

Official Journal

of the European Communities

ISSN 0378-6978

L 145

Volume 42

10 June 1999

English edition

Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1187/1999
of 9 June 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 10 June 1999.

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

Done at Brussels, 9 June 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 9 June 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	58,9
	999	58,9
0707 00 05	052	73,3
	628	126,6
	999	100,0
0709 90 70	052	59,6
	999	59,6
0805 30 10	382	51,9
	388	56,9
	528	58,3
	999	55,7
0808 10 20, 0808 10 50, 0808 10 90	388	74,9
	400	76,5
	508	77,4
	512	65,0
	524	74,8
	528	57,4
	804	98,7
	999	75,0
0809 20 95	052	239,7
	064	234,8
	400	179,6
	999	218,0

⁽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 1188/1999

of 9 June 1999

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar ⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a

small quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 June 1999.

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 9 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	6,29	0,25	—
1703 90 00 ⁽¹⁾	7,46	0,00	—

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 1189/1999
of 9 June 1999

fixing the maximum export refund for white sugar for the 42nd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1574/98

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98⁽²⁾, and in particular the second subparagraph of Article 17(5)(b) thereof,

Whereas Commission Regulation (EC) No 1574/98 of 22 July 1998 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9(1) of Regulation (EC) No 1574/98 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 42nd partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 42nd partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1574/98 the maximum amount of the export refund is fixed at 51,844 EUR/100 kg.

Article 2

This Regulation shall enter into force on 10 June 1999.

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

Done at Brussels, 9 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 206, 23.7.1998, p. 7.

COMMISSION REGULATION (EC) No 1190/1999
of 8 June 1999
establishing unit values for the determination of the customs value of certain
perishable goods

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 502/1999 ⁽⁴⁾, and in particular Article 173 (1) thereof,

Whereas Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation;

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 11 June 1999.

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

Done at Brussels, 8 June 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 119, 7.5.1999, p. 1.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 65, 12.3.1999, p. 1.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	30,84 183,37 274,83	424,37 202,30 1 244,08	60,32 24,29 19,77	229,15 59 714,57	9 992,16 67,96	5 131,34 6 182,86
1.30	Onions (other than seed) 0703 10 19	a) b) c)	29,87 177,60 266,19	411,02 195,93 1 204,95	58,42 23,52 19,15	221,94 57 836,38	9 677,88 65,82	4 969,95 5 988,40
1.40	Garlic 0703 20 00	a) b) c)	130,75 777,40 1 165,18	1 799,16 857,66 5 274,44	255,72 102,97 83,84	971,50 253 167,30	42 363,00 288,14	21 754,97 26 213,02
1.50	Leeks ex 0703 90 00	a) b) c)	26,05 154,89 232,14	358,46 170,88 1 050,85	50,95 20,52 16,70	193,56 50 439,83	8 440,20 57,41	4 334,36 5 222,56
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	54,34 323,09 484,25	747,73 356,45 2 192,07	106,28 42,80 34,84	403,76 105 216,91	17 606,16 119,75	9 041,42 10 894,19
1.70	Brussels sprouts 0704 20 00	a) b) c)	59,69 354,90 531,93	821,35 391,54 2 407,89	116,74 47,01 38,27	443,51 115 575,96	19 339,56 131,54	9 931,58 11 966,77
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	40,76 242,35 363,23	560,87 267,37 1 644,25	79,72 32,10 26,14	302,85 78 922,37	13 206,24 89,82	6 781,89 8 171,65
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 629,95 944,17	1 457,90 694,99 4 274,01	207,22 83,44 67,94	787,23 205 147,81	34 327,80 233,48	17 628,60 21 241,07
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	46,43 276,06 413,76	638,89 304,56 1 872,98	90,81 36,57 29,77	344,98 89 901,02	15 043,32 102,32	7 725,30 9 308,38
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	152,67 907,73 1 360,52	2 100,79 1 001,45 6 158,69	298,60 120,24 97,89	1 134,37 295 610,34	49 465,08 336,44	25 402,15 30 607,59
1.120	Endives ex 0705 29 00	a) b) c)	21,82 129,74 194,45	300,25 143,13 880,22	42,68 17,18 13,99	162,23 42 249,41	7 069,68 48,08	3 630,54 4 374,52
1.130	Carrots ex 0706 10 00	a) b) c)	54,00 321,07 481,22	743,06 354,22 2 178,35	105,61 42,53 34,62	401,23 104 558,58	17 496,00 119,00	8 984,84 10 826,03
1.140	Radishes ex 0706 90 90	a) b) c)	117,77 700,23 1 049,51	1 620,55 772,52 4 750,83	230,34 92,75 75,51	875,05 228 034,52	38 157,48 259,53	19 595,28 23 610,77
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	350,79 2 085,70 3 126,07	4 826,98 2 301,03 14 150,83	686,09 276,27 224,93	2 606,44 679 224,15	113 655,96 773,04	58 366,54 70 327,08

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	123,50 734,30 1 100,57	1 699,40 810,11 4 981,98	241,55 97,26 79,19	917,63 239 129,35	40 014,00 272,16	20 548,67 24 759,53
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	118,14 702,43 1 052,80	1 625,64 774,95 4 765,76	231,06 93,04 75,75	877,80 228 750,94	38 277,36 260,35	19 656,84 23 684,94
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 937,88 1 405,70	2 170,55 1 034,71 6 363,22	308,51 124,23 101,14	1 172,04 305 427,23	51 107,76 347,61	26 245,73 31 624,03
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	355,31 2 112,58 3 166,35	4 889,17 2 330,68 14 333,17	694,93 279,83 227,82	2 640,02 687 976,09	115 120,44 783,00	59 118,61 71 233,26
1.200.2	— other ex 0709 20 00	a) b) c)	151,19 898,93 1 347,33	2 080,42 991,74 6 098,99	295,70 119,07 96,94	1 123,37 292 744,66	48 985,56 333,18	25 155,90 30 310,87
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	77,39 460,14 689,66	1 064,91 507,65 3 121,90	151,36 60,95 49,62	575,02 149 847,94	25 074,36 170,55	12 876,61 15 515,30
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	60,09 357,28 535,49	826,86 394,16 2 424,02	117,53 47,32 38,53	446,48 116 350,46	19 469,16 132,42	9 998,13 12 046,96
1.230	Chantarelles 0709 51 30	a) b) c)	1 166,05 6 933,02 10 391,25	16 045,20 7 648,79 47 038,34	2 280,60 918,34 747,67	8 663,98 2 257 787,63	377 800,20 2 569,64	194 014,40 233 772,04
1.240	Sweet peppers 0709 60 10	a) b) c)	185,14 1 100,79 1 649,88	2 547,58 1 214,44 7 468,53	362,10 145,81 118,71	1 375,63 358 481,03	59 985,36 407,99	30 804,70 37 117,24
1.250	Fennel 0709 90 50	a) b) c)	73,55 437,31 655,44	1 012,07 482,46 2 967,00	143,85 57,93 47,16	546,49 142 412,66	23 830,20 162,08	12 237,69 14 745,45
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	51,27 304,84 456,89	705,49 336,31 2 068,23	100,28 40,38 32,87	380,95 99 272,56	16 611,48 112,98	8 530,61 10 278,71
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	176,48 1 049,30 1 572,70	2 428,42 1 157,63 7 119,19	345,16 138,99 113,16	1 311,28 341 712,93	57 179,52 388,91	29 363,80 35 381,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	66,50 395,39 592,61	915,06 436,21 2 682,60	130,06 52,37 42,64	494,11 128 761,96	21 546,00 146,55	11 064,67 13 332,05

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	148,71 884,19 1 325,23	2 046,29 975,47 5 998,95	290,85 117,12 95,35	1 104,95 287 942,71	48 182,04 327,71	24 743,26 29 813,68
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	109,97 653,85 980,00	1 513,22 721,36 4 436,18	215,08 86,61 70,51	817,10 212 931,61	35 630,28 242,34	18 297,47 22 047,01
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamou- tis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	48,57 288,78 432,83	668,34 318,60 1 959,31	94,99 38,25 31,14	360,88 94 044,63	15 736,68 107,03	8 081,37 9 737,41
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsu- mas), fresh; clementines, wilkings and simi- lar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 10	a) b) c)	79,18 470,78 705,61	1 089,54 519,39 3 194,11	154,86 62,36 50,77	588,32 153 313,86	25 654,32 174,49	13 174,44 15 874,16
2.70.2	— Monreales and satsumas 0805 20 30	a) b) c)	58,67 348,84 522,84	807,32 384,85 2 366,74	114,75 46,21 37,62	435,93 113 600,96	19 009,08 129,29	9 761,87 11 762,28
2.70.3	— Mandarines and wilkings 0805 20 50	a) b) c)	53,62 318,81 477,83	737,83 351,72 2 163,03	104,87 42,23 34,38	398,41 103 822,80	17 372,88 118,16	8 921,62 10 749,84
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	53,12 315,84 473,38	730,95 348,44 2 142,86	103,89 41,84 34,06	394,69 102 854,66	17 210,88 117,06	8 838,42 10 649,60
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	191,35 1 137,72 1 705,22	2 633,03 1 255,17 7 719,04	374,25 150,70 122,69	1 421,77 370 505,26	61 997,40 421,68	31 837,96 38 362,23
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	42,67 253,70 380,25	587,15 279,90 1 721,30	83,46 33,61 27,36	317,05 82 620,64	13 825,08 94,03	7 099,69 8 554,57
2.90.2	— pink ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	53,09 315,66 473,11	730,53 348,25 2 141,65	103,84 41,81 34,04	394,47 102 796,57	17 201,16 116,99	8 833,43 10 643,59
2.100	Table grapes ex 0806 10 10	a) b) c)	187,40 1 114,23 1 670,02	2 578,68 1 229,26 7 559,70	366,52 147,59 120,16	1 392,42 362 857,00	60 717,60 412,98	31 180,74 37 570,33

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	44,07 262,03 392,73	606,42 289,08 1 777,78	86,19 34,71 28,26	327,45 85 331,42	14 278,68 97,12	7 332,63 8 835,24
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	64,17 381,54 571,85	883,00 420,93 2 588,61	125,51 50,54 41,15	476,80 124 250,45	20 791,08 141,41	10 676,99 12 864,93
2.120.2	— other ex 0807 19 00	a) b) c)	95,16 565,80 848,02	1 309,43 624,21 3 838,74	186,12 74,94 61,02	707,06 184 255,45	30 831,84 209,71	15 833,29 19 077,87
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>) ex 0808 20 50	a) b) c)	129,54 770,21 1 154,40	1 782,51 849,73 5 225,63	253,36 102,02 83,06	962,51 250 824,42	41 970,96 285,47	21 553,64 25 970,44
2.140.2	Other ex 0808 20 50	a) b) c)	67,02 398,48 597,25	922,22 439,62 2 703,58	131,08 52,78 42,97	497,97 129 768,82	21 714,48 147,69	11 151,19 13 436,30
2.150	Apricots 0809 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.160	Cherries 0809 20 05 0809 20 95	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.170	Peaches 0809 30 90	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.180	Nectarines ex 0809 30 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.190	Plums 0809 40 05	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.200	Strawberries 0810 10 10 0810 10 05 0810 10 80	a) b) c)	491,71 2 923,57 4 381,87	6 766,08 3 225,41 19 835,53	961,70 387,25 315,28	3 653,50 952 083,32	159 314,04 1 083,59	81 813,66 98 579,00
2.205	Raspberries 0810 20 10	a) b) c)	1 648,10 9 799,16 14 687,04	22 678,35 10 810,83 66 484,19	3 223,40 1 297,98 1 056,76	12 245,71 3 191 166,59	533 984,40 3 631,93	274 220,77 330 414,38
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	981,91 5 838,17 8 750,29	13 511,38 6 440,91 39 610,15	1 920,45 773,32 629,60	7 295,79 1 901 242,88	318 138,84 2 163,84	163 376,08 196 855,28
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 10 0810 50 20 0810 50 30	a) b) c)	128,24 762,48 1 142,81	1 764,62 841,20 5 173,19	250,82 101,00 82,23	952,85 248 307,26	41 549,76 282,60	21 337,34 25 709,81

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a)	52,98	729,02	103,62	393,65	17 165,52	8 815,13
		b)	315,00	347,53	41,73	102 583,58	116,75	10 621,54
		c)	472,13	2 137,21	33,97			
2.240	Khakis (including sharon fruit) ex 0810 90 85	a)	317,58	4 370,00	621,13	2 359,68	102 895,92	52 840,87
		b)	1 888,24	2 083,19	250,11	614 920,63	699,85	63 669,07
		c)	2 830,11	12 811,15	203,63			
2.250	Lychees ex 0810 90 30	a)	357,20	4 915,18	698,62	2 654,07	115 732,80	59 433,08
		b)	2 123,81	2 343,08	281,32	691 635,64	787,17	71 612,17
		c)	3 183,19	14 409,41	229,04			

COMMISSION REGULATION (EC) No 1191/1999
of 9 June 1999
prohibiting fishing for haddock by vessels flying the flag of Germany

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 2846/98⁽²⁾, and in particular Article 21(3) thereof,

- (1) Whereas Council Regulation (EC) No 51/1999 of 18 December 1998 allocating, for 1999, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen⁽³⁾ lays down the haddock quotas for 1999;
- (2) Whereas, in order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;
- (3) Whereas, according to the information communicated to the Commission, catches of haddock in the waters of ICES divisions I, II a and II b (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany have reached the quota allocated for 1999; whereas

Germany has prohibited fishing for this stock as from 20 May 1999; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of haddock in the waters of ICES divisions I, II a and II b (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany are hereby deemed to have exhausted the quota allocated to Germany for 1999.

Fishing for haddock in the waters of ICES divisions I, II a and II b (Norwegian waters north of 62° N) by vessels flying the flag of Germany or registered in Germany is hereby prohibited, as are the retention on board, transshipment and landing of fish from this stock caught by the abovementioned vessels after the date of entry into force of this Regulation.

Article 2

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

It shall apply with effect from 20 May 1999.

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

Done at Brussels, 9 June 1999.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 13, 18.1.1999, p. 67.

COMMISSION REGULATION (EC) No 1192/1999
of 9 June 1999
fixing the import duties in the rice sector

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

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 2831/98 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product;

Whereas Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 10 June 1999.

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

Done at Brussels, 9 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽⁷⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	83,41	121,01		188,03
1006 10 23	(7)	83,41	121,01		188,03
1006 10 25	(7)	83,41	121,01		188,03
1006 10 27	(7)	83,41	121,01		188,03
1006 10 92	(7)	83,41	121,01		188,03
1006 10 94	(7)	83,41	121,01		188,03
1006 10 96	(7)	83,41	121,01		188,03
1006 10 98	(7)	83,41	121,01		188,03
1006 20 11	205,56	67,61	98,44		154,17
1006 20 13	205,56	67,61	98,44		154,17
1006 20 15	205,56	67,61	98,44		154,17
1006 20 17	228,33	75,58	109,83	0,00	171,25
1006 20 92	205,56	67,61	98,44		154,17
1006 20 94	205,56	67,61	98,44		154,17
1006 20 96	205,56	67,61	98,44		154,17
1006 20 98	228,33	75,58	109,83	0,00	171,25
1006 30 21	427,24	137,14	198,71		320,43
1006 30 23	427,24	137,14	198,71		320,43
1006 30 25	427,24	137,14	198,71		320,43
1006 30 27	(7)	160,51	232,09		370,50
1006 30 42	427,24	137,14	198,71		320,43
1006 30 44	427,24	137,14	198,71		320,43
1006 30 46	427,24	137,14	198,71		320,43
1006 30 48	(7)	160,51	232,09		370,50
1006 30 61	427,24	137,14	198,71		320,43
1006 30 63	427,24	137,14	198,71		320,43
1006 30 65	427,24	137,14	198,71		320,43
1006 30 67	(7)	160,51	232,09		370,50
1006 30 92	427,24	137,14	198,71		320,43
1006 30 94	427,24	137,14	198,71		320,43
1006 30 96	427,24	137,14	198,71		320,43
1006 30 98	(7)	160,51	232,09		370,50
1006 40 00	(7)	49,58	(7)		114,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR 250 per tonne applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	228,33	494,00	205,56	427,24	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	351,09	292,99	399,61	432,23	—
(b) fob price (EUR/tonne)	—	—	—	370,72	403,34	—
(c) Sea freight (EUR/tonne)	—	—	—	28,89	28,89	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1193/1999
of 9 June 1999
altering the export refunds on white sugar and raw sugar exported in the natural state

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98⁽²⁾, and in particular the second subparagraph of Article 19(4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1160/1999⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 1160/1999 to the information known to the Commission that the export refunds

at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1160/1999 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 June 1999.

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

Done at Brussels, 9 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 140, 3.6.1999, p. 14.

ANNEX

to the Commission Regulation of 9 June 1999 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— EUR/100 kg —
1701 11 90 9100	45,77 ⁽¹⁾
1701 11 90 9910	44,82 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	45,77 ⁽¹⁾
1701 12 90 9910	44,82 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— EUR/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4975
	— EUR/100 kg —
1701 99 10 9100	49,75
1701 99 10 9910	48,72
1701 99 10 9950	48,72
	— EUR/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4975

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21. 11. 1985, p. 14).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 November 1998

on aid granted by France to Nouvelle Filature Lainière de Roubaix

(notified under document number C(1998) 3515)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/378/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 given the interested parties notice, in accordance with the abovementioned Articles, to submit their comments, and having regard to those comments,

Whereas:

I. PROCEDURE

By letters dated 6 May and 16 September 1996, the German industrial association 'Industrieverband Garne and Gewebe' drew the Commission's attention to aid which had been granted or which might have been granted to Nouvelle Filature Lainière de Roubaix.

By letter dated 25 September 1996 and at the express request of the Commission by letters dated 15 May and 3 July 1996, the French Government informed the Commission of aid which it had granted or intended to grant to Nouvelle Filature Lainière de Roubaix. By letters dated 22 November 1996, 16 January, 2 April and 3 July 1997, the French Government submitted additional in-

formation to the Commission. By letter dated 19 September 1996, the Commercial Court of Roubaix-Tourcoing forwarded to the Commission the judgment of 17 September 1996 under the 'redressement judiciaire' procedure (administration under supervision of a court) concerning SA Filature Lainière de Roubaix.

By letter dated 18 August 1997, the Commission informed the French Government of its decision to initiate proceedings under Article 93(2) of the Treaty with respect to the aid. The Commission's decision to initiate proceedings was published in the *Official Journal of the European Communities*⁽¹⁾. The Commission called on the interested parties to submit their comments on the aid.

By letter dated 24 September 1997, the French Government submitted its comments to the Commission. On the basis of this letter, the Commission sent the French Government additional information in letters dated 2 March and 17 June 1998, to which the French Government replied by letters dated 8 May, 21 July and 16 October 1998. Additional information was received by letter dated 30 October 1998.

II. DESCRIPTION OF THE AID

This Decision concerns aid in the form of an equity loan of FRF 18 million and an investment premium of FRF 22 million which the French Government has granted to Nouvelle Filature Lainière de Roubaix as part of the 'administration procedure' concerning the group SA Filature Lainière de Roubaix.

⁽¹⁾ OJ C 392, 24.12.1997, p. 6.

1. The recipient

Following the company's bankruptcy, the Commercial Court of Roubaix decided on 30 April 1996 to initiate the 'judicial administration' (redressement judiciaire) procedure with respect to the group SA Filature Lainière de Roubaix (hereinafter referred to as SA Filature), comprising three companies (SA Groupe Lainière, SA Lainière de Roubaix and SA Proditex). By judgment of 17 September 1996, having ascertained that the plan for recovery via the clearing of liabilities in accordance with Article 18 of Law No 85/98 of 25 January 1985 was not feasible and having invited bids with a view to selling the company, the Commercial Court of Roubaix decided that the company should be sold in accordance with the abovementioned Law to a newly created public limited company with a capital base of FRF 510 000 named 'Nouvelle Filature Lainière de Roubaix' (hereinafter referred to as Lainière de Roubaix).

Under the above judgment, and with effect from 1 October 1996, the assets of the companies undergoing the administration procedure and most of the business and service contracts concluded by those companies were sold to the shareholders of the new company for FRF 4,8 million. The assets taken over were estimated on 1 September 1996 at FRF 50,956 million and were made up as follows: intangible assets and financial assets: none; tangible movable assets: FRF 21,126 million; stock and work in progress: FRF 20,676 million; debts to be recovered: FRF 3,647 million and liquid assets: FRF 5,507 million. The financial debts of the companies undergoing the administration procedure, the figures for which were not communicated to the Commission, were cleared as part of the procedure. The French Government then granted the new company the aid in question described below. In the grounds for the judgment of sale to the buyer, the Court took into account the fact that France, in the person of the Procureur de la République, had: 'confirmed State support to the amount of FRF 40 million according to the arrangements offered by each of the bidders, and hopes that the Court will adopt the plan which will ensure rigorous use of public funds restricted solely to the assets necessary to finance the recovery of the companies acquired, excluding the possibility of any equity investment or external expansion and ensure the continuity of business and employment'.

2. Restructuring and investment by the recipient

— *Restructuring measures undertaken by the recipient*

Under the supervision of the administrator appointed by the Court of Roubaix to implement the plan, the new shareholders reduced capacity by closing down one area

of production, the heavily loss-making manufacture of basic yarns. Thus around 60 % of the production capacity of the former SA Filature, i.e. some loss-making production units and one entire industrial site (Proditex), was definitively closed down. In terms of turnover, the projected business of the new company is FRF 150 million, i.e. 38 % and 26 % of the turnover in 1995 and 1994 respectively. Production is reoriented towards more specialised products with greater added value. With the Court's authorisation, the new company has also made 339 of the 587 employees of the former group redundant. Under the abovementioned judgment, the Court of Roubaix decided that Lainière de Roubaix must make a redundancy payment of FRF 50 000 to each employee dismissed (i.e. a total of FRF 16,95 million for the 339 jobs cut).

However, as the Commission has already noted in its decision to initiate proceedings, the French Government did not forward a restructuring plan which would allow the Commission to assess restoration of the recipient company's long-term viability and the need for the aid. By the letter referred to above of 2 March 1998, the Commission asked the French Government to forward: 'the latest financial information available on Lainière de Roubaix (...), i.e. the detailed balance-sheet and financial statement, including the trading account'.

By letter dated 8 May 1998, the French Government sent the Commission, in addition to the projected profit and loss figures for 1996 to 1999, which it had already sent in the letter of 2 April 1997, the provisional profit-and-loss account at 31 December 1997. However, the French Government did not forward the other information requested.

— *Restructuring costs*

At the repeated request of the Commission with a view to obtaining additional information on the exact costs to be covered by the FRF 18 million loan, the French Government sent the following information:

— by letter dated 16 January 1997, the French Government calculated the costs of restructuring at FRF 14,5 million, including FRF 12,5 million for retraining leave and FRF 2 million for redeployment of the employees made redundant. The French Government also stated in the same letter that 'some 20 people had taken early retirement, in accordance with the provisions of ordinary law'; however, the French Government did not indicate how much this measure might cost,

- by letter dated 2 April 1997, the French Government confirmed that the FRF 18 million loan was to cover the costs of 'maintaining activity and rapidly adapting the wage bill via the social plan implemented following the judgment of 17 September 1996',
- in its letter of 8 May 1998, the French Government calculated the costs relating to restructuring as follows: extra rent for premises not necessary for production for the period 1996/1997: FRF 2,2 million; cost of transfer of products (handling) involving unloading and reloading detrimental to the organisation of production: not quantified; renovation of premises: FRF 2,5 million; cost relating to the under-productivity of the company in the first six months: FRF 10 million; training costs: not quantified; costs relating to the welfare benefits of employees not made redundant in accordance with French law: not quantified; costs of setting up a management control system: not quantified,
- by letter dated 21 July 1998, the French Government maintained that it was 'in effect impossible to allocate a resource precisely to specific jobs'. The French Government also indicated that the loan corresponded to the period of restarting activity following the administration procedure and confirmed the use of the FRF 18 million loan for costs relating to restarting, for financing running costs and for part of the planned investments. The French Government also calculated the costs of under-productivity of the company in the first six months at FRF 10 million, the costs of renovating premises (letter of 8 May 1998) at FRF 2,5 million and the costs of the extra rent to be paid for premises not necessary to production for the period 1996/1999 at FRF 5 million. It mentioned the costs of retraining employees (not quantified) and the extra costs relating to welfare benefits due to the seniority of most of the employees taken over (FRF 1,6 million a year),
- by letter dated 16 October 1998, in addition to the information given in the letter of 21 July, the French Government indicated that additional [...] (*) could arise [...]*. At the time of the letter, however, this figure was not final.

— *Investment costs*

Lainière de Roubaix implemented an investment programme amounting to FRF 22,2 million, spread over three years, aimed at improving the efficiency of produc-

tion plant at the sites and minimising related costs (heating, maintenance, etc.). The programme involves the modernisation of obsolete machinery from the point of view of quality and productivity, the acquisition of new spindles (FRF 9,5 million), the development of differentiated products such as Plyfil Lycra (FRF 7,6 million) and the installation and retrofitting of a boiler (FRF 5,1 million).

— *Other information*

At present, Lainière de Roubaix operates in the textiles sector (spinning of woollen yarn) and is in direct competition with other producers in Europe and Asia. It is located in the Nord/Pas-de-Calais region, which is eligible for regional aid under Article 92(3)(c) of the Treaty and in accordance with the Commission Decision of 14 September 1994 on the regional planning grant scheme for industrial projects (?). According to the letter of 24 September 1997 and on the date the company was taken over, Lainière de Roubaix currently has 248 employees, a (projected) turnover of FRF 150 million and a balance sheet total of FRF 60 million. A total of 85 % of the capital is held by natural persons.

According to information from the French authorities, Lainière de Roubaix has a market share of only 0,4 % of European production and 8 % of French production. About 50 % of its output is exported, over half of this figure being accounted for by other Member States.

3. The aid granted

(a) *FRF 18 million loan*

The French Government communicated the following conditions governing the equity loan of FRF 18 million: duration 12 years, comprising an initial two-year grace period with a fixed interest rate of 4,5 % followed by 10 years with an interest rate of 6,5 %, plus an additional amount indexed on retained earnings. By letter dated 2 April 1997, the French Government communicated the consolidated projected profit-and-loss figures for Lainière de Roubaix showing the interest on the equity loan at FRF 200 000 for 1996, FRF 800 000 for 1997, FRF 900 000 for 1998 and FRF 1 100 000 for 1999. In its letter of 21 July 1998, the French Government maintained that the loan had been granted under market conditions.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

(?) OJ C 364, 20.12.1994, p. 6.

In reply to the Commission's question in its letter of 17 June 1998, i.e. whether Lainière de Roubaix had, at the time the State loan was granted, obtained loans from private banks and, if so, on what terms (interest rate, grace period, duration, etc.), the French Government told the Commission that: 'the company was given (...) an authorised ceiling for financing of FRF 28 million with a financial institution at a rate currently of the order of 4,2 %'.

The French Government did not, however, communicate the terms of the loan at the time the State equity loan was granted, or the status of the financial institutions involved.

By letter dated 2 April 1997, the French Government confirmed that the equity loan had been granted before the plan for the takeover by Lainière de Roubaix came into effect on 1 October 1996.

(b) FRF 22 million investment premium

As part of the takeover plan, the French Government also granted Lainière de Roubaix an investment premium of FRF 22 million on the basis of the abovementioned investments.

This money was deposited in a sequestration account in the hands of the administrator appointed by the Court of Roubaix to implement the plan. The funds are being released as the company implements the plan. The French Government did not inform the Commission how much aid had already been released.

(c) Legal basis of the aid

The equity loan was granted by the government on an *ad hoc* legal basis. It is not part of an aid scheme approved by the Commission.

The FRF 22 million investment premium was granted on the basis of the 'Crédits de politique industrielle (funds for industrial restructuring) scheme administered by the Ministry of Industry (CIRI, budget line 64-96)'. This scheme has never been notified to the Commission in accordance with Article 93(3) of the Treaty. However, by letter dated 3 July 1991 to the French Government, the Commission proposed, as an appropriate measure under Article 93(1), that all cases of restructuring aid granted on the basis of the scheme should be notified in advance. By

letter dated 11 November 1991, the French Government accepted the above proposal of individual notification for cases of aid over FRF 5 million. This amount has clearly been exceeded in the case in question.

III. COMMENTS UNDER THE ARTICLE 93(2) PROCEEDINGS

1. Reasons given by the Commission for initiating Article 93(2) proceedings

In its decision to initiate proceedings, the Commission raised doubts concerning the compatibility of the aid with the common market. It gave the following reasons.

The Commission considers State aid for rescuing and restructuring firms in difficulty on the basis of the Guidelines published in 1994⁽³⁾. On the basis of the information available to the Commission at the time it initiated proceedings, it was not able to determine whether the aid granted could be considered compatible in accordance with the criteria set out in the Guidelines. Furthermore, since no restructuring plan had been submitted giving all the information necessary to assess the compatibility of the aid, the Commission was unable to ascertain the company's long-term viability or to check that the aid was limited to the strict minimum needed to enable restructuring to be undertaken. It nevertheless indicated that, under certain conditions and up to a certain limit, the company might be eligible for regional aid under Article 92(3)(c) of the Treaty.

2. Comments of the French Government under the proceedings

The French Government insists that, in its view, the aid granted to Lainière de Roubaix must be considered compatible with the common market. It maintains that the State measures to support the company must be considered as a whole, i.e. the investment aid and the equity loan. These two measures, the abandonment of structurally loss-making activities and investment in expanding market niches would be necessary to ensure the company's return to long-term viability.

Overall, by assuming a grant equivalent of FRF 22 million for the investment premium and FRF -0,4 million for the loan (based on the reference rate of 5,55 % as communicated by the Commission in its letter of 18 August 1997), the French Government calculates the grant equivalent of aid for restructuring at FRF 21,6 million or 55 % in terms of aid intensity (letters dated 24 September 1997 and 8 May 1998).

⁽³⁾ OJ C 368, 23.12.1994, p. 12.

The French Government also insists that the FRF 18 million loan must be regarded as rescue aid within the meaning of the Guidelines, even though it is of over six months' duration, the period generally set as the maximum in the Guidelines. The aid should therefore be considered compatible with the common market (letter of 24 September 1997). It also disagrees that the aid is illegal, while refusing to discuss the point (letter of 8 May 1998). It challenges the view taken by the Commission in its decision to initiate proceedings that the French Government did not submit sufficient information for the Commission to ascertain the company's long-term viability (letter of 24 September 1997).

The French Government also maintains that the aid granted to Lainière de Roubaix cannot be regarded as distorting competition. First, the new company had made a considerable reduction in capacity and closed certain production sites and, secondly, its share of the European market was trifling (letter of 24 September 1997). In the French Government's view, the company should be regarded as an SME under the Community definition, located in a region eligible for regional aid under Article 92(3)(c) of the Treaty with an admissible aid intensity of up to 33 % for an SME (letter of 24 September 1997). Finally, the French Government submitted information showing that the market on which Lainière de Roubaix currently operates does not suffer from overcapacity but, on the contrary, is growing (letter of 8 May 1998).

3. Comments from interested third parties

As part of the proceedings, the company 'Leuze Textil GmbH & Co.', Owen-Teck, Germany (by letters dated 11 November and 17 December 1996 and 11 February 1998), the company 'Kammspinnerei Stöhr GmbH', Mönchengladbach, Germany (by letter dated 23 January 1998) and the textile federation Febeltex (by letter dated 22 January 1998) submitted their comments to the Commission. They essentially pointed to the difficulties confronting the relevant market as such and called on the Commission to examine the compatibility of the aid granted to Lainière de Roubaix. In a letter dated 2 March 1998, the Commission forwarded a copy of the letters to the French Government and gave it the opportunity to comment on them.

IV. ASSESSMENT OF THE AID

1. State aid within the meaning of Article 92(1)

(a) *The FRF 22 million investment premium*

The investment premium constitutes State aid within the meaning of Article 92(1). It was granted by the State in the form of a non-repayable grant to a specific company

and therefore gives that company a financial benefit of FRF 22 million. Furthermore, it threatens to distort competition, since it constitutes an economic advantage which other producers were unable to benefit from. It affects trade between Member States in so far as the recipient company exports a large proportion of its products to other Member States.

The fact that the company made considerable reductions in its production capacity does not in itself mean that the measures in question do not constitute State aid within the meaning of Article 92(1) of the Treaty. Similarly, the recipient company's relatively small share of the European market does not in itself mean there is no distortion of competition. Without the aid in question, the recipient company would not have been able to make the investments it has made; some of the recipient's market share could therefore have been won by its competitors.

(b) *The FRF 18 million equity loan*

An equity loan granted by the State confers an economic advantage on the recipient in so far as it allows the company to obtain capital on better terms than those prevailing on the market. The market conditions and the terms of the loan in question must be compared with reference to the time the loan was granted, i.e., in the absence of a precise date communicated by the French authorities, the date of effective takeover on 1 October 1996, which was carried out with the loan under examination.

The method of calculating the rate applicable to the equity loan chosen by the French Government includes an additional amount for the final 10 years of the loan depending on the company's performance rather than on the market rate. This method therefore makes it difficult to conclude that the equity loan was granted under market conditions.

In the absence of precise information that would allow the conditions of the loan granted by the State to be compared with market conditions, the Commission applies a reference rate to calculate the aid component of a loan. This is supposed to reflect the average level of market interest rates in the Member States for medium- and long-term loans with normal security. In this case, the State granted an equity loan which gives it the option of acquiring a holding in the company in question. This measure is therefore similar to a capital injection by the State. The Commission has published a notice setting out

the conditions for assessing whether a capital injection by the State constitutes State aid⁽⁴⁾. In that notice, the Commission states that where fresh capital is injected into a company, this does not involve State aid if the capital is contributed in circumstances that would be acceptable to a private investor operating under normal market economy conditions.

In the present case the Commission cannot conclude that the equity loan from the French Government as part of the takeover of the assets of SA Filature by Lainière de Roubaix was granted on terms which would be acceptable to a private investor operating under normal market economy conditions. In its decision to initiate proceedings, the Commission had already demonstrated that the takeover of assets by the new company was based almost exclusively on State aid, particularly in view of the low capital base in comparison with the amount of aid granted. Despite the Commission's request, the French Government did not demonstrate that Lainière de Roubaix had received or could have received, at the time the equity loan was granted by the State, loans or capital injections on terms comparable to the terms of the loan in question. Under these circumstances, in order to calculate the aid component of the loan in question, the reference rate mentioned above must be applied as an indicator of the market rate.

At the time the loan was granted, the method for setting the interest rate used by the Commission with the agreement of the Member States, meeting at the multilateral meetings of 24 and 25 June 1993 and 15 December 1993, was that which the Commission communicated to the Member States by letter of 17 January 1994. On the basis of this method, the Commission communicates the reference rate to the Member States at the beginning of each year. By letter of 2 August 1996 to the French Government, the Commission notified the reference rate of 8,28 % applicable with effect from 1 August 1996 and thus also applicable at the time the equity loan was granted by the State. In the absence of more precise information on the return on a market equity loan equivalent to that granted to Lainière de Roubaix, this reference rate must be applied, for the period the loan has already run, as a minimum market rate for the equity loan granted in 1996.

The grant equivalent of the equity loan therefore consists of the difference between the rate applied by the State and the reference rate. This difference must be regarded

as an economic advantage granted by the State to the recipient company. As with the investment premium, this loan, in so far as it involves a financial advantage, threatens to distort competition and affects trade between the Member States. The loan therefore involves aid within the meaning of Article 92(1) of the Treaty.

Thus, by applying the abovementioned reference rate and assuming, in the absence of information provided by the French Government, linear repayment of the loan, the Commission calculates the gross grant equivalent of the FRF 18 million equity loan at FRF 1 461 067 for the full term of the loan (or, as an indicative figure should the rate be raised to the same level as the reference rate at 31 December 1998, FRF 1 164 980).

The French Government also used the above method to calculate the aid intensity as communicated in the letters referred to above. However, the result of the calculation is wrong, in so far as the French Government used the reference rate of 5,5 % in force at 1 August 1997, communicated by the Commission to the French Government by letter of 18 August 1997, and not that applicable at the time the loan was granted.

2. Illegal nature of the aid

As demonstrated above, the aid was not granted on the basis of a scheme approved by the Commission. Thus, in breach of Article 93(3), the aid was granted before the Commission had decided on its compatibility with the common market. The same is true of the FRF 22 million investment premium, even though it has not yet been paid in full to the recipient, since the decision to grant it has been taken and payment now depends only on completion of the various stages of the investment. The aid must therefore be regarded as illegal.

3. Compatibility of the aid with the common market

The aid is not compatible with the common market on the basis of the derogations provided for in Article 92(2), since it is not aid having a social character granted to individual consumers and is not intended to make good the damage caused by natural disasters or exceptional occurrences. Nor does the derogation provided for in Article 92(2)(c) apply. Similarly, the aid cannot be considered compatible on the basis of Article 92(3)(a), (b) or (d). It does not promote the economic development of areas where the standard of living is abnormally low or where

⁽⁴⁾ Bull. EC 9-1984.

there is serious underemployment, pursuant to Article 92(3)(a), the Commission communication on the method for the application of Article 92(3)(a) and (c) to regional aid⁽⁵⁾ and the Commission Decision on the regional planning grant scheme for industrial projects⁽⁶⁾. Nor is the aid intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, and it is not intended to promote culture and heritage conservation.

Assessment of compatibility of the aid must therefore be confined to the derogation provided for in Article 92(3)(c). In this context, application of the derogation must be examined on the basis of the Guidelines clearly setting out the Commission's interpretation of the derogation.

— *Rescue and restructuring aid*

For the following reasons, the Commission does not find that the aid may be considered compatible with the common market.

First, in line with the Commission's consistent practice, based on the Guidelines on aid for rescuing and restructuring firms in difficulty⁽⁷⁾, one condition for the compatibility of restructuring aid is the submission of a restructuring plan which would allow the Commission to assess restoration of the recipient company's long-term viability within a reasonable timescale. The plan must be based on realistic assumptions as to the company's future operating conditions. In this case, as stated in point II.2 of this Decision and as the Commission already pointed out in its decision to initiate proceedings, the French Government did not submit a credible restructuring plan to the Commission. Nor has any such plan been submitted to the Commission by the French authorities since the proceedings were initiated. The Commission cannot therefore alter the position it took when it initiated the proceedings.

Furthermore, the condition laid down in the Guidelines, whereby the restructuring aid must be submitted to the Commission in all relevant detail, is not met. Some information explicitly requested by the Commission was never sent, as stated in point II.2 of this Decision. Also, figures were not put on some elements of the cost of restructuring (point II.2 of this Decision). Furthermore, as indi-

cated above, the costs communicated to the Commission contain significant disparities in the various letters sent by the French authorities.

With regard to the company's long-term viability, as the projected accounts submitted to the Commission before the proceedings were initiated appear to demonstrate (letters of 22 November 1996 and 2 April 1997), the first operating account provided includes errors in the calculation of the operating profit. The second indicates that the company's net profit for 1996 (some FRF 20 million) is exclusively due to the investment aid. The net profit for 1999, when the restructuring is supposed to be complete, is put at FRF 848 000, which would mean a steady drop of 60 % to 70 % per year since 1996. Such figures could be taken to reflect a certain lack of competitiveness in the company.

It follows from the above that, even in the absence of a restructuring plan within the meaning of the Guidelines, the information provided by the French authorities does not demonstrate the company's long-term viability.

This is further borne out by the latest information sent by the French Government in its fax of 16 October 1998. According to this information, the profits of a large part of the new company's business were in fact considerably lower than the projected figures given by the buyer in his restructuring plan. [...]*. Besides the fact that the various pieces of information sent by the French Government and described in points II.1 and II.2 of this Decision cannot be regarded as a restructuring plan within the meaning of the Guidelines, these facts show that the granting of the aid was not accompanied by a credible restructuring plan.

In addition, the Guidelines state that the aid must be in proportion to the restructuring costs and benefits. This means that aid recipients will normally be expected to make a significant contribution to the restructuring plan from their own resources or from external commercial financing. In this case, the buyer is putting up capital of some FRF 500 000 in addition to the money to buy up the assets, i.e. FRF 4,8 million. This contrasts with the FRF 40 million of public money. The disproportion is clear, since the buyer is contributing only 12 % of these funds. The condition that the aid must be proportional is therefore not met.

⁽⁵⁾ OJ C 212, 12.8.1988, p. 2.

⁽⁶⁾ See footnote 2.

⁽⁷⁾ See footnote 3; point 3.2.

The disproportion between the public funding and the buyer's contribution is significant in several ways. First, it is clear that the company would not be viable without State support. Secondly, the steady and very considerable drop in profits over the supposed duration of the restructuring is a particularly optimistic assumption given that the buyer is having to consider closures of units in 1998. Finally, the fact that, according to the information given by the French authorities, the company's average price is higher than the average price on the relevant market and that the prices on this particular market (Lycra Wool) are also among the highest in Europe (letter of 8 May 1998) shows that the company is one of the least competitive on the market, even though it has been relieved of a large part of its costs through State support.

The French authorities' claim that the aid in the form of an equity loan is rescue aid cannot be accepted either. According to the definition given in the Guidelines, a rescue: 'temporarily maintains the position of a firm that is facing a substantial deterioration in its financial position reflected in an acute liquidity crisis or technical insolvency, while an analysis of the circumstances giving rise to the company's difficulties can be performed and an appropriate plan to remedy the situation devised'.

However, the aid was granted in order to allow the assets to be bought and a new company created. Quite obviously it was not granted in order temporarily to maintain the company until a restructuring plan was drawn up; as the Commission has found above, there is no such plan.

— Aid to promote regional development

Under the derogation set out in Article 92(3)(c) of the Treaty, the Commission may consider compatible with the common market aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Under the decision referred to above of 14 September 1994 on the regional planning grant scheme for industrial projects, the Commission decided, on the basis of socioeconomic data for the regions

concerned, that initial investment, within the meaning of point 18(i) of the Annex to the Commission communication on regional aid systems⁽⁸⁾, carried out in the region in which Lainière de Roubaix is located may be eligible for regional aid with an aid intensity of 25 % gross for large companies, with a possible 10 % bonus for SMEs (making 35 % gross). Lainière de Roubaix must be considered an SME under the Community definition.

With regard to the FRF 22 million investment premium granted to Lainière de Roubaix, the Commission finds as follows: the investment of FRF 22,2 million described above carried out by Lainière de Roubaix may be considered to be initial investment within the meaning of the 1979 communication. Therefore, and in view of the foregoing, investment aid of 35 % gross of the investment costs of FRF 22,2 million, i.e. FRF 7,77 million gross, may be considered to be compatible with the common market on the basis of the derogation under Article 92(3)(c). However, the remaining aid of FRF 14,23 million cannot be considered to be compatible with the common market under that provision.

However, with regard to the equity loan of FRF 18 million the eligible costs, as communicated by the French Government in its letter of 21 July 1998, cannot be considered to be initial investment within the meaning of the abovementioned Communication. The costs concerned are in fact ongoing costs which a company is normally expected to bear. The aid must therefore be deemed to be operating aid which, according to the Commission's consistent practice in accordance with its Communication on the method for the application of Article 92(3)(a) and (c) to regional aid⁽⁹⁾, cannot be granted outside a region eligible for regional aid under Article 92(3)(a). The equity loan cannot, therefore, be considered to be compatible with the common market on the basis of this derogation.

— Other bases for derogation

Finally, Lainière de Roubaix could in principle be eligible for employment aid under the Guidelines on aid to employment⁽¹⁰⁾. However, despite repeated requests from the Commission, the French Government has not clearly demonstrated or put any figures on the social costs which might be eligible for the aid in question. In its most recent letters of 8 May, 21 July and 16 October 1998, the French Government communicated costs which cannot be eligible for employment aid on the basis of the Guidelines.

⁽⁸⁾ OJ C 31, 3.2.1979, p. 9.

⁽⁹⁾ See footnote 5; point 6.

⁽¹⁰⁾ OJ C 334, 12.12.1995, p. 4.

V. CONCLUSIONS

The Commission finds that the French Government has illegally granted an investment premium of FRF 22 million and an equity loan of FRF 18 million in breach of Article 93(3) of the Treaty.

The Commission considers that investment aid of 35 % gross of the investment costs of FRF 22,2 million, i.e. FRF 7,77 million, may be considered to be compatible with the common market under Article 92(3)(c). However, aid amounting to FRF 14,23 million must be considered to be incompatible with the common market. Therefore, in order to restore the company to the financial situation in which it would have found itself without the incompatible aid, the French Government must take all necessary steps to recover the incompatible aid of FRF 14,23 million from the recipient.

The Commission also finds that the equity loan of FRF 18 million includes an aid component, namely the difference between the rate applied by the French Government and the reference rate in force at the time the loan was granted. The Commission calculates this sum at FRF 1 461 067 for the full term of the loan (or, as an indicative figure should the rate be raised to the same level as the reference rate at 31 December 1998, FRF 1 164 980). Aid of this amount must be considered to be incompatible with the common market. In order to restore the company to the financial situation in which it would have found itself without the incompatible aid, the French Government must without delay abolish the aid in question by applying normal market conditions corresponding at least to the reference rate of 8,28 % applicable at the time the loan was granted,

HAS ADOPTED THIS DECISION:

Article 1

The aid in the form of an investment premium granted by France to Nouvelle Filature de Roubaix amounting to FRF 7,77 million may be considered to be compatible with the common market on the basis of Article 92(3)(c) of the Treaty.

Article 2

The aid in the form of an investment premium granted by France to Nouvelle Filature de Roubaix amounting to

FRF 14,23 million is incompatible with the common market.

Article 3

1. The equity loan of FRF 18 million constitutes aid in so far as the rate applied by France is lower than the reference rate of 8,28 % applicable at the time the loan was granted.
2. The aid referred to in paragraph 1 granted by France to Nouvelle Filature de Roubaix is incompatible with the common market.

Article 4

1. France shall take all necessary measures to recover from the recipient, Nouvelle Filature de Roubaix, the aid referred to in Article 2 which has already been illegally paid.
2. Repayment shall be made in accordance with the procedures and provisions of French law. The amounts to be repaid shall bear interest from the date on which the aid was paid to the recipient until the date on which it is effectively recovered. The interest shall be calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid.
3. France shall without delay abolish the aid referred to in Article 3 by applying normal market conditions corresponding at least to the reference rate of 8,28 % applicable at the time the loan was granted.

Article 5

France shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply with it.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 4 November 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 11 November 1998

on aid for the INMA SpA shipyard under Italian Law No 564/93, converted by
Law No 132/94*(notified under document number C(1998) 3584)*

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/379/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 given the interested parties notice to submit their comments, and having regard to those comments,

Whereas:

I

By letter dated 27 May 1997 from the Italian Permanent Representative's Office, registered by the Commission on 3 June 1997, the Italian Government notified the Commission of a plan to grant additional aid to the INMA shipyard for two liner conversion contracts. The notification was followed by a meeting between Commission staff and officials from the Ministry of Transport and Shipping and the sending of a letter by the Italian authorities on 8 July 1997.

The Italian shipyard INMA, situated at La Spezia, negotiated two liner conversion contracts in 1994. The first, concluded on 19 August, was for the *Regal Voyager*, owned by St Thomas Cruises Limited (Bahamas), involving a total of some ITL 20 billion, and the second, concluded on 4 October, was for the *Sally Albatros*, owned by the Finnish shipping company Sally AB, involving a total of some ITL 93 billion. The two contracts have already received 4,5 % aid each, in line with the ceiling set by the Commission in 1994 for ship conversions. The aid was also notified to the Commission as part of the monitoring of shipbuilding aid provided for in Article 11 of Council Directive 90/684/EEC⁽¹⁾, as last

amended by Directive 94/73/EC⁽²⁾, application of which was extended by Regulation (EC) No 3094/95⁽³⁾, as last amended by Regulation (EC) No 2600/97⁽⁴⁾.

The two shipping companies used the same broker, Simonship AB, to negotiate the contracts, and Simonship AB tendered widely among European shipyards, both within the Community and outside. The Community shipyards approached were:

- Germany: HDW and Lloyd Bremerhaven,
- Denmark: Reparationsvaerftet,
- Spain: Astilleros Españoles,
- Italy: INMA, Fincantieri and T. Mariotti,
- Netherlands: Wiltonfijenoord Drydock,
- Portugal: Lisnave and Estaleiros Navais de Viana do Castelo.

Two Finnish and two Polish shipyards were also approached.

Since, during the negotiations, the shipyard managers received letters from the broker Simonship informing them that the shipowners had lower tenders from the Finnish and Polish shipyards, an application was made to the competent Italian authorities for aid to be granted at a rate of 9 %.

The application for a higher rate of aid for the two contracts is based on Article 4(5) of Decree Law No 564/93, which was converted by Law No 132/94 (hereinafter 'Law No 132/94'). This states that if, in trying to obtain a ship conversion contract, a shipyard is in competition with one or more shipyards from countries not belonging to the European Community, the Minister may, with the prior agreement of the Commission of the European Communities, increase the rate of aid provided for in paragraph 1 (namely 4,5 %), without exceeding the rate provided for in Article 3(1) (namely 9 %), provided that the shipyard demonstrates that this increase in the level of aid is necessary to challenge the non-Community competition and to win the order.

⁽²⁾ OJ L 351, 31.12.1994, p. 10.

⁽³⁾ OJ L 332, 31.12.1995, p. 1.

⁽⁴⁾ OJ L 351, 23.12.1997, p. 18.

⁽¹⁾ OJ L 380, 31.12.1990, p. 27.

When this provision was introduced into the Law, reference was made to a Commission statement entered in the minutes of the 1 450th meeting of the Council on 26 November 1990 when it adopted Directive 90/684/EEC, reading: 'where a Member State proves that its yards are in competition with non-European countries for the construction of specialised small vessels costing less than ECU 10 million or for ship conversion of any contract value, then, following appropriate prior notification by the Member State concerned, the Commission could authorise the granting of contract-related production aid up to the ceiling referred to in Article 4(1)'.

II

Having carried out a detailed examination of the information provided by the Italian authorities, the Commission would make the following points.

It queries the Italian authorities' interpretation of the phrase 'appropriate prior notification' which is included in the Commission statement entered in the minutes of the Council meeting in 1990. Any aid measure which does not comply with the criteria set out in Article 92(3) of the Treaty can be authorised by the Commission only if it does not distort or threaten to distort competition by favouring certain undertakings or the production of certain goods. Assessment of this aspect must be carried out before the aid takes effect. However, in the two cases in point, as is evident from the facts and from the following analysis, it is apparent that the shipyard acted on the assumption that the aid had already been agreed and the Italian authorities seem to have taken the view, in submitting their notification three years after the signature of the contracts, that the Commission's authorisation in the case related only to the release of the funds.

A chronological examination of the facts, as set out in the notification, shows that the INMA shipyard submitted its applications for a derogation under Article 4(5) of Italian Law No 132/94 on 1 September 1994 in the case of the *Regal Voyager* contract (signed on 19 August) and on 11 October 1994 in the case of the *Sally Albatros* contract (signed on 4 October). The two applications were therefore subsequent to the signing of the contracts, whose prices, as is apparent from an examination of the figures, were determined on the basis of an increase in the level of aid.

The shipyard thus failed to comply with the Law, which stipulates quite clearly that the Minister may grant an increase only after the Commission has given its prior

agreement. By anticipating such agreement, solely on the basis of letters from the broker in charge of negotiating the contracts and putting it under pressure, the shipyard failed to take account of the detailed examination of the situation on the relevant market which the Commission has to carry out before authorising any such derogations, which in any event may not be regarded as automatic merely because all the conditions appear to have been met, since, in its statement entered in the minutes of the Council meeting, the Commission stated that it 'could' authorise an increase in the rate. The use of the conditional tense demonstrates clearly that a derogation could be granted only in really exceptional circumstances and provided that the Commission was certain that no other Community shipyard would be damaged.

The shipyard's attitude seems all the more doubtful as it was in possession of the list of Community shipyards invited to tender as from 20 June 1994, that is, two months before the first contract was signed. The reputation of those shipyards, which were entirely able to respond to the invitation to tender, shows that there was a genuinely competitive situation between Community shipyards and that, on the basis of the information available to the shipyard, an examination of the situation by the Commission, using the procedure provided for in Article 4(5) of Directive 90/684/EEC, could have taken place. In the absence of such examination, it may even be concluded that, by anticipating the granting of the aid, the shipyard was distorting competition from the very outset, since the other shipyards had not had the opportunity of tendering with a 9 % rate of aid.

Consequently, by letter of 18 August 1997, the Commission informed the Italian Government that it had decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of the request for an increase in the rate of aid for conversion of the ships *Regal Voyager* and *Sally Albatros* at the INMA shipyard.

III

As part of those proceedings, the Commission gave the Italian Government notice to submit its comments; the other Member States and interested parties were informed via publication of the decision to initiate proceedings in the *Official Journal of the European Communities* ⁽¹⁾.

The Italian authorities submitted their comments by letter of 17 October 1997.

Following publication of the decision, the shipyard concerned and Denmark submitted their comments to the Commission, respectively via a law firm (letter of 12 January 1998) and the Danish Permanent Representative's Office (letter of 2 January 1998).

In its comments, Denmark agreed with the Commission's decision to initiate proceedings.

By letter of 4 February 1998 the Commission forwarded these comments to the Italian authorities.

⁽¹⁾ OJ C 377, 12.12.1997, p. 4.

IV

In their comments both the Italian authorities and the shipyard concerned stress that the additional aid has not yet been granted and that the rules of notification, upheld by the Court of Justice, have been complied with, in that there was no breach of the obligation to give prior notification.

Since the aid has not yet been released, there has been no infringement of the rules. On the contrary, the shipyard has taken itself the risk of having the increase in aid refused. In this case, therefore, there is no adverse effect on competition. Furthermore, Directive 90/684/EEC does not expressly stipulate that an aid project must be notified before the contract is drawn up.

In their view, the fact that the application for an increase in aid was notified three years after the contract was concluded is irrelevant; on the contrary, it demonstrates that the Italian authorities carried out a thorough investigation of all the legal and factual conditions which could justify the granting of the aid. The technical department of the Ministry of Transport and Shipping assessed the contract prices submitted by INMA and found them appropriate and also noted that non-Community shipyards were interested in the order. Once they had completed their investigation and found that the justifying conditions did indeed exist, the authorities informed the Commission, at the same time requesting authorisation to grant the aid. During the course of the investigation no aid was granted, which meant that, if Community authorisation was not given, the shipyard would be forced to complete the order without the additional State aid.

Both parties also criticise the Commission for failing to analyse the merits of the case as a whole and concentrating simply on detecting an alleged distortion of competition. The Italian authorities maintain that distortion of competition can occur only when the aid is actually granted, and that in the case in question the Commission does not demonstrate in concrete terms how releasing the aid three years after the contract was signed can distort competition on the market at the time of signature.

Finally, the Italian authorities challenge the use of Article 4(5) of Directive 90/684/EEC which the Commission could have invoked if the notification had been made before the contract was signed, since no text or statement provides for its use where the derogation in question is applied.

V

With regard to the comments of the Italian authorities and the shipyard concerned, on the basis of the judgment of the Court of Justice of 18 May 1993 in Joined Cases C-356/90 and C-180/91 *Belgium v. Commission* ⁽¹⁾, the Commission doubts the value, as a legal basis, of the

Commission statement entered in the minutes of the 1 450th meeting of the Council on 26 November 1990. The Court in fact confirms that, 'as regards production aid for shipbuilding and ship conversion, the criterion chosen is that the aid does not exceed the common maximum ceiling provided for in Article 4(1) of the Directive. This ceiling constitutes what the Council regarded as the balance between the conflicting requirements of respect for the rules of the common market and the maintenance of a sufficient level of activity in European shipyards and also the survival of an efficient and competitive European shipbuilding industry (sixth recital in the preamble to the Directive).

Clearly, therefore, compliance with the ceiling at issue is the essential condition for aid to shipbuilding to be regarded as compatible with the common market and, where that ceiling is exceeded, the aid in question is automatically incompatible.

In this context, therefore, the Commission's role is limited to checking that that condition has been observed. If, as the Belgian Government contends, the Commission was further required to reassess the compatibility of the aids, case by case, in relation to the criteria set out in Article 92(1), that would not only deprive the Directive of any effectiveness: it would also be illogical, since any system of derogations necessarily presupposes that the aids referred to are at the outset incompatible with the common market' ⁽²⁾.

In view of this, even if the Commission statement in the minutes of the 1 450th Council meeting or the authorisation of the Italian aid scheme confirming it could be regarded as a legal basis, the Commission cannot consider the aid to be compatible with the common market.

Where aid which is an exception to the general rule is notified, the Commission must be in a position to verify that the additional aid, even if eligibility is based on a tangible factor, in this case competition from non-Community shipyards, does not cause distortion of competition between Community shipyards that is incompatible with the common market. Of course, such verification is made even more difficult by the fact that notification was made three years after the contract was signed. Given the number of Community shipyards approached by the agent, the Commission has reason to suppose that, if those shipyards had been able to submit bids on the basis of aid above the level normally authorised, or at any increased rate up to the 9 % requested by the shipyard, the possibility cannot be excluded that they might also have been in competition for the orders concerned.

⁽¹⁾ [1993] ECR I-2323.

⁽²⁾ *Ibidem*, paragraphs 31, 32 and 33 of the judgment.

The parties concerned also say that the Commission has failed to analyse the facts of the case, but they do not offer any new evidence which would allow it to examine the case in more detail. On the contrary, the Italian authorities believe that the Commission does not in any way dispute that the conditions necessary for application of the derogation are met, since it does not mention the absence of clarification or information on that score. This would tend to suggest that the Commission could be content, as sole proof of the possible need to grant a derogation, with two brief letters in which the agent asks the shipyard to reduce its tenders in order to avoid losing the orders to non-Community yards.

No figures have been given to back up the case, and the only figures available to the Commission are the contract prices which, as the shipyard recognises, were set at a loss. When, in initiating proceedings, the Commission said that it was unable to analyse the market conditions, in particular under the procedure in Article 4(5) of Directive 90/684/EEC, it indicated very clearly that it had doubts whether the request was even valid. Furthermore, since in their comments neither the Italian authorities nor INMA provide any new figures to show that it was absolutely necessary to double the level of aid to avoid losing the orders to non-Community shipyards, the Commission is all the more convinced that, in reducing its prices, the shipyard was simply giving in to blackmail by the ship-owners.

It is clear that aid has its effect at the time the contract is signed since, even for aid authorised under Article 4(1) of Directive 90/684/EEC, the Directive stipulates that, irrespective of when the Member State pays the aid to the shipyards, the aid ceiling applicable shall be that in force at the date of signature of the contract. Furthermore in the past, with the Directives on aid to shipbuilding in force, there have been several cases of Italian shipyards being unable to receive aid without a legal basis, either because of parliamentary delays or because the schemes had not yet been authorised by the Commission. This has never prevented Italian shipyards from winning orders while counting on the effect of the aid, since, when the laws entered into force, they were satisfied with receiving the aid without its affecting the price originally set.

It is therefore clear that the shipyard anticipated the aid and although, as its lawyers state, it took a risk by offering a price below cost without being certain of obtaining the aid, thus not distorting competition, the Commission cannot be sure that, at the time the contracts were signed, tenders by competing Community shipyards with prices

calculated on the basis of aid of 9 % would not have allowed them to win the orders.

Since it could not verify this at the appropriate time, either when the contracts were signed or at present, on the basis of more specific information provided by the Italian authorities, namely figures for the tenders from Community and non-Community competitors, the Commission takes the view that the Italian authorities have not proved that the increase in the level of aid up to 9 % was necessary for the shipyard to keep the contracts in question within the Community.

VI

In the light of the above, the Commission cannot conclude that the doubling of the aid intensity to 9 % is compatible with the common market, in so far as the Italian Government has not demonstrated that the other Community shipyards that were in competition with the INMA shipyard would not have been able to win the orders with aid at an intensity of less than 9 %. It cannot therefore be ruled out that INMA won the contracts only because allowance had been made for aid at 9 %, thus putting it *de facto* in a more favourable position than its Community competitors. The Commission cannot therefore authorise the additional 4,5 % aid for the conversion of the *Regal Voyager* and *Sally Albatros* at the INMA shipyard,

HAS ADOPTED THIS DECISION:

Article 1

The increase in the rate of aid by 4,5 % of the contract price for contracts to convert the *Regal Voyager* and *Sally Albatros* at the INMA SpA shipyard, provided for by Law No 132/94 and notified by Italy by letter of 27 May 1997, is incompatible with the common market.

Article 2

Italy is not authorised to grant the aid referred to in Article 1.

Article 3

Italy shall inform the Commission within two months of the date of notification of this Decision of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Republic of Italy.

Done at Brussels, 11 November 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 3 February 1999

concerning State aid granted by Germany to Spindelfabrik Hartha GmbH*(notified under document number C(1999) 326)***(Only the German text is authentic)****(Text with EEA relevance)**

(1999/380/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 establishing the European Economic Area, and in particular Article 62(1)(a) thereof,

Having, in accordance with these Articles, given the parties notice to submit their comments,

Whereas:

I. PROCEEDINGS

By letter dated 25 November 1996, Germany notified, pursuant to Article 93(3) of the EC Treaty, the granting of aid to Spindelfabrik Hartha GmbH (Hartha). By letters dated 13 December 1996 and 4 March 1997 the Commission asked for further information, which was provided by letters dated 29 January, 6 March and 27 March 1997. Since the aid had been made available before it was notified, it was registered as non-notified aid under the reference NN 135/96.

In June 1997 Hartha filed for bankruptcy (Gesamtvollstreckungsverfahren).

On 30 July 1997 the Commission initiated proceedings under Article 93(2) of the EC Treaty and published a notice to the other Member States and interested parties ⁽¹⁾.

II. DETAILED DESCRIPTION OF THE AID**A. Description of Hartha**

Hartha is engaged in the manufacture of various types of spindle, cotton-picker spindles, bottom rollers and

doffing systems, and in the modernisation of ring spinning frames and speed-frames.

Under a purchase agreement dated 6 November 1992 Hartha was sold to Frocatec Elektronik & Konstruktion Beteiligungsgesellschaft mbH (Frocatec). Frocatec's shares are held by four persons, and the company has six employees. It is an SME within the meaning of Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ⁽²⁾. The total aid granted under the privatisation (DEM 14,942 million) was covered by the Treuhand regime and was within the limits laid down therein.

Between 1989 and 1996 the company reduced the number of employees from 675 to 173. In 1995 it had a turnover of DEM 18 million. It was an SME within the meaning of the said Recommendation.

B. Description of the restructuring

In the period 1992 to 1994 Hartha emerged from its position of weakness and became an established company. In 1995, however, the company again encountered problems ⁽³⁾. It was forced on more than one occasion to interrupt the manufacture of cotton-picker spindles.

The restructuring plan was accepted by the executive committee of the Federal Office for Special Unification-Related Tasks (BvS) on 28 June 1996. The committee took a positive view of Hartha's development.

To implement the restructuring plan, the following financing strategy for Hartha was worked out by various creditors acting in concert.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

⁽³⁾ This was owing to several factors, including liabilities of DEM 1 979 800 when the investors took over the company, the collapse of a large contract in 1995, and the need to open up new markets because of the loss of east European ones.

⁽¹⁾ OJ C 224, 17.7.1998, p. 6.

BvS	Grant (18.9.1996)	DEM 1 750 000
BvS	Loan (1.7.1996 to 31.12.1999), interest: 5,75 % p.a.	DEM 1 000 000
Saxony	Contribution from Consolidation Fund	DEM 3 000 000
Dresdner Bank	Loan Secured by a 50 % deficiency guarantee from the Sächsische Aufbaubank (SAB)	DEM 1 250 000
Kreissparkasse Döbeln	Loan Secured by a 50 % deficiency guarantee from the SAB	DEM 1 250 000
Hartha: management	Waiver of salaries	DEM 100 000
Hartha: employees	Waiver of wages	DEM 450 000
Hartha: shareholders	Cash contribution	DEM 250 000
Hartha: staff	Staff loans	DEM 250 000
Total		DEM 9,3 million

Before the concerted financing measure and the restructuring plan were brought into operation, Hartha received, on 19 June 1996, an interest-free loan of DEM 1 million from the Sächsische Aufbaubank as a provisional measure. This was repaid on 1 November.

The restructuring plan, which was submitted in January 1996, reckoned that the company would make an operating profit in 1997.

C. Further measures (not directly linked to the restructuring)

BvS	Redemption of a loan guaranteed by the BvS, including interest (see point 2.1)	DEM 733 000
BvS	Extension to 30.8.1997 of the deadline for paying out the proceeds from the assignment of debts, with interest at the discount rate plus four percentage points	DEM 250 000
Shareholders	Conversion of shareholder loan into equity	DEM 3,5 million

The extension of the deadline for paying out the proceeds from the assignment of debts (DEM 250 000) does not constitute State aid. The BvS behaved like a private investor. As the company had liquidity problems, the likelihood of repayment in view of the results expected at the time was increased by extending the deadline. Interest was charged at four percentage points above the market rate.

As regards the redemption of the DEM 733 000 loan, the guarantee was provided at the time of privatisation. The measure was based on the decisions about the activities of the Treuhand, which were notified to the Commission and authorised by it⁽¹⁾. As the company was in difficulty

when the loan was granted, it was feared that the guarantee was tantamount to aid consisting of the total amount; i.e. an aid intensity of 100 % can be assumed. The repayment cannot be regarded therefore as additional aid, since the totality of the loan has already been assessed as aid.

D. Products and markets

After a decline in Community production in 1993, the textile machinery market in general has started to recover. The growth in production is expected to last until the year 2000. The upturn should be regarded with

⁽¹⁾ State aid E 15/92. The thresholds for this arrangement are 1 500 workers and DEM 150 million in financial liabilities *vis-à-vis* the Treuhandanstalt. The guarantee is covered by the arrangement and does not have to be notified.

caution, however, since the market is still very dependent on exports⁽¹⁾. It seems that, at the beginning of 1997, the spindle market was weak and sales were declining sharply. However, this decline is not yet confirmed by any overall analysis.

The textile machinery industry is dominated by small and medium-sized enterprises. The sector is faced with internationalisation and increasing competition. One of the strategies of SMEs for coping with this situation is to specialise. The spindle market is a highly specialised one.

On the niche market for cotton-picker spindles, Hartha is the only supplier in the Community. As mentioned in the decision to initiate proceedings, its share of the spindle market is fairly small. According to the information available to the Commission, the company's production capacity for spindles was 930 000 units per annum, for bottom rollers 240 000 units per annum, and for cotton-picker spindles 2 900 000 units per annum.

III. OBSERVATIONS OF THE GERMAN GOVERNMENT

The Commission has received no comments from other interested parties following the initiation of proceedings.

IV. OBSERVATIONS OF THE GERMAN GOVERNMENT

The German Government commented on this case by letter dated 8 October 1997.

V. ASSESSMENT OF THE AID

Germany did not fulfil its obligation to notify under Article 93(3) of the EC Treaty. The aid, which does not come under an aid scheme notified to and authorised by the Commission, was therefore granted unlawfully. Its compatibility with the common market is examined below.

A. Amount of restructuring aid

The aid planned by the BvS in the form of a grant of DEM 1,750 million and a loan of DEM 1 million is not part of any scheme notified to and examined by the Commission; it has therefore been granted illegally.

The State of Saxony's contribution is DEM 3 million from the Consolidation Fund. This is an aid scheme which was notified to and approved by the Commission⁽²⁾. According to the authorisation decision, the granting of aid is linked to the condition that a restructuring plan for restoring the profitability of the firm is carried out. In

addition, aid from the Consolidation Fund may not be combined with other restructuring aid.

On two occasions the Sächsische Aufbaubank guaranteed 50 % of a loan for DEM 1,25 million. This aid was granted under a scheme notified to the Commission and authorised by it on 7 June 1993⁽³⁾. According to the authorisation decision, the granting of aid is linked to the condition that a restructuring plan for restoring the profitability of the firm is carried out.

With regard to these two Saxony schemes, the Commission, in its decision initiating the proceedings, expressed considerable doubt about whether the condition concerning the implementation of the restructuring plan had been fulfilled.

On 19 June 1996 Hartha received from the Sächsische Aufbaubank an interest-free loan of DEM 1 million. The loan (capital plus interest) can be regarded as aid within the meaning of Article 92 of the EC Treaty. It is not based on any scheme notified to and authorised by the Commission, and is therefore unlawful. As the loan was repaid on 1 November 1996, the company saved about DEM 28 000 in interest. This amount should be taken into account in any recovery of the aid.

Pursuant to Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement, aid granted through State resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market. The aid granted by Germany, in so far as it is provided for activities other than the manufacture of cotton-picker spindles, favours Hartha. It can therefore be assumed that as a result of the aid the market conditions for competitors are changed and trade is affected. Consequently, the aid is in principle incompatible with the common market.

B. Exemptions

The Commission must also determine whether the aid qualifies for one of the exemptions in Article 92(2) and (3) of the EC Treaty.

In Hartha's case, the Commission has taken into account that the company is situated in an area which comes under Article 92(3)(a) of the EC Treaty.

In any event, however, the aid must be examined in the light of the exemption in Article 92(3)(c), since it has the hallmarks of aid for the rescue and restructuring of firms in difficulty.

⁽¹⁾ See *Panorame of EU Industry 1997*, Chapter 13, p. 54.

⁽²⁾ State aid N 117/95, which was authorised by the Commission by letter dated 5 May 1995.

⁽³⁾ N 73/93, E 16/94.

The exemption in Article 92(3)(c), aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, is applied in conjunction with the Community guidelines on state aid for rescuing and restructuring firms in difficulty⁽¹⁾ ('the guidelines'). Since Hartha has repeatedly made substantial losses in the past, it can be regarded as a firm in difficulty within the meaning of the guidelines.

C. Restructuring plan

Under section 3.2 of the guidelines, restructuring aid may be granted only if there is a restructuring plan which meets the following conditions:

- (a) the restructuring must restore the long-term viability of the company in question;
- (b) undue distortions of competition should be avoided;
- (c) the amount and intensity of the aid must be limited to the strict minimum needed, and the costs of the restructuring may not exceed the expected benefit;

(d) the granting of the aid is linked to the full implementation of the restructuring plan and the observance of the conditions;

(e) the implementation, progress and success of the restructuring plan will be monitored by requiring the submission of detailed annual reports to the Commission.

The tests of the guidelines are not satisfied, in particular where the restoration of profitability is concerned. Germany submitted to the Commission a restructuring plan which was accepted by the BvS in January 1996 and which was intended to restore Hartha to long-term viability. The Commission doubts whether the plan was based on realistic assumptions. In particular, the plan seems over optimistic as regards market developments and expected sales. It forecasts that turnover will double between 1995 and 1998 and that a profit will be achieved as early as 1997.

	1995 (balance sheet)	1996 (projected)	1997 (projected)	1998 (projected)
Turnover	18 074	23 004	33 090	35 713
Labour costs	8 358	9 085	8 045	8 538
Cost of materials	10 344	11 751	16 707	18 436
Operating profit (after tax)	- 7 775	- 3 667	1 376	1 788
Annual profit	- 7 775	- 607	2 702	1 788

The forecast trend is based on the expansion of the market and the marketing of high-technology products. The Commission takes the view that the sales prospects are overstated and that, in the circumstances, the profitability of the company cannot be restored within an appropriate period.

In 1997 the firm actually made a loss of DEM 4,880 million⁽²⁾. It was not capable therefore of returning to viability and making a profit in that year.

This was why the bankruptcy proceedings were started. There are two reasons for Hartha's poor results and the commencement of bankruptcy proceedings: firstly, contrary to the optimistic forecasts in the restructuring plan, the market weakened considerably at the start of

1997 and prices fell by some 20 %. Secondly, the company had to withdraw from the US market because of product liability problems. The products supplied by Hartha were of insufficient quality or were defective. They caused considerable problems for some American customers. The restructuring plan submitted was based on the marketing of high-technology products and the favourable development of the market. The plan exaggerated both the firm's capability and the market and estimated overall company results too highly. These facts confirm the Commission's view that the plan was not based on realistic assumptions.

The effects on competition on the spindle market as a whole must be examined. The overall market for spindles has clearly declined since 1997. While the deterioration of, and possible excess capacity on, the market

⁽¹⁾ OJ C 368, 23.12.1994, p. 12.

⁽²⁾ This figure is taken from a statement of the assets and liabilities of the company at 1 August 1997, which was submitted by the receiver. There is no complete set of books for 1997.

cannot be disregarded, Hartha, which has a small market share and is an SME operating in an Article 92(3)(a) area, cannot be required to reduce capacity. In the circumstances, no undue distortion of competition can be established. According to the information available to the Commission concerning the cotton-picker spindle market, the aid granted has not caused an undue distortion of competition.

To summarise, therefore, one of the conditions in the guidelines is not met, and consequently the restructuring aid to Hartha cannot be authorised.

VI. CONCLUSION

The Commission has taken account, in its assessment, of the fact that Hartha has not been able to return to profitability.

As regards the arrangements concerning the State of Saxony's Consolidation Fund and the guarantees from the Sächsische Aufbaubank, it is true that a restructuring plan for restoring the viability of the firm in question was submitted, but this has turned out to be based on unrealistic assumptions. The condition that the restructuring plan should restore profitability cannot be regarded as met. Therefore the aid granted to Hartha cannot be authorised. The condition that the aid should not be combined with other restructuring aid has not been met either.

The exemption in Article 92(3)(c) of the EC Treaty is not applicable to the aid to Hartha, since the authorisation conditions in the guidelines are not met.

The contribution of DEM 3 million from the Consolidation Fund, the BvS loan of DEM 1 million, the BvS grant of DEM 1,750 million, the saving of DEM 28 000 in interest and the two 50 % guarantees from the Sächsische Aufbaubank for loans of DEM 1,25 million therefore constitute State aid which is incompatible with the common market.

The Commission finds that the Federal Republic of Germany has granted this aid unlawfully in breach of Article 93(3) of the EC Treaty and is therefore obliged to

recover it in accordance with the rules and procedures of German law,

HAS ADOPTED THIS DECISION:

Article 1

The aid of DEM 7 028 000 granted by Germany to Spindelfabrik Hartha GmbH is incompatible with the common market. The aid consists of a grant of DEM 1 750 000 from the Federal Office for Special Unification-Related Tasks (BvS), a loan of DEM 1 000 000 from the BvS, a contribution of DEM 3 000 000 from the State of Saxony, a total guarantee of DEM 1 250 000 from the Sächsische Aufbaubank and a saving of DEM 28 000 in interest.

Article 2

1. Germany shall take all necessary measures to recover from the firm in question the aid referred to in Article 1, which has already been granted.
2. The aid shall be recovered in accordance with the procedures of German law. Interest shall be charged from the date the aid was granted to the beneficiary until the date of recovery, at the rate used for calculating the net grant equivalent of regional aid.

Article 3

Germany shall inform the Commission within two months from the date of notification of this Decision of the measures it has taken to comply therewith.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 3 February 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION**of 25 May 1999****amending Decision 97/370/EC authorising methods for grading pig carcasses in Sweden***(notified under document number C(1999) 1342)***(Only the Swedish text is authentic)****(1999/381/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3220/84 of 13 November 1984 determining the Community scale for grading pig carcasses ⁽¹⁾, as last amended by Regulation (EC) No 3513/93 ⁽²⁾, and in particular Article 5(2) thereof,Whereas the Commission, by Decision 97/370/EC ⁽³⁾ has authorised different methods for grading pig carcasses in Sweden;Whereas the Swedish Government has requested the Commission to authorise the use of a new method for grading pig carcasses; whereas the information required pursuant to Article 3 of Commission Regulation (EEC) No 2967/85 of 24 October 1985 laying down detailed rules for the application of the Community scale for grading pig carcasses ⁽⁴⁾ has been submitted; whereas evaluation of the request has shown the conditions for authorising the said method of grading to be fulfilled;

Whereas Decision 97/370/EC should be amended accordingly;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Management Committee for Pigmear,

HAS ADOPTED THIS DECISION:

Article 1

Decision 97/370/EC is hereby amended as follows:

1. The following indent is added to Article 1:

‘— the apparatus termed “Fully automatic ultrasonic carcass grading” (Autofom) and the assessment method related hereto, details of which are given in Part 3 of the Annex.’

2. The Annex to this Decision is added to the Annex as Part 3.

Article 2

This Decision is addressed to the Kingdom of Sweden.

Done at Brussels, 25 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 301, 20.11.1984, p. 1.⁽²⁾ OJ L 320, 22.12.1993, p. 5.⁽³⁾ OJ L 157, 14.6.1997, p. 19.⁽⁴⁾ OJ L 285, 25.10.1985, p. 39.

ANNEX

PART 3

Fully automatic ultrasonic carcass grading (Autofom)

1. Grading of pig carcasses shall be carried out by means of the apparatus "Fully automatic ultrasonic carcass grading" (Autofom).
2. The apparatus shall be equipped with 16 ultrasonic transducers, 2 MHz (Krautkrämer, SFK 2 NP) with an operating of 25 mm between each transducer.

The ultrasonic data comprise measurements of fat thickness and muscle depth.

The results of the measurements are converted into estimated lean mean content by means of a central data-processing unit.

3. The lean meat content of the carcass shall be calculated on the basis of 29 individual measuring points according to the following formula:

$$\hat{y} = 63,022667 - 0,061990 x_1 - 0,044287 x_2 - 0,020369 x_3 - 0,031346 x_4 - 0,090065 x_5 - 0,046915 x_6 - 0,080397 x_7 - 0,055209 x_8 - 0,087009 x_9 - 0,057792 x_{10} + 0,020473 x_{11} + 0,022994 x_{12} + 0,024723 x_{13} + 0,021543 x_{14} + 0,018325 x_{15} - 0,098499 x_{16} - 0,078841 x_{17} - 0,087616 x_{18} - 0,089338 x_{19} - 0,083622 x_{20} - 0,070741 x_{21} - 0,086366 x_{22} - 0,089192 x_{23} - 0,090805 x_{24} - 0,081049 x_{25} + 0,023325 x_{26} + 0,024673 x_{27} + 0,026422 x_{28} + 0,023543 x_{29}$$

where:

$\hat{y}$ = the estimated percentage of lean meat in the carcass.

4. The description of the measurement points and the description of the statistical method are laid down in the Swedish Protocol, Part II, submitted to the Commission under the terms of Article 3(3) of Commission Regulation (EEC) No 2967/85.

The formula shall be valid for carcasses weighing between 50 and 120 kg.'

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/99, 1999/2000 and the 2000/01 marketing years

(Official Journal of the European Communities L 293 of 31 October 1998)

On page 54, in Article 8(c), first indent:

for: '— either, quantity sold is less than 50 litres...',

read: '— either, where the quantity sold is less than 50 litres...'.

Corrigendum to Commission Regulation (EC) No 1081/1999 of 26 May 1999 opening and providing for the administration of tariff quotas for imports of bulls, cows and heifers other than for slaughter of certain Alpine and mountain breed, repealing Regulation (EC) No 1012/98 and amending Regulation (EC) No 1143/98

(Official Journal of the European Communities L 131 of 27 May 1999)

On page 19, in the fourth indent of Article 11(3):

for: '— Ορεσίβιες φυλές (κανονισμός (ΕΚ) αριθ.) έτος εισαγωγής...',

read: '— Ορεσίβιες φυλές (κανονισμός (ΕΚ) αριθ. 1143/98) έτος εισαγωγής...'.
