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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1869/1999
of 30 August 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,

- (1) Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multi-lateral 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;

- (2) 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 31 August 1999.

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

Done at Brussels, 30 August 1999.

For the Commission

Karel VAN MIERT

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 30 August 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
0709 90 70	052	79,6
	999	79,6
0805 30 10	388	66,1
	524	73,8
	528	63,5
	999	67,8
	052	78,5
0806 10 10	064	71,8
	400	232,6
	600	83,6
	624	87,0
	999	110,7
	388	53,8
	400	54,8
0808 10 20, 0808 10 50, 0808 10 90	508	56,9
	512	52,8
	524	63,4
	528	47,1
	800	76,0
	804	80,5
	999	60,7
	052	79,9
	064	45,4
	388	70,4
0808 20 50	999	65,2
	052	98,6
	999	98,6
0809 30 10, 0809 30 90	052	98,6
	999	98,6
0809 40 05	052	50,9
	064	48,1
	066	46,6
	068	46,6
	093	17,4
	999	41,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2645/98 (OJ L 335, 10.12.1998, p. 22). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1870/1999
of 30 August 1999
determining estimated production of unginned cotton for the 1999/2000 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton as last amended by Council Regulation (EC) No 1553/95 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 ⁽²⁾, as last amended by Regulation (EC) No 1419/98 ⁽³⁾, and in particular Article 8(1) thereof,

- (1) Whereas Article 8(1) of Regulation (EC) No 1554/95 requires estimated production of cotton to be determined from crop estimates before 1 October of each marketing year; whereas on the basis of the data available the production estimate for the 1999/2000 marketing year should be as indicated below;
- (2) Whereas, to ensure that the proper working of the system is not compromised, the estimated production should be fixed using all the information available to the Commission; whereas, with this in mind, some adjust-

ments must be made to the figures notified by Greece; whereas doing so results in an estimated Greek production for the 1999/2000 marketing year of 1 231 468 tonnes;

- (3) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Flax and Hemp,

HAS ADOPTED THIS REGULATION:

Article 1

For the 1999/2000 marketing year estimated production of unginned cotton is:

- 1 231 468 tonnes for Greece,
- 390 472 tonnes for Spain,
- 67 tonnes for other Member States.

Article 2

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

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

Done at Brussels, 30 August 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ L 148, 30.6.1995, p. 45.

⁽²⁾ OJ L 148, 30.6.1995, p. 48.

⁽³⁾ OJ L 190, 4.7.1998, p. 4.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 April 1999

in a procedure under Article 88 of the ECSC Treaty concerning state aid granted by Germany to
Neue Maxhütte Stahlwerke GmbH

(notified under document number C(1999) 1123)

(Only the German text is authentic)

(1999/597/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 86 and 88,

Whereas:

Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg and Lech-Stahlwerke GmbH, Meitingen-Herbertshofen ⁽¹⁾ (NMH Decision I), determined that the notified measures, including a loan from the shareholders, the *Land* of Bavaria, constitutes state aid that is incompatible with the common market and must not be granted.

- (4) Nevertheless, in the years 1993-95 Bavaria granted a series of such loans without informing the Commission in advance.

I. PROCEDURE

- (1) On 16 December 1998 the Commission initiated the procedure under Article 88 of the ECSC Treaty against Germany. It concluded, on an evaluation of the information presented to it, that Germany had infringed Article 86 of the ECSC Treaty by its failure to implement decisions requiring it to recover state aid of DEM 74 million that was incompatible with the common market from the recipient enterprise, Neue Maxhütte Stahlwerke GmbH (hereinafter referred to as 'NMH').
- (2) On 1 February 1999 the Commission notified Germany of its position and gave it an opportunity to submit its comments. It received Germany's comments on 5 March 1999.

The Commission therefore adopted the following two decisions:

- (a) Decision 96/178/ECSC of 18 October 1995 on state aid that Bavaria granted to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg ⁽²⁾ (NMH Decision II), laying down that the sum of DEM 49,9 million granted as loans by Bavaria to NMH constitutes state aid that is incompatible with the common market and prohibited under the provisions of the ECSC Treaty and Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry ⁽³⁾;
- (b) Commission Decision 96/484/ECSC of 13 March 1996 on state aid that Bavaria granted to the ECSC steel undertaking Neue Maxhütte Stahlwerke GmbH, Sulzbach-Rosenberg ⁽⁴⁾ (NMH Decision III), laying down that the sum of DEM 24,1 million granted as

II. FACTS

- (3) The Commission, by Decision 95/422/ECSC of 4 April 1995 concerning state aid that the *Land* of Bavaria intends to grant to the ECSC steel undertakings Neue

⁽¹⁾ OJ L 253, 21.10.1995, p. 22.

⁽²⁾ OJ L 53, 2.3.1996, p. 41.

⁽³⁾ OJ L 362, 31.12.1991, p. 57.

⁽⁴⁾ OJ L 198, 8.9.1996, p. 40.

loans by Bavaria to NMH constitutes state aid incompatible with the common market and prohibited under the provisions of the ECSC Treaty and Commission Decision No 3855/91/ECSC.

- (5) In both cases, i.e. by Decisions NMH II and NMH III, Germany was ordered to recover the aid from the recipient company on the ground that it was incompatible with the common market.
- (6) Germany challenged all three decisions before the European Court of Justice (Cases C-158/95, C-399/95 and C-195/96). The Court ordered the proceedings to be stayed pending a ruling by the Court of First Instance, before which NMH challenged the decisions (Joined Cases T-129/95, T-2/96 and T-97/96) ⁽¹⁾.
- (7) By judgment of 21 January 1999, the Court of First Instance dismissed NMH's applications and upheld the Commission's decisions in their entirety.
- (8) In Case C-399/95, Germany sought a suspension of the operation of Decision NMH II on the grounds that there was doubt as to the lawfulness of the decision and there was reason to fear that its immediate implementation might cause significant harm. The President of the Court of Justice dismissed the application by Order of 3 May 1996 ⁽²⁾ on the ground that Germany had failed to adduce sufficient evidence justifying the suspension of the Commission decision ordering the repayment of the aid that Bavaria had granted to NMH.
- (9) On 6 December 1996 Germany informed the Commission that Bavaria had ordered NMH to repay the aid by 15 October 1996 and that proceedings to recover the aid from NMH in accordance with the Commission decisions in NMH II and NMH III were being prepared. Germany indicated on 25 and 27 June 1997 that Bavaria had begun recovery proceedings in February 1997, seeking an order for recovery of the debt from the Regensburg Local Court. NMH challenged the decision, whereupon the case was remitted to the Amberg Regional Court.
- (10) In the statement of reasons for the claim and the application, it is indicated that Bavaria has claimed DEM 14,8 million together with interest, i.e. only 20 % of the aid declared incompatible with the common market in the NMH II and NMH III Decisions. According to the statement of reasons for the claim and the application and according to information provided by Germany, Bavaria took this step unilaterally in order to economise on the costs. Bavaria understands that, if its

application is successful, NMH will repay the remaining 80 % on a voluntary basis.

- (11) On 27 November 1997 Germany informed the Commission that NMH had lodged defences on 8 July 1997. In its defences, it denied that it had concluded any agreement with Bavaria for the repayment of the balance not forming the subject matter of proceedings for recovery. Accordingly, the repayment of the aid that is incompatible with the common market is entirely at the discretion of NMH.
- (12) In addition, NMH seeks to have the proceedings stayed pending a decision by the European Court of Justice.
- (13) It was not until 14 July 1998 that Germany informed the Commission that the Amberg Regional Court had already ordered a stay of proceedings on 5 March 1998.

The terms of that order were not made known to the Commission until 23 November 1998. The order was made solely on the basis of Section 148 of the Code of Civil Procedure, which states that a court may grant a stay of proceedings if a similar procedure is pending before another court whose judgment is relevant to the proceedings in the former court.

- (14) On 20 October 1998 the German authorities confirmed by telephone that Bavaria had not taken any steps to challenge the order. However, the Federal Government's letter to the Commission of 23 November 1998 shows that the order could, and still can, be challenged through a simple appeal and is not subject to a time limit.

The aid has not yet been repaid. On 23 November 1998 the Federal Government informed the Commission that NMH had initiated settlement and winding-up procedures.

III. GROUNDS FOR THE INITIATION OF THE PROCEDURE

- (15) Under Article 86 of the ECSC Treaty, Member States must take all appropriate measures to ensure fulfilment of the obligations resulting from Commission decisions. They are to refrain from any measures incompatible with Articles 1 and 4. Under Article 4(c), subsidies or aids granted by States are prohibited. If the Commission considers that a State has failed to fulfil an obligation under the Treaty, it may institute proceedings under Article 88 of the ECSC Treaty.
- (16) In instituting the proceedings, the Commission considered that, on the basis of the facts set out below, Germany had failed to fulfil its obligations under Article 86 of the ECSC Treaty.

⁽¹⁾ The legal basis is Article 47 of the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community.

⁽²⁾ Order of the European Court of Justice of 3 May 1996, Case C-399/95 R, Germany v Commission [1996] ECR I, p. 2444, point 76.

(a) In order to save on the costs of the procedure, Bavaria has unilaterally decided to apply to the court for the repayment of only 20 % of the aid that is incompatible with the common market. In doing so, it relied on NMH to make a voluntary repayment of the balance. For reasons of cost, it is common practice in Germany to assess the amount claimed at a lower level than its true value but this is permissible only if the parties expressly record their lower assessment in a notarially authenticated agreement in order to preclude difficulties of enforcement after judgment has been delivered. Since in NMH's defences it was denied that any agreement of that nature had been concluded, Germany must have been aware that, after the court had issued its judgment, it would not be able to rely on voluntary payment of the remaining balance.

(b) Neither Germany nor Bavaria has sought an interlocutory order for repayment of the aid, for example to claim initial payments or the provision of guarantees or security, or an attachment order, etc., in order to ensure that the Commission's decisions are implemented as quickly as possible.

(c) Bavaria has failed to appeal against the order of the Amberg Regional Court of 5 March 1998 staying the proceedings although it was not in accordance with the case-law of the European Court of Justice on the implementation of decisions that aid must be repaid and on the staying of the enforcement of decisions of Community authorities. Germany has taken no action against Bavaria to secure the revocation of the stay of proceedings.

IV. GERMANY'S COMMENTS AND THE COMMISSION'S ASSESSMENT

IVa. Failure to claim recovery of, or obtain security for, the full amount of aid

(17) Germany considers that it has complied with Article 86 of the ECSC Treaty at all stages of the procedure.

(a) The restriction of the claim for repayment forms established practice in such cases in Germany in order to keep the court and lawyers' fees, which are based on the value of the subject matter at issue, within bounds. The statement of reasons on which the judgment is based would have covered all loans at issue. A notarially authenticated agreement would simply have led to additional costs. Since there was no danger of the claims being time-barred and they could be extended at any time, Bavaria had done what was necessary to secure a flexible procedure in the future.

(b) Moreover, the Commission was aware as early as March 1997 that the claim for repayment was being

restricted and could have then made known its views.

(c) Lastly, Bavaria put forward a claim for the full amount in NMH's winding-up.

(18) The Commission considers that these arguments cannot be accepted. As was pointed out at the beginning of the proceedings, it did not object to the practice of restricting the value of the subject matter at issue but wished that, in accordance with usual practice in such cases, a (notarial) agreement should be concluded in order to avoid difficulties with enforcement of the judgment. In the absence of that agreement, the balance of 80 % of the claim would not be covered by any judgment of the court so that there would be no legal basis for enforcement. NMH would in that case enjoy a discretion to decide whether it paid over the balance under the judgment or not. It is irrelevant that Bavaria could at any time have sought payment of the balance of the 80 % since it has not done so.

(19) In fact, the Commission did not formally react regarding this particular fact before the initiation of the procedure. However, that does not prevent it from deciding that there has been an actual breach of Article 86 of the ECSC Treaty. It is pointed out again that, when the statement of reasons on which the claim was based and the application were transmitted on 25 July 1997, Germany confirmed without reservation the views of the Bavarian authorities that NMH would repay the aid in full. It was only as a result of repeated requests that the Commission on 27 November 1997 received NMH's defences of 8 July 1997 and discovered that the necessary measures had not been taken. Since the defences, moreover, sought to stay the proceedings, it wished to be kept informed of further developments so that it could ensure compliance with Article 86 of the ECSC Treaty. However, it was not until 14 July 1998 that it was apprised of the order staying the proceedings. A copy of the order reached it only on 23 November 1998. In those circumstances Germany cannot rely on the principle of legitimate expectations.

(20) The submission of the claim on 19 January 1999 in NMH's winding-up does not preclude a finding that there has been an infringement of the Treaty since the claim was not lodged until after the beginning of the present proceedings.

(21) The Commission therefore considers that Germany has infringed Article 86 of the ECSC Treaty by its failure to recover all of the aid that was unlawful and incompatible with the common market or to embody the reduction of the claim in a notarially authenticated agreement, thereby ensuring that, on the delivery of the court's judgment on the partial amount of the claim, the Commission's decision would be immediately and fully enforced.

1. *Failure to take interim measures to recover the aid*

(22) Germany argues that, under the relevant rules (Sections 916 and 917 of the Code of Civil Procedure), interim measures (attachment) are permissible only if the enforcement of a judgment would be thwarted or significantly hampered, in particular if assets are liable to be removed. However, those rules are of only limited relevance; since all of NMH's assets were at that stage of the procedure subject to a charge, attachment would not have been possible.

(23) The Commission considers that Germany has shown that procedural law, to be applied without distinction to claims based on domestic and Community law, precludes attachment in this case. It is therefore of the view that the failure to seek interim measures for repayment of the aid does not infringe Article 86 of the ECSC Treaty.

2. *Failure to appeal against the order to stay the proceedings*

(24) Germany does not challenge the Commission's view that failure to lodge an appeal infringes Article 86 of the ECSC Treaty. It must therefore be found that an infringement has been committed.

(25) Appended to Germany's reply is an intervention by Bavaria, which disputes the Commission's view. Bavaria considers that the order of the Amberg Regional Court staying the proceedings is lawful. Under Section 148 of the Code of Civil Procedure, the Regional Court was not only empowered in this case to stay the proceedings; it was under a duty to do so. Only the European Court of Justice has jurisdiction to determine the lawfulness of the decision on the aid so that the Regional Court, if it delivered any judgment in this case, would have risked doing so in contrast to a ruling of the European Court of Justice. Moreover, since an appeal could at any time be lodged against the order to stay the proceedings, there was no risk of the right to challenge it being time-barred.

(26) The order to stay the proceedings should not be appraised on the criteria in the Zuckerfabrik case, which relate solely to the suspension of administrative decisions, but only on the criteria for recovery fixed by the European Court of Justice, which require that the application of national procedural law must not make recovery impossible or extremely difficult. That is not the case here. Section 148 of the Code of Civil Procedure is in accordance with Community law and there is no reason to consider that Community law has been disregarded, in accordance with the approach adopted in Factortame I.

(27) The Commission considers, on the grounds set out below, that an appeal should have been lodged against the order to stay the proceedings.

(28) The Amberg Regional Court based its order to stay the proceedings solely on Section 148 of the Code of Civil Procedure, which lays down that a court has a discretion to stay the proceedings if it considers that the decision in a case before it depends on the outcome of a case pending before another court.

(29) However, Section 148 of the Code of Civil Procedure does not make it compulsory to stay the proceedings, so that Community law can in fact be applied without disregarding national law. Bavaria's arguments are not relevant to the present facts and would mean that the implementation of ECSC decisions would automatically be suspended whenever an application was made to the Court. Such an interpretation is contrary to Community law.

(30) Likewise, Section 148 of the Code of Civil Procedure cannot be interpreted to mean that a stay of proceedings is compulsory under Community law. In fact, the requirements of Community law are as set out below:

(a) first, the national courts are required to give fullest effect to Community law having direct effect. Any provision of national law that might prevent Community law from having full force and effect must be set aside ⁽¹⁾. In addition, the national courts must order the repayment of unlawful aid unless, by reason of exceptional circumstances, repayment is inappropriate ⁽²⁾.

(b) Moreover, the requirement that recovery must take place in accordance with the procedural provisions of national law ⁽³⁾ cannot justify a stay of proceedings if an appeal is possible under national law and required under Community law. In addition, the power of national courts to suspend the implementation of domestic measures based on Community law is acceptable only subject to certain restrictions and conditions ⁽⁴⁾ that are not applicable in this case. One of these conditions is that due account must be taken of the Community interest and that the national court must respect judgments or orders (in proceedings for interim relief) of the European Court of Justice ⁽⁵⁾. That was not so in the present case since the Order of the President of the European Court of Justice of 3 May 1996 was entirely disregarded.

(31) There were thus sufficient grounds to lodge an appeal. Accordingly, the Commission considers that the failure of Bavaria to lodge an appeal against the order of the Amberg Regional Court of 5 March 1998 granting a stay of the proceedings for recovery of aid from NMH is contrary to Article 86 of the ECSC Treaty.

⁽¹⁾ Judgment of the European Court of Justice in Case C-213/89 Factortame I [1990] ECR I, p. 2433.

⁽²⁾ Judgment of the European Court of Justice in Case C-39/94 SFEI and others [1996] ECR I, p. 3547.

⁽³⁾ Judgment of the European Court of Justice in Case C-24/95 Alcan Deutschland [1997] ECR I, p. 1591.

⁽⁴⁾ Judgment of the European Court of Justice in Joined Cases C-143/88 and C-92/89 Zuckerfabrik Süderdithmarschen v Hauptzollamt Itzehoe and Zuckerfabrik Soest v Hauptzollamt Paderborn [1991] ECR I, p. 415.

⁽⁵⁾ Judgment of the European Court of Justice in Case C-465/93 Atlanta Fruchthandelsgesellschaft and others [1995] ECR I, p. 3761.

- (32) Germany considers, however, that the Commission's position, namely that the German authorities failed to take the necessary steps with regard to the *Land* of Bavaria to ensure that an appeal was lodged, establishes that the Commission is not familiar with the constitutional relations between the Federal Government and the Government of the *Land* of Bavaria. The complaint regarding this relationship is therefore incomprehensible.
- (33) The Commission considers that this objection is irrelevant to the measures taken by Germany. Even in the administrative procedure prior to the institution of Article 88 proceedings, the Commission expressly raised questions concerning those measures and received no answer. It therefore assumed that no measures were taken. Germany is responsible throughout its national territory for the application of Community law and cannot evade that responsibility by invoking domestic circumstances. Germany's manifest failure to take the necessary steps against the order to stay the proceedings therefore infringes Article 86 of the ECSC Treaty.

V. TIME LIMITS FOR THE FULFILMENT OF OBLIGATIONS

- (34) The second sentence of the first paragraph of Article 88 of the ECSC Treaty lays down that the Commission must set the State in question a time limit for the fulfilment of its obligation. On 31 December 1998 the Commission was informed that NMH had been declared unable to meet its obligations and, in the event of winding-up, the proceedings would automatically be interrupted under Section 240 of the Code of Civil Procedure. In the circumstances an appeal would be of no effect. Moreover, Germany informed the Commission that on 18 January 1999 Bavaria had lodged a claim in the list of creditors' claims against NMH for the entire amount of the aid that was unlawful and contrary to the common market.
- (35) Germany therefore requests that the Article 88 proceedings should be stayed without a decision.
- (36) The Commission considers that, in the circumstances that have developed after the institution of proceedings on 16 December 1998, it has no more reason to set Germany a time limit for the fulfilment of its obligations which, as has been established in this decision, that State has infringed.
- (37) However, the Commission does not consider that NMH's winding-up proceedings undo the infringement of Community law. The submission of a claim in winding-up does not stand in the way of a Commission decision on an infringement of Article 86 of the ECSC Treaty adopted before the initiation of the winding-up. Even if the winding-up were to be considered a legal remedy, it was adopted after the Commission's position was made known. In accordance with the case-law of the European Court of Justice, the proceedings must be

continued since the basis has been created for a liability that Germany may bear towards other Member States, the Community or individuals as a result of the breach of its obligations.

VI. CONCLUSIONS

- (38) The Commission determines that the following infringements of Article 86 of the EC Treaty have taken place:
- (a) Germany (the *Land* of Bavaria) has failed to claim the recovery of unlawful aid that is incompatible with the common market to its full amount or to have the reduction in the claim incorporated in a notarially authenticated agreement so as to ensure that the Commission's decision after delivery of the Court's judgment on part of the claim can be implemented immediately and for the full amount;
 - (b) Germany or Bavaria has failed to lodge an appeal against the order of 5 March 1998 of the Amberg Regional Court staying the civil proceedings for recovery of the aid from NMH,

HAS ADOPTED THIS DECISION:

Article 1

Germany has failed to fulfil its obligations under Decisions 96/178/ECSC and 96/484/ECSC and Article 86 of the ECSC Treaty by failing to lodge a claim with the court for the recovery in full of the payments of aid incompatible with the Treaty and amounting to DEM 74 million, together with interest, that was granted to Neue Maxhütte Stahlwerke GmbH or to have incorporated in a notarially authenticated agreement the reduction of the claim, thereby ensuring that the decisions could be immediately and fully implemented after the delivery of judgment by the court.

Article 2

Germany has failed in its obligations under Decisions 96/178/ECSC and 96/484/ECSC and Article 86 of the ECSC Treaty by the failure, either on its part or on the part of the Bavarian authorities, to lodge an appeal against the order of the Amberg Regional Court of 5 March 1998 staying the proceedings before that court.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 April 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 4 May 1999

on the state aid which Portugal is planning to grant to Companhia de Têxteis Sintéticos, SA
(Cotesi)

(notified under document number C(1999) 1268)

(Only the Portuguese version is authentic)

(Text with EEA relevance)

(1999/598/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having regard to the Code on aid to the synthetic fibres industry ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to those provisions ⁽²⁾ and having regard to those comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 19 March 1998, the Portuguese authorities notified the Commission of a proposal to grant aid in favour of Companhia de Têxteis Sintéticos, SA (hereinafter 'Cotesi'), a manufacturer of rope and nets located in Grijó (Carvalhos). The proposed aid falls within the scope of the control measures under the Code on aid to the synthetic fibres industry.
- (2) Following a preliminary analysis, the Commission registered the case under number N 196/98 and requested additional information by letters dated 17 April and 1 July 1998. The Portuguese authorities replied to the first letter by letter dated 2 June and to the second by letter dated 12 August 1998.
- (3) By letter dated 29 October 1998, the Commission informed the Portuguese Government of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the above aid. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission called on interested parties to submit their comments.

- (4) The Commission received comments from interested parties in December 1998 and January 1999. It forwarded them to the Portuguese authorities, who were given the opportunity to react; their comments were received by letter dated 11 March 1999, registered by DG IV on 15 March.

II. THE PROPOSED AID

- (5) The eligible costs for the project total EUR 10 006 095 and the proposed financial support amounts to EUR 2 883 864 (including Community co-financing). Of the latter amount, EUR 318 446 is an outright grant while EUR 2 565 418 is in the form of a subsidy repayable at zero interest over a period of five years, with a grace period of 18 months. The Commission calculates that the total amount of aid (including the grant equivalent of the repayable subsidy) is some EUR 899 696, with an aid intensity of around 9 % (gross).
- (6) The proposed aid will be granted under the specific programme for modernising the Portuguese textile and clothing industry (IMIT), as provided for in Council Regulation (EC) No 852/95 ⁽⁴⁾, which stipulated that the programme would be jointly financed by the Member State and the Community and executed in conformity with the Structural Funds regulations.

III. THE PROJECT

- (7) The Portuguese authorities stated that the project related to the modernisation of the company's production process, with a view to replacing the tooling, improving the storage areas, altering the layout and strengthening the supply chain. The objective pursued is not to increase the production capacity but rather to achieve higher efficiency and reduce costs. The project would result in the dismantling of a number of extrusion machines and the acquisition of a new extrusion line.
- (8) The Portuguese authorities stated that Cotesi employs 1 524 persons, that its turnover in the year preceding the launch of the project was some ECU 46 million and that it had total assets of around ECU 47 million.

⁽¹⁾ OJ C 94, 30.3.1996, p. 11.⁽²⁾ OJ C 405, 24.12.1998.⁽³⁾ See footnote 2.⁽⁴⁾ OJ L 86, 20.4.1995, p. 50.

- (9) They also stated that the company's extrusion capacity for polypropylene (PP) yarn would diminish as a result of the project, while the production capacity for fibres not covered by the Code on aid to the synthetic fibres industry, such as polyethylene (PE), would increase. More specifically, Cotesi would increase the production capacity for high-density polyethylene and would start manufacturing polysteel, a fibre made of 70 % PP and 30 % PE.
- (10) According to the information transmitted by the Portuguese authorities by letter of 2 June 1998, the production capacity for PP fell by 2,89 %, from 20 556 tonnes per year (prior to the beginning of the project) to 19 962 tonnes per year (after the completion of the project). The Portuguese authorities also pointed out in their letter dated 12 August 1998 that this capacity reduction took place in the context of a general tendency for the company to cut capacity since 1992. Cotesi had already reduced installed capacity by 2,1 % between 1992 and 1995 and is forecasting a further 2 % capacity cut in the years 1999-2001.

IV. GROUNDS FOR INITIATING THE PROCEDURE

- (11) The Commission was obliged to open the Article 88(2) procedure since it was not satisfied that, as required by the Code on aid to the synthetic fibres industry, the aid resulted in a significant reduction in the relevant capacity.

V. COMMENTS FROM INTERESTED PARTIES

- (12) The Commission received comments from the International Rayon and Synthetic Fibres Committee (IRSFC). These comments did not concern the extent to which the aid might or might not lead to a distortion of competition in the polypropylene fibres sector, but rather the criteria by which the Commission assesses the 'significance' of a capacity reduction. As explained below, the additional information transmitted by the Portuguese authorities renders it unnecessary for the Commission to take a definitive view in this case as to whether a 2,89 % capacity reduction may be considered significant.
- (13) The Commission also received comments from Ficcorfil (Syndicat des producteurs français de ficelles, cordages et filets) and from three French companies that manufacture net and rope. These interested parties oppose the granting of the aid, arguing:
- that there is a fierce competition in the products concerned in what is a shrinking market,

- that the acquisition of a new extrusion line would make it possible to manufacture products such as fishing nets or synthetic cords for agricultural use, for which there is excess capacity in Europe; one of the consequences of excess capacity is pressure on prices and manufacturers' margins,
- that the cheaper labour costs in Portugal as compared with France already constitute a competitive advantage which should not be further increased through subsidies,
- that the scrapping of capacity is difficult to establish in practice,
- and, in some cases, that they have never received subsidies whereas investments by Portuguese producers have been subsidised to a large extent.

VI. COMMENTS FROM THE PORTUGUESE AUTHORITIES

- (14) By letter dated 26 January 1999, the Portuguese authorities submitted their comments. The main points were as follows:
- the information transmitted to the Commission prior to the opening of the procedure and concerning the installed extrusion capacities for the fibres covered by the Code was inaccurate. More specifically, the 90 % (PP)/10 % (PE) capacity ratio, which was correct in the three years preceding the project, should not have been taken as the basis for evaluating the change in capacity during the project period,
 - during that period, Cotesi increased the capacity to produce high-density polyethylene (HDPE), to the detriment of PP. HDPE can be used in agriculture, with better resistance to UV rays and pesticides than PP. It is also more environmentally friendly and has a longer life than PP. The investment also resulted in the installation of a machine to extrude polysteel, a hybrid fibre made of 70 % PP and 30 % PE. On account of its strength and high resistance to abrasion, polysteel is increasingly used for fishing and for mooring large ships,
 - the Portuguese legislation on working time (Law 21/96 of 23 July, which came into force on 1 December 1996) was the cause of an estimated 8 % reduction in viable capacity since, as a consequence of that legislation, the working week was reduced from 44 hours per week in 1995 (pre-project) to 40 in 1999 (post-project). The number of working days in a year also fell from 270 in 1995 to 248 in 1999,
 - from 1993 to 1998, 13 extrusion lines for PP were scrapped, while only three new lines were installed (one for PP, one for PE and one for polysteel),

- the tables attached to the letter, which include details of the capacity of all of Cotesi's extrusion machines from 1993 to 1999, show that the 90 % (PP)/10 % (PE) ratio which existed in 1995 (pre-project) had become 79,5 % (PP)/20,5 % (PE) in 1999 (post-project),
 - the actual installed capacity for the extrusion of PP (including the 70 % PP capacity of the new machine producing polysteel) diminished from 20 936 tonnes in 1995 to 16 800 tonnes in 1999, a 19,7 % reduction.
- (15) By letter dated 11 March 1999, the Portuguese authorities responded to the comments from third parties. They stressed that the latter had been based on inaccurate information with regard to the capacity reduction. In addition, the production of fishing nets would not increase as a result of the project; these were in any case not covered by the Code. Nor did the project envisage investment in the production of agricultural fibres. The Portuguese authorities stressed that physical proof existed of the reduction in capacity. They agreed that increases in production could exacerbate the oversupply situation in the sector and thus gave special attention to projects which would result in a reduction in capacity. However, it was important to ensure that Portuguese companies invested in modern equipment. While Portugal had certain advantages, e.g. relatively cheap labour, it also had disadvantages such as a lack of raw materials and not enough producers of equipment, which had to be imported from other EU countries that thus benefited from investments by Portuguese companies. The Portuguese authorities concluded that the proposed aid satisfied the conditions laid down in the Code.
- VII. ASSESSMENT OF THE AID PLAN**
- (16) Article 87(1) of the EC Treaty lays down the principle that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Similarly, Article 61(1) of the EEA Agreement states that, except where otherwise provided, such aid is incompatible with the functioning of the EEA Agreement.
- (17) The plan to grant aid to Cotesi undoubtedly constitutes aid within the meaning of the Articles mentioned above as it would allow the company to carry out the investment in question without having to bear the full cost. There is significant intra-EEA trade in the products concerned by the investment and placed on the market by the company (CN codes 5607 49 90, 6305 32 81, 5608 11 91 and 6002 43 31); the trade involved amounted to about 30 000 tonnes in 1997. Accordingly, it can be said that the proposed aid would be likely to distort competition and affect trade within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.
- (18) The exception provided in Article 87(3)(a) of the EC Treaty and Article 61(3)(a) of the EEA Agreement relates to aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. By enabling the company to carry out the investment in question, the proposed aid would promote the economic development of Carvalhos, an Objective 1 area. However, the effects of the aid on the synthetic fibres sector are subject to control, even for the most underdeveloped areas of the Community.
- (19) Since 1977 the conditions under which aid may be granted to synthetic fibres producers by way of support for such activities have been prescribed in a code whose terms and scope have been revised from time to time, most recently in 1996 ⁽⁵⁾.
- (20) The current Code requires the notification of any proposal to grant aid, in whatever form, irrespective of whether the Commission has authorised the scheme concerned, (except where the aid would satisfy the *de minimis* criterion) to synthetic fibres producers by way of support for any of the following activities:
- extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or
 - polymerisation (including polycondensation), where it is integrated with extrusion in terms of the machinery used, or
 - any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.
- (21) In the present case, the proposed aid would be granted to a large extent in support of the production of synthetic fibres which fall within the scope of the Code, namely the installation of new capacity for the extrusion of polypropylene filament yarn. The extrusion of polyethylene, on the other hand, falls outside the scope of the Code.

⁽⁵⁾ See footnote 1.

- (22) The Commission regrets that the Portuguese authorities did not notify the project sooner, bearing in mind that the company applied for the aid in 1996, the year in which the project started. Nevertheless, it notes that the proposed aid conforms with the IMIT specific programme, which the Commission authorised on 5 October 1995 and which is carried out within the framework of the PEDIP II programme, which the Commission authorised as being compatible with the common market by virtue of Article 87(3)(a) of the EC Treaty ⁽⁶⁾.
- (23) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states among other things that, in assessing the compatibility of the proposed aid, the fundamental consideration is the effect of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. In all cases and irrespective of the state of the market for the relevant product and the effect of the aid on that market, it provides for the limitation of the intensity of aid. Investment aid will be authorised for companies which are not SMEs, at up to 50 % of the applicable aid ceiling, only on condition that either the aid would result in a significant reduction in the relevant capacity or the market was characterized by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity.
- (24) Given that the market does not appear to be characterised by a structural shortage of supply, the Commission must be satisfied that the aided project results in a significant reduction in the relevant capacity, which is the extrusion capacity for polypropylene filament yarn.
- (25) Taking into account the new information provided by the Portuguese authorities in the course of the procedure with regard to the capacity reduction resulting from the project, which superseded the information provided during the Commission's preliminary investigation and on which the comments of third parties were based, the Commission can accept that the actual 19,7 % capacity reduction is significant within the meaning of the Code on aid to the synthetic fibres industry. Moreover, the planned aid intensity of approximately 9 % (gross) is well below 50 % of the ceiling of 75 % (gross) allowed under the PEDIP II programme,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which the Portuguese Republic plans to grant to Companhia de Têxteis Sintéticos, SA (Cotesi) in the form of an outright grant of EUR 318 446 and a subsidy of EUR 2 565 418 repayable at zero interest over a period of five years with a grace period of 18 months is compatible with the common market.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 4 May 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽⁶⁾ By letter SG(94) D/5991 dated 2 May 1994.