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Commission

1999/148/EC, ECSC:

- ★ **Commission Decision of 13 May 1998 on State aid granted by Italy by way of tax relief under Law No 549/95 to firms in the motor vehicle, shipbuilding and synthetic fibres industries and to steel firms covered by the ECSC Treaty⁽¹⁾ (notified under document number C(1998) 1434)** 6

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 387/1999
of 19 February 1999
amending Regulation (EC) No 286/1999 on the supply of cereals as food aid

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

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, and in particular Article 24(1)(b) thereof,

Whereas Commission Regulation (EC) No 286/1999 ⁽²⁾ issued an invitation to tender for the supply, as food aid, of cereals; whereas some of the conditions specified in the Annex to that Regulation should be altered at the request of the beneficiary,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 286/1999 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 19 February 1999.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 34, 9. 2. 1999, p. 14.

ANNEX

LOT A

1. **Action No:** 105/98
2. **Beneficiary** ⁽²⁾: CICR, 19 avenue de la Paix, CH-1202 Genève; tel.: (41 22) 734 60 01; telex: 22269 CICR CH
3. **Beneficiary's representative:** ICRC Tbilissi, Dutu Megreli St. 1, 380003 Tbilissi, Georgia; tel.: (7 88 32) 93 55 11; fax: 93 55 20
4. **Country of destination:** Georgia
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 500
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (II.B(1)(a))
9. **Packaging** ⁽⁷⁾: —
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.B(3) and IX.A.(3)(a))
 - language to be used for the markings: English
 - supplementary markings: 'ICRC'
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at destination ⁽⁸⁾
13. **Alternative delivery stage:** free at port of shipment or ex works ⁽⁹⁾
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** ICRC warehouse, Castello St. 30A, 354341 Adler, Russian Federation; tel.: (7 86 22) 97 40 60, fax: 44 13 34
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 11.4.1999
 - second deadline: 9.5.1999
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: 15 — 28.3.1999
 - second deadline: 12 — 25.4.1999
19. **Deadline for the submission of tenders (12 noon, Brussels time):**
 - first deadline: 23.2.1999
 - second deadline: 9.3.1999
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾:
Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/
Wetstraat 200, B-1049 Bruxelles/Brussel
telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** ⁽⁴⁾: refund applicable on 28.2.1999, fixed by Commission Regulation (EC) No 218/1999 (OJ L 23, 30.1.1999, p. 16)

Notes:

- (¹) Supplementary information: André Debongnie (tel. (32 2) 295 14 65).
Torben Vestergaard (tel. (32 2) 299 30 50).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver 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 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation. The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32 2) 296 20 05).
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:
— phytosanitary certificate,
— fumigation certificate.
- (⁶) Notwithstanding OJ C 114 of 29.4.1991, point II.B(3)(c) is replaced by the following: 'the words "European Community"'.

(⁷) The flour is to be packed in paper sachets with a net content of 1 kg. The paper must be a minimum weight of 80 g/m² and be designed to come into contact with foodstuffs.
The sachets, maximum 20, are to be packed together:
(a) either in a plastic film with a minimum thickness of 60 microns,
(b) or in a high quality corrugated board box.
The tender shall indicate the envisaged type of outer packaging.
If glue is used for making up or sealing the packaging, it must be water-resistant. If adhesive tape is used, it must not become unstuck in a damp atmosphere.
- (⁸) In addition to the provisions of Article 14(3) of Regulation (EC) No 2519/97, vessels chartered shall not appear on any of the four most recent quarterly lists of detained vessels as published by the Paris Memorandum of Understanding on Port State Control (Council Directive 95/21/EC (OJ L 157, 7.7.1995, p. 1)).
- (⁹) In case of delivery by land only, Article 7(7)(e) of Commission Regulation (EC) No 2519/97 (OJ L 346, 17.12.1997, p. 23) applies.
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COMMISSION REGULATION (EC) No 388/1999
of 19 February 1999
amending Regulation (EC) No 1292/98 establishing the forecast supply balance of
the Canary Islands for products of the processed fruit and vegetable sector

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

Having regard to Council Regulation (EC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EC) No 2348/96 ⁽²⁾, and in particular Article 3(4) thereof,

Whereas Commission Regulation (EC) No 1292/98 ⁽³⁾ establishes the forecast supply balance for processed fruit and vegetables for the Canary Islands for the period 1 July 1998 to 30 June 1999; whereas that balance can be revised; whereas the quantities fixed for certain products are in the process of being completely exhausted; whereas it therefore appears necessary to increase the quantities of certain products for the current marketing year, on the basis of the updated requirements of the Canary Islands;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1292/98 is hereby replaced by the Annex hereto.

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, 19 February 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ L 178, 23. 6. 1998, p. 28.

ANNEX

Establishing the forecast supply balance of the Canary Islands for products of the processed fruit and vegetable sector for the period 1 July 1998 to 30 June 1999

<i>(tonnes)</i>		
CN code	Description	Quantity
<i>Part I</i>		
2007 99	Preparations other than homogenized, containing fruit other than citrus fruit	6 633 ⁽¹⁾
<i>Part II</i>		
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or sweetening matter or spirit, not elsewhere specified or included:	
2008 20	— pineapples	2 650
2008 30	— citrus fruit	500
2008 40	— pears	3 850 ⁽²⁾
2008 50	— apricots	200
2008 70	— peaches	8 000
2008 80	— strawberries	700 ⁽³⁾
	— other, including mixtures other than those of subheading No 2008 19:	
2008 92	— — mixtures	2 770 ⁽⁴⁾
2008 99	— — other than palm hearts and mixtures	750
Total		19 420

⁽¹⁾ Of which 1 133 tonnes for the processing and/or packaging sector.

⁽²⁾ Of which 2 250 tonnes for the processing and/or packaging sector.

⁽³⁾ Of which 600 tonnes for the processing and/or packaging sector.

⁽⁴⁾ Of which 670 tonnes for the processing and/or packaging sector.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 May 1998

on State aid granted by Italy by way of tax relief under Law No 549/95 to firms in the motor vehicle, shipbuilding and synthetic fibres industries and to steel firms covered by the ECSC Treaty

(notified under document number C(1998) 1434)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/148/EC, ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry⁽¹⁾, and in particular Article 6(5) thereof,

Having given interested parties notice to submit their comments⁽²⁾, and having regard to those comments,

Whereas:

I

By letter dated 5 March 1996 from the Office of the Italian Permanent Representative to the European Union, the Italian authorities notified the Commission of Law No 549 of 28 December 1995 (hereinafter 'the Law'), which, *inter alia*, grants tax relief to certain firms.

⁽¹⁾ OJ L 338, 28. 12. 1996, p. 42.

⁽²⁾ OJ C 268, 4. 9. 1997, p. 4.

The Law provides for investment aid in the form of tax exemptions on reinvested profits. The scheme applies to all firms in Objective 1, 2 or 5(b) areas and to microenterprises outside such areas. Microenterprises are defined as firms which, in the tax period following that in progress on 12 June 1994, generated a turnover of less than ITL 5 billion and which have a workforce of not more than 20.

Under the Law, 50 % of reinvested profits are exempt from tax. Eligibility for this relief is restricted to profits intended for the financing of investment carried out in 1996 that exceeds the average amount of investment carried out in the previous five years. Eligible investment is investment in new plant, investment for the extension and modernisation of an existing establishment and investment in the purchase of new capital goods, including capital goods acquired through leasing contracts.

A ministerial circular dated 14 February 1997 spelled out the provisions of the Law with regard to the definition of eligible firms, the aid intensities allowed, the methods for calculating the aid, and eligible expenditure.

Those provisions stipulate that:

- firms covered by the Community definition of small or medium-sized enterprises (hereinafter 'SMEs') given in the Community guidelines on State aid for SMEs⁽³⁾ and other firms in the Objective 1, 2 or 5(b) areas which are eligible for the derogations provided for in Article 92(3)(a) and (c) qualify for the aid,
- of the firms in the Objective 1, 2 or 5(b) areas that are not eligible for the derogations provided for in Article 92(3)(a) and (c), only those that are covered by the Community definition of SMEs qualify for the aid,
- in the other areas to which the Law applies, both microenterprises as defined in the Law and SMEs qualify for aid.

Since the only sectors excluded from the scope of the Law were banking and insurance, the Commission had to conclude that it did not contain any provisions on aid to sensitive sectors.

In their letter of 13 February 1997 the Italian authorities stated among other things that, in implementing the Law, they did not intend to comply with the Community rules governing the motor vehicle and synthetic fibres industries and steel firms covered by the ECSC Treaty. No details were given in this respect regarding the ship-building industry. The Italian authorities appeared to take the view that the Community provisions relating to sensitive sectors were not applicable, since the scheme was horizontal in nature. They considered that those provisions applied only where a scheme had sectoral objectives.

In view of the foregoing and while generally approving the Law in the light of the Community rules on regional aid, the Commission informed the Italian Government, by letter of 21 May 1997, of its decision to initiate proceedings pursuant to Article 6(5) of Decision No 2496/96/ECSC and Article 93(3) of the EC Treaty in respect of application of the aid scheme in question in sensitive sectors such as the steel, motor vehicle, ship-building and synthetic fibres industries.

II

As part of the proceedings the Commission invited the Italian Government to submit its comments, and informed the other Member States and interested parties by publishing a notice in the *Official Journal of the European Communities*⁽⁴⁾.

⁽³⁾ OJ C 213, 13. 7. 1996, p. 4.

⁽⁴⁾ See footnote 2.

In response to that notice, four interested parties and one Member State submitted comments to the Commission: the International Rayon and Synthetic Fibres Committee (letter of 12 September 1997), British Steel (letter of 15 September 1997), the UK Steel Association (letter of 16 September 1997), Wirtschaftsvereinigung Stahl (letter of 25 September 1997) and Denmark (letter of 2 October 1997).

In their comments, the interested parties and Denmark expressed support for the Commission's decision to initiate proceedings.

By letter of 24 October 1997 the Commission passed on the above comments to the Italian authorities. As of 20 April 1998, the Italian authorities had not made any formal reply to that letter or to the letter of 21 May 1997 by which the Commission had informed them of its decision to initiate proceedings.

III

The measures in question constitute aid to firms since they have the effect of selectively reducing, for the recipients, the costs normally borne by competing firms. Furthermore, only certain firms qualify for these reductions, more specifically firms located in Objective 1, 2 or 5(b) areas, microenterprises as defined in the Law, and SMEs.

The aid, granted in the form of tax relief, consequently distorts competition between firms and is liable to affect intra-Community trade.

As regards the application of the Law to steel firms covered by the ECSC Treaty, Article 4(c) of that Treaty stipulates that subsidies or aids granted by States in any form whatsoever are recognised as incompatible with the common market for coal and steel and must accordingly be abolished and prohibited within the Community. The only derogations that might possibly be granted from that general ban are listed exhaustively in Decision No 2496/96/ECSC. These are aid for research and development (Article 2), aid for environmental protection (Article 3) and aid for closures (Article 4).

The Italian authorities have not relied on any of these derogations to justify the application of the State aid measures concerned to the steel industry. It is furthermore clear from the file that none of the above derogations can apply to the aid in question.

Neither does the Law lay down any limit in respect of the nature and purpose of the investments qualifying for tax relief.

The application of the tax exemptions concerned to steel firms covered by the ECSC Treaty must consequently be regarded as illegal since it was not previously authorised by the Commission. It is also incompatible with the common market for coal and steel since it does not qualify for any of the possible derogations allowed by Decision No 2496/96/ECSC.

IV

As regards the application of the aid scheme in question to shipbuilding and ship repair firms, the latter are subject to the special State aid rules laid down in Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding⁽⁵⁾, the validity of which was extended by Council Regulation (EC) No 2600/97⁽⁶⁾. Article 11(2)(b) of the Directive stipulates that Member States must notify the Commission in advance of any decision to apply a general or regional aid scheme to the firms covered by the Directive, and must not put such a decision into effect before it is authorised.

Each case in which the Law is applied to shipbuilding or ship repair firms must therefore be notified to the Commission, which alone has the powers to assess whether the aid is in conformity with the rules laid down in Article 6 of the Directive.

As far as the application of the Law to the synthetic fibres industry is concerned, in 1997, in view of the low average rate of productive capacity utilisation in the synthetic fibres industry, the resulting job losses and the risk that any new aid could aggravate the situation and distort competition, the Commission adopted a code on aid to the synthetic fibres industry in order to impose tighter control on the granting of aid by Member States to synthetic fibre producers.

The code has been periodically revised. The current version⁽⁷⁾ entered into force on 1 April 1996 and expires on 31 March 1999. It replaced the previous version⁽⁸⁾, which expired on 31 March 1996. A Community code on aid to the industry was therefore in force throughout 1996

and Italy was therefore required by the code to notify any aid which it planned to grant to firms in the industry.

Lastly, as regards application of the Law to the motor vehicle industry, in 1989 the Commission decided to adopt a framework for State aid to the motor vehicle industry⁽⁹⁾. Because of the increasingly tough competition in the sector, the framework makes the granting of aid subject to stricter rules, so as to ensure that the competitiveness of the Community industry is not distorted by unfair competition. In particular, it requires Member States to notify in advance major aid measures for the motor vehicle industry in accordance with strict rules.

Since 1989 the framework has been renewed four times, in 1991⁽¹⁰⁾, 1992⁽¹¹⁾, 1995⁽¹²⁾ and 1997⁽¹³⁾. With reference to the provisions of the Law, therefore, a Community framework was in force throughout 1996 and Italy was required by the framework to notify any aid for an investment project in the motor vehicle industry costing more than ECU 17 million.

Even if the tax exemptions in question could be regarded as compatible with the common market, on the grounds that they fulfil some of the conditions laid down in the relevant sectoral rules, the aid granted in the above sensitive sectors should be declared illegal since it was granted without the prior approval of the Commission, which is exclusively empowered to assess its compatibility.

The Italian authorities must therefore inform the Commission in good time of the individual cases in which they intend to apply the Law to firms in the above sensitive sectors and provide it with all the necessary information and explanations enabling it to assess the compatibility of the aid in the sectors in question. If the Commission were not to receive from the Italian authorities the information required for the purpose of assessing the compatibility of the aid with the common market, it would have to base its assessment on the information in its possession at the time it took its final decision; in view of the misgivings about aid in the sectors concerned which the Commission expressed when it initiated the proceedings, a negative final decision cannot be ruled out at this stage in the procedure.

V

In the light of the foregoing, and in particular Parts III and IV, it must be concluded that the aid granted under the Law by Italy in 1996 by way of tax relief to steel firms and firms in the other sensitive sectors mentioned in this Decision is illegal since it was not notified and, *a fortiori*, was not approved by the Commission before it was

⁽⁵⁾ OJ L 380, 31. 12. 1990, p. 27.

⁽⁶⁾ OJ L 351, 23. 12. 1997, p. 18.

⁽⁷⁾ OJ C 94, 30. 3. 1996, p. 11.

⁽⁸⁾ OJ C 142, 8. 6. 1995, p. 4.

⁽⁹⁾ OJ C 123, 18. 5. 1989, p. 3.

⁽¹⁰⁾ OJ C 81, 26. 3. 1991, p. 4.

⁽¹¹⁾ OJ C 36, 10. 2. 1993, p. 17.

⁽¹²⁾ OJ C 284, 28. 10. 1995, p. 3.

⁽¹³⁾ OJ C 279, 15. 9. 1997, p. 1.

granted. The aid to steel firms covered by the ECSC Treaty is furthermore incompatible with the common market since it does not qualify for any of the possible derogations provided for by Decision No 2496/96/ECSC. On the question of the compatibility of the aid in the other sensitive sectors, the Commission will determine its position when it has received the information that Italy is required to communicate,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Italy under Law No 549/95 by way of tax relief to steel firms covered by the ECSC Treaty is illegal, since it was granted in breach of Article 6(1) of Decision No 2496/96/ECSC.

It is also incompatible with the common market for coal and steel by virtue of Article 4(c) of the ECSC Treaty.

Article 2

Italy shall recover the aid referred to in Article 1 in accordance with the provisions of Italian law relating to the recovery of amounts owed to the public authorities. In order to counteract the effects of the aid, interest shall be charged on the amount of the aid from the date on which it was granted until the date it is reimbursed. The interest rate applicable shall be that used by the Commission to calculate the net grant equivalent of regional aid schemes in the period in question.

Article 3

Italy is required to provide the Commission, within one month of the notification of this Decision, with all the necessary information and explanations enabling it to assess the compatibility with the common market of the State aid granted under Law No 549/95 to firms in the shipbuilding, motor vehicle and synthetic fibres industries.

That aid is illegal, since it was granted in breach of the prior notification requirement laid down in Article 93(3) of the EC Treaty.

Article 4

Italy shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 May 1998.

For the Commission

Karel VAN MIERT

Member of the Commission
