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(Acts adopted pursuant to Title V of the Treaty on European Union)

COMMON POSITION

of 23 April 1999

defined by the Council on the basis of Article J.2 of the Treaty on European Union concerning a ban on the supply and sale of petroleum and petroleum products to the Federal Republic of Yugoslavia (FRY)

(1999/273/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.2 thereof,

- (1) Whereas on 8 April 1999 the Council recalled its conclusions of 25 January and 21 February, including those on the strengthening of economic sanctions;
- (2) Whereas on 14 April 1999 the Heads of State Government reiterated their determination not to tolerate the killings and deportations in Kosovo and that the use of the most severe measures is necessary and warranted;
- (3) Whereas, in the face of extreme and criminally irresponsible policies by the FRY authorities, the European Union considers it appropriate to prohibit the supply and sale of petroleum and petroleum products to the FRY and to invite the Associated Countries of central and eastern Europe and Cyprus and the EFTA Members of the EEA to do likewise;
- (4) Whereas action by the Community is needed in order to implement the measures cited below,

HAS DEFINED THIS COMMON POSITION:

Article 1

1. The supply and sale of petroleum and petroleum products to the FRY shall be prohibited.

2. The prohibition referred to in paragraph 1 shall not apply to sales or supplies for verified humanitarian purposes, in particular for the needs of internally displaced persons and returnees.

Article 2

The Presidency will request the Associated Countries of central and eastern Europe and Cyprus and the EFTA Members of the EEA to align themselves with this Common Position.

Article 3

This Common Position shall be kept under constant review.

Article 4

This Common Position shall take effect on the date of its adoption.

Article 5

This Common Position shall be published in the Official Journal.

Done at Brussels, 23 April 1999.

For the Council

The President

J. FISCHER

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 856/1999
of 22 April 1999
establishing a special framework of assistance for traditional ACP suppliers of
bananas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽²⁾,

(1) Whereas the European Union is bound by the undertakings it made to the ACP countries under the Lomé Convention, and more particularly Protocol 5 thereof, which seeks to guarantee maintenance for the ACP States of their advantages on the European market, access to that market in conditions that may not be less favourable than those that they have previously enjoyed and improvement of production and marketing conditions for ACP bananas;

(2) Whereas the common organisation of the market in bananas established by Regulation (EEC) No 404/93 ⁽³⁾ set the framework for continuing, on the Community market, the advantages enjoyed in the past by traditional ACP suppliers;

(3) Whereas, in particular, the trade arrangements with third countries established by Title IV of the said Regulation were designed to allow bananas produced by the ACP States, which are traditional suppliers to the Community, to be disposed of on the Community market providing an adequate income for the producers, in accordance with the Community's commitment set out above;

(4) Whereas these trade arrangements have been amended by Regulation (EC) No 1637/98;

(5) Whereas these trade modifications have substantially altered the market conditions for traditional ACP suppliers and might, in particular, harm the most disadvantaged suppliers;

(6) Whereas particular efforts will thus be needed by traditional ACP suppliers to adapt to these new market conditions in order to maintain a presence on the Community market and to allow for the continuing viability of traditional ACP supplies;

(7) Whereas technical and financial assistance, additional to that provided for in the fourth ACP-EC Convention of Lomé, should therefore be granted to traditional ACP suppliers to enable them to adapt to new market conditions and in particular to improve competitiveness; whereas at the same time environment-friendly production and marketing methods which also respect social standards should be encouraged;

(8) Whereas, as this assistance should relate to the special efforts required as a consequence of the new market conditions, objective criteria should be fixed to determine the extent of such assistance;

(9) Whereas, in order to ensure the appropriateness of such assistance with regard to the objectives pursued, this assistance should be temporary and should be gradually and smoothly phased out;

(10) Whereas, to facilitate implementation of these provisions, a procedure involving close cooperation between the Member States and the Commission should be established,

⁽¹⁾ OJ C 364, 25.11.1998, p. 14.

⁽²⁾ Opinion of the European Parliament of 19 June 1998 (OJ C 210, 6.7.1998), Council Common Position of 5 October 1998 (OJ C 364, 25.11.1998) and Decision of the European Parliament of 28 January 1999 (not yet published in the Official Journal).

⁽³⁾ OJ L 47, 25.2.1993, p. 1. Regulation as last amended by Regulation (EC) No 1637/98 (OJ L 210, 28.7.1998, p. 28).

HAS ADOPTED THIS REGULATION:

Article 1

1. A special framework for technical and financial assistance is hereby established to assist traditional ACP suppliers of bananas to adapt to the new market conditions following the amendments made to the common organisation of the market in bananas by Regulation (EC) No 1637/98.

2. This special framework shall be implemented for a period not exceeding ten years starting on 1 January 1999.

Article 2

For the purposes of this Regulation:

- 'traditional ACP suppliers' means the ACP countries listed in the Annex,
- 'bananas' means fresh or dried bananas covered by CN code 0803, except for plantains.

Article 3

1. Traditional ACP suppliers shall be eligible for technical and financial assistance.

2. Technical and financial assistance shall be granted at the request of the ACP to contribute to the implementation of programmes aiming:

- (a) to improve competitiveness in the banana sector, in particular through:
 - increasing productivity, without causing damage to the environment,
 - improving quality, including phytosanitary measures,
 - adapting production, distribution or marketing methods to meet the quality standards provided for in Article 2 of Regulation (EEC) No 404/93,
 - establishing producers' organisations which have as their objective the improvement of the marketing and competitiveness of their products and the development of systems of certifying environment-friendly production methods, including fair-trade bananas,
 - developing a production and/or marketing strategy to meet the requirements of the market in the light of the Community's common organisation of the market in bananas,
 - assisting with training, market intelligence, the development of environment-friendly production methods including fair-trade bananas, improving the distribution infrastructure and improving

commercial and financial services to banana producers;

- (b) to support diversification where improvement in the competitiveness of the banana sector is not sustainable.

Article 4

The Commission shall decide on the eligibility of the programmes referred to in Article 3 after consultation with the traditional ACP suppliers concerned in accordance with the procedures laid down in Article 6. Special account will be taken of the individual circumstances of each ACP supplier, with particular regard to the need for specific solutions for Somalia. It shall also take into account the consistency of the envisaged programme with the general development objectives of the ACP State concerned and its coherence with regional cooperation with other banana producers, in particular the Community producers.

Article 5

1. The Commission shall be responsible for appraising, taking decisions on and managing operations conducted under this Regulation, in accordance with the budgetary and other procedures in force, notably those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. Decisions concerning any operation financed under this Regulation at a cost of over EUR 2 million, or any adjustment of such an operation involving an increase of more than 20 % in the amount initially agreed, and proposals for fundamental amendments to be made as a result of difficulties which emerged in implementing projects which have already started, shall be adopted by means of the procedure laid down in Article 6.

Where the overrun referred to in the first paragraph is more than EUR 4 million but less than 20 % of the original commitment, the opinion of the Committee, as defined in Article 6, shall be sought by simplified and accelerated procedures.

The Commission shall inform the Committee succinctly of financing decisions it intends to take concerning projects and programmes of a value of under EUR 2 million. Such information shall be given at least one week before the decision is taken.

3. All financing agreements or contracts concluded under this Regulation shall provide for on-the-spot checks by the Commission and the Court of Auditors in accordance with the usual arrangements established by the Commission pursuant to the rules in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

4. Where operations given rise to financing agreements between the Community and the recipient country, such agreements shall stipulate that taxes, duties and charges shall not be borne by the Community.

5. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States, the recipient country and the ACP States. Participation may be extended to include other developing countries in duly substantiated cases and in order to ensure the best cost-effectiveness ratio.

6. Supplies shall originate in the Member States or the ACP States. In duly substantiated exceptional cases, they may originate in other developing countries.

7. Particular attention will be given to:

- the pursuit of cost effectiveness and sustainable impact in project design,
- the clear definition and monitoring of objectives and indicators of achievement for all projects.

8. The assistance provided for under this Regulation shall complement and reinforce assistance provided under other instruments of development cooperation.

Article 6

1. The Commission shall be assisted by the geographically determined committee competent for development, consisting of representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 7

1. Within the global amount available for a given year, the Commission shall fix the maximum amount available to each traditional ACP supplier for the financing of the programmes referred to in Article 3(2), on the basis of the competitiveness gap observed and taking into account the importance of banana production of the country concerned. Where only programmes as defined in Article 3(2)(b) are implemented, the Commission will allocate an amount comparable to that given to the other traditional suppliers.

2. From the year 2004 and for each subsequent year thereafter, a maximum reduction coefficient of 15 % shall be applied to the level of assistance made available to individual traditional ACP suppliers. Where programmes defined under Article 3(2)(a) are implemented, this reduction coefficient shall be reduced to the same extent that an increase in competitiveness has been observed compared to the previous year.

3. Detailed rules will be established by the Commission in accordance with the procedure laid down in Article 8.

Article 8

1. Detailed rules for the application of this Regulation shall be laid down by the Commission.

2. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by a representative of the Commission.

3. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 9

By 31 December 2000, and every two years thereafter, the Commission shall present a report, accompanied if appropriate by proposals, on the operation of this Regulation to the European Parliament and the Council.

Article 10

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

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

Done at Luxembourg, 22 April 1999.

For the Council

The President

W. MÜLLER

*ANNEX***LIST REFERRED TO IN THE FIRST SUBPARAGRAPH OF ARTICLE 2****Traditional ACP suppliers of bananas**

Belize
Cameroon
Cape Verde
Côte d'Ivoire
Dominica
Grenada
Jamaica
Madagascar
Saint Lucia
Saint Vincent and the Grenadines
Somalia
Suriname

COUNCIL REGULATION (EC) No 857/1999
of 22 April 1999
amending Regulation (EC) No 2200/96 on the common organisation of the
market in fruit and vegetables

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Regulation (EEC) No 2200/96 ⁽⁴⁾ lays down rules on recognised producer organisations; whereas these rules require members to sell their entire production through the producer organisation; whereas, however, provision is made for this obligation to be waived for direct sales on the producer's holding to consumers for their personal needs; whereas a volume restriction applies to such sales; whereas to take account of standard practice in certain parts of the Community this waiver should be extended to embrace direct sales away from the holding but no change should be made in the present volume restriction;

Whereas Article 15(4)(c) of the said Regulation should be clarified;

Whereas the present provisions on defrayal by the Community of transport, sorting and packaging costs in connection with certain products withdrawn from the market and then distributed free should apply to all free distribution of withdrawn products,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2200/96 is hereby amended as follows:

1. in the first indent of Article 11(1)(c)(3) the words 'on their holdings' shall be replaced by 'on their holdings and/or outside their holdings'.

2. Article 15(4)(c) shall be replaced by the following:

'(c) make financial provision for the technical and human resources required to ensure the monitoring of compliance with the standards referred to in Article 2, with plant-health rules and with maximum permitted levels of residues.'

3. Article 30(6) shall be replaced by the following:

'6. The Community shall defray, on terms and conditions to be determined in accordance with the procedure laid down in Article 46, transport, sorting and packaging costs in connection with free distribution as provided for in paragraph 1.'

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 Luxembourg, 22 April 1999.

For the Council

The President

W. MÜLLER

⁽¹⁾ OJ C 381, 8.12.1998, p. 8.

⁽²⁾ Opinion delivered on 14 April 1999 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 24 February 1999 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 297, 21.11.1996, p. 1. Regulation as amended by Commission Regulation (EC) No 2520/97 (OJ L 346, 17.12.1997, p. 41).

COUNCIL REGULATION (EC) No 858/1999
of 22 April 1999
amending Regulation (EC) No 2202/96 introducing a Community aid scheme for
producers of certain citrus fruits

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 5 of Regulation (EC) No 2202/96 ⁽⁴⁾ introduces processing thresholds; whereas an overrun of these thresholds is assessed using the average of the quantities processed under the aid scheme in the last three marketing years, including the current one; whereas the aid fixed for the current marketing year is reduced where an overrun has been established; whereas this system of calculation means that the amount of aid for a given marketing year cannot be known until after the marketing year in question; whereas this situation causes problems for the management of producer organisations; whereas the effects of an overrun should therefore be postponed to the following marketing year;

Whereas account needs to be taken of the fact that certain products are processed during the whole of the marketing year for those products; whereas, in that case, observance of the processing threshold should be assessed over a period equivalent to three marketing years;

Whereas this amendment to Regulation (EC) No 2202/96 should apply from the 1999/2000 marketing year,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2202/96 is hereby amended as follows:

1. Article 5(2) and (3) shall be replaced by the following:

‘2. The aid fixed in accordance with Article 3(2) for a given marketing year for the products in question shall be reduced by 1 % per tranche of the overrun referred to in paragraph 1 of this Article where the average of the quantities processed under the aid scheme during the three marketing years proceeding the marketing year in question, or during an equivalent period, exceeds the said threshold.

The overrun tranches shall be equal to 1 % of each of the thresholds referred to in paragraph 1.’

2. Article 6 shall be replaced by the following:

Article 6

Detailed rules for the application of this Regulation, in particular on the payment of aid, monitoring measures and penalties, the marketing years, the minimum characteristics of the raw materials delivered for processing, the equivalent period referred to in Article 5(2) and the financial consequences of exceeding the thresholds shall be adopted in accordance with the procedure laid down in Article 46 of Regulation (EC) No 2200/96.’

Article 2

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

It shall apply from the 1999/2000 marketing year.

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

Done at Luxembourg, 22 April 1999.

For the Council

The President

W. MÜLLER

⁽¹⁾ OJ C 381, 8.12.1998, p. 9.

⁽²⁾ Opinion delivered on 24 February 1999 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 24 February 1999 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 297, 21.11.1996, p. 49.

COUNCIL REGULATION (EC) No 859/1999
of 22 April 1999

amending Regulation (EEC) No 1442/88 on the granting, for the 1988/1989 to 1998/1999 wine years, of permanent abandonment premiums in respect of wine-growing areas

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European and Social Committee ⁽³⁾,

Having regard to Council Regulation (EEC) No 1442/88 of 24 May 1988 on the granting, for the 1988/1989 to 1998/1999 wine years, of permanent abandonment premiums in respect of wine-growing areas ⁽⁴⁾,

Whereas, as a result of the over-production crisis throughout the Cognac production area in the French region of Charentes and pending adoption of the reformed common organisation of the market in wine, a new deadline should be set for the submission of applications for the permanent abandonment premium so as to facilitate maximum use of that scheme in the above region, while maintaining the last date for grubbing up;

Whereas Regulation (EEC) No 1442/88 should accordingly be amended,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 4 of Regulation (EEC) No 1442/88 the following paragraph shall be added:

‘7. For the 1998/1999 wine year for the Charentes region:

- the last date referred to in paragraph 1 for the submission of applications for the payment of the premium shall be 31 March 1999,
- the last date for grubbing up referred to in paragraph 2 shall be 15 May 1999.’

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 Luxembourg, 22 April 1999.

For the Council

The President

W. MÜLLER

⁽¹⁾ OJ C 105, 15.4.1999, p. 5.

⁽²⁾ Opinion delivered on 14 April 1999 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 25 March 1999 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 132, 28.5.1988, p. 3. Regulation as last amended by Regulation (EC) No 1630/98 (OJ L 210, 28.7.1998, p. 12).

COUNCIL REGULATION (EC) No 860/1999
of 22 April 1999
amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical
nomenclature and on the Common Customs Tariff (Chapter 27)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, suspends customs duties in respect of goods of subheading 2712 90 31 intended for undergoing a specific process; whereas the said specific processes are described in Additional Note 4 to Chapter 27 of the Combined Nomenclature;

Whereas it is in the Community interest to extend the suspension of customs duties to goods of subheading 2712 90 31 intended for de-oiling by fractional crystallisation to take account of eco-friendly technological devel-

opments and improve the competitiveness of European firms,

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I, Part 2 to Regulation (EEC) No 2658/87, the following item shall be added to Additional Note 4 to Chapter 27, Section V, Schedule of Duties:

‘(p) solely for products under subheading 2712 90 31: de-oiling by fractional crystallisation’.

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 Luxembourg, 22 April 1999.

For the Council

The President

W. MÜLLER

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 2261/98 (OJ L 292, 30.10.1998, p. 1).

COUNCIL REGULATION (EC) No 861/1999
of 22 April 1999
amending Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical
nomenclature and on the Common Customs Tariff (drilling platforms)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and, in particular Article 28 thereof,

Having regard to the proposal from the Commission,

Whereas Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff⁽¹⁾, suspends customs duties in respect of particular goods intended for incorporation in drilling or production platforms: fixed, subheading ex 8430 49, operating in the territorial sea of Member States;

Whereas it is in the Community interest to extend the suspension of customs duties to goods intended for connection to fixed drilling or production platforms of subheading ex 8430 49, operating outside the territorial sea of Member States to take account of technological

developments, simplify customs procedures and improve the competitiveness of European firms,

HAS ADOPTED THIS REGULATION:

Article 1

In the preliminary provisions of Annex I, first part, Title II to Regulation (EEC) No 2658/87, under point A.2(a)(1) of the special provisions, the words 'fixed, subheading ex 8430 49, operating in the territorial sea of Member States' shall be replaced by 'fixed, subheading ex 8430 49, operating in or outside the territorial sea of Member States'.

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 Luxembourg, 22 April 1999.

For the Council
The President
W. MÜLLER

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Commission Regulation (EC) No 2261/98 (OJ L 292, 30.10.1998, p. 1).

COMMISSION REGULATION (EC) No 862/1999
of 26 April 1999
establishing the standard import values for determining the entry price of certain
fruit and vegetables

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

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4 (1) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 27 April 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 26 April 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	77,7
	999	77,7
0709 10 00	220	170,9
	999	170,9
0709 90 70	052	68,7
	999	68,7
0805 10 10, 0805 10 30, 0805 10 50	052	38,6
	204	39,3
	212	60,0
	600	46,1
	624	46,2
0808 10 20, 0808 10 50, 0808 10 90	999	46,0
	388	82,5
	400	84,6
	404	102,4
	508	77,0
	512	74,9
	524	75,1
	528	69,9
	720	91,8
	804	101,9
0808 20 50	999	84,5
	388	62,2
	512	68,4
	528	66,5
	999	65,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22.11.1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 863/1999**of 26 April 1999****determining the extent to which applications lodged in April 1999 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 April to 30 June 1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

*Article 1*Having regard to Commission Regulation (EC) No 1486/95 of 28 June 1995 opening and providing for the administration of tariff quotas for certain products in the pigmeat sector ⁽¹⁾, as last amended by Regulation (EC) No 1390/98 ⁽²⁾, and in particular Article 5 (5) thereof,

Applications for import licences for the period 1 April to 30 June 1999 submitted pursuant to Regulation (EC) No 1486/95 shall be met as referred to in the Annex.

Whereas the applications for import licences lodged for the second quarter of 1999 are for quantities less than the quantities available and can therefore be met in full,

Article 2

This Regulation shall enter into force on 27 April 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission⁽¹⁾ OJ L 145, 29.6.1995, p. 58.⁽²⁾ OJ L 187, 1.7.1998, p. 28.

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1999
G2	100
G3	100
G4	100
G5	100
G6	100
G7	100

COMMISSION REGULATION (EC) No 864/1999
of 26 April 1999
amending Regulation (EC) No 194/97 setting maximum levels for certain
contaminants in foodstuffs
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food⁽¹⁾, and in particular Article 2(3) thereof,

(1) Whereas Commission Regulation (EC) No 194/97 of 31 January 1997 setting maximum levels for certain contaminants in foodstuffs⁽²⁾, as last amended by Regulation (EC) No 1525/98⁽³⁾, fixes maximum nitrate levels for spinach, lettuce and preserved, deep-frozen or frozen spinach;

(2) Whereas Article 3 of the said Commission Regulation stipulates that the Commission shall proceed, before 1 October 1998 to a review of the maximum levels provided for in the Annex for lettuces and spinach, on the basis of the results of controls carried out by the Member States;

(3) Whereas codes of good practice to reduce the nitrate levels in spinach and lettuce have been put in place by Member States as provided for in Article 2(2) and (3) of the said Commission Regulation; whereas it is recognised that the period between the application of the measures and the revision of the maximum levels is too short to result in significant decreases in nitrate levels in spinach and lettuce, taking into account the major influence of climatic conditions on the level of nitrates in lettuce and spinach;

(4) Whereas the results of controls carried out by the Member States indicate that the maximum levels for nitrates in fresh spinach are in several cases exceeded; whereas several Member States have authorised for a transitional period the placing on the market of spinach grown and intended for consumption in their territory with nitrate levels higher than those set in point 1.1 of Part I of the Annex; whereas it is not possible for the time

being, given the short period of time between application and revision of the measures, to fix maximum levels for nitrates in spinach as low as reasonably achievable, taking into account the application of codes of good practice; whereas it is therefore appropriate to maintain the current maximum limits for nitrates in fresh spinach and to provide that these levels will be reviewed in a three-year period; whereas this review will be based on monitoring carried out by the Member States and the application of codes of good practice to reduce nitrate levels;

(5) Whereas the results of controls carried out by the Member State indicate that there is no possibility for the time being to reduce the maximum levels for lettuce;

(6) Whereas some Member states still need a transitional period to authorise the placing on the market of lettuce grown and intended for consumption in their territory with nitrate levels higher than those set in point 1.1 of Part I of the Annex; whereas it is appropriate to review each three years the maximum levels for nitrates in lettuce on the basis of the application of good practice to reduce nitrates levels and the results of controls carried out by the Member States in order to fix the maximum levels as low as reasonably achievable;

(7) Whereas the monitoring and the application of good practices shall be carried out using means proportionate to the desired objective, the obtained monitoring results and, particularly, in the light of the risks and of experience gained; whereas the application of codes of good practice in some Member States will be closely observed; whereas it is therefore appropriate that Member States communicate each year the results of their monitoring and report on the measures taken and the progress with regard to the application of codes of good practices to reduce nitrate levels and that an exchange of views with the Member States on these reports will take place annually;

⁽¹⁾ OJ L 37, 13.2.1993, p. 1.

⁽²⁾ OJ L 31, 1.2.1997, p. 48.

⁽³⁾ OJ L 201, 17.7.1998, p. 43.

- (8) Whereas lower limits are fixed for open-grown lettuce than for lettuce grown under glass, and in order to allow effective control the limits set for open grown lettuce should apply also to lettuce grown under glass in the absence of precise labelling;
- (9) Whereas the Scientific Committee for Food has been consulted, in accordance with Article 3 of Regulation (EEC) No 315/93, on the provisions liable to affect public health; whereas the Committee in its opinion on nitrate and nitrite of 22 September 1995 recommended continuation of efforts to reduce exposure to nitrates via food and water and urged that good agricultural practices are adopted to ensure nitrate levels are as low as possible;
- (10) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Foodstuffs,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 194/97 is hereby amended as follows:

1. Article 3 is replaced by the following:

'Article 3

Member States shall each year communicate to the Commission by 30 June, the results of their

monitoring and report on the measures taken and the progress made with regard to the application and improvement of codes of good practices to reduce nitrate levels. This information shall also contain the data on which their codes of good practice are based.

The Member States, who do not apply Article 2(2) of this Regulation, shall carry out the monitoring and the application of good practices using means proportionate to the desired objective, the obtained monitoring results and, particularly, in the light of the risks and of experience gained.

On the basis of the results of controls carried out by the Member States to check compliance with the maximum limits laid down in the Annex, the reports with regard to the application and improvement of codes of good practice to reduce nitrate levels and the evaluation of the data on which the Member States have based their good agricultural practices, the Commission shall proceed each three years and before 31 December 2001 for the first time, to a review of the provisions of this Regulation.';

2. the Annex is amended in accordance with the Annex hereto.

Article 2

This Regulation shall enter into force on the 20th 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, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

In the Annex, point '1. Nitrates' under heading 'I. Agricultural contaminants' is replaced by the following:

1. Nitrates

1.1. Fresh vegetables

Product	Maximum nitrate levels ⁽¹⁾ (mg NO ₃ /kg fresh product)		Sampling method	Reference analysis method
Spinach ⁽⁷⁾ (<i>Spinacia oleracea</i>)	Harvested 1 November to 31 March	3 000 ⁽²⁾	Commission Directive 79/700/EEC ⁽³⁾	
	Harvested 1 April to 31 October	2 500 ⁽²⁾		
Lettuce (<i>Lactuca sativa</i> L.) (protected and open-grown lettuce)	Harvested 1 October to 31 March	4 500 ⁽²⁾	Directive 79/700/EEC However, the minimum number of units per laboratory sample is 10	
	Harvested 1 April to 30 September	3 500 ⁽²⁾ ⁽⁸⁾		
	with the exception of open grown lettuce harvested from 1 May to 31 August	2 500 ⁽²⁾ ⁽⁸⁾		

1.2. Other processed vegetables for consumption

Product	Maximum nitrate levels ⁽¹⁾ (mg NO ₃ /kg processed product)		Sampling method	Reference analysis method
Preserved, deep-frozen or frozen spinach		2 000	Directive 79/700/EEC	

⁽¹⁾ The maximum levels do not apply to food particularly prepared for babies and young children.

⁽²⁾ Subject to review before 31 December 2001 pursuant to the provisions of Article 3.

⁽³⁾ OJ L 207, 15.8.1979, p. 26.

⁽⁷⁾ The maximum limits for fresh spinach do not apply for fresh spinach to be subjected to processing and which is directly transported in bulk from field to processing plant.

⁽⁸⁾ In the absence of appropriate labelling, indicating the production method, the limit established for the open-grown lettuce applies.

COMMISSION REGULATION (EC) No 865/1999

of 26 April 1999

allocating quotas for tomatoes for processing among the Member States for the 1999/2000 marketing year

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

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products⁽¹⁾, as last amended by Regulation (EC) No 2199/97⁽²⁾, and in particular Article 6(5) thereof,

- (1) Whereas Article 6(3) of Regulation (EC) No 2201/96 provides that the quotas for the groups of products for the 1999/2000 marketing year are to be apportioned among the Member States on the basis of average production for which at least the minimum price was paid during the 1997/98 and 1998/99 marketing years; whereas Article 6(3) of that Regulation provides that from the 1999/2000 marketing year onward, no apportionment may vary, by Member State and by product group, by more than 10 % from one marketing year to the next;
- (2) Whereas Article 17(2) of Commission Regulation (EC) No 504/97 of 19 March 1997 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards the system of production aid for products processed from fruit

and vegetables⁽³⁾, as last amended by Regulation (EC) No 702/1999⁽⁴⁾, provides that the Member States concerned are to notify the Commission each marketing year of their production for which at least the minimum price has been paid; whereas the quotas can accordingly be allocated for each group of products among the Member States on the basis of those notifications;

- (3) 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

For the 1999/2000 marketing year, pursuant to Article 6(3) of Regulation (EC) No 2201/96, the quotas shall be apportioned as set out in 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, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 303, 6.11.1997, p. 1.

⁽³⁾ OJ L 78, 20.3.1997, p. 14.

⁽⁴⁾ OJ L 89, 1.4.1999, p. 26.

ANNEX

Fresh tomato allocation broken down by Member State and product group for the 1999/2000 marketing year

<i>(tonnes)</i>				
Member State	Tomato concentrate	Preserved whole peeled tomatoes	Other products	Total
France	250 822	32 502	49 324	332 648
Greece	1 064 832	15 619	30 503	1 110 954
Italy	1 771 812	1 113 528	651 972	3 537 312
Spain	696 663	149 948	158 219	1 004 830
Portugal	801 124	9 522	39 872	850 518
Total	4 585 253	1 321 119	929 890	6 836 262

COMMISSION REGULATION (EC) No 866/1999
of 26 April 1999
concerning the authorisation of new additives and new additive uses in feeding-
stuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs⁽¹⁾, as last amended by Directive 1999/20/EC⁽²⁾, and in particular Articles 3 and 9j thereof,

- (1) Whereas Directive 70/524/EEC provides that new additives or new additive uses may be authorised, taking account of advances in scientific and technical knowledge;
- (2) Whereas Council Directive 93/113/EC of 14 December 1993 concerning the use and the marketing of enzymes, micro-organisms and their preparations in animal nutrition⁽³⁾, as last amended by Directive 97/40/EC⁽⁴⁾, by derogation from Directive 70/524/EEC, authorised Member States to permit provisionally the use and marketing of enzymes, micro-organisms and their preparations;
- (3) Whereas the examination of the dossiers, submitted by the Member States in accordance with Article 3 of Directive 93/113/EC, indicates that a certain number of preparations belonging to the groups of enzymes and micro-organisms can be provisionally authorised;

(4) Whereas the Scientific Committee for Animal Nutrition has delivered a favourable opinion with regard to the harmlessness of these preparations;

(5) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Feedingstuffs,

HAS ADOPTED THIS REGULATION:

Article 1

The preparations belonging to the group 'enzymes' and listed in Annex I to this Regulation may be authorised according to Directive 70/524/EEC as additives in animal nutrition under the conditions laid down in that Annex.

Article 2

The preparations belonging to the group 'micro-organisms' and listed in Annex II to this Regulation may be authorised according to Directive 70/524/EEC as additives in animal nutrition under the conditions laid down in that Annex.

Article 3

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 July 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 270, 14.12.1970, p. 1.

⁽²⁾ OJ L 80, 25.3.1999, p. 20.

⁽³⁾ OJ L 334, 31.12.1993, p. 17.

⁽⁴⁾ OJ L 180, 9.7.1997, p. 21.

ANNEX I

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					Units of activity per kg of complete feedingstuff			
2	3-phytase EC 3.1.3.8	Preparation of 3-phytase produced by <i>Aspergillus oryzae</i> (DSM 10 289) having a minimum activity of: Coated form: 2 500 FYT ⁽¹⁾ /g Liquid form: 5 000 FYT/g	Laying hens	—	500 FYT	1 000 FYT	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: 750 FYT. 3. For use in compound feed rich in phytates, e.g. containing more than 40 % cereals (corn, barley, oats, wheat, rye, triticale), oilseeds and pulses.	30. 9. 1999
8	Endo-1,4-betaglucanase EC 3.2.1.4 Endo-1,4-betaxylanase EC 3.2.1.8	Preparation of endo-1,4-beta-glucanase and endo-1,4-beta-xylanase produced by <i>Aspergillus niger</i> (CBS 600.94) having a minimum activity of: Solid and liquid forms: Endo-1,4-beta-glucanase: 10 000 BGU ⁽²⁾ /g Endo-1,4-beta-xylanase: 4 000 FXU ⁽³⁾ /g	Piglets	Four months	3 000 BGU 1 200 FXU	5 000 BGU 2 000 FXU	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: 3 000 to 5 000 BGU 1 200 to 2 000 FXU. 3. For use in compound feed rich in non-starch polysaccharides (mainly beta-glucans and arabinoxylans), e.g. containing more than 30 % barley.	30. 9. 1999

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					Units of activity per kg of complete feedingstuff			
29	Endo-1,3(4)-beta-glucanase EC 3.2.1.6	Preparation of endo-1,3(4)-beta-glucanase produced by <i>Geosmithia emersonii</i> (IMI SD 133) having a minimum activity of: 5 500 U (°)/g	Chickens for fattening	—	250 U	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: 250 U. 3. For use in compound feed rich in non-starch polysaccharides. (mainly beta-glucans), e.g. containing more than 50 % barley.	30. 9. 1999
30	Endo-1,3(4)-beta-glucanase EC 3.2.1.6 Endo-1,4-beta-xylanase EC 3.2.1.8	Preparation of endo-1,3(4)-beta-glucanase and endo-1,4-beta-xylanase produced by <i>Penicillium funiculosum</i> (IMI SD 101) having a minimum activity of: Powder form Endo-1,3(4)-beta-glucanase: 2 000 U (°)/g Endo-1,4-beta-xylanase: 1 400 U (°)/g Liquid form Endo-1,3(4)-beta-glucanase: 500 U/ml Endo-1,4-beta-xylanase: 350 U/ml	Chickens for fattening	—	Endo-1,3(4)-beta-glucanase: 100 U Endo-1,4-beta-xylanase: 70 U	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: Endo-1,3(4)-beta-glucanase: 100 U Endo-1,4-beta-xylanase: 70 U. 3. For use in compound feed rich in non-starch polysaccharides, (mainly beta-glucans and arabinoxylans), e.g. containing more than 50 % barley or 60 % wheat.	30. 9. 1999

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					Units of activity per kg of complete feedingstuff			
31	Endo-1,4-betaxylanase EC 3.2.1.8	Preparation of endo-1,4-beta-xylanase produced by <i>Trichoderma longibrachiatum</i> (CBS 614-94) having a minimum activity of: Solid form: 300 EU (7)/g Liquid form: 1 000 EU/g	Chickens for fattening	—	600 EU	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: 600 EU. 3. For use in compound feed rich in non-starch polysaccharides (mainly arabinoxylans), e.g. containing more than 60 % wheat.	30. 9. 1999
			Laying hens	—	300 EU	—	1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. 2. Recommended dose per kg of complete feedingstuff: 600 EU. 3. For use in compound feed rich in non-starch polysaccharides (mainly arabinoxylans), e.g. containing more than 60 % wheat.	30. 9. 1999

(1) One FYT is the amount of enzyme which liberates one micromole of inorganic phosphate per minute using Na-phytate as substrate at pH 5,5 and 37 °C.

(2) One BGU is the amount of enzyme which liberates 0,15 micromoles of glucose per minute from azurine-crosslinked beta-glucan at pH 5,0 and 40 °C

(3) One FXU is the amount of enzyme which liberates 0,15 micromoles of xylose per minute from azurine-crosslinked xylan at pH 5,0 and at 40 °C

(4) One U is the amount of enzyme which liberates 2,78 micromoles of reducing sugars (maltose equivalents) from barley beta-glucan per minute at pH 5,0 and 50 °C

(5) One U is the amount of enzyme which liberates 5,55 micromoles of reducing sugars (maltose equivalents) from barley beta-glucan per minute at pH 5,0 and 50 °C

(6) One U is the amount of enzyme which liberates 4,00 micromoles of reducing sugars (maltose equivalents) from birchwood xylan per minute at pH 5,5 and 50 °C

(7) One EU is the amount of enzyme which liberates one micromole of reducing sugars (xylose equivalents) from oat xylan per minute at pH 4,5 and 40 °C

ANNEX II

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					CFU/kg of complete feedingstuff			
5	<i>Saccharomyces cerevisiae</i> CBS 493.94	Preparation of <i>Saccharomyces cerevisiae</i> containing a minimum of 1 ×10 ⁸ CFU/g additive	Cattle for fattening	—	1,7 × 10 ⁸	1,7 × 10 ⁸	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. The quantity of <i>Saccharomyces cerevisiae</i> in the daily ration must not exceed 7,5 × 10 ⁸ CFU for 100 kg body weight. Add 1 × 10 ⁸ CFU for each extra 100 kg body weight.	30.9.1999
9	<i>Pediococcus acidilactici</i> CNCM MA 18/5M	Preparation of <i>Pediococcus acidilactici</i> containing a minimum of 1 × 10 ¹⁰ CFU/g of additive	Chickens for fattening	—	1 × 10 ⁹	1 × 10 ¹⁰	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. May be used in compound feed containing the permitted coccidiostats: amprolium, meticlorpindol, decoquinate, halofuginone, narasin, salinomycin sodium, nicarbazin, maduramicin ammonium, diclazuril.	30.9.1999
			Piglets	Four months	1 × 10 ⁹	1 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.	30.9.1999
			Pigs	—	1 × 10 ⁹	1 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.	30.9.1999

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					CFU/kg of complete feedingstuff			
10	<i>Enterococcus faecium</i> NCIMB 10415	Preparation of <i>Enterococcus faecium</i> containing a minimum of: Microencapsulated form: 1,0 × 10 ¹⁰ CFU/g additive 1,75 × 10 ¹⁰ CFU/g additive	Chickens for fattening	—	0,3 × 10 ⁹	2,8 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. May be used in compound feed containing the permitted coccidio-stats: amprolium, amprolium/ethopa-bate, diclazuril, halofuginone, madur-amicin ammonium, meticlorpindol, meticlorpindol/methylbenzoate, monensin sodium, robenidine, sal-inomycin sodium	30.9.1999
			Pigs	—	0,35 × 10 ⁹	1,5 × 10 ⁹	In the directions for use of the addi-tive and premixture, indicate the storage temperature, storage life and stability to pelleting.	30.9.1999
			Sows	—	0,2 × 10 ⁹	1,25 × 10 ⁹	In the directions for use of the addi-tive and premixture, indicate the storage temperature, storage life and stability to pelleting.	30.9.1999
			Cattle for fattening	—	0,25 × 10 ⁹	0,6 × 10 ⁹	In the directions for use of the addi-tive and premixture, indicate the storage temperature, storage life and stability to pelleting. The quantity of <i>Enterococcus faecium</i> in the daily ration must not exceed 1 × 10 ⁹ CFU for 100 kg body weight. Add 1 × 10 ⁹ CFU for each additional 100 kg body weight.	30.9.1999

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorisation
					CFU/kg of complete feedingstuff			
		Preparation of <i>Enterococcus faecium</i> containing a minimum of: Microencapsulated form: 1,0 × 10 ¹⁰ CFU/g additive 1,75 × 10 ¹⁰ CFU/g additive and Granulated form: 3,5 × 10 ¹⁰ CFU/g additive	Piglets	Four months	0,3 × 10 ⁹	1,4 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. Granulated form to be used exclusively in milk replacers.	30.9.1999
		Calves	Six months	0,35 × 10 ⁹	6,6 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting. Granulated form to be used exclusively in milk replacers.	30.9.1999	
11	<i>Enterococcus faecium</i> DSM 5464	Preparation of <i>Enterococcus faecium</i> containing a minimum of: 5 × 10 ¹⁰ CFU/g additive	Piglets	Four months	0,5 × 10 ⁹	1 × 10 ⁹	In the directions for use of the additive and premixture, indicate the storage temperature, storage life and stability to pelleting.	30.9.1999

COMMISSION REGULATION (EC) No 867/1999
of 26 April 1999

determining the extent to which applications lodged in April 1999 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania can be accepted

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

Having regard to Commission Regulation (EC) No 1898/97 of 29 September 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for by Council Regulation (EC) No 3066/95 and repealing Regulations (EEC) No 2698/93 and (EC) No 1590/94 ⁽¹⁾, as amended by Regulation (EC) No 618/98 ⁽²⁾, and in particular Article 4(5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1999 are for quantities less than the quantities available and can therefore be met in full;

Whereas, it is appropriate to draw the attention of operators to the fact that licences may only be used for prod-

ucts which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1999 submitted pursuant to Regulation (EC) No 1898/97 shall be met as referred to in the Annex.
2. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 27 April 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 267, 30.9.1997, p. 58.

⁽²⁾ OJ L 82, 19.3.1998, p. 35.

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1999
1	100,0
2	100,0
3	100,0
4	100,0
H1	100,0
H2	100,0
5	100,0
6	100,0
7	100,0
8	100,0
9	100,0
10/11	100,0
12/13	100,0
14	100,0
15	100,0
16	100,0
17	100,0

COMMISSION REGULATION (EC) No 868/1999

of 26 April 1999

determining the extent to which applications lodged in April 1999 for import licences for certain pigmeat products under the regime provided for by the Agreement concluded by the Community with Slovenia can be accepted

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

Having regard to Commission Regulation (EC) No 571/97 of 26 March 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the Interim Agreement between the Community and Slovenia ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas the applications for import licences lodged for the second quarter of 1999 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined;

Whereas it is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1999 submitted pursuant to Regulation (EC) No 571/97 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1999 applications may be lodged pursuant to Regulation (EC) No 571/97 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 27 April 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 85, 27.3.1997, p. 56.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1999
23	100,00
24	100,00

*ANNEX II**(tonnes)*

Group No	Total quantity available for the period 1 July to 30 September 1999
23	36,7
24	85,6

COMMISSION REGULATION (EC) No 869/1999
of 26 April 1999

determining the extent to which applications lodged in April 1999 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted

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

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2068/96 ⁽²⁾, and in particular Article 4(4) thereof,

Whereas the applications for import licences lodged for the second quarter of 1999 are for quantities less than the quantities available and can therefore be met in full;

Whereas the quantity available for the following period should be determined;

Whereas it is appropriate to draw the attention of operators to the fact that licences may only be used for prod-

ucts which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1999 submitted pursuant to Regulation (EC) No 1432/94 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1999 applications may be lodged pursuant to Regulation (EC) No 1432/94 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 27 April 1999.

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

Done at Brussels, 26 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 156, 23.6.1994, p. 14.

⁽²⁾ OJ L 277, 30.10.1996, p. 12.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1999
1	100,00

*ANNEX II**(t)*

Group No	Total quantity available for the period 1 July to 30 September 1999
1	3 469

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 July 1998

on the misuse of restructuring aid for MTW-Schiffswerft and Volkswerft Stralsund, two companies formerly belonging to Bremer Vulkan Verbund, and the unauthorised provision of an investment loan of DEM 112,4 million to MTW-Schiffswerft

(notified under document number C(1998) 2405)

(Only the German text is authentic)

(Text with EEA relevance)

(1999/274/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93(2), first subparagraph, thereof,

Having given notice in accordance with the above Article 93 to the parties to submit their comments,

Whereas:

Communities⁽¹⁾; the other Member States and interested parties were asked to submit their comments.

Germany commented on the Commission's decision by letter dated 3 September 1996. It made available to the Commission a report by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben (BvS) on the loss of DEM 854 million in the context of the insolvency of BVV, and sent under cover of a letter dated 22 July 1996 an auditor's report by the firm of accountants Susat & Partner (Susat) on the contributions made by the 'eastern yards' (i.e. MTW and Volkswerft) to BVV's central cash concentration system. A revised final auditor's report was drawn up on 5 September 1996.

I. PROCEDURE

By letter dated 20 March 1996 the Commission informed Germany of its decision to initiate proceedings under Article 93(2) of the Treaty. The reasons given for the decision were the suspected spillover of authorised restructuring aid for MTW-Schiffswerft GmbH, Wismar (MTW), Volkswerft GmbH, Stralsund (Volkswerft) and other companies belonging to Bremer Vulkan Verbund AG (BVV), and the unauthorised provision of an investment loan to MTW.

The Commission's decision to initiate proceedings was published in the *Official Journal of the European*

The comments submitted by two Member States in response to the initiation of proceedings by the Commission were forwarded to Germany by letter dated 19 July 1996. Germany commented thereon in its abovementioned letter of 3 September 1996.

The comments and reports which the Commission received after the main investigation proceedings were initiated afforded a much better insight into the extent of the misuse of funds and the operation of the cash concentration system. But little was still known in particular

⁽¹⁾ OJ C 150, 24.5.1996, p. 2.

about the uses to which the funds had been put in the various BVV companies. In order that it might take an informed decision on the recovery of the aid after first giving all interested third parties and above all the companies concerned an opportunity to state their views, the Commission decided to extend the scope of the Article 93(2) proceedings. In its decision to this effect the Commission set forth the facts as they were apparent from the documents then available and made a preliminary assessment of the findings of its investigation.

By letter dated 22 November 1996 the Commission informed Germany of its decision to extend the proceedings. The decision was published in the Official Journal ⁽²⁾.

Two Member States, two industry associations and seven companies, in which BVV either had or still has an interest, submitted comments on the decision to extend the proceedings. The Commission forwarded the comments to Germany by letter dated 17 April 1997.

Germany replied by letter dated 17 July 1997, stating that it was unable to adopt a position on the comments owing to the ongoing nature of the inquiry by the investigating authorities and the proceedings pending before the courts. The letter contains among other things a description of how the cash concentration system had developed during the four months prior to the initiation of the BVV insolvency proceedings.

II. FACTS

The facts as set out in the abovementioned letters and in the Commission decisions of 20 December 1992 ⁽³⁾, 21 December 1993 ⁽⁴⁾, 11 May 1994 ⁽⁵⁾, 21 June ⁽⁶⁾, 20 September ⁽⁷⁾ and 14 November 1995 ⁽⁸⁾ are as follows.

1. The exceptional arrangements for shipyards in the former German Democratic Republic

On 20 July 1992 the Council adopted Directive 92/68/EEC ⁽⁹⁾ amending Directive 90/684/EEC ⁽¹⁰⁾ (Seventh Directive on aid to shipbuilding) to enable yards in the new German *Länder* to carry out the comprehensive restructuring that was urgently needed if they were to become competitive.

When the exceptional arrangements were adopted the Commission gave an undertaking that it would make use of its monitoring and investigatory powers in order to ensure that the yards in the new *Länder* received only

such aid as was needed to enable them to restructure. To that end, the aid was to be released in instalments. According to Directive 92/68/EEC, however, the operating aid had to be paid by 31 December 1993, that is to say before most of the operating losses had had an effect on liquidity.

2. Disbursement of the aid

MTW was privatised in 1992 and sold on 11 August of that year to the BVV-owned company Hanse-Holding. On 2 October 1992 Germany notified the aid that was to accompany the privatisation. Since it was clear to the German authorities (from the discussions held in the spring of 1992 in connection with Directive 92/68/EEC) that the Commission would authorise the release of the planned aid in instalments only, the Treuhandanstalt concluded a collateral agreement on 1 October 1992. This had the effect of circumventing the clause in the privatisation agreement whereby the Commission reserved the right to withhold its approval, in particular as regards the disbursement of the aid. A lump-sum cash subsidy of approximately DEM 686,5 million was accordingly paid to MTW on 6 October 1992 (343,8 million), 6 January 1993 (275,1 million) and 1 December 1993 (67,6 million). The payment took the form of a loan, on which interest was not to be payable until after the aid proceedings were terminated. If and when the Commission gave its consent, the obligation to pay interest was to cease to apply retroactively as of the day on which the principal was paid. This collateral agreement was not notified to the Commission, and was made available by Germany only on 18 November 1996 in response to repeated queries about the Susat report.

The Commission authorised the release of a first instalment of DEM 223,3 million of restructuring aid by letter dated 6 January 1993. With an eye to the deadline for the disbursement of operating aid laid down in Directive 92/68/EEC, at the Commission's request the DEM 463,2 million which had not yet been released was placed at the end of 1993 in a blocked account (held, not by the Treuhandanstalt as expected, but by the company). Payments from this blocked account were then made only following authorisation for release from the Commission on 18 May 1994 (DEM 220,8 million), 5 October 1995 (DEM 194,0 million) and 3 April 1996 (DEM 48,4 million) ⁽¹¹⁾.

In the privatisation agreement, provision was made not only for payment of the lump-sum cash subsidy, but also for the granting to MTW of a loan of DEM 112,4

⁽²⁾ OJ C 65, 1.3.1997, p. 17.

⁽³⁾ Case N 692/B/91 (MTW).

⁽⁴⁾ Case N 692/F/91 (VWS).

⁽⁵⁾ Case N 692/I/91 (MTW).

⁽⁶⁾ Case N 84/95 (VWS).

⁽⁷⁾ Case N 572/95 (MTW).

⁽⁸⁾ Case N 801/95 (VWS).

⁽⁹⁾ OJ L 219, 4.8.1992, p. 54.

⁽¹⁰⁾ OJ L 380, 31.12.1990, p. 27.

⁽¹¹⁾ Case N 207/96. This payment of the balance took place at the end of the reflection period following the hiving-off of MTW from BVV.

million to finance investments. The loan was to be free of interest for four years, after which it was to bear interest at a rate 1,5 % above the discount rate. It was notified as part of the overall aid package on 2 October 1992. It was common ground between the Commission and Germany that, because of the favourable rate at which it was granted, the loan constituted State aid, the grant equivalent of which was put at DEM 45 million. The Commission never authorised the release of the loan as up until the end of the reflection period it was not needed to finance any investment. By letter dated 15 March 1996, Germany announced that the loan had been granted on 22 March 1993. The funds were never used to finance investment at MTW.

Volkswertt was sold on 18 February 1993 to a consortium led by BVV. Germany transmitted the privatisation agreement on 17 March 1993, and the actual notification of the aid dates from 7 May 1993. A collateral agreement similar to the one in the MTW case was concluded on 9 March 1993. A lump-sum cash subsidy of DEM 585 million was paid in three instalments on 25 March 1993, 2 August 1993 and 6 January 1994. Contrary to the Commission's expectations no blocked account was created in the Volkswertt case. The Commission was sent a copy of the payment agreement on 18 November 1996.

The reason given by Germany for the premature disbursement of the funds was that the buyers would not otherwise have been prepared to take over the urgently needed day-to-day running of the company. The funds bore a normal commercial interest rate and had therefore been granted in accordance with the rules applicable to State aid. A blocked account had not been created for the Volkswertt funds because, according to Germany, the Treuhandanstalt did not consider it necessary, essentially since the Commission had authorised the release of all operating aid in December 1993.

3. Monitoring of the uses to which the aid was put

The aid to MTW and Volkswertt consisted of operating aid, investment aid and closure aid to finance the redundancies accompanying the restructuring. Whereas the release of the operating aid was authorised by the Commission under Directive 92/68/EEC in a lump sum to cover the expected operating losses and strengthen the equity capital base, the release of the instalments of the

investment aid and closure aid was authorised on the basis of amounts actually or soon to be paid out. But because the Commission had no knowledge of the disbursements made without its authorisation, the actual flow of funds differed markedly from the money outflow that should have resulted from the Commission's decisions on the release of aid. In fact, only the MTW funds placed, as indicated above, in a blocked account at the end of 1993 were disbursed in accordance with the relevant Commission decisions.

The funds not yet needed for restructuring were placed by the two yards at the disposal of BVV AG under separate arrangements in the form of interest-bearing loans. Since October 1993 BVV had operated a cash concentration system⁽¹²⁾. MTW and Volkswertt joined the system at the end of 1994 on instructions from the group's top management. Initial demands by the BvS that the two eastern yards' contributions be covered by bank guarantees were dropped in view of BVV's persistent refusal.

Under Directive 92/68/EEC, Germany had to provide evidence in the form of annual reports by an independent accountant that the aid was benefiting only yards in the former GDR. Further to this measure, the Commission and Germany agreed that quarterly reports (so-called spillover reports) should be provided. These reports, which were mostly very late in forthcoming, were produced by the same firm of accountants as audited BVV's annual accounts.

The reports confirm that the funds whose release was authorised by the Commission benefited only MTW and Volkswertt, that (in 1994) MTW and Volkswertt were run as separate profit centres, and that no spillover effects had occurred in transactions between MTW and Volkswertt and other BVV-owned companies. With regard to the yards' investments in BVV, it is confirmed that, as required by the Commission, these had been undertaken on normal market terms. The Susat report draws the conclusion that the authors of the spillover reports did not perform their mandate properly. Being aware of the expectations of the BvS and the Commission, they should at least have appended to their confirmatory certificates a reservation to the effect that they had not examined the placement of funds in BVV, especially in the cash concentration system.

For 1994 BVV reported a profit of DEM 56,5 million and in the spring of 1995 contemplated paying a dividend once more. Susat concludes that 'the management (of BVV) portrayed the group's profitability in 1994 and at the beginning of the 1995 financial year in too favourable a light. Although the group's annual accounts as at 31 December 1994 (...) comply with the statutory balance sheet and valuation requirements as currently worded and with one interpretation of the principles of proper accounting, the margin for manoeuvre (...) was exploited to the utmost.'

⁽¹²⁾ See Section II(5) for an explanation of how the system worked.

On the whole, therefore, the reports submitted by BVV and the then auditors described the financial transactions in an incomplete manner and painted too positive a picture of BVV's financial position.

4. Investigations into the extent to which funds were misused

The first signs of liquidity problems began to emerge at BVV in September 1995, but the company gave the impression that the difficulties had been overcome within a few days. However, the crisis erupted again in late October/early November 1995. The Commission accordingly sent an initial letter on 10 November 1995 asking whether the terms and conditions of the funds transferred by MTW to BVV were still in line with the spillover ban. Further questions concerning Volkswerft followed on 27 November. Several reminders and high-level talks followed in December and January. It is clear from the reports submitted by Germany that by late October 1995 the German authorities were aware of extremely high losses at BVV and that they knew, at the latest after talks between BVV and the BvS and various authorities on 29 November 1995, that a massive misuse of funds had taken place and that the resources of the eastern yards were 'no longer sufficient to meet their needs'. Nevertheless, the Commission received an initial report only on 2 February 1996, followed on 23 February 1996 by a further interim report by the firm of accountants KPMG, which had in the meantime been newly appointed as auditors by the BvS. The Commission's decision to initiate formal investigation proceedings under Article 93(2) was necessarily based on these two interim and incomplete reports.

The KPMG interim report contains an initial itemisation of the main uses and recipients of the funds taken from the cash concentration system. The basis for this itemisation was a letter dated 31 January 1996 from a senior employee of BVV to the BvS. The origin of the funds in the cash concentration system had at that time hardly been explored, as a result of which only a spread of potentially misused funds could be mentioned in the decision initiating proceedings.

It was then that Germany commissioned Susat to clarify matters further. In the first part of its comments of 3 September 1996, Germany reports on the findings of the

investigations into the use made of the aid by BVV and confirms that a total of DEM 854,0 million had been placed by MTW and Volkswerft in BVV's cash concentration system by 31 December 1995⁽¹³⁾. Susat is of the opinion that it is impossible to determine unequivocally how much of this amount is accounted for by State aid. It is equally impossible to identify specific payments made under the cash concentration system as deriving from the aid or from the funds received from MTW and Volkswerft, since other subsidiaries of the BVV group such as Flender Werft and STN Atlas Elektronik were also net contributors to the system. Total deposits in the cash concentration system by the end of 1995 amounted to DEM 972,1 million, including the abovementioned amount of DEM 854,0 million originating from MTW and Volkswerft.⁽¹⁴⁾

Over time the aid became so inextricably mixed up with the yards' other funds, such as advance payments received or own liquidity, that it is no longer possible to say what is aid and what is not. However, on the assumption that all aid which had not yet been used by 31 December 1995 was placed in the cash concentration system, the following amounts may be identified as aid:

<i>(million DEM)</i>		
	MTW	Volkswerft
Operating aid	268,1	60,7
Investment aid	55,3	107,2
Closure aid	1,5	0,0
Subtotal (Lump-sum cash subsidy)	324,9	167,9
+ investment loan	112,4	0,0
+ accrued interest on aid (estimate) ⁽¹⁾	85,0	54,4
+ transferable interim payments of regional aid	16,0	28,1
Grand total	538,3	250,4
Grand total both yards	788,7	

⁽¹⁾ Source: Susat report of 5 September 1996, Annex 2a; by contrast to Germany's comments of 3 September 1996, this interest calculation is based on the actual dates on which the funds were disbursed. The figures do not include any interest on the investment loan as this was provided interest-free until March 1997.

⁽¹³⁾ According to the auditor's report, some further transactions took place up until 21 February 1996, so the balance in favour of the eastern yards on that date was DEM 846,1 million.

⁽¹⁴⁾ As a result of a series of transactions and interest accrued before BVV became insolvent, the total amount of claims by the two yards on BVV increased to DEM 868,9 million (including DEM 596,9 million for MTW and DEM 272,0 million for Volkswerft).

The interim payments of regional aid originate from aid received under the joint Federal Government/*Länder* programme for improving regional economic structures. Under the privatisation agreement, they were to be paid back by the yards to the BvS.

5. Investigations into the uses to which the misused funds were put

Finding answers to the question as to what the misused funds had actually been spent on proved to be extremely difficult. Although BVV had announced the opening of debt composition proceedings on 21 February 1996, the new chairman of the managing board was prepared only days before the liquidation began on 1 May 1996 to place documents at the disposal of Susat's employees and release the previous auditors from their obligation of secrecy. The requested documents were not made available until later, and then only partially. The BVV board members responsible for financial and auditing matters said they were not prepared to talk. It was therefore not possible to verify the BVV data set out in the letter of 31 January 1996 (see above). As indicated in the Commission decision extending the proceedings, Susat saw no reason to question the veracity of BVV's statements. Nevertheless the figures did not, it realised, reflect every movement of funds between 1993 and 1995, individual transactions having been singled out. Nor, it said, could any direct connection between the in-payments made by MTW and Volkswerft and specific uses be deduced from the data.

Lawyers acting on behalf of DSR-Senator Lines GmbH have proved, however, with the help of a letter sent by Germany on 19 December 1996, that BVV's data are to some extent manifestly wrong, something which was also conceded by Susat in a letter dated 5 February 1997⁽¹⁵⁾.

BVV's statements of 31 January 1996 therefore appear on the whole to be unusable as proof of the uses to which the funds were put. The Commission asked Germany on a number of occasions to take further steps to clarify the uses to which the aid had been put in BVV's various areas of activity between 1993 and 1995. Germany finally replied in a letter dated 17 July 1997 that: 'The Federal Government does not know for certain what use was made of the funds taken from the yards through the cash concentration system. Despite extensive inquiries in connection with the enforcement of the BvS's claims,

which are being asserted also against members of BVV's managing board⁽¹⁶⁾, a precise correlation with specific financial transactions within BVV cannot at present be established.' According to the information currently available, direct proof of the use of the aid intended for the eastern yards to cover specific expenditure by named companies elsewhere in the BVV group is therefore not on hand.

Since for the reasons given above it is not possible to obtain any direct evidence of the uses to which the misused funds were put, Susat concentrated its efforts on deducing the use made of the funds from the account balances of the group member companies in the cash concentration system. This proved possible, however, to only a limited extent.

— The cash concentration system was introduced in 1993/94 to cover the liquidity requirements of the various group activities and companies as far as possible from internal sources and thus to limit recourse to the more costly alternative of credit lines from banks. The various group member companies joined the system by concluding an agreement with BVV. In some cases, especially in that of MTW, enormous pressure was brought to bear by the group's top management. From the beginning of 1995 onwards, virtually every payment transaction involving the group member companies was carried out through the cash concentration system. The number of accounting operations is therefore extremely high and it is technically impossible to determine the proportion of aid in a given payment. The funds were reshuffled almost daily and the aid was mixed up inseparably with funds from other sources.

— The cash concentration system had a pyramid-like structure. Credit relationships were always established between a subsidiary and its immediate parent company. As a rule this was an intermediate holding company subordinate to the BVV holding company itself. The balances held by the intermediate holding companies were equalised using the target account of the BVV holding company, which decided on the granting of credit lines to the various group member companies. The intermediate holding company for MTW and Volkswerft was Vulkan Schiffbau Verbund GmbH (VSV), in which all the shipbuilding and shipping activities of the group were clustered⁽¹⁷⁾. As a result of this pyramid-like structure, at no time was there any direct credit relationship between MTW/Volkswerft and the other operational units of BVV, such relationships existing solely *vis-a-vis* VSV. By virtue, however, of the applicable provisions of German law on liability in a *de facto* group, the claims of these shipyards are also enforceable against the umbrella holding company BVV.

⁽¹⁶⁾ The judicial inquiries did not reveal anything new in this respect. It must be assumed at present that, within the group also, the eastern yards' funds were not kept separate; see judgment of the Bremen Regional Court of 8 October 1997, Case No 4-O-1073/96.

⁽¹⁷⁾ The shipping company DSR-Senator Lines did not belong to VSV and did not participate in the cash concentration system, being an 'associated company' within the shipbuilding division.

⁽¹⁵⁾ Letter from Germany to the Commission dated 6 February 1997.

— The cash concentration system was brought to an end between December 1995 and February 1996. By then BVV's difficulties had reached the stage where business was being conducted normally in only a few areas of activity. When the system was closed down, the accounts were not equalised, but instead each company was either in the black or in the red. It cannot be concluded directly, however, from the fact that a group member company was in the black that that company had profited from the misuse of aid. Although most companies were either permanently in the black or permanently in the red⁽¹⁸⁾, in a number of cases the position changed towards the end more or less by chance owing to in-payments which were in no way connected with State aid. Bremer Vulkan Werft GmbH had been in loss for many years and was accordingly a long-standing debtor towards the cash concentration system. However, since towards the end of 1995 the yard received a series of interim payments for ships under construction, it finished in the black. By contrast, Geeste Metallbau GmbH, a supplier to the yard, had for years been in profit. Only when Bremer Vulkan Werft wrung price concessions out of it with retroactive effect and refused to pay bills did it fall into the red. The transfer prices for internal group services were not actual market prices. Especially when one analyses the deliveries of ships by group member yards to shipping companies linked to the group, the services provided turn out to be overvalued. Lastly, account must be taken of the fact that in a number of cases the fact of being in the black was influenced by a remission of debt by the holding companies.

To conclude, it can therefore be said that the final accounting positions in the cash concentration system represent no more than a snapshot of the financial positions of the group member companies within the group. Owing to the system's pyramid-like structure, MTW and Volkswerft could not assert any claims against other operative companies belonging to the group. Overall it is quite clear that the substantial sums of money that were employed by BVV under the cash concentration system largely originated as aid for MTW and Volkswerft. There is also a strong likelihood that those companies that were persistently in the red benefited from the misuse of aid. But because of the constant mixing with other funds and for the other reasons given above, the proportion of the

final liabilities of each subsidiary accounted for by aid can be determined only with the help of various assumptions. A clear causal link proving beyond a shadow of doubt that certain amounts held by a subsidiary started out as aid cannot as a rule be established. Germany accordingly endorses Susat's view that a direct connection between the amounts paid out of the cash concentration system and the amounts paid in by MTW and Volkswerft cannot be proved⁽¹⁹⁾. In the case of Dörries Scharmann AG, which according to Germany's letter of 3 September 1996 withdrew DEM 304,5 million from the cash concentration system, it can, however, be said for certain that the company was the recipient of misused aid. The overall net payments from other sources would not otherwise have sufficed to cover the company's liquidity requirements.

6. Steps taken by the German authorities to recover the misused funds

The misused aid forms part of the funds that accrued to BVV from MTW and Volkswerft through VSV in the form of loans under the cash concentration system. Both BVV and VSV have been insolvent since 1 May 1996. The repayment claims of MTW and Volkswerft were added to the schedule of debts in both sets of insolvency proceedings and confirmed down to the smallest amounts (of no relevance from an aid point of view) by the liquidator. The aid and the other funds in the cash concentration system can thus be retraced in so far as BVV and VSV still have any resources or saleable assets. The sale of assets as part of the liquidation also includes any shares in subsidiaries and any claims by BVV and VSV against subsidiaries.

The repayment claims of MTW and Volkswerft will be met once the liquidation proceedings are terminated up to the amount of the dividend for non-preferential creditors. BVV's liquidator stated back in 1996 that it will probably not be possible to pay any dividend for non-preferential claims.

When MTW and Volkswerft were taken over, all their repayment claims against BVV and VSV were assigned to the BvS, which is now following them up. At the same time, the BvS renounced all claims for recovery against the two yards. As stated in the Commission's proposal for a regulation on aid to certain shipyards under restructuring⁽²⁰⁾, this was necessary to allow the restructuring to go ahead.

⁽¹⁸⁾ The former category included, for example, STN Atlas Elektronik GmbH, Flender Werft AG and MTW-Schiffswerft GmbH, while the latter category included Dörries Scharmann AG, Dieselmotorenwerk Vulkan GmbH and Schichau-Seebeckwerft AG.

⁽¹⁹⁾ Letter from Germany dated 17 July 1997.

⁽²⁰⁾ OJ C 153, 22.5.1997, p. 3.

Besides following up the claims in the liquidation proceedings, the BvS has brought actions for damages against five BVV management board members before the Bremen Regional Court. On 8 October 1997 the court dismissed four of these actions, finding that the board members were not personally liable. The BvS has appealed against these decisions. The trial court has yet to deliver judgment in the fifth case.

III. COMMENTS FROM THIRD PARTIES ON THE EXTENSION OF THE PROCEEDINGS

Following the initiation of proceedings the governments of two Member States sent comments to the Commission. These were summarised in Part III of the notice concerning the extension of the proceedings⁽²¹⁾.

The governments of two Member States, two national shipbuilding associations and seven companies stated their positions on the extension of the proceedings.

One Member State took the view that, first, the aid amounts that had not been authorised by the Council or the Commission should be recovered from the companies (i.e. MTW and Volkswerft) in accordance with normal practice. Second, any aid unlawfully received by other companies belonging to the BVV group should be recovered. The other Member State doubted whether MTW and Volkswerft needed any fresh restructuring aid. The sale of BVV's assets should have sufficed to cover both yards' new liquidity requirements.

It is not the purpose of these proceedings to assess any new restructuring aid for MTW and Volkswerft. The matter was discussed in the Council in connection with Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring⁽²²⁾. The Commission would point out, however, that the proceeds from the sale of BVV's assets benefited only preferential creditors. It was not possible to finance the further restructuring of MTW and Volkswerft out of these resources.

One shipbuilding association likewise objected strongly in its comments to the granting of any fresh aid to MTW and Volkswerft. In its view the yards were themselves responsible for transferring the funds to their parent company and they themselves ought therefore to see to their recovery. All aid should, it stated, be paid back to the State if it could not be proved that it had been used for the purpose for which it was intended. The argument to the effect that Germany had no influence over the misuse was not satisfactory. Germany ought, in accord-

ance with the decisions of the Council and the Commission, to have made sure that it did exert sufficient influence and thus be in a position to ascertain that the aid was being used properly. The association called lastly for improved, uniform monitoring of the use of aid by the Commission. Until this was assured, no further aid decisions should be taken.

The other shipbuilding association took the view that MTW and Volkswerft had profited from the cash concentration system through their links with BVV. At all events BVV had, it claimed, gained a competitive advantage over the yards belonging to the association, and the conduct in question was partly responsible for the collapse in prices in the shipbuilding market. In 1996 four out of five east German yards had exceeded their capacity limits. All these points should, it argued, be taken into consideration in the decision on fresh aid to MTW and Volkswerft.

As indicated above, these proceedings are not concerned with the question of new aid. As regards any exceeding of capacity limits, as far as the Commission is aware this occurred only in the case of MTW. The Commission punished this infringement by reducing the aid in its decision of 30 July 1997⁽²³⁾.

The seven companies, which were all previously connected with BVV either as subsidiaries or as associated companies, all state in their comments that they had no knowledge of the refinancing of the cash concentration system or of the misuse of the aid. They had assumed from statements by the group's top management that the banks had granted generous lines of credit and that there was a large amount of freely disposable liquid assets. Individual companies belonging to the group also refer to their limited independence when taking strategic decisions in the financial sphere, when acquiring new subsidiaries and when performing large contracts within the group. They were therefore not commercially responsible for the losses they had had to cover through obligations under the cash concentration system. According to Lloyd Werft Bremerhaven, Schichau Seebeckwerft AG and Volkswerft, this applied especially to the second half of 1995 when those companies had been compelled to contract loans on behalf of the group and had had to provide part of their assets as guarantees.

DSR-Senator Lines pointed out, lastly, that in its case misuse of aid through the cash concentration system was impossible. The relevant liquidity inflows had occurred at a time when the two yards did not yet have the resources, and DSR-Senator Lines had never been included in the cash concentration system.

⁽²¹⁾ See footnote 2.

⁽²²⁾ OJ L 148, 6.6.1997, p. 1.

⁽²³⁾ Case C 60/96, see OJ C 344, 14.11.1997, p. 2.

The German Government stressed in its reply that, despite extensive inquiries, it could draw no definite conclusions as to the uses to which the aid had been put. Owing to the large number of in-payments and out-payments by the companies participating in the cash concentration system, there was no concrete evidence on the allocation of specific aid resources. In the absence of proof to the contrary, it had to be assumed that the companies which benefited from the cash concentration system were not, and could not have been, aware of the outflow of aid from the yards. Especially when BVV was under a contractual obligation to finance companies⁽²⁴⁾, those companies' managers were entitled to rely on being able to receive funds under the cash concentration system for that purpose. Germany reserved the right, however, to take further steps if new evidence came to light and was therefore not in a position to comment on the observations made by individual companies.

IV. ASSESSMENT

The notifications of the restructuring programmes for MTW and Volkswerft were from the outset incomplete and, in part, factually incorrect inasmuch as Germany did not inform the Commission of the agreements it had reached with BVV on the payment of the lump-sum cash subsidy. The reasons given, namely that if other payment conditions had been imposed there was a risk that BVV might have refused to take over the yards, and that Germany assumed that authorisation would be forthcoming for payment of the entire aid amount in one instalment, cannot justify this behaviour. If only because of the agreement to the effect that the interest on the as yet unauthorised amounts would be waived with retroactive effect once the aid was authorised by the Commission, Germany's argument that the advance payments took the form of loans at normal commercial rates is incorrect. Member States are required pursuant to Article 11(2) of Directive 90/684/EEC to notify to the Commission in advance any new aid scheme covered by the Directive and they may not put it into effect without the Commission's authorisation. Germany has disregarded this provision. The infringement took place throughout the period from October 1992 until the time of BVV's collapse, as even when it applied for the release of further instalments Germany omitted to inform the Commission of the earlier payments.

It follows both from the provisions of Articles 6 and 7 of Directive 90/684/EEC and above all from the exception provided for by Article 10a as inserted by Directive 92/68/EEC that all restructuring aid payments had to be

strictly limited to the activities of yards situated in the new *Länder*. When Directive 92/68/EEC was adopted, the Commission undertook to ensure that the yards in the new *Länder* received only such aid as was needed for restructuring. The Commission referred to these provisions in each of its decisions releasing instalments of the aid. The decisions also contained a statement of the reasons for the size of the relevant aid instalment. In assessing the scale of operating aid the Commission took into account both the need for the aid and the deadline referred to in Article 10a(2)(a). In assessing the instalments of investment and closure aid to be authorised pursuant to Articles 6 and 7, it was guided in conformity with those provisions by the need for funds in the light of the investment and redundancy plans submitted by Germany. In the course of the proceedings Germany did not furnish any information which might have objectively justified the advance payment of aid the release of which had not yet been authorised. On the contrary, the deadline referred to in Article 10a led in the case of operating aid to payments being authorised well before the need for funds actually arose. As a result of repeated delays in the implementation of the investment programme, the amount of investment aid authorised for release almost always exceeded the need for funds at that particular moment. The payment of aid without the Commission's prior authorisation and in excess of the amounts authorised was therefore not only expressly unlawful, but it was objectively unjustified and incompatible with the provisions of Articles 6 and 10a of Directive 90/684/EEC (as amended).

This holds true especially for the DEM 112,4 million 'investment loan' to MTW-Schiffswerft, which was granted on 22 March 1993 but never used for investment purposes, and for the DEM 70,5 million of investment aid for Volkswerft, which was paid in January 1994 despite the fact that up until the time of BVV's collapse there was no need for it.

The regional aid totalling DEM 44,1 million (DEM 16,0 million for MTW and DEM 28,1 million for Volkswerft) which found its way into the cash concentration system is likewise to be considered incompatible. These amounts can be traced back to the joint financing of the restructuring drive, being funds from the Treuhandanstalt and the joint Federal/*Länder* development programme. It was never intended by the providers of the aid that it should be retained by the recipient companies, being instead repayable under the privatisation agreements to the Treuhandanstalt/BvS. Ultimately, however, additional aid was channelled through the chosen handling mechanism to the companies and the needs-based amount authorised in each case by the Commission was exceeded.

⁽²⁴⁾ Such obligations existed above all in respect of businesses in the new *Länder* which had been taken over by the Treuhandanstalt.

Lastly, the advance payments produced considerable benefits in terms of interest earned. According to the Susat report's calculations, this may be put at some DEM 100 million for the period between 1992 and the beginning of 1996. On the basis of the assumptions made in that report, which though simplistic are basically plausible, during that period a total of DEM 139,7 million accrued as interest, including approximately DEM 39 million attributable to authorised aid from the time of its authorisation.

Of the DEM 788,7 million of aid which according to the analyses submitted by Germany was to be found on 31 December 1995 in the cash concentration system, approximately DEM 327 million consisted of amounts whose disbursement had not been authorised by the Commission and which must be considered incompatible with the Treaty.

It has not been clearly ascertained so far, however, for what purposes the aid which, though disbursed, has not been used, was applied in each case. There are basically two reasons for this. Contrary to normal commercial practice, the Treuhandanstalt did not ensure that provision was made in the privatisation agreements for any earmarking of the lump-sum cash subsidy or for any suitable monitoring procedures. With the exception of the sums placed in a blocked account at the end of 1993, the aid became mixed up with the group's other funds. From 1995 at the latest this state of affairs became irreversible owing to the multitude of transactions in the cash concentration system. According to the available documents, in particular the expert's report of the auditors Susat, it is however very likely that at least the main debtors under the cash concentration systems received parts of the misused aid. In the case of Dörries Scharmann AG (which went into bankruptcy in the meantime) this is to be regarded as certain, even if the exact amount cannot be established until now. When the system was wound up, all the claims of MTW and Volkswerft were offset by liabilities of other parts of the BVV group. These claims, totalling DEM 854 million, included aid amounting to DEM 788,7 million. It is certain, therefore, that this aid has not, as required by Article 10a(2)(d) of Directive 92/68/EEC, benefited only yards in the former German Democratic Republic, and that the aid for MTW and Volkswerft has been misused within the meaning of Article 93(2) of the EC Treaty. According to that provision, misused aid must be abolished or altered. Alteration of the aid in the sense of restitution of the misused amounts to MTW and Volkswerft is out of the question as when they were hived off from BVV both yards assigned their claims to the BvS. All the misused aid, totalling DEM 788,7 million, must therefore be abolished and recovered. The German Government has informed the

Commission that the BvS has taken the steps required by German law to recover the aid as part of the BVV and VSV insolvency proceedings,

HAS ADOPTED THIS DECISION:

Article 1

The aid which was granted to MTW-Schiffswerft GmbH, Wismar, and Volkswerft GmbH, Stralsund, for their restructuring was disbursed without being notified fully to the Commission in advance. It was therefore granted unlawfully in infringement of Article 11 of Directive 90/684/EEC and Article 93(3) of the EC Treaty. Including interest accruing up until the end of 1995, the two companies received approximately DEM 327 million more in the way of aid than had been authorised by the Commission. The granting of this additional amount of DEM 327 million infringes Articles 6 and 10a of Directive 90/684/EEC. This aid amount is accordingly incompatible with the common market.

Article 2

The aid referred to in Article 1 and part of the aid which was authorised by the Commission for the restructuring of the two yards was misused elsewhere in the Bremer Vulkan Verbund AG group. On the basis of the analyses submitted by Germany, the total amount of funds thus misused may be put at DEM 788,7 million. This misuse constitutes a misuse of aid within the meaning of Article 93(2) of the EC Treaty.

Article 3

Germany shall recover the misused aid from Bremer Vulkan Verbund AG as part of the insolvency proceedings concerning that company and shall take all steps required by German law to recover any partial amounts from companies previously belonging to the Bremer Vulkan group should suitable opportunities arise in the course of subsequent inquiries. In the recovery of the aid according to the procedures and rules under German law, accrued interest is to be taken into account.

Article 4

The German Government shall inform the Commission within one month from the date of notification of this Decision of the measures taken to comply therewith and of their outcome.

Article 5

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 22 July 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION
of 25 November 1998
on State aid granted by Germany to Draiswerke GmbH
(notified under document number C(1998) 3800)
(Only the German text is authentic)
(Text with EEA relevance)

(1999/275/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions,

Whereas:

1. PROCEDURE

By letter dated 30 August 1996, Denmark informed the Commission of State aid which, according to an article appearing in the *Frankfurter Allgemeine Zeitung* of 8 August 1996, was apparently being granted to the firm Draiswerke GmbH, Mannheim. By letter dated 26 September 1996, the Commission asked Germany for its comments. Germany replied by letter dated 18 February 1997 and confirmed that several transactions involving public funds had taken place. The Commission took the view that these transactions might contain State aid that was not covered by an approved aid scheme. The matter was therefore registered on 19 March 1997 as 'unnotified aid'. By letter dated 21 March 1997, the Commission asked Germany to supply the information necessary for the assessment of restructuring aid. Germany replied to this request on 2 June 1997. The Commission requested further information by letter dated 18 July 1997, since some important details had not been supplied. In its letter of 8 September 1997, Germany indicated that some of the information previously submitted had been revised, and

reference was made to a further transaction. By letter dated 26 January 1998, the Commission asked Germany to clarify these points. Germany replied to this request by letter dated 16 February 1998.

By letter dated 25 March 1998, the Commission informed Germany that it had decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of the unnotified measures.

A Commission notice to this effect was published in the *Official Journal of the European Communities*⁽¹⁾. The Commission called on interested parties to submit their comments. The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE MEASURES

The company was in severe liquidity difficulty in 1996. The Mannheim city authorities arranged negotiations between banks and the owners to keep the firm in business. The parties involved decided to adopt restructuring measures and thus averted the initiation of bankruptcy proceedings. In its decision to initiate Article 93(2) proceedings, the Commission noted the following measures:

- (a) In August 1996, the Mannheim city authorities put up a loan of DEM 0,8 million (ECU 0,4 million) for ten months at an interest rate of 5 %.
- (b) On 21 August 1996, the Landeskreditbank Baden—Württemberg (hereinafter referred to as 'LAKRA') put up a 50 % deficiency guarantee in respect of DEM 6 million (ECU 3 million). This was originally scheduled to expire on 30 June 1997, but was extended on 27 June 1997 for a further year until 30 June 1998. The guarantee was subject to a one-off fee of 1 % and an annual charge of 0,5 % of the outstanding guarantee amount.
- (c) The public bank Sparkasse Mannheim granted loans secured by the abovementioned guarantees. These took the form of an overdraft facility of DEM 4 million (ECU 2 million) at an initial interest rate of 8 % (currently 8,25 %) and a guarantee loan of DEM

⁽¹⁾ OJ C 207, 3.7.1998, p. 14.

2 million (ECU 1 million) at an interest rate of 1 %. These loans were originally scheduled to expire on 30 June 1996, but were subsequently extended until 30 June 1998. Sparkasse Mannheim was not one of the firm's previous lenders.

- (d) In August 1996, the Mannheim city authorities purchased a 5 944 m² plot of land from the former shareholders' private estate. The former shareholders injected the proceeds from the sale, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring.

In its decision to initiate proceedings, the Commission took the view that, on the basis of the information provided, Germany had not demonstrated that the restructuring measures fulfilled the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽²⁾ (hereinafter referred to as the 'guidelines'). The Commission took the preliminary view that the loan granted by the Mannheim city authorities and the guarantee granted by LAKRA constituted State aid within the meaning of Article 92 of the EC Treaty and that these transactions were unlawful since Germany failed to notify them in accordance with Article 93(3) of the EC Treaty. Furthermore, the Commission considered that the loan granted by the Sparkasse Mannheim and the transfer price for sale of land might contain State aid elements.

3. COMMENTS FROM GERMANY

Germany submitted its comments on the Commission's decision to initiate proceedings by letter dated 17 July 1998.

Germany pointed out that it had already submitted a report by Deutsche Gesellschaft für Mittelstandsberatung mbH ('DGM'), which had been drawn up in August 1996. Germany explained that the restructuring programme was designed to demonstrate the company's ability to achieve a successful restructuring. Furthermore, Germany provided details on a more comprehensive restructuring plan drawn up on 16 December 1996, a comprehensive business plan drawn up by Draiswerke on 20 May 1998, the 1997 annual statement of accounts of Draiswerke, monthly cash-flow forecasts, profit-and-loss-account forecasts and balance-sheet forecasts for the years 1998 to 2001. Germany takes the view that the restructuring plan is now realistic and coherent.

Germany forwarded letters from Draiswerke's banks, namely Deutsche Bank (4 June 1998), Dresdner Bank (12 June 1998) and Sparkasse Mannheim (19 June 1998). In

their letters, the banks gave a favourable opinion on Draiswerke's prospects.

Germany pointed out that the loan of DEM 0,8 million (ECU 0,4 million) granted by the Mannheim city authorities, which had a maturity of 10 months, had been repaid with interest on schedule at the end of May 1997. Germany argued that, although the company was in difficulty, the amount of the loan could not be regarded as State aid. Any benefit by way of interest savings were covered by the *de minimis* rule.

Germany stated that the granting of the guarantee by LAKRA was covered by the guidelines on the grant of guarantees to business by the Land of Baden-Württemberg (*Richtlinien für die Übernahme von Bürgschaften des Landes Baden-Württemberg für die gewerbliche Wirtschaft*). Germany submitted the detailed workforce figures for the years 1996 to 1998 and showed that, at the time the guarantee was extended, Draiswerke GmbH had 279 employees, which is below the 300 threshold above which Germany had undertaken to notify guarantees individually.

Germany explained that Draiswerke had engaged the M & A firm B. Metzler to find investors. Germany forwarded a report which had been drawn up by B. Metzler on 23 June 1998. Germany pointed out that a new investor would be beneficial to the company's restructuring, but stressed that this was not a condition *sine qua non*.

Germany provided a letter from Sparkasse Mannheim, dated 16 June 1998, in which the bank stated that it had acted in accordance with the 'market economy investor principle' in providing loans to Draiswerke.

Germany took the view that the transfer price for the sale of the land did not contain State aid elements and provided as evidence an estimate of the Mannheim District Land Valuation Committee (*Gutachterausschuss für die Ermittlung von Grundstückswerten des Stadtkreises Mannheim*).

Germany also submitted, as part of its comments, a statement made by Draiswerke on 30 June 1998 to the effect that it was convinced that the restructuring would be successful.

4. ASSESSMENT

The Commission assessed the case in the light of the information sent to it by Germany by letter dated 17 July 1998.

⁽²⁾ OJ C 368, 23.12.1994, p. 12.

4.1. The recipient

The firm Draiswerke GmbH is situated in the *Land* of Baden-Württemberg, outside an assisted area. In 1996, Draiswerke employed an average of 334 workers and had a turnover of DEM 55 million (ECU 27,5 million) and an end-of year balance sheet total of DEM 41 million (ECU 20,5 million). According to the definition set out in the Commission recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽³⁾, the company was a large enterprise due to the fact that its workforce exceeded the threshold of 250 employees. The former shareholders, all members of the same family, sold their shares to the company's employees in 1996.

Draiswerke manufactures special machinery in two product areas: dispersion and micro-wet-milling and machinery for mixing and reaction purposes. The firm supplies the chemical, coating, food, paper, pharmaceutical, detergent and ceramic industries.

In the first half of 1996, it recorded heavy losses. Its main lender lost confidence in the firm and, on 31 July 1996, called in its loan. As a consequence, another credit institution also called in its loan, and Draiswerke became insolvent. Accordingly, at that time, Draiswerke was a company in difficulty.

4.2. State aid

Draiswerke operates in two sub-sectors of the special machinery industry, in which there are a number of competitors within the EEA. In the product area of dispersion and micro-wet-milling, which accounts for approximately 60 % of the company's total turnover, Draiswerke's main competitors are the Swiss company Bühler AG and the German company Erich Netzsch GmbH & Holding KG. Both competitors have subsidiaries in several Member States. The second product area, machinery for mixing and reaction purposes, accounts for 40 % of the company's turnover. Draiswerke's main competitor in this product area is the German company Gebrüder Lodige Maschinenbau GmbH, which has also subsidiaries in several Member States.

The loan granted by the Mannheim city authorities and the guarantee granted by LAKRA were provided by government bodies. Both measures were therefore financed through State resources. The loan and the guarantee were provided with the intention of enabling the ailing firm to remain in business. These measures therefore placed Draiswerke in a more favourable position than

its competitors. Both State measures are therefore liable to affect the economic position of its competitors in other Member States. Accordingly, the loan granted by the Mannheim city authorities and the guarantee granted by LAKRA distort or threaten to distort trade between the Member States and constitute State aid within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

The Mannheim city authorities did not grant their restructuring loan to Draiswerke under an approved scheme. The Commission cannot agree with Germany's view that the amount of the loan does not constitute State aid and that any benefit by way of interest saving is covered by the *de minimis* rule. In line with long-standing Commission practice, the loan's face amount of DEM 0,8 million (ECU 0,4 million) must be regarded as State aid since the company is in difficulty and would not have been able to raise the loan on financial markets. In accordance with the Commission notice on the *de minimis* rule for State aid⁽⁴⁾, the amount of DEM 0,8 million (ECU 0,4 million) exceeds the *de minimis* threshold of ECU 100 000 over a three-year period. Moreover, the Commission would remind Germany that the loan must be cumulated with other restructuring measures, notably the guarantee granted by LAKRA. Accordingly, Germany should have notified the loan to the Commission pursuant to Article 93(3) of the EC Treaty. Germany failed to comply with this requirement. The measure was accordingly unlawful.

The State-owned bank LAKRA provided the guarantee under the Guidelines on the grant of guarantees to business by the *Land* of Baden-Württemberg. That scheme was approved by the Commission by letter of 5 June 1984. In the context of proceedings in Case C 57/86, Germany undertook, by letter dated 6 February 1987, to notify individually any guarantee granted under this scheme to firms in difficulty with more than 300 employees. According to the company's annual report, Draiswerke had 334 employees in 1996. The Commission should therefore have been informed of the guarantee pursuant to Article 93(3) of the EC Treaty. When LAKRA granted an extension of the guarantee in June 1997, the number of employees was 279 — below the threshold of 300. However, the extension of the duration of the guarantee is linked to the initial granting of the guarantee in 1996, when Draiswerke had more than 300 employees. The Commission cannot therefore share Germany's view that the extension of the guarantee by LAKRA was

⁽³⁾ OJ L 107, 30.4.1996, p. 4.

⁽⁴⁾ OJ C 68, 6.3.1996, p. 9.

covered by the guidelines on the grant of guarantees to business by the *Land* of Baden-Württemberg. Consequently, the extension also required individual notification pursuant to Article 93(3) of the EC Treaty. Germany failed to comply with these requirements. The initial provision of the guarantee and the extension were accordingly unlawful.

Germany stated that Sparkasse Mannheim and Draiswerke's two other banks, Deutsche Bank and Dresdner Bank, formed a banking consortium. The provision of loans was made under the condition that all three banks act unanimously. Thus, Sparkasse Mannheim provided the loans only on condition that the other two banks agreed to re-open their credit lines. Furthermore, Sparkasse Mannheim continued to provide loans only if the other banks extended their credit lines and Draiswerke's prospects justified the provision of further funds to Draiswerke⁽⁵⁾. Moreover, Sparkasse Mannheim and the other two banks based the granting of their loans on the restructuring plan drawn up by Draiswerke and the business consultant firm DGM⁽⁶⁾. Furthermore, Sparkasse Mannheim has a representative on the supervisory board of Draiswerke, which allows it to have a sound knowledge of the company's financial and strategic position. Finally, the loans provided by Sparkasse Mannheim were secured by the guarantee granted by LAKRA. In the light of the above, the Commission concluded that the financing activities of Sparkasse Mannheim were consistent with the market economy investor principle and did not constitute State aid within the meaning of Article 92 of the EC Treaty.

Germany provided evidence that the transfer price of DEM 1,2 million (ECU 0.6 million), which the Mannheim city authorities paid for the 5 944 m² plot of land to the former shareholders, was based on an estimate of the Mannheim District Land Valuation Committee. The Commission reviewed their estimate and verified that it was carried out in line with the rules generally applicable for land valuation. Moreover, the valuer took the lower and more prudent gross rental value (*Ertragswert*) instead of the asset value (*Sachwert*). Taking into account these aspects, the Commission concluded that the price corresponds to the market price and does not contain State aid elements within the meaning of Article 92 of the EC Treaty.

⁽⁵⁾ In their letters, Draiswerke's banks gave a favourable opinion on the firm's prospects.

⁽⁶⁾ As is explained later, the Commission considers that the restructuring plan is a feasible, coherent and far-reaching plan and that it is designed to restore the firm's long-term viability within a reasonable time scale.

4.3. Exemptions

Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement lay down the principle that aid having the characteristics specified therein is incompatible with the common market. Article 92(2) and (3) of the EC Treaty and Article 61(2) and (3) of the EEA Agreement list exemptions under which aid may be found compatible with the common market. The Commission examined whether State aid of DEM 3,8 million (ECU 1,9 million), namely the DEM 0,8 million (ECU 0,4 million) loan of the Mannheim city authorities and the 50 % guarantee of LAKRA for DEM 6,0 million (ECU 3,0 million), could be deemed compatible with the common market under one of these exemptions.

The exemptions set out in Articles 92(2) of the EC Treaty and Article 61(2) of the EEA Agreement do not apply, since the aid is not aid having a social character granted to individual consumers, nor does it serve to make good the damage caused by natural disasters, nor is it granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany.

The exemptions set out in Article 92(3)(a) of the EC Treaty and Article 61(3)(a) of the EEA Agreement and the regional aspect of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement are not relevant, since the firm is located outside an assisted area.

As far as the exemptions provided for in Article 92(3)(b) of the EC Treaty and Article 61(3)(b) of the EEA Agreement are concerned, the Commission found that the measure in question does not fulfil the criteria which the Commission usually applies to projects of common European interest and that the aid was also not intended to remedy a serious disturbance in the economy of a Member State.

The exemptions provide for in Article 92(3)(d) of the EC Treaty and Article 61(3)(d) of the EEA Agreement similarly do apply, since the aid is not designed to promote culture and heritage conservation.

Consequently, only the first part of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement might apply, if the aid contributes to the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest.

4.4. Community guidelines

Draiswerke is a company in difficulty. The loan granted by the Mannheim city authorities and the guarantee provided by LAKRA constitute restructuring aid. The Community guidelines on State aid for rescuing and restructuring firms in difficulty (7) set out the conditions under which restructuring aid may be considered compatible with the common market.

Under the guidelines, restructuring must take place in the context of a feasible, coherent and far-reaching plan designed to restore a firm's long-term viability within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. Restructuring plans must take account of, *inter alia*, the circumstances giving rise to the firm's difficulties, market supply and demand for the relevant products as well as their expected development and the specific strengths and weaknesses of the firm. They should allow an orderly transition of the firm to a new structure that gives it viable long-term prospects and will enable it to operate on the strength of its own resources without requiring further State assistance.

Restructuring usually involves the reorganisation and rationalisation of the firm's activities on to a more efficient basis typically involving the withdrawal from activities that are no longer viable or are already loss-making, the restructuring of those existing activities that can be made competitive again and, possibly, the development of or diversification into new viable activities. Financial restructuring usually has to accompany the physical restructuring.

According to Section 3 of the Community guidelines, the Commission has to examine whether the restructuring satisfies the following conditions in particular: first, it must restore the long-term viability of the company within a reasonable timescale; secondly, undue distortions of competition through the aid must be avoided; thirdly, the aid must be in proportion to the restructuring costs and benefits.

4.5. Long-term viability

By letter dated 17 July 1998, Germany submitted a realistic, coherent and far-reaching restructuring plan, drawn up by Draiswerke and the business consultant firm DGM. The restructuring programme takes account of the circumstances giving rise to the firm's difficulties, notably an unfavourable cost-structure, insufficient cost-transparency and an unsound financial position.

In order to improve its cost-structure, Draiswerke had primarily to reduce staff costs, which were almost 50 % of turnover in 1996. As provided for in the restructuring

plan, Draiswerke's employees agreed to a significant reduction in wages per hour. Draiswerke also reduced its workforce by 62 persons. As a result, wage costs were DEM 5,2 million (ECU 2,6 million) lower in 1998 than in 1996, a reduction of 18 %. In addition, Draiswerke took a number of measures to improve the efficiency of its production process.

In order to improve its cost-transparency, Draiswerke significantly upgraded its cost accounting and cost control methods. As a result, Draiswerke also gave up producing turn-key plants, reduced the range of products and decided to concentrate more on the company's core business.

The restoration of the company's financial position was primarily financed by the former shareholders, the employees and measures taken by the company. The former shareholders issued a letter of subordination for a shareholders' loan of DEM 7,2 million (ECU 3,6 million) at the beginning of August 1996. At the same time, Gustav Eirich KG, which is owned by the former shareholders, issued a letter of subordination for a loan of DEM 2 million (ECU 1 million). Finally, the former shareholders issued a letter of subordination for a Loan of DEM 2 million (ECU 1 million). Finally, the former shareholders injected the proceeds from the sale of land, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring. In November 1996, the employees provided the company with a subordinated and interest-free loan of DEM 746 000 (ECU 373 000). Draiswerke was also able to reduce its accounts receivable from sales and services from DEM 17,8 million (ECU 8,9 million) at the end of 1996 to DEM 9,3 million (ECU 4,6 million) at the end of 1997. The value of stocks was reduced from DEM 6,5 million (ECU 3,2 million) to DEM 3,5 million (ECU 1,7 million) in the same period. Finally, the Mannheim city authorities provided a loan of DEM 0,8 million (ECU 0,4 million) and LAKRA provided the 50 % guarantee for DEM 6,0 million (ECU 3,0 million).

The restructuring was also accompanied by a shareholder change. Draiswerke's employees took over the firm for DEM 1 from the former shareholders. Two new executive directors with experience in restructuring measures were appointed. The management board and the new shareholders of Draiswerke decided to find a strategic investor. Draiswerke entrusted the task of finding an investor to the company B. Metzler GmbH. The Commission takes note of the fact that, according to Germany, a new investor would help the company's strategic position, but is not a condition *sine qua non* for a successful restructuring.

(7) See footnote 2.

The Commission examined the forecasts for the balance sheets, profit-and-loss accounts and cash flow figures, which were drawn up for the period until the year 2001, to assess whether the restructuring measures would result in the restoration of Draiswerke's viability. The Commission notes that the forecasts are presented in detail with statements on the underlying assumptions. In line with its strategy of abandoning loss-making activities and concentrating on the company's core business, Draiswerke reduced its output in 1997 by more than 10 % compared with the previous year. The Commission notes that, despite the reduction in output, the operating result was already positive in 1997. The net result in that year was negative because of physical restructuring measures amounting to DEM 4,7 million (ECU 2,4 million). According to the plan, Draiswerke will turn around its profitability in 1998. In 1998, Draiswerke is expected to achieve a DEM 1,2 million (ECU 0,6 million) positive result on ordinary activities (2,2 % of turnover). According to the forecasts, Draiswerke will increase its profits to DEM 8,8 million (ECU 4,4 million) in the year 2001 (12,8 % of turnover). This figure implies that the company will be highly profitable and competitive in the year 2001.

Draiswerke's forecasts expect an increase in turnover of on average 9 % a year until the year 2001 and a continuous reduction of staff expenditures to 35 % of turnover in the year 2001, with all other cost items remaining stable. Accordingly, the restructuring will be effected mainly by a reduction in staff expenditures, already under way, and improvements in the production process. The

Commission considers these assumptions optimistic but achievable. The Commission also notes that Draiswerke provided a detailed geographical breakdown of turnover for both business areas and showed that it has significantly reduced its turnover expectations in Asia as a result to the prevailing economic crisis and currency depreciations.

The company will still have negative equity capital in 1998. However, according to Germany, from a going-concern perspective, the company has considerable hidden reserves of DEM 16,8 million (ECU 8,4 million), as confirmed by the accountancy firm Schitag Ernst & Young. Draiswerke did not therefore have to initiate bankruptcy proceedings. Moreover, according to the plan, Draiswerke will retain its future profits. This policy will result in an increase in equity capital to DEM 15,4 million (ECU 7,7 million) (37,7 % of the balance-sheet total) by the year 2001. The forecasts indicate that Draiswerke does not plan significant investments until the year 2001. Draiswerke would therefore be able to reduce its liabilities and to achieve a sound financial position in the year 2001.

The Commission takes the view that the forecasts indicate that Draiswerke has viable long-term prospects and is able to operate on the strength of its own resources without requiring further state assistance.

The following tables summarise the main factors in the Commission's analysis:

Profit and loss account (in DEM thousands)	1996	1997	1998	1999	2000	2001
Total operating income	56 476	50 557	52 900	59 250	62 750	68 750
Operating result	- 2 417	412	2 048	4 007	7 152	9 516
Result from ordinary activities	- 3 204	- 4 260	1 208	3 107	6 352	8 816

Balance sheet (in DEM thousands)	1996	1997	1998	1999	2000	2001
Capital stock	2 931	- 1 392	- 350	1 150	6 700	15 400
Liabilities	38 176	29 441	34 750	31 050	28 700	25 500
Balance sheet total	41 107	28 049	34 400	32 200	35 400	40 900

The Commission notes that Draiswerke has committed itself to implementing the restructuring plan.

The Commission also notes that Draiswerke's banks, namely Deutsche Bank, Dresdner Bank and Sparkasse Mannheim, have given a favourable opinion as to Draiswerke's prospects and expressed their readiness to provide loans to it.

4.6. Avoidance of undue distortions of competition through the aid

The Commission has examined whether measures have to be taken to off-set adverse effects of the restructuring aid on competitors.

The restructuring aid in the form of a loan granted by the Mannheim city authorities and the guarantee granted by LAKRA may generate two different distortive effects. First, the aid affects the market, since Draiswerke is still in business. Secondly, the restructuring aid may reduce Draiswerke's financial expenditure.

As to the first effect, the Commission has reviewed the market data available to it and the market report provided by Germany. As regards the first product area dispersion and micro-wet-milling — market demand is expected to expand over the coming years. As regards the second product area — machinery for mixing and reaction purposes — market demand is highly dependent on investment by the chemical industry, and there are therefore good growth prospects here as well. No excess capacity was evident in either of the two product areas. This view is also underlined by the fact that the Commission has not received any comments from third parties. As was stated in point 3.2.2(ii) of the Community guidelines, where there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission will normally not require a reduction of capacity in return for the aid.

Moreover, the Commission notes that Draiswerke has abandoned some activities and reduced its product range. Account must also be taken of the fact that Draiswerke, which is at present an SME, holds a small market share in the relevant market and that its main competitors, namely Bühler AG, Erich Netzsch GmbH & Holding KG and Gebrüder Lödige Maschinenbau GmbH, are far larger than Draiswerke in terms of turnover and staff.

As to the second possible effect, the Commission notes that Draiswerke paid 5 % interest on the 10-month DEM 0,8 million (ECU 0,4 million) loan granted by the Mannheim city authorities. This interest rate was below the 6,7 % reference rate for Germany in 1996. The advantage to Draiswerke from the lower interest rate on the loan granted by the Mannheim city authorities would thus amount to DEM 11 000 (ECU 5 500). Even if the Commission were to compare the interest rate on the loan with the higher 8,25 % interest rate charged by Sparkasse Mannheim, the advantage in terms of reduced

financial expenditures is still small (DEM 21 000 or ECU 10 500).

As to the 50 % guarantee provided by LAKRA, the Commission notes that Draiswerke paid a one-off fee of 1 % and an annual charge of 0,5 % of the outstanding guarantee amount. The 0,5 % fee can be compared with the 1 % interest rate on the DEM 2 million (ECU 1 million) guarantee loan which Sparkasse Mannheim provided to Draiswerke. Since LAKRA and Sparkasse Mannheim share the risk equally, the Commission assumes that the LAKRA fee is 0,5 % below the market rate. This results in an advantage to Draiswerke of DEM 50 000 (ECU 25 000) over the guarantee's duration of 22 months.

The amount of the loan of DEM 0,8 million (ECU 0,4 million) and the guarantee amount of DEM 3 million (ECU 1,5 million) (50 % of DEM 6 million) constitute State aid, since the company is in difficulty and would not have received the loan and the guarantee on the financial market. However, the Commission takes the view that the advantages conferred by the loan and the guarantee in the form of reduced financial charges are small (0,1 % of turnover) and will not noticeably affect the company's operating costs or its profitability. Moreover, there is no evidence of excess capacity, the company's market share is small, and it has abandoned some of its activities. The Commission therefore considers that no measures are necessary to offset adverse effects of the aid on competitors.

4.7. Aid in proportion to the restructuring costs and benefits

The Commission has examined whether the aid was limited to the minimum needed for the company's restructuring.

The restructuring aid helped to ease Draiswerke's shortage of liquidity, triggered by heavy losses in previous years. In 1995, Draiswerke recorded a loss on its ordinary activities of DEM 8,9 million (ECU 4,4 million) (18 % of turnover). In 1996, it recorded a loss of DEM 1,9 million (ECU 1,0 million) (3,3 % of turnover). In 1997, it disclosed a loss of DEM 4,3 million (ECU 2,2 million), mainly because of physical restructuring costs of a similar amount. The losses reduced Draiswerke's liquidity by approximately DEM 14 million (DEM 7,0 million) over the period from 1995 to 1997.

The Commission's assessment of cash-flow calculations and balance-sheet forecasts shows that the DEM 0,8 million (ECU 0,4 million) loan granted by the Mannheim city authorities and the 50 % guarantee provided by LAKRA for the DEM 6 million (ECU 3 million) credit line made available by Sparkasse Mannheim did not lead to a cash surplus, but were limited to the amount needed to keep Draiswerke in business and enable it to finance the necessary restructuring measures. The Commission notes that Draiswerke benefited from the DEM 0,8 million (ECU 0,4 million) for only ten months and reimbursed the loan in June 1997 at a time when the company's financial position was still very weak; for instance, the company had still a negative equity capital. The guarantee, which was provided until June 1998, was necessary to obtain interim finance for its ordinary activities on the financial markets. This was a precondition for remaining in business.

The Commission takes into account the fact that the restructuring aid was accompanied by significant contributions by the former shareholders (DEM 10,4 million, or ECU 5,2 million) and the new shareholders (DEM 746 000, or ECU 373 000). It notes that, at the beginning of August 1996, the former shareholders issued a letter of subordination for a shareholders' loan of DEM 7,2 million (ECU 3,6 million) and that Gustav Eirich KG, which is also owned by the former shareholders, issued a letter of subordination for a loan of DEM 2 million (ECU 1 million). Furthermore, the former shareholders injected the proceeds from the sale of land, totalling DEM 1,2 million (ECU 0,6 million), into the firm as a final contribution to restructuring. In November 1996, the employees, who are the new shareholders, provided the company with a subordinated and interest-free loan of DEM 746 000 (ECU 373 000). The employees also agreed to significant wage reductions and to staff cutbacks that resulted in staff costs being DEM 5,2 million (ECU 2,6 million) lower in 1998 than in 1996.

Accordingly, the Commission considers that the State aid measures were in proportion to the restructuring costs and to the contributions of the shareholders.

5. CONCLUSIONS

The Commission considers that the loan and the guarantee were granted unlawfully in breach of Article 93(3) of the EC Treaty. However, the Commission takes account of the fact that Draiswerke was receiving restructuring aid for the first time and that the loan granted by the

Mannheim city authorities and the guarantee provided by LAKRA meet the conditions laid down in the Community guidelines for firms in difficulty, namely that the restructuring aid will restore the long-term viability of the company within a reasonable timescale, avoids undue distortions of competition and is in proportion to the restructuring costs and benefits.

The Commission therefore concludes that the State aid contributed to the development of economic activities without adversely affecting trading conditions to an extent contrary to the common interest. The Commission has therefore decided that the State aid can be deemed compatible with the common market under the first part of the exemptions provided for in Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

The Commission requests Germany to provide detailed annual reports in order to demonstrate that the restructuring plan is being implemented properly,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Germany granted to Draiswerke in the form of a DEM 0,8 million (ECU 0,4 million) loan provided by the Mannheim city authorities and the 50 % guarantee provided by LAKRA is compatible with the common market.

Article 2

Germany shall submit detailed annual reports to the Commission in order to demonstrate that the restructuring plan is being implemented properly.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 25 November 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 23 April 1999

laying down special conditions governing imports of fishery and aquaculture products originating in Mauritius

(notified under document number C(1999) 921)

(Text with EEA relevance)

(1999/276/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/493/EEC of 22 July 1991 laying down the health conditions for the production and the placing on the market of fishery products⁽¹⁾, as last amended by Directive 97/79/EC⁽²⁾, and in particular Article 11 thereof,

- (1) Whereas a Commission expert has conducted an inspection visit to Mauritius to verify the conditions under which fishery products are produced, stored and dispatched to the Community;
- (2) Whereas the provisions of legislation of Mauritius on health inspection and monitoring of fishery products may be considered equivalent to those laid down in Directive 91/493/EEC;
- (3) Whereas, in Mauritius the 'Official Veterinary Services (OVS) of the Ministry of Agriculture, Fisheries and Cooperatives' is capable of effectively verifying the application of the laws in force;
- (4) Whereas the procedure for obtaining the health certificate referred to in Article 11(4)(a) of Directive 91/493/EEC must also cover the definition of a model certificate, the minimum requirements regarding the languages in which it must be drafted and the grade of the person empowered to sign it;
- (5) Whereas, pursuant to Article 11(4)(b) of Directive 91/493/EEC, a mark should be affixed to packages of fishery products giving the name of the third country and the approval/registration number of the establishment, factory vessel, cold store or freezer vessel of origin;
- (6) Whereas, pursuant to Article 11(4)(c) of Directive 91/493/EEC, a list of approved/registration establishments, factory vessels, or cold stores must be drawn up; whereas a list of freezer vessels registered in the sense of Council Directive 92/48/EEC⁽³⁾

must be drawn up; whereas these lists must be drawn up on the basis of a communication from the OVS to the Commission; whereas it is therefore for the OVS to ensure compliance with the provisions laid down to that end in Article 11(4) of Directive 91/493/EEC;

- (7) Whereas the OVS has provided official assurances regarding compliance with the rules set out in Chapter V of the Annex to Directive 91/493/EEC, and regarding the fulfilment of requirements equivalent to those laid down by that Directive for the approval or registration of establishments, factory vessels, cold stores or freezer vessels of origin;
- (8) Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

The 'Official Veterinary Services (OVS) of the Ministry of Agriculture, Fisheries and Cooperatives' shall be the competent authority in Mauritius for verifying and certifying compliance of fishery and aquaculture products with the requirements of Directive 91/493/EEC.

Article 2

Fishery and aquaculture products originating in Mauritius must meet the following conditions:

1. each consignment must be accompanied by a numbered original health certificate, duly completed, signed, dated and comprising a single sheet in accordance with the model in Annex A hereto;
2. the products must come from approved establishments, factory vessels, cold stores or registered freezer vessels listed in Annex B hereto;

⁽¹⁾ OJ L 268, 24.9.1991, p. 15.

⁽²⁾ OJ L 24, 30.1.1998, p. 31.

⁽³⁾ OJ L 187, 7.7.1992, p. 41.

3. except in the case of frozen fishery products in bulk and intended for the manufacture of preserved foods, all packages must bear the word 'MAURITIUS' and the approval/registration number of the establishment, factory vessel, cold store or freezer vessel of origin in indelible letters.

Article 3

1. Certificates as referred to in Article 2(1) must be drawn up in at least one official language of the Member State where the checks are carried out.
2. Certificates must bear the name, capacity and signature of the representative of the OVS and the latter's

official stamp in a colour different from that of other endorsements.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 23 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX A

HEALTH CERTIFICATE

for fishery and aquaculture products originating in Mauritius and intended for export to the European Community, excluding bivalve molluscs, echinoderms, tunicates and marine gastropods in whatever form

Reference No:

Country of dispatch: MAURITIUS

Competent authority: 'Official Veterinary Services (OVS) of the Ministry of Agriculture, Fisheries and Cooperatives'

I. Details identifying the fishery products

- Description of fishery/aquaculture products ⁽¹⁾:
- species (scientific name):
- presentation of product and type of treatment ⁽²⁾:
- Code number (where available):
- Type of packaging:
- Number of packages:
- Net weight:
- Requisite storage and transport temperature:

II. Origin of products

Name(s) and official approval number(s) of establishment(s), factory vessel(s), or cold store(s) approved or freezer vessel(s) registered by the OVS for export to the European Community:

III. Destination of products

The products are dispatched
from:
(place of dispatch)

to:
(country and place of destination)

by the following means of transport:

Name and address of dispatcher:

Name of consignee and address at place of destination:

IV. Health attestation

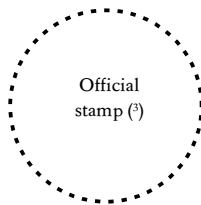
- The official inspector hereby certifies that the fishery or aquaculture products specified above:
 - (1) were caught and handled on board vessels in accordance with the health rules laid down by Directive 92/48/EEC;

⁽¹⁾ Delete where applicable.

⁽²⁾ Live, refrigerated, frozen, salted, smoked, preserved, etc.

- (2) were landed, handled and where appropriate packaged, prepared, processed, frozen, thawed and stored hygienically in compliance with the requirements laid down in Chapters II, III and IV of the Annex to Directive 91/493/EEC;
 - (3) have undergone health controls in accordance with Chapter V of the Annex to Directive 91/493/EEC;
 - (4) are packaged, marked, stored and transported in accordance with Chapters VI, VII and VIII of the Annex to Directive 91/493/EEC;
 - (5) do not come from toxic species or species containing biotoxins;
 - (6) have satisfactorily undergone the organoleptic, parasitological, chemical and microbiological checks laid down for certain categories of fishery products by Directive 91/493/EEC and in the implementing decisions thereto.
- The undersigned official inspector hereby declares that he is aware of the provisions of Directive 91/493/EEC, Directive 92/48/EEC and Decision 1999/276/EC.

Done at , on
(Place) (Date)



.....
Signature of official inspector (3)

.....
(name in capital letters, capacity and qualifications of person signing)

(3) The colour of the stamp and signature must be different from that of the other particulars in the certificate.

*ANNEX B***LIST OF APPROVED ESTABLISHMENTS**

Number	Name	Address
DVS/TF/1	Mauritius Tuna Fishing & Canning Enterprises Ltd	Port Louis
DVS/F/8	Seskel Ent. Ltd	Riche Terre
DVS/F/10	Le Rouget Ltd Cap. Malheureux	Cap Malheureux

COMMISSION DECISION

of 23 April 1999

**amending Decision 97/296/EC drawing up the list of third countries from which
the import of fishery products is authorised for human consumption**

*(notified under document number C(1999) 997)***(Text with EEA relevance)**

(1999/277/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs ⁽¹⁾, as last amended by Decision 98/603/EC ⁽²⁾, and in particular Article 2(2) and Article 7 thereof,

- (1) Whereas Commission Decision 97/296/EC ⁽³⁾, as last amended by Decision 1999/244/EC ⁽⁴⁾, lists the countries and territories from which importation of fishery products for human consumption is authorised. Part I of the Annex lists the names of the countries and territories covered by a specific Decision and Part II names those qualifying under Article 2(2) of Decision 95/408/EC;
- (2) Whereas Commission Decision 1999/276/EC ⁽⁵⁾, set specific import conditions for fishery and aquaculture products originating in Mauritius; Whereas Mauritius should therefore be added to Part I of the list of the Annex of countries and territories from which importation of fishery products for human consumption is authorised;

- (3) Whereas New Caledonia has provided information that it satisfies the equivalent conditions and is able to guarantee that the fishery products it exports to the Community meet the health requirements of the Directive 91/493/EEC, it is therefore necessary to modify the above list to include this country and territory in Part II of the list;

- (4) Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

The Annex of the present Decision replaces the Annex to Decision 97/296/EC.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 23 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 243, 11.10.1995, p. 17.

⁽²⁾ OJ L 289, 28.10.1998, p. 36.

⁽³⁾ OJ L 122, 14.5.1997, p. 21.

⁽⁴⁾ OJ L 91, 7.4.1999, p. 37.

⁽⁵⁾ See page 52 of this Official Journal.

ANNEX

List of countries and territories from which importation of fishery products in any form intended for human consumption is authorised

I. Countries and territories covered by a specific Decision pursuant to Council Directive 91/493/EC

AL — Albania	GH — Ghana	NG — Nigeria
AR — Argentina	GM — Gambia	NZ — New Zealand
AU — Australia	GT — Guatemala	PE — Peru
BD — Bangladesh	ID — Indonesia	PH — Philippines
BR — Brazil	IN — India	RU — Russia
CA — Canada	JP — Japan	SC — Seychelles
CI — Côte d'Ivoire	KR — South Korea	SG — Singapore
CL — Chile	MA — Morocco	SN — Senegal
CO — Colombia	MG — Madagascar	TH — Thailand
CU — Cuba	MR — Mauritania	TN — Tunisia
EC — Ecuador	MU — Mauritius	TW — Taiwan
EE — Estonia	MV — Maldives	TZ — Tanzania
FK — Falkland Islands	MX — Mexico	UY — Uruguay
FO — Faroes	MY — Malaysia	ZA — South Africa

II. Countries and territories meeting the terms of Article 2(2) of Council Decision 95/408/EC

AG — Antigua and Barbuda ⁽¹⁾	GN — Guinea Conakri	PF — French Polynesia
AN — Netherlands Antilles	HK — Hong Kong	PG — Papua New Guinea
AO — Angola	HN — Honduras	PK — Pakistan
AZ — Azerbaijan ⁽²⁾	HR — Croatia	PL — Poland
BJ — Benin	HU — Hungary ⁽³⁾	PM — St Pierre and Miquelon
BS — Bahamas	IL — Israel	RO — Romania
BZ — Belize	IR — Iran	SB — Solomon Islands
CH — Switzerland	JM — Jamaica	SH — St Helena
CM — Cameroon	KE — Kenya	SI — Slovenia
CN — China	LK — Sri Lanka	SR — Suriname
CR — Costa Rica	LT — Lithuania	TG — Togo
CV — Cape Verde	LV — Latvia	TR — Turkey
CY — Cyprus	MM — Myanmar	UG — Uganda
CZ — Czech Republic	MT — Malta	US — United States of America
DZ — Algeria	MZ — Mozambique	VC — St Vincent and Grenadines ⁽¹⁾
ER — Eritrea	NA — Namibia	VE — Venezuela
FJ — Fiji	NC — New Caledonia	VN — Vietnam
GA — Gabon	NI — Nicaragua	ZW — Zimbabwe
GL — Greenland	PA — Panama	

⁽¹⁾ Authorised only for imports of fresh fish.

⁽²⁾ Authorised only for imports of caviar.

⁽³⁾ Authorised only for import of live animals intended for human consumption.