to DSI's exclusive distribution network in the Netherlands. Similar markings were added in Belgium.

VI. The role played by certain DSI exclusive distributors in determining its policy

(30) An investigation carried out on 3 November 1988 on the premises of AWS, DSI's exclusive distributor for Dunlop products in the Benelux countries, revealed the active part placed by AWS in support of DSI's export policy to those countries. An investigation carried out on 4 November 1988 at Pinguin, DSI's exclusive distributor for Slazenger in the Netherlands, revealed that Pinguin had at the very least played a passive role in that policy.

1. *AWS*

(31) On the basis of the documents obtained during the abovementioned investigation, the role played by AWS consisted essentially in informing DSI of the flow of parallel imports into the Benelux countries, in helping to identify their origin, in encouraging DSI to take steps to end such imports and participating in the implementation of such measures. The products involved in the concerted practices between DSI and AWS appear to have been chiefly, but not exclusively, tennis-balls and tennis-rackets. To these must be added, at least, golfing equipment and squash-balls. The respective roles played by AWS and DSI were described in detail in the Statement of Objections (2) (recitals 42 to 76), and this Decision provides only a summary of them.

1.1. Exchange of information and pressure on DSI

(32) Numerous documents obtained on the premises of AWS show that there was close collaboration between AWS and DSI to identify the origin of parallel imports into the Netherlands and Belgium so as to eliminate them.

From 1985 to the end of 1987 at least, AWS regularly informed DSI of the imminent arrival or sale at low prices on the Dutch market of parallel imports of Dunlop products, from whatever country. Such information was generally transmitted in the form of a complaint, with AWS accusing DSI of not being able to control its distribution channels and pointing out on occasion that such control was one of the conditions for their collaboration. AWS frequently accompanied its complaints with threats : threats that it would stop doing business with DSI and threats that it would not place planned orders or would return unsold stocks. Where it was aware of them, AWS informed DSI of the country of origin of parallel imports or the identity of the parallel importer or any other information likely to help in such identification.

The documents show, moreover, that DSI took action (generally very rapidly) on the complaints from its distributor and sought actively to identify the origin of the parallel imports complained about and the channels through which the goods had been imported, taking specific measures in this respect (codification, marking, etc.). Once the sources had been identified, DSI attempted by various means to eliminate such imports. At all stages of this process, DSI in turn requested AWS's collaboration.

(1) KNLTB : Koninklijke Nederlandse Lawn Tennis Bond.

(2) Letters sent on 29 May 1990 by the Commission to DSI, BTR, AWS and Pinguin. However, it should be noted that the Commission's interpretation, in the Statement of Objections, of a number of documents obtained during the investigation at AWS has been challenged by AWS. The Commission's interpretation is not maintained here in respect of the following : Statement of Objections point 37 in fine (not 'various', but 'one' document), point 53 in fine ('eigen kenmerken'), point 64 first paragraph in fine ('inkoop' and 'verkoopprijzen'), point 72 in fine ('artificial exchange rates') and point 74.

1.2. Stopping of supplies to Newitt

(33) While DSI's export ban was intended to provide general protection for the whole of its exclusive distribution network (1), the documents and the complainant's allegations (not denied by DSI) show that AWS played a particular role in stopping supplies to Newitt. Thus, in announcing in May 1986 that it intended to put an end to parallel imports, DSI referred to AWS's complaints (2). It also made reference to the question of balls sold by Newitt in France and re-exported to the Netherlands and Belgium in refusing, in October 1986, to supply orders placed by Newitt for dispatch to France (3). It was also in response to complaints by AWS concerning the arrival on the Dutch market of Dunlop balls originating in the United States that DSI sought to identify the source or sources in question and got its American subsidiary to stop supplying Newitt (4).

1.3. Pricing measures

(34) The documents obtained during the investigation carried out at AWS show that the pricing measures taken by DSI against British traders (5) were also in response to complaints made by AWS. The prices for Dunlop products imported through parallel channels into the Netherlands were much lower than those charged by AWS. AWS wanted a ratio to be set (for the most widely sold tennis-balls and tennis-rackets in any case) between UK domestic prices and the prices it was charged, with such a ratio enabling it to sell in the Netherlands at a price equal to the net purchasing prices of the UK parallel exporters, with the aim of removing any incentive for the latter to export. Taking account of the net trading margin which it wanted to reserve for itself and transport costs, AWS took the view that the net prices which it should be allowed should be equal to 65 to 66 % of the net domestic prices charged to British traders :

Net purchasing price for UK traders =

100 % = AWS's selling price in the Netherlands,

— 32,5 % = AWS's net trading margin,

—(±) 2,5 % = transport costs

± 65 % = AWS's net purchasing prices.

However, DSI did not accept AWS's proposals as they stood, since it found them too rigid, and requested further discussion and examination of the figures. It informed AWS, however, that the net prices charged to Newitt for tennis-balls had already risen from £ 7,50 per dozen in 1985 to £ 8,50 in order 'to make exporting impossible' (meeting held on 15 and 16 May 1986). After fairly lengthy negotiations (AWS again demanded the introduction of a fixed ratio), DSI decided to increase UK domestic prices in general, to increase in addition the 'lowest UK net trade prices' charged to Newitt and two other UK traders and, conversely, to reduce (temporarily) the net prices charged to AWS. AWS thus was charged 'the lowest prices for Dunlop Fort balls' and this solution was intended 'in theory to make parallel imports impossible' (6).

In general, it is evident from Annex 3.3 that the index of prices charged to Newitt as compared with those charged to AWS rose from + 109 % in 1984 to + 112 % in 1985, + 121 % in 1986, + 125 % in 1987, + 134 % in 1988, falling again to + 123 % in 1989.

(35) The documents show that similar measures involving the setting of *'ad hoc'* prices (7), intended to eliminate parallel imports by removing any commercial advantage while at the same time maintaining AWS's profit margin at the desired level, were also taken, in collaboration between DSI and AWS, in respect of other products (tennis-rackets and golf equipment at least). So as to make this dissuasive price difference permanent, these prices were supposed to move in parallel with those charged to UK wholesalers.

(36) It should lastly be mentioned that DSI closed all export accounts for UK traders (8). AWS stated that this measure was also the result of its 'very tough position' (9).

(1) See recitals 16 to 18 above.
(2) See recitals 18 above.
(3) See recitals 19 above.
(4) See in particular the telefax sent on 16 November 1987 by AWS to DSI and the telefax sent on 17 November 1987 by DSI to AWS. See also recital 21 above.
(5) See recitals 22 *et seq.* above.
(6) AWS internal memorandum dated 4 March 1987.
(7) Sometimes referred to as 'special net prices' by AWS.
(8) For the significance of this measure, see recital 18 above.
(9) Meeting of the NSF (Dutch sports federation) on 20 October 1986.

1.4. Buy-back of products exported through parallel channels

(37) The documents also show that it was on a proposal by AWS (1) that DSI decided in May 1986 to contribute financially to the buy-back of parallel imports of Dunlop Max 200 G rackets from two chains of shops (see recital 26 above).

1.5. Marking of products

1.5.1. Identification codes

(38) DSI's practice of marking some of its tennis-rackets with identification codes (see recital 27 above) does not appear to be directly due to pressure exercised by AWS, since it seems to predate such pressure. However, the documents show clearly that when consignments of rackets imported through parallel channels appeared on the Dutch or Belgian markets, AWS noted the codes and passed them on to DSI for the purposes of identifying the exporter (see recital 32 above).

1.5.2. Marking

(39) The documents obtained do not show whether AWS played an active role as regards the marking of tennis-ball tins (see recital 28 above), but the context within which this operation took place leaves little if any doubt that it represented one of DSI's responses to the complaints made by AWS, if not by other of its exclusive distributors (see recital 32 above), with a view to identifying parallel exporters.

1.6. Reserved use of tennis federation labels

(40) Although the implementation of this measure (see recital 29 above) was due to DSI, the documents obtained show that it represented once agin one of the responses made to AWS's complaints. The documents show that, regardless of the promotional effects anticipated for AWS, the measure was also intended to facilitate the identification of parallel imports. The cost of stamping the initials was borne by DSI, the major advertising campaigns accompanied the operation.

1.7. Miscellaneous

(41) The documents also show that the requests for protection did not necessarily emanate exclusively from AWS, but also from DSI. In May 1986, DSI asked AWS not to supply squash-balls for export to the United Kingdom 'because of its low prices' (2).

(1) See in particular the record of the meeting of Dunlop racket sports goods distributors on 6 and 7 May 1987, record of the meeting between DSI and AWS on 15 and 16 May 1986 and AWS's internal memorandum of 7 November 1986.

(2) Meeting on 15 and 16 May 1986.

2. *Pinguin*

(42) By letter dated 12 August 1987, DSI informed AWS and Pinguin, as well as its other distributors, that the Commission had received a complaint from Newitt 'concerning action we took against the resale of our products, by Newitt, outside the UK'. It asked AWS and Pinguin, if contacted by the Commission, not to make any response without first contacting DSI, so as to ensure that responses were provide 'in a coordinated way'. In the margin of the letter, Pinguin replied:

'Don't supply Newitt unless you can make an arrangement with him. If making arrangements is impossible because Newitt does not keep them, them don't do business with him. Pirate traders like Newitt and others have harmed our mutual business for hundreds of thousands of pounds in the past'.

VII. The conduct of the undertakings concerned following the complaint by Newitt and the Statement of Objections by the Commission

1. *DSI*

(43) After having been informed of the complaint by Newitt in June 1987 (letter dated 23 June 1987) and despite a clear warning from the Commission (letter dated 20 October 1987) (3), DSI did not alter its conduct, which it justified to the Commission on the grounds of its obligation to support its exclusive distributors in view of the specific responsibilities they bore (letter dated 9 November 1987). On 12 August 1987, it sent a letter to its exclusive distributors warning them of the investigation initiated by the Commission and asking them not to make any response to the Commission without first contacting DSI (4) and at the end of 1987/beginning of 1988, it got its American subsidiary to stop supplying Newitt (5).

(3) The warning was expressed in the following terms:
'You will not be unaware of the importance the Commission attaches to compliance with the Treaty's competition rules and more particularly those concerning the free movement of goods within the Community. The Commission has always taken the view that any barrier to exports must be considered a particularly serious infringement of those rules. If, therefore, as the complainant maintains — and the documents supporting his complaint seem at first sight to confirm the validity of this claim — you have exerted pressure on him of any kind whatsoever with a view to restricting his freedom to export within the common market, I call upon you to cease doing so immediately.'

(4) 'It is just possible that the Commission may contact you as one of our European distributors. If so, please do not make any response without first contacting myself. This is most important. We obviously wish to assist the Commission with their investigations, but to do so in a coordinated way' (letter dated 12 August from the Managing Director).

(5) See recital 21 above.

(44) It was only after having received the Commission's Statement of Objections (29 May 1990) that DSI, in its written (16 July 1990) and oral (hearing of 5 October 1990) replies, acknowledged that most of the measures which it had taken against Newitt and other UK exporters constituted infringements of Article 85 of the Treaty and gave undertakings in this respect regarding future action.

2. *AWS and Pinguin*

(45) In its written (31 July 1990) and oral (hearing of 5 October 1990) replies, AWS, while acknowledging most of the facts outlined by the Commission, denied that they could — with a few exceptions — have constituted infringements of Article 85 of the Treaty. Pinguin did not reply to the Statement of Objections.

VIII. Development of Newitt's exports

(46) DSI products accounted for a large proportion of Newitt's exports to the Community. From 1985 to 1988, these fell by 40 %, while its turnover rose by 42 % during the same period: its exports of DSI products to the Community accounted for only 7,6 % of its turnover in 1988 compared with 18,3 % in 1985. With more particular regard to tennis-balls, having, according to its own estimates, exported 44 000 dozen DSI tennis-balls to the Community, Newitt exported only 9 000 in 1987 and none in 1988.

B. LEGAL ASSESSMENT

I. Article 85 (1)

(47) The barriers erected by DSI to the export of its products are not unilateral acts by DSI, but must be regarded as an integral, although frequently unwritten, part of its distribution or sales agreements, or are the result of concerted action by DSI and some of its distributors. The barriers had the direct object and the effect of restricting competition and affecting trade between Member States.

A. AGREEMENTS, CONCERTED PRACTICES AND RESTRICTIONS OF COMPETITION

1. *Ban on exports* (recitals 16, 17 and 18)

(48) The various letters from DSI to Newitt and more particularly the letter dated 5 August 1985, which confirms DSI's export policy of 'quite simply not allowing shipment to any world market where we have local legal distributor agreements', indicate clearly that:

— DSI's exclusive distribution system contains an unwritten clause whereby DSI undertakes to provide its exclusive distributors with absolute territorial protection,

— the sales agreements between DSI and its retailers and distributors also contain an unwritten condition of sale which prohibits them from exporting to the territories of other distributors.

Such unwritten clauses, by their very nature, have the object of restricting competition and of impeding trade between Member States, in breach of Article 85 (1). By eliminating all scope for economic operators to engage in parallel exports, they result in a sharing of the market for Dunlop-Slazenger products between DSI's various exclusive distributors and create the prerequisites for a differentiated pricing policy.

(49) DSI's letter of 5 August 1985 and a letter dated 15 October 1986 stipulate further that the general export ban covers the whole of Europe. As has been seen, DSI has, in all the Member States, either exclusive distributors or subsidiaries or branches which perform that function [1].

(50) BTR's letter dated 3 September 1987 — sent in response to the Commission's communication of Newitt's complaint — does little if anything to alter this general export ban: the possibility of exporting which it re-establishes is purely formal in that the new conditions which it introduces remove any real incentive for economic operators to export, since the prices they would be charged would be determined according to the 'responsibilities' of DSI's exclusive distributor in the country of destination, in other words, on the basis of the profit margin fixed for that distributor [2]. There is also the fact that the obligation on the exporter to reveal the identity of the final customer — an obligation which the decisions and case law of the Commission and the Court of Justice have always opposed — is liable to jeopardize the goodwill on which his business is based.

[1] See recital 10 above.
[2] This was actually implemented by DSI in collaboration with AWS in the Netherlands: see recitals 34 and 35 above. See also recital 56 below on the reasons adduced by DSI to justify these protection measures.

2. *Refusal to supply* (recitals 19, 20, 21, 33 and 42)

(51) The refusal to fill two large orders from Newitt for tennis-balls for France in October 1986, followed by the embargo, albeit temporary, on (some) supplies to the company in June 1987, and the subsequent stopping of supplies by the American subsidiary in 1988 were all measures designed to put an end to Newitt's exports, which had continued despite DSI's ban.

As has been seen (recitals 32 and 33), these refusals to supply were the result both of concerted practices by DSI and AWS and of the export ban governing DSI's sales agreements with UK traders.

Article 85 (1) prohibits such agreements and such concerted practices, which had the direct object and effect of restricting competition and of affecting trade between Member States and which prevented Dutch consumers from benefiting from lower prices than those charged by DSI's exclusive distributor.

(52) A document obtained at the premises of Pinguin shows that it too urged DSI to stop supplying Newitt unless an 'arrangement' was possible. The wording of the text is such that it must be concluded that the 'arrangement' would in one way or another restrict Newitt's freedom to export and that here too there was a concerted practice in breach of Article 85 (1).

(53) In its written and oral replies to the Statement of Objections, DSI, while denying that it imposed a permanent export ban, acknowledges that 'on occasion' it took such measures in respect of countries where it had exclusive distributors. It acknowledges that it thus refused to supply Newitt's orders for France and that, following AWS's request, it took action to get its American subsidiary to stop supplies to Newitt. It regrets having taken such measures, which it now regards as 'incorrect', but takes the view that 'the matter should have been dealt with entirely through the mechanism of price and discount adjustment', which is not any more acceptable for the Commission (see recital 56 below).

3. *Pricing measures* (recitals 22 to 25, 34, 35 and 36)

(54) The fact that DSI no longer allowed Newitt to benefit from its export prices and that it reduced the discounts usually granted to Newitt constituted measures aimed at preventing Newitt from remaining competitive in relation to DSI's exclusive distributors on the export markets [1]. These measures, which together had the effect of increasing Newitt's purchase prices by between 15 and over 50 % in the case of certain articles, efectively prevented it from continuing to export certain DSI products, such as tennis- and squash-balls, to other Community countries and compelled it to seek alternative sources of supply in third countries. As outlined in recital 34, these measures, which infringe Article 85 (1), were the result of close collaboration between DSI und AWS, and the level of the new prices charged to Newitt was specifically calculated to remove any incentive for that company to continue to export to the Benelux countries and to enable AWS to retain artificially its profit margins on the DSI products concerned.

(55) Certain documents show that, when it was impossible to raise the prices charged to British exporters — either for commercial reasons, or because the parallel imports had already taken place — DSI, in certain cases, subsidized the products of AWS byx covering part of the losses or loss of profit resulting from the 'special' prices which AWS was obliged to charge in order to combat such parallel imports. These *ad hoc* measures must be considered to be measures having an equivalent effect to the higher prices charged to British exporters.

(56) In its written and oral replies to the Statement of Objections, DSI defends the abovementioned pricing measures by referring to the specific costs borne by exclusive distributors and not borne by the parallel exporters. It thus argues that the measures taken in 1986 to 1987 against Newitt

[1] Indeed, the very existence of two price-lists, one for all export countries, the other for the United Kingdom only, is questionable in terms of its economic justification or, in any event, in terms of the frequently large disparities between the two sets of prices, which are usually to the disadvantage of the UK. The fact that domestic prices are for the most part considerably higher (15 to 50 %) (see recital 12 above) removes, in many cases, any incentive for UK firms to export. DSI has announced that it intends to do away with this double price list within the Community. The Commission reserves the right — if this intention is not put into effect — to return to this question and examine its compatibility with Article 85 (1) (possible existence of indirect export barriers) and, for products where DSI proves to hold a dominant position, with Article 86 (possible discriminatory pricing practices).

were intended merely to put an end to an unfair and commercially unjustified advantage whose origin was to be sought in a certain degree of management laxity prior to the takeover of DSI by BTR.

The Commission cannot accept this argument, for several reasons.

Firstly, it is not apparent (see Annex 3.1) that the prices charged to Newitt before the 1986 to 1988 measures gave it any unfair advantage, given the volumes involved, over DSI's other major wholesalers, selling mainly, or indeed virtually exclusively, on the UK market. During this entire period, the net prices charged to Newitt were, moreover, already significantly higher (some 9 to 12 %) than those charged to AWS (see Annex 3.3). On the contrary, the 1986 to 1988 measures affecting mainly Newitt, whose purchase prices exceeded those charged to smaller firms (Annex 3.1) and were at dissuasive levels compared with DSI's exclusive distributors (Annex 3.2 and 3.3), were in point of fact discriminatory in character.

The 'specific' costs referred to by DSI and cited during the hearing [1] do not, moreover, in any way properly derive from the function of exclusive distributor. Such costs are normal costs borne by any distribution firm, and their scale is primarily linked to the volume of turnover. The only particular costs of any scale which DSI's exclusive distributors have to bear, compared with independent firms, relate to advertising and promotional expenditure for the brand (some 6 % of its turnover according to AWS). However, it should firstly be noted that such expenditure is partly financed by DSI, which indeed makes a considerable contribution towards it.

In addition, such expenditure is certainly not without benefit to the exclusive distributor in so far as his name — and his title of 'exclusive' or 'official' distributor — are broadly associated with the brand in the advertising and promotional measures. If there are specific costs, they are thus counterbalanced by specific benefits.

At any rate, the view must be taken that any specific costs borne by exclusive distributors are largely offset by the granting of exclusivity, which constitutes a key commercial advantage. They do not justify the additional application to exclusive distributors of special prices intended to protect them from parallel imports.

[1] Administrative and sales staff, advertising and promotion, storage costs, distribution costs, travel and entertainment expenses, postage, telex, fax, bad debts.

Lastly, it should be pointed out that the documents obtained from AWS show that it was not the economic considerations claimed by DSI in its written and oral replies to the Statement of Objections which guided it in the measures it took against parallel exporters. The setting of the relative prices for UK firms and exclusive distributors was never based on their respective commercial importance or even on the amount of the 'specific' costs referred to by DSI. Such relative prices were set precisely, in collusion with AWS, at the level which would remove any incentive for British firms to continue exporting. This was the only criterion, inended to prevent parallel imports, which was taken into consideration [2].

(57) AWS for its part maintains that it was DSI which decided to increase the prices charged to United Kingdom traders and that it sought only to reduce its purchasing prices, which could only stimulate competition.

It has been abundantly evident that AWS's requests were not intended to obtain pruchasing prices at an economically justified level, but the setting of an artificial ratio between them and the prices charged to British firms in order, on the contrary, to prevent all competition.

4. *Buying-back of parallel imports* (recitals 26 and 37)

(58) As indicated in recitals 26 and 37, the repurchasing by AWS of parallel imports of low-price tennis-rackets on sale in Dutch chain stores and the reimbursement by DSI of the difference between the buy-back price paid by AWS and the price it normally paid DSI were also carried out at AWS's request and involved close collaboration between the two companies. These concerted practices were designed to protect AWS from competition and to enable it to maintain a high level of prices. They prevented consumers from benefiting from the cheaper prices charged by the parallel exporters and clearly infringe Article 85 (1). THe same applies to the advertising and promotion campaigns organized by AWS, with the support of DSI, which were intended to heighten the dissuasive effect of the buy-back operations.

[2] DSI acknowledges this, moreover, indirectly in its written reply to the Statement of Objections — and shows that it persists in this view — when, expressing regret at the export bans imposed on Newitt and the interruptions in supply, it adds that 'this matter should have been dealt with entirely through the mechanism of price and discount adjustment' (see recital 53 above).

5. *Product marking* (recitals 27 and 28, 38 and 39)

(59) DSI marked its products with codes or marks in order to make it easier to identify parallel exporters, with a view to terminating their activities. DSI acknowledged this operation, and the documents obtained from AWS also show that AWS actively participated in efforts to identify such exporters. Such concerted practices, once again aimed at protecting the DSI distribution network from parallel imports, also infringe Article 85 (1).

6. *Use of the tennis federation label for the benefit of exclusive distributors only* (recitals 29 and 40)

(60) The printing of the initials of the Dutch tennis federation ('KNLTB official') only on tennis-balls sold to AWS and the use of stickers bearing the same message together with the legend 'the only approved and recommended tennis-ball' on the corresponding tins were intended to achieve two objectives. They were intended, on the one hand, to facilitate (by allowing immediate identification) the tracing of balls imported through parallel channels and, on the other, whatever DSI and AWS say, to give the DSI exclusive distribution network an edge over competitors by inducing consumers erroneously to believe that only the balls distributed by that network met the technical standards supposedly imposed by the federation [1] and, incidentally, that the higher prices charged were justified. These measures must be regarded as constituting concerted practices that infringe Article 85 (1), since DSI implemented them and bore the financial costs of them in response to urgent requests from AWS to identify and halt parallel imports into the Benelux countries.

The exclusivity agreement between the KNLTB and AWS (which AWS refers to in its written reply to the Statement of Objections) does not alter the facts of the situation. Regardless of the question of the compatibility of the exclusivity agreement with Article 85 — a question on which the Commission has not expressed an opinion in this case, since it had no knowledge of the existence of the agreement — it has always been considered that the concerted use, within the framework of an exclusive distribution agreement, of an intellectual property right with the sole aim of impeding parallel imports constitutes an infringement of Article 85 (1) [2].

B. EFFECT ON TRADE BETWEEN MEMBER STATES

(61) The ban on exports contained in the DSI distribution agreements and conditions of sale had the direct object of impeding trade between Member States. The ban was a general one, in that it concerned all DSI products and all the Community countries. In view, moreover, of DSI's importance in the markets for sports equipment, especially the market for tennis, squash and golf equipment [3], the effect on trade between Member States was particularly appreciable.

(62) The concerted practices by DSI and AWS aimed at eliminating parallel imports into the Benelux countries also had the object of impeding trade between Member States. In many cases, they enabled such imports to be halted or cancelled their effects on prices, preventing consumers in those countries from enjoying lower prices than those charged by AWS. The concerted practices led to the virtual elimination of all exports by Newitt of Dunlop products to other Member States [4] and probably also to that of parallel exports by other UK traders.

II. Regulation (EEC) No 1983/83

(63) Article 1 of Regulation (EEC) No 1983/83 provides that exclusive distribution agreements are in general exempt from the prohibition laid down in Article 85 (1) if they fulfil the conditions set out in the Regulation. The exclusive distribution agreements concluded by DSI do not, however, qualify for such block exemption as they impose on the parties obligations which are liable to restrict competition other than the restrictions authorized in Article 2 of the Regulation and because they are accompanied by an unwritten clause giving absolute territorial protection to DSI distributors.

(1) The consumer certainly cannot imagine that the selection of the 'official' balls is carried out solely on a financial basis and not on the basis of their technical properties (see recital 29), particularly when the 'official' sticker is followed by the legend 'the only approved and recommended tennis-ball', — referring to approval and recommendation by the KNLTB. It is significant in this respect that AWS urged DSI to take back its old stocks of balls not marked with this label.

(2) See in particular Joined Cases 56 and 58/64 *Consten and Grundig v. Commission [1966]* ECR 299. See also Article 3 (d) of Regulation (EEC) No 1983/83 (OJ No L 173, 30. 6. 1983, p. 1).

(3) See recitals 6 to 9 above.

(4) See recital 46 above.

Furthermore, the implementation of the agreements also involves concerted practices. Both the provisions of the agreements and the concerted practices are caught by Article 3 (d) of the Regulation.

III. Article 85 (3)

(64) The DSI distribution agreements in the United Kingdom and in the other Member States were not notified to the Commission and do not therefore qualify for an individual exemption. In any event, even if they had been notified, they would not have qualified for such exemption in view of the export bans aimed at total territorial protection which they contain and which are not indispensable to the effectiveness of DSI's distribution system.

IV. Article 3 of Regulation No 17

(65) Pursuant to Article 3 (1) of Regulation No 17, the Commission may, if it finds that there has been an infringement of Article 85, require by decision that the undertakings concerned bring such infringement to an end.

(66) DSI is required, if it has not already done so, to terminate the export bans governing its sales agreements in the United Kingdom and the absolute territorial protection included in the exclusive distribution agreements it has in other Member States. It is also required to terminate the various measures (notably as regards prices) applied to Newitt and other UK traders with a view to preventing them from exporting, thus protecting its exclusive distributors.

V. Article 15 (2) of Regulation No 17

(67) Pursuant to Article 15 (2) (a) of Regulation No 17, the Commission may, by decision, impose fines of from ECU 1 000 to 1 000 000 or a sum in excess thereof, but not exceeding 10 % of the turnover in the previous business year, on undertakings which, either intentionally or negligently, infringe Article 85. In setting the amount of the fine, regard must be had both to the gravity and to the duration of the infringement.

(68) DSI could not have been unaware that the export ban (which applied to all its products and all the Member States) governing its distribution agreements and conditions of sale infringed Article 85 (1) and that the Court of Justice and the Commission have always regarded such bans, which undermine one of the fundamental objectives of the EEC Treaty, as particularly serious infrngements. DSI and AWS could not have been unaware that the same applied to the various concerted practices employed in order to prevent parallel imports into the Benelux countries. Consequently, a fine should be imposed on DSI and AWS.

(69) Neither the communication of Newitt's complaint to DSI in June 1987 nor the formal warning given by the Commission in October 1987 against these restrictions on exports induced DSI to change its behaviour [1]. The only response which the communication of Newitt's complaint to DSI appears to have evoked was that DSI sent a letter to its distributors on 12 August 1987 requesting them to coordinate their replies to any questions the Commission might ask.

In its written and oral replies to the Statement of Objections, by contrast, DSI acknowledge that a number (but not all) of the measures it had taken constituted infringements of the competition rules, said that it regretted this and announced that it would take a series of corrective measures, namely instructions to its staff and exclusive distributors, new distribution agreements and new conditions of sale [2]. However, at the same time, it made clear its intention of continuing to protect its exclusive distributors through a system of differentiated prices or discounts [3].

(70) Account must be taken of the fact that the infringements committed by DSI date back to at least 1977 (see the letter dated 14 December 1977 stressing that Dunlop products supplied to Newitt may not be exported) [4] and that they stopped in 1990, except in the case of the measures relating to prices. Account must also be taken of the fact that the infringements committed by AWS date back to at least 1985 (see the telexes dated 1 February and 29 April 1985 showing that AWS was noting the identification codes on Dunlop rackets and the telex dated 27 February 1986 in which it states that it agreed to DSI's pricing policy in 1985 only on the express condition that DSI had 'its distribution under control') and that the infringements stopped in April 1989, the date on which AWS ceased to be DSI's exclusive distributor.

[1] See recital 43 above.
[2] In this context, BTR communicated to the Commission by letter dated 12 December 1990 a 'competition law compliance manual' and, by letter dated 22 January 1991, a new standard distribution agreement.
[3] See in particular 53 above.
[4] However, the Commission acknowledges that this export ban was not always applied.

(71) In setting the amount of the fine, the Commission has also taken account of the fact that, although the export ban governing DSI's distribution agreements was general and covered all products, the concerted practices engaged in with AWS were apparently (on the basis of the information available to the Commission) limited to only some of the products (tennis-balls, squash-balls, tennis-rackets and golfing equipment). The Commission has also taken DSI's importance on the relevant markets into consideration.

As regards AWS, the Commission has taken account of the financial problems which it has encouraged and which have culminated in a take-over,

HAS ADOPTED THIS DECISION:

Article 1

Dunlop Slazenger International Ltd has infringed Article 85 (1) of the EEC Treaty by applying in its business relations with its customers a general ban on exporting its products, designed to protect its exclusive distribution network, and by implementing, in respect of some of its products (tennis-balls, squash-balls, tennis-rackets and golfing equipment), various measures — refusal to supply, dissuasive pricing measures, marking and follow-up of exported products, buy-back of exported products and the discriminatory use of official labels — in order to ensure enforcement of the export ban.

All Weather Sports International BV has infringed Article 85 (1) by urging and participating in the implementation of such measures in the Netherlands in respect of Dunlop products.

Pinguin Sports BV has infringed Article 85 (1) by urging the implementation of similar measures in the Netherlands in respect of Slazenger products.

Article 2

A fine of ECU 5 000 000 is hereby imposed on Dunlop Slazenger International Ltd and a fine of ECU 150 000 on All Weather Sports Benelux BV (which has taken over the assets of All Weather Sports BV) in respect of the infringements referred to in Article 1.

The fine shall be paid, in ecus, to the Commission of the European Communities, account No 310-0933000-43, Banque Bruxelles Lambert, Agence Européenne, Rond Point Schuman 5, 1040 Brussels, within a period of three months of the notification of this Decision. After the expiry of that period, interest shall automatically be payable at the rate charged by the European Monetary Cooperation Fund on its ecu operations on the first working day of the month in which this Decision is adopted, plus three and a half percentage points.

Article 3

Dunlop Slazenger International Ltd shall, in so far as it has not already done soe, terminate the infringements referred to in Article 1 of this Decision. It shall refrain from adopting any measure having equivalent effect.

Article 4

This Decision is addressed to:

Dunlop Slazenger International Ltd,
Challenge Court,
Barnett Wood Lane,
Leatherhead,
UK — Surrey KT22 2LW,

BTR plc,
Vincent Square,
UK — London SW1P 2PL,

All Weather Sports Benelux BV,
Postbus 295,
Wattstraat 20,
NL-2700 AG-Zoetemeer,

Pinguin Sports BV,
Postbus 30,
Industrieweg 50,
NL-2380 AA Zoeterwoude/Rijndijk.

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

Done at Brussels, 18 March 1992.

For the Commission
Leon BRITTAN
Vice-President

ANNEX 1.1

First-grade tennis-balls — Market shares and dimensions in the Community (1) — 1989

(%)

Member States	Market Dimension ('000 dozen)	Dunlop	Slazenger	Total DSI	Penn	Wilson	Tretorn	Dunlop France	Others
Belgium/ Luxembourg	160	5	12	17	14	5	44	3	17
Denmark	45	5	25	30	15	5	33	—	17
Ireland	20	35	8	43	37	8	10	—	2
France	1 800	5	10	15	16	3	5	48	13
Germany	1 700	57	7	64	12	4	12	—	8 (Pirelli : 7)
Greece	10	40	5	45	20	15	15	—	5
Netherlands	210	38	21	59	12	3	20	2	4
Italy	540	28	5	33	10	6	20	4	27 (Pirelli : 25)
Portugal	12	30	10	40	32	8	—	10	10
Spain	180	18	3	21	31	19	2	20	7
United Kingdom	290	11	39	50	20	25	5	—	—
Total EEC	4 967	28	11	39	16	6	11	19	9

ANNEX 1.2

Squash-balls — Market shares in the Community (1) — 1989

(%)

Member States	Dunlop	Slazenger	Total DSI
Belgium/Luxembourg	33	17	50
Denmark	—	—	—
Ireland	85	—	85
France	—	10	10
Germany	43	3	46
Netherlands	50	5	55
Italy	53	15	68
Portugal	—	—	—
Spain	80	10	90
United Kingdom	70	10	80
Greece	—	—	—
Total EEC	56	7	63

(1) DSI estimates and commercial audits.

ANNEX 2

DSI — United Kingdom domestic price-list and export price-list — Differentials for tennis-balls and squash-balls — United Kingdom domestic list price = 100

Dunlop									Slazenger								
Date	Tennis-balls (1)				Squash-balls (2)				Date	Tennis-balls (3)				Squash-balls (4)			
	United Kingdom price (a)		Export price (b)		United Kingdom price		Export price			United Kingdom price		Export price		United Kingdom price		Export price	
	£	Index	£	Index	£	Index	£	Index		£	Index	£	Index	£	Index	£	Index
1982									1982								
1. 9	?		7,87				5,07		1. 10	?		8,30		?		4,50	—
1983									1983								
1. 3 / 1. 4	8,55	100	8,26 (7,87) (*)	96,6	6,05	100	5,58	92,2	31. 1	8,15	100		101,8	5,20	100		86,5
1. 10			8,67 (7,87)	101,4			5,58	92,2	3. 10	8,98		9,15	101,9	6,66	100	5,20	78,1
1984									1984								
1. 10 / 1. 11	9,40	100	9,10 (7,87)	96,8	6,66	100	5,58	83,8	2. 4	8,98			101,9	6,66	100		78,1
									1. 10	9,40			97,3	6,66	100		78,1
1985									1985								
25. 2 / 4. 3	9,40	100	9,10	96,8	8,08	100	5,58	69,1	4. 3	9,40		?	?	6,66	100	?	?
1. 9 / 1. 10	10,45	100	10,20	97,6	8,08	100	5,58	69,1	1. 10	10,45		?	?	6,66	100	?	?
2. 12	11,20	100		91,1													
1986									1986								
2. 4	11,90	100		85,7	8,08			69,1	1. 3 / 2. 4	11,20		10,75	96,0	6,66	100	5,58	83,8
1. 9 / 29. 9	11,90	100	11,00	92,4	8,08	100	5,75	71,2	1. 9 / 29. 9	11,90		11,00	92,4	6,66	100	5,75	86,3
1987									1987								
13. 4	11,90	100		92,4	8,75			65,7	13. 4	11,90			92,4	6,66			86,3
1. 7							6,20	70,9	1. 7							6,20	93,1
1. 9 / 28. 9	12,40	100	11,75	94,8	8,75			70,9	1. 9 / 28. 9	12,40		11,75	94,8	6,66		6,20	93,1
1988									1988								
1. 4	12,40	100		94,8	9,09			68,2	1. 4	12,40			94,8	6,66			93,1
1. 7							6,65	73,2	1. 9 / 3. 10	13,02		13,15	101,0	6,66		6,90	
1. 9 / 3. 10	13,02	100	13,15	101,0			6,65	73,2									
1989									1989								
3. 4	13,02	100		101,0					3. 4	13,02			101,0				
1. 7					9,54		7,10	74,4	1. 7					6,66		6,90	103,6
1. 9 / 2. 10	13,02	100	13,15	101,0	9,54			74,4	1. 9 / 2. 10	13,02		13,14	100,9	6,66			103,6

(a) Carriage paid.
(b) fob.
(*) Figures supplied by Newitt.
(1) Dunlop Fort 601.331 (1. 9. 1982-1. 10. 1983) — 601.332 and 601.330 (1. 10. 1984-2. 12. 1985) — 601.336 (2. 4. 1986-1. 9. 1988) — Dunlop T.P. 601.362 (since 1. 9. 1989).
(2) Black Yellow Dot 750 890 (1. 9. 1982-1. 10. 1984) — XX Black Yellow Dot 750 440 (since 4. 3. 1985).
(3) Slazenger Yellow 340 430 (1. 10. 1982-1. 9. 1986) — 340 454 (since 1. 9. 1986).
(4) Navy Blue Yellow Dot 419 043 (1. 10. 1982-4. 3. 1985) — 419 047 (1. 10. 1985-2. 4. 1986) — 419 173 (since 1. 9. 1986).

ANNEX 3.1.

DSI first-grade tennis-balls — Volumes/Prices/Discounts

Date	United Kingdom List price (A)	Export List price (B)	AWS (Benelux) (export price only)			Newitt (United Kingdom and export price)				...(*) (United Kingdom price only)			... (United Kingdom price only)			... (United Kingdom price only)		
			'000 dozen	Price	Discount on B	'000 dozen	Price	Discount on B	Discount on A	'000 dozen	Price	Discount on A	'000 dozen	Price	Discount on A	'000 dozen	Price	Discount on A
1984	8,55	8,67																
1/11	9,40	9,10																
1985	9,40	9,10																
1/9	10,45	10,20																
2/12	11,20	10,20																
1986	11,20	10,20																
2/4	11,90	10,20																
1/9	11,90	11,00																
1987	11,90	11,00																
1/9	12,40	11,75																
1988	12,40	11,75																
1/9	13,02	13,15																
1989	13,02	13,15																

1. Year-end figures.
2. Price = weighted average price.
3. AWS 1989 sales: January-April only (distribution agreements terminated).

Source: DSI.

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

ANNEX 3.2

DSI 'first-grade' tennis-balls — Volumes/Prices/Discounts

Date	Export list price	Benelux three distributors			Italy two distributors			Spain two distributors			Newitt		
		'000 dozen	Price	Discount	'000 dozen	Price	Discount	'000 dozen	Price	Discount	'000 dozen	Price	Discount
1984	8,67												
1/11	9,10												
1985	9,10												
1/9	10,20												
1986	10,20												
1/9	11,00												
1987	11,00												
1/9	11,75												
1988	11,75												
1/9	13,15												
1989	13,15												

1. Sales in Spain in 1984 were affected by late purchases in 1983 (total 1983 = [...] dozen).

Source: DSI.

ANNEX 3.3

Ratio of prices charged to Newitt and to certain DSI exclusive distributors — Index

Year	Newitt price	AWS price	Newitt price	Italian distributor price	Newitt price	Spanish distributor price
1984	109	100	94	100	101	100
1985	112	100	104	100	109	100
1986	121	100	113	100	116	100
1987	123	100	115	100	117	100
1988	134	100	123	100	124	100
1989	123	100	120	100	140	100