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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2196/1999
of 15 October 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:

- (1) 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;

- (2) 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 16 October 1999.

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

Done at Brussels, 15 October 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 15 October 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	65,9
	060	108,4
	204	66,2
	999	80,2
0707 00 05	052	80,8
	628	125,1
	999	102,9
0709 90 70	052	63,0
	999	63,0
0805 30 10	052	63,8
	388	61,0
	524	54,4
	528	65,1
	999	61,1
0806 10 10	052	102,6
	064	91,9
	400	207,7
	999	134,1
0808 10 20, 0808 10 50, 0808 10 90	060	46,2
	388	57,5
	400	56,9
	800	177,4
	804	36,2
	999	74,8
0808 20 50	052	93,2
	064	57,5
	999	75,3

⁽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 2197/1999
of 15 October 1999
amending Regulations (EEC) No 548/89 and (EEC) No 812/89 concerning the classification of
certain goods in the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽¹⁾, as last amended by Commission Regulation (EC) No 1835/1999 ⁽²⁾, and in particular Article 9 thereof,

- (1) Whereas Commission Regulation (EEC) No 548/89 ⁽³⁾, and Regulation (EEC) No 812/89 ⁽⁴⁾, lay down measures concerning the classification in the Combined Nomenclature of, *inter alia*, knitted garments;
- (2) Whereas the judgment of the Court C-338/95 of 20 November 1997 ⁽⁵⁾ has dealt with classification of dresses and nightdresses;
- (3) Whereas there is therefore a need to specify the reasons for the classification of the products mentioned under points 1, 2 and 3 in the Annex to Regulation (EEC) No 548/89, and for the products mentioned under points 1, 2 and 3 in the Annex to Regulation (EEC) No 812/89;

- (4) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In column 3 (reason) the second paragraph of points 1, 2 and 3 of the Annex to Regulation (EEC) No 548/89, and the second paragraph of points 1, 2 and 3 of the Annex to Regulation (EEC) No 812/89 are replaced by the following paragraph:

‘Classification as a nightdress is excluded, because the garment in question, by reason of its objective characteristics, may be worn equally in bed and elsewhere and, therefore, is not intended to be worn exclusively or essentially as night-wear.’

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, 15 October 1999.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 224, 25.8.1999, p. 5.

⁽³⁾ OJ L 60, 3.3.1989, p. 31.

⁽⁴⁾ OJ L 86, 31.3.1989, p. 25.

⁽⁵⁾ *Wiener S.I. GmbH v. Hauptzollamt Emmerich*, [1997] ECR I-6495.

COMMISSION REGULATION (EC) No 2198/1999**of 15 October 1999****setting export refunds on products processed from fruit and vegetables other than those granted for added sugar**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the market in products processed from fruit and vegetables ⁽¹⁾, as amended by Regulation (EC) No 2199/97 ⁽²⁾, and in particular Article 16(3),

(1) Whereas Commission Regulation (EC) No 1429/95 ⁽³⁾, as last amended by Regulation (EC) No 1007/97 ⁽⁴⁾, sets implementing rules for export refunds on products processed from fruit and vegetables;

(2) Whereas Article 16(1) of Regulation (EC) No 2201/96 states that, to the extent necessary to permit exports in economically significant quantities of the products referred to in Article 1(1)(a) of that Regulation, on the basis of prices for those products in international trade, the difference between those prices and prices in the Community may be covered by export refunds; whereas Article 18(4) of Regulation (EC) No 2201/96 provides that, if the refund on sugar incorporated into the products listed in Article 1(1) is insufficient to allow export of the products, the refund fixed in accordance with Article 17 is to be applicable to those products;

(3) Whereas Article 17(2) of Regulation (EC) No 2201/96 states that refunds must be fixed with regard to the existing situation and outlook for prices for products processed from fruit and vegetables on the Community market and supply availability, on the one hand, and prices in international trade on the other hand; whereas account must also be taken of the costs indicated at (b) in that paragraph and of the economic aspect of the envisaged exports;

(4) Whereas refunds are, pursuant to Article 16(1) of Regulation (EC) No 2201/96, to be set with due regard to the limits resulting from agreements concluded in accordance with Article 300 of the Treaty;

(5) Whereas Article 17(3) of Regulation (EC) No 2201/96 states that prices on the Community market are to be determined taking account of those most favourable from the exportation standpoint; whereas international trade prices are to be determined account taken of the prices indicated in the second subparagraph of that paragraph;

(6) Whereas the international trade situation or the special requirements of certain markets may make it necessary to vary the refund on a given product depending on the destination of that product;

(7) Whereas economically significant exports can be made at the present time of provisionally preserved cherries, peeled tomatoes, preserved cherries, prepared hazelnuts and some orange juices;

(8) Whereas application of the rules mentioned above to the present and forecast market situation, in particular to prices of products processed from fruit and vegetables in the Community and in international trade, leads to the refund rates set in the Annex hereto;

(9) Whereas, pursuant to Article 16(2) of Regulation (EC) No 2201/96, the most efficient possible use should be made of the resources available without creating discrimination between traders; whereas, therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements;

(10) Whereas Commission Regulation (EEC) No 3846/87 ⁽⁵⁾, as last amended by Regulation (EC) No 1230/1999 ⁽⁶⁾, establishes an agricultural product nomenclature for export refunds;

(11) Whereas Commission Regulation (EEC) No 3719/88 ⁽⁷⁾, as last amended by Regulation (EC) No 1127/1999 ⁽⁸⁾, lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products;

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 303, 6.11.1997, p. 1.

⁽³⁾ OJ L 141, 24.6.1995, p. 28.

⁽⁴⁾ OJ L 145, 5.6.1997, p. 16.

⁽⁵⁾ OJ L 366, 24.12.1987, p. 1.

⁽⁶⁾ OJ L 149, 16.6.1999, p. 3.

⁽⁷⁾ OJ L 331, 2.12.1988, p. 1.

⁽⁸⁾ OJ L 135, 29.5.1999, p. 48.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refund rates in the processed fruit and vegetables sector shall be those fixed in the Annex hereto.
2. Quantities for which licences are issued in the context of food aid, as referred to in Article 14a of Regulation (EEC) No 3719/88 shall not count against the eligible quantities referred to in the first paragraph.

Article 2

This Regulation shall enter into force on 25 October 1999.

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

Done at Brussels, 15 October 1999.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

Product (The full definitions of the eligible products are given in the 'processed fruit and vegetables' sector of Commission Regulation (EEC) No 3846/87, as amended)		Product code	Destination code ⁽¹⁾	Licence issuing period November 1999 to February 2000	
				Period for submission of applications: from 25 October 1999 to 22 February 2000	
				Refund rate (EUR/t net)	Quantities provided (in t)
Provisionally preserved cherries		0812 10 00 9100	F06	55	3 358
Peeled tomatoes		2002 10 10 9100	A20	50	50 000
Preserved cherries		2006 00 31 9000 2006 00 99 9100	F06	170	345
Prepared hazelnuts		2008 19 19 9100 2008 19 99 9100	A00	66	405
Orange juice	With a sugar content of not less than 10° Brix, but less than 22° Brix	2009 11 99 9110 2009 19 99 9110	A00	6	353
	With a sugar content of not less than 55° Brix	2009 11 99 9150 2009 19 99 9150	A00	32	354

⁽¹⁾ The destination codes are defined as follows:

A00: All destinations,

A20: All destinations except the United States of America,

F06: All destinations except the countries of North America.

**COMMISSION REGULATION (EC) No 2199/1999
of 15 October 1999**

amending Regulation (EC) No 1729/1999 laying down special measures derogating from Regulations (EEC) No 3665/87 and (EEC) No 3719/88 as regards milk and milk products, beef and veal, pigmeat, eggs, poultrymeat, agricultural products exported in the form of goods not covered by Annex I to the Treaty and certain cereal products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Articles 13(3), 17(14) and 28 thereof, and the corresponding provisions of other Regulations on the common organisation of the market in agricultural products,

Whereas:

- (1) Special measures have been taken by Commission Regulation 1729/1999 ⁽³⁾ to regularise export operations which could not be completed due to the appearance of contamination of certain products with dioxin.
- (2) Health measures taken by the authorities of certain third countries in respect of exports from the Community are still in place and continue to affect export possibilities for certain agricultural products.
- (3) The damaging consequences for Community exporters should be limited by extending the validity of export licences for certain products and extending certain time limits.
- (4) In the light of development, this Regulation should enter into force immediately.
- (5) The measures provided for in this Regulation are in accordance with the opinion of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1729/1999 is hereby amended as follows:

1. Article 2(2) is replaced by the following:

‘2. On application by the titular holder, the validity period of export licences issued pursuant to Regulations (EC) No 1162/95 ⁽⁶⁾, (EC) No 1466/95 ⁽⁷⁾ and (EC) No 174/1999 ⁽⁸⁾ which were applied for by 7 June 1999 at the latest shall be extended by:

- 5 months for licences for which the validity period expires on 31 May 1999,
- 4 months for licences for which the validity period expires on 30 June 1999,
- 3 months for licences for which the validity period expires on 31 July 1999,
- 2 months for licences for which the validity period expires on 31 August 1999,
- 1 month for licences for which the validity period expires on 30 September 1999.’

2. In Article 2(3) ‘150 days’ is replaced by ‘180 days’.

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, 15 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 204, 4.8.1999, p. 13.

COMMISSION REGULATION (EC) No 2200/1999**of 15 October 1999****fixing the maximum compensatory aid resulting from the rates for the conversion of the euro into national currency units and the exchange rates applicable on 1 August 1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽¹⁾, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2800/98 of 15 December 1998 on transitional measures to be applied under the common agricultural policy with a view to the introduction of the euro ⁽²⁾, and in particular Article 3 thereof,

- (1) Whereas Article 3(1) of Regulation (EC) No 2800/98 provides that compensatory aid is to be paid where the conversion rate for the euro into national currency units or the exchange rate applicable on the date of the operative event is below the rate previously applicable; whereas, however, that provision does not apply to amounts to which a rate lower than the new rate applied in the 24 months preceding the new rate's entry into force;
- (2) Whereas the conversion rate for the euro into national currency units applicable from 1 January 1999 is below the rate previously applicable for Belgium, France, Ireland, Italy, Luxembourg, Spain and Finland; whereas the exchange rates for the Danish krone, the Swedish krona and the pound sterling applicable on 1 August 1999, the date of the operative event, are below the rates previously applicable;
- (3) Whereas the compensatory aid is to be granted on the terms set out in Regulation (EC) No 2799/98, Commission Regulation (EC) No 2808/98 of 22 December 1998 laying down detailed rules for the application of the

agrimonetary system for the euro in agriculture ⁽³⁾, as last amended by Regulation (EC) No 1410/1999 ⁽⁴⁾, and Commission Regulation (EC) No 2813/98 of 22 December 1998 laying down detailed rules for applying the transitional measures for the introduction of the euro to the common agricultural policy ⁽⁵⁾;

- (4) Whereas the amounts of compensatory aid are established in accordance with Articles 5 and 9 of Regulation (EC) No 2799/98, Article 10 of Regulation (EC) No 2808/98 and Article 4 of Regulation (EC) No 2813/98;
- (5) Whereas the measures provided for in this Regulation are in accordance with the opinions of the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum amounts of the first tranche of compensatory aid to be granted as a result of the reduction recorded on the date of the operative event, 1 August 1999, in the conversion rates for the euro in force from 1 January 1999 in Belgium, France, Ireland, Italy, Luxembourg, Spain and Finland and in the exchange rates applicable on 1 August 1999 for the Danish krone, the Swedish krona and the pound sterling as against the agricultural conversion rates previously applicable shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on the seventh 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, 15 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 349, 24.12.1998, p. 1.

⁽²⁾ OJ L 349, 24.12.1998, p. 8.

⁽³⁾ OJ L 349, 24.12.1998, p. 36.

⁽⁴⁾ OJ L 164, 30.6.1999, p. 53.

⁽⁵⁾ OJ L 349, 24.12.1998, p. 48.

ANNEX

Maximum amounts of the first instalment of compensatory aid, millions of euro

Measures		Belgium	Denmark	France	Spain	Ireland	Italy	Luxembourg	Finland	Sweden	United Kingdom
Type	Council Regulation										
Aid per ha, fibre flax	(EEC) No 1308/70 ⁽¹⁾	0,10	0	0,47	0,38	0	0	0	0,01	0,001001	2,27
Aid for production of hemp	(EEC) No 1308/70	0	0	0,03	0,03	0	0	0	0	0	0,12

⁽¹⁾ OJ L 146, 4.7.1970, p. 1.

COMMISSION REGULATION (EC) No 2201/1999**of 15 October 1999****establishing the quantities to be allocated to importers from the 2000 Community quantitative quotas on certain products originating in the People's Republic of China**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas ⁽¹⁾, as amended by Regulation (EC) No 138/96 ⁽²⁾ and in particular Articles 9 and 13 thereof,

Having regard to Commission Regulation (EC) No 1369/1999 of 25 June 1999 establishing administration procedures for the 2000 quantitative quotas for certain products originating in the People's Republic of China ⁽³⁾, and in particular Article 6 thereof,

(1) Whereas Regulation (EC) No 1369/1999 established the portion of each of the quotas concerned reserved for traditional and other importers and the conditions and methods for participating in the allocation of the quantities available; whereas importers lodged applications for import licences with the competent national authorities between 27 June and 10 September at 3 p.m., Brussels time, in accordance with Article 3 of Regulation (EC) No 1369/1999;

(2) Whereas the Commission has received from the Member States, pursuant to Article 5 of Regulation (EC) No 1369/1999, particulars of the numbers and aggregate volume of import licence applications submitted and the total volume imported by traditional importers in 1997 or 1998, the reference years;

(3) Whereas the Commission is now able, on the basis of that information, to establish uniform quantitative criteria by which the competent national authorities may satisfy licence applications submitted by importers in the Member States for the 2000 quantitative quotas;

(4) Whereas examination of the figures supplied by Member States shows that the aggregate volume of applications submitted by traditional importers for the products listed in Annex I to this Regulation exceeds the portion of the quota set aside for them; whereas the applications must therefore be met by applying the uniform rate of

reduction/increase shown in Annex I to the volume of each importer's imports, expressed in quantity or value terms, over the reference period;

(5) Whereas examination of the figures supplied by Member States shows that the aggregate volume of applications submitted by non-traditional importers for the products listed in Annex II to this Regulation exceeds the portion of the quota set aside for them; whereas the applications must therefore be met by applying the uniform rate of reduction shown in Annex II to the amounts requested by each importer, as limited by Regulation (EC) No 1369/1999,

HAS ADOPTED THIS REGULATION:

Article 1

In response to licence applications in respect of the products listed in Annex I duly submitted by traditional importers, the competent national authorities shall allocate each importer a quantity or value equal to his imports for 1997 or 1998, as indicated by the importer, adjusted by the rate of reduction/increase specified in the said Annex for each quota.

Where the use of this quantitative criterion would entail allocating an amount greater than that applied for, the quantity or value allocated shall be limited to that specified in the application.

Article 2

In response to licence applications in respect of the products listed in Annex II duly submitted by non-traditional importers, the competent national authorities shall allocate each importer a quantity or value equal to the amount requested within the limits set by Regulation (EC) No 1369/1999, adjusted by the rate of reduction specified in the said Annex for each quota.

Article 3

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

⁽¹⁾ OJ L 66, 10.3.1994, p. 1.

⁽²⁾ OJ L 21, 27.1.1996, p. 6.

⁽³⁾ OJ L 162, 26.6.1999, p. 35.

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

Done at Brussels, 15 October 1999.

For the Commission

Pascal LAMY

Member of the Commission

ANNEX I

**Rate of reduction/increase applicable to imports in 1997 or 1998
(traditional importers)**

Product description	HS/CN code	Rate of reduction/increase (%)
Footwear falling within HS/CN codes	ex 6402 99 ⁽¹⁾	- 28,15
	6403 51 6403 59	+ 3,61
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	- 31,92
	ex 6404 11 ⁽²⁾	- 23,07
	6404 19 10	+ 137,11
Tableware, kitchenware of porcelain or china	6911 10	- 51,54
Ceramic tableware or kitchenware	6912 00	- 33,59

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

Taric codes: 6402 99 10 10, 6402 99 31 10, 6402 99 39 10, 6402 99 50 10, 6402 99 91 10, 6402 99 93 10, 6402 99 96 10, 6402 99 98 11, 6403 91 11 10, 6403 91 13 10, 6403 91 16 10, 6403 91 18 10, 6403 91 91 10, 6403 91 93 10, 6403 91 96 10, 6403 91 98 10, 6409 99 11 10, 6403 99 31 10, 6403 99 33 10, 6403 99 36 10, 6403 99 38 10, 6403 99 50 10, 6403 99 91 10, 6403 99 93 11, 6403 99 96 11, 6403 99 98 11

⁽²⁾ Excluding:

- a) footwear which is designed for a sporting activity and has, or has provision for the attachment of, spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

Taric codes: 6404 11 00 10, 6404 11 00 20

- b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

ANNEX II

**Rate of reduction applicable to the volume requested within the limits of the maximum amounts fixed by
Regulation (EC) No 1369/1999
(non-traditional importers)**

Product description	HS/CN code	Rate of reduction/increase (%)
Footwear falling within HS/CN codes	ex 6402 99 ⁽¹⁾	- 47,41
	6403 51 6406 59	- 93,09
	ex 6403 91 ⁽¹⁾ ex 6403 99 ⁽¹⁾	- 83,37
	ex 6404 11 ⁽²⁾	- 72,57
	6404 19 10	- 54,14
Tableware, kitchenware of porcelain or china	6911 10	- 22,13
Ceramic tableware or kitchenware	6912 00	- 42,52

⁽¹⁾ Excluding footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

Taric codes: 6402 99 10 10, 6402 99 31 10, 6402 99 39 10, 6402 99 50 10, 6402 99 91 10, 6402 99 93 10, 6402 99 96 10, 6402 99 98 11, 6403 91 11 10, 6403 91 13 10, 6403 91 16 10, 6403 91 18 10, 6403 91 91 10, 6403 91 93 10, 6403 91 96 10, 6403 91 98 10, 6409 99 11 10, 6403 99 31 10, 6403 99 33 10, 6403 99 36 10, 6403 99 38 10, 6403 99 50 10, 6403 99 91 10, 6403 99 93 11, 6403 99 96 11, 6403 99 98 11

⁽²⁾ Excluding:

(a) footwear which is designed for a sporting activity and has, or has provision for the attachment of spikes, sprigs, stops, clips, bats or the like, with a non-injected sole;

Taric codes: 6404 11 00 10, 6404 11 00 20

(b) footwear involving special technology: shoes which have a cif price per pair of not less than EUR 9 for use in sporting activities, with a single- or multi-layer moulded sole, not injected, manufactured from synthetic materials specially designed to absorb the impact of vertical or lateral movements and with technical features such as hermetic pads containing gas or fluid, mechanical components which absorb or neutralise impact or materials such as low-density polymers.

COMMISSION REGULATION (EC) No 2202/1999
of 15 October 1999
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1253/1999 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 2519/98 ⁽⁴⁾, and in particular Article 2 (1) thereof,

- (1) Whereas Article 10 of Regulation (EEC) No 1766/92 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 55 %, minus the cif import price applicable to the consignment in question; however, that duty may not exceed the rate of duty in the Common Customs Tariff;
- (2) Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

- (3) Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;
- (4) 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 for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;
- (5) Whereas, in order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties;
- (6) Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 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 16 October 1999.

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

Done at Brussels, 15 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 315, 25.11.1998, p. 7.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	29,50	19,50
	medium quality ⁽¹⁾	39,50	29,50
1001 90 91	Common wheat seed	46,13	36,13
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	46,13	36,13
	medium quality	77,37	67,37
	low quality	87,68	77,68
1002 00 00	Rye	80,84	70,84
1003 00 10	Barley, seed	80,84	70,84
1003 00 90	Barley, other ⁽³⁾	80,84	70,84
1005 10 90	Maize seed other than hybrid	101,19	91,19
1005 90 00	Maize other than seed ⁽³⁾	101,19	91,19
1007 00 90	Grain sorghum other than hybrids for sowing	80,84	70,84

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 14 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 1 October to 14 October 1999)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas-City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	111,67	96,20	89,21	74,29	138,86 (**)	128,86 (**)	87,52 (**)
Gulf premium (EUR/t)	—	6,93	3,61	5,02	—	—	—
Great Lakes premium (EUR/t)	10,56	—	—	—	—	—	—

(*) A discount of EUR 10/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: 14,24 EUR/t; Great Lakes — Rotterdam: 26,38 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: EUR 0,00/t (HRW2)
EUR 0,00/t (SRW2).

COMMISSION REGULATION (EC) No 2203/1999
of 15 October 1999
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organization of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, as last amended by Regulation (EC) No 624/98 ⁽³⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

- (1) Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1441/1999 ⁽⁴⁾, as last amended by Regulation (EC) No 1884/1999 ⁽⁵⁾;

- (2) Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 October 1999.

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

Done at Brussels, 15 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 16.

⁽³⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁴⁾ OJ L 166, 1.7.1999, p. 77.

⁽⁵⁾ OJ L 231, 1.9.1999, p. 30.

ANNEX

to the Commission Regulation of 15 October 1999 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	15,69	8,66
1701 11 90 ⁽¹⁾	15,69	14,96
1701 12 10 ⁽¹⁾	15,69	8,43
1701 12 90 ⁽¹⁾	15,69	14,45
1701 91 00 ⁽²⁾	14,91	20,22
1701 99 10 ⁽²⁾	14,91	14,52
1701 99 90 ⁽²⁾	14,91	14,52
1702 90 99 ⁽³⁾	0,15	0,49

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 July 1999

on State aid which Spain is planning to implement in favour of Brilén SA

(notified under document number C(1999) 2131)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/672/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 given interested parties notice, in accordance with the abovementioned Articles, to submit their comments ⁽¹⁾ and having regard to those comments,

Whereas:

I. Procedure

- (1) By letter dated 2 December 1997, Spain notified the Commission of a proposal to grant aid to Brilén SA, a company located at Barbastro in the Autonomous Community of Aragon (Brilén). By letter dated 22 December 1997, the Commission requested additional information. The Spanish authorities responded by letter of 12 February 1998.
- (2) By letter dated 4 May 1998 the Commission informed Spain of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the planned aid. Spain submitted its comments by letter of 10 June 1998.
- (3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Commu-*

nities ⁽¹⁾. The Commission invited interested parties to submit their comments on the aid.

- (4) The Commission received comments from interested parties. It forwarded them to Spain, which was given the opportunity to react; its comments were received by letters dated 2 October 1998 and 20 May 1999.
- (5) On 27 October 1998 a meeting was held between the Commission, the Spanish authorities and representatives of the company. By letter of 29 October 1998 the Commission invited the Spanish authorities to submit further comments. The Spanish authorities responded by letter dated 19 January 1999. By letter of 4 February 1999, the Commission requested clarification on certain points. The Spanish Government replied by letter dated 9 April 1999.

II. Description of the aid

The recipient

- (6) Brilén belongs to the Samca group, also based in Aragon and active chiefly in the mining, agriculture, chemical, textiles, construction and other sectors. The group has a total workforce of 4 000, with plants spread across the whole of Spain and in other countries including France, Italy and Argentina. Brilén has a workforce of 266 and in 1996 generated turnover of ESP 6 059 million.
- (7) Brilén produces and processes polyester and, as part of its activities in the textiles sector, has two product lines: polyester textile filament yarn and PET/staple fibre. The raw material for the manufacture of these products is

⁽¹⁾ OJ C 199, 25.6.1998, p. 12.

supplied by the company's in-house polymerisation plant (32 000 tonnes per year). Its extrusion capacity for textile yarn of 19 370 tonnes per year determined the maximum combined output of the two end-products.

- (8) Output in 1994 was 7 554 tonnes of filament yarn and 6 546 tonnes of PET/staple fibre, i.e. an extrusion capacity utilisation rate of 73 %.
- (9) [...] (*)
- (10) Given the obsolescence of its production technology and the poor health of the market in staple fibre, a business plan was implemented over the period 1992-96 in order to bring production into line with new market requirements. Consequently, the PET/staple production line was dismantled and the company focused on the production of filament yarn. Total production of filament yarn before the Investment (1997) was 9 987 tonnes, i.e. 52 % of total extrusion capacity.
- (11) The polyester filament yarn line produces continuous filament yarn presented in cops; spin-draw yarn (SDY) presented in bobbins; draw-winder yarn (DWY) presented in bobbins; pre-oriented yarn (POY) presented in bobbins; and warped and sized yarn presented in beams. The market for the intermediate products manufactured by Brilén is the textiles industry, including the garment, hosiery and decoration sectors.
- (12) The company exports about 30 % of its output to other Member States and about 5 % to the rest of the world, a pattern which is not expected to change significantly after the completion of the project.
- (13) The Spanish authorities stressed that the company acts as a major driving-force in the regional economy, both through its own business activity and through the indirect employment it generates.

The project

- (14) The Spanish authorities stated that the investment project was to be carried out between 1997 and 1998 and would relate exclusively to the technological rationalisation and upgrading of the polyester yarn production plant. While polymerisation capacity was to remain the same (32 000 tonnes), extrusion capacity for continuous filament yarn would increase from 9 500 tonnes per year to 11 500 tonnes, with an equivalent reduction in PET/flock production from 22 500 tonnes to 20 500 tonnes. Nominal textile yarn production capacity was to remain unchanged at 19 370 tonnes per year. Thus, after the project, the capacity utilisation rate was expected to be 59 %.
- (15) According to the Spanish authorities, the combined capacity for these products will not change following the investment. Instead there will be a reorientation of production with a switch from staple fibre, for which the prospects are disappointing owing to the evolution

of customers' quality and cost requirements, to polyester textile filament yarn, for which the market prospects are more promising.

- (16) The investment is to cover four areas of production and concerns chiefly the purchase of new machinery, including a spinning line to produce spun dyed yarn, a draw winder draw-twisters and draw-warping lines. It will also include construction works and other ancillary installations, including electricity, steam, compressed air, air conditioning, internal transport, control equipment and safety systems. The company's intention is to opt for a new technology which allows a high degree of intermingling of the yarn filaments. This will improve the company's competitiveness and reduce pollution in the subsequent texturing processes. The company will thus be able to increase its market share in polyester yarn in its different presentations (bobbins, cops and beams) by entering the medium-high price markets. The project will begin to reverse the effects of the policy of abandonment and disinvestment in this sector in Spain which the main European producers have been pursuing over the last decade, in favour of their own domestic plants. As a result of the project 25 new jobs will be created.
- (17) While 40 % of the planned investment will relate to activities falling outside the scope of the Code on aid to the synthetic fibres industry⁽¹⁾ (the Synthetic Fibres Code), the scope and provisions of which have periodically been amended, most recently in 1999⁽²⁾, namely the drawing, warping and sizing operations (i.e. these processes do not form part of the extrusion/texturisation process and are not integrated with such machinery), the remaining 60 % will relate to the spinning area of production and therefore falls within the scope of the Synthetic Fibres Code.
- (18) As far as external trade is concerned, it is expected that after the investment the company will increase its exports, particularly to non-member countries.
- (19) The Spanish authorities stated that the total eligible investment costs amounted to ESP 2 012 million (EUR 12,09 million) and that the proposed aid was ESP 201,2 million (EUR 1,21 million), with an aid intensity of 10 %. The aid was to be awarded under the approved regional economic incentives scheme⁽³⁾. The legal basis was Law No 50/1985 of 27 December 1985 (Law on regional incentives to correct economic imbalances between different parts of the country)⁽⁴⁾, Royal Decree No 1535/1987 of 11 December 1987⁽⁵⁾ (regulations implementing Law No 50/1985) and Royal Decrees Nos 491/1988 of 6 May 1988⁽⁶⁾ and 2486/1996 of 5 December 1996⁽⁷⁾ (definition of eligible area in Aragon). The aid was to be conditional on the maintenance of the 266 existing jobs and the creation of 25 new jobs.

⁽¹⁾ OJ C 94, 30.3.1996, p. 11.

⁽²⁾ OJ C 24, 29.1.1999, p. 18.

⁽³⁾ Commission notice published in OJ C 251, 29.9.1988, p. 4.

⁽⁴⁾ Spanish official gazette (BOE) No 3, 3.1.1986, p. 790.

⁽⁵⁾ BOE No 299, 15.12.1987, p. 36729.

⁽⁶⁾ BOE No 124, 24.5.1988, p. 15821.

⁽⁷⁾ BOE No 3, 3.1.1997, p. 89.

III. Comments by interested parties

- (20) Comments were received from the International Rayon and Synthetic Fibres Committee (IRSFC) and from Brilén itself.
- (21) The IRSFC stated that it was the representative body for the European man-made fibres industry, with its member companies accounting for 85 % of European Community production. It strongly supported full, rigorous and impartial implementation of the Synthetic Fibres Code. It stressed that, in the case concerned, the relevant product, in terms of the Synthetic Fibres Code, was polyester textile yarn and that the proposed aid was intended to assist an investment project which would increase Brilén's capacity for producing that fibre. It noted that, although Brilén's total production capacity for man-made fibres would remain below the levels of some years previously, the Code permitted only capacity for the relevant product to be taken into account. It stated that capacity utilisation for the relevant product in the EEA in 1996/97 averaged only 86 %, making it clear that the output of most producers was limited by demand rather than supply factors. Owing to the strong pressure from suppliers in Asia, it anticipated that imports from outside the EEA would maintain or even slightly increase their level and that structural overcapacity in this sector would continue at least until 2003.
- (22) By letter dated 7 July 1998 Brilén submitted the following comments in response to the Commission's decision to initiate the procedure:
- (23) Brilén did not agree with the Commission's statement that 'the company exports about 30 % of its output, a figure which is not expected to change significantly after the completion of the project.' The reality of the project was precisely the opposite: it was expected that the company would increase its exports, particularly to non-member countries, namely Argentina, Canada, the United States, Algeria and Israel.
- (24) It did not agree that its investment project should be regarded as increasing its extrusion capacity. It stressed that there was no real increase in extrusion capacity, only a product substitution, namely a switch from standard staple fibre to specialised textile filament yarn. Between 1980 and 1994 the company had extrusion capacity of approximately 19 370 tonnes of fibre per year. Brilén was currently producing approximately 9 987 tonnes per year (96 dtex) of continuous filament, representing a capacity utilisation rate of only 52 %. After the polyester filament investment project, the company would produce 11 500 tonnes per year (100 dtex), increasing the capacity utilisation rate to 59 %.
- (25) It did not agree with the statement that the aid requested by Brilén would distort competition within the EEA. The aid requested represented only 10 % of the planned investment and only 1,6 % of the cost of sales and therefore could not significantly influence the investment decision or the company's competitiveness. Moreover, the expansion of Brilén's production of polyester

textile filament yarn was not geared to the major commodities markets, in which there clearly existed excess capacity and which were not — and could not be — the target markets for a company of the size of Brilén.

- (26) It disagreed with the treatment of Brilén as one of the large firms in the sector rather than as a small or medium-sized enterprise (SME), for the following reasons:

There were in fact four manufacturing plants that coexisted within Brilén:

- a plant producing polyester staple;
- a polyester yarn spinning plant;
- a warping and sizing plant;
- a plant producing preforms for bottles.

- (27) Within each of these product ranges, Brilén would qualify as an SME on turnover and workforce criteria. As far as yarn production in particular was concerned, the company had a workforce directly employed of approximately 180 workers and a turnover (1997) of approximately ESP 4 000 million (EUR 24,04 million). Furthermore, the Samca group to which Brilén belonged did not have any other interests or own any other companies in the sector, which meant that, except from a financial standpoint, the company was isolated industrially.
- (28) Brilén's production accounted for only 5,5 % of the estimated total demand for polyester filament yarn in western Europe, which stood at 174 000 tonnes in 1997. The proposed increase in polyester filament yarn capacity thus represented merely 1 % of demand in western Europe.
- (29) It disagreed with the claim that there was no shortage of supply, for the following reasons:

According to consultants PCI, the forecast for supply was that 'from 1998 onwards the market for polyester filament yarn will grow sharply and steadily until the year 2005'. It was expected that demand for polyester filament yarn would grow at a steady rate, while production capacity would stagnate.

It was acknowledged among companies in the sector that a large proportion of production capacity was obsolete.

Although surplus production capacity possibly existed on an aggregate basis, it was a fact that Brilén had since 1996 been facing excess demand for the products it manufactures and sells. It therefore doubted whether it was proper to apply a calculation based on the total supply of all products and total demand for each product to the analysis of the appropriateness of an investment by a company of the size of Brilén. It argued that the analysis of the appropriateness of the aid should focus on the real state of Brilén's business broken down by product rather than an aggregate data, in view of the company's small size.

The Intrastat statistics showed that Spain's trade balance for 1997 was in deficit to the tune of over 12 000 tonnes per year, corresponding to the volume of imports from non-member countries; a similar picture emerged if the situation was examined at Community level.

IV. Comments by Spain

- (30) By letter dated 10 June 1998, the Spanish authorities essentially reiterated the views expressed by Brilén in the course of the procedure, adding that the proposed aid, with an intensity of 10 % (gross), amounted to less than half of the regional aid ceiling, which for the Aragon Economic Development Area is 20 % net gram equivalent.

V. Assessment of the aid

- (31) The Commission must first determine whether or not the measure under examination constitutes State aid within the meaning of Article 87(1) of the Treaty. In the light of the information available the Commission's assessment is as follows:
- (32) Article 87(1) of the Treaty lays down the principle that, except where otherwise allowable, 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 allowable, such aid is incompatible with the functioning of the Agreement.
- (33) The proposal to award aid to Brilén undoubtedly falls within the scope of Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement as it would allow the company to carry out the investment in question without having to bear the full cost. The product which would be supported by the aid is polyester filament yarn falling under Combined Nomenclature (CN) codes 5402 42 00, 5402 43 10 and 5402 43 90. Since there is significant intra-EEA trade in these products (approximately 48 000 tonnes in 1997) the proposed aid would be likely to distort competition and affect trade within the meaning of Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement.
- (34) Having established that the proposed aid to Brilén constitutes state aid, the Commission must decide whether or not it is incompatible with the common market.
- (35) The exceptions to that principle set out in Article 87(2) of the Treaty do not apply to the case in point, given the nature and objectives of the aid.

- (36) As far as the exception provided for by Article 87(3)(b) is concerned, the aid is clearly not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Spanish economy. Nor has the Spanish Government attempted to justify the aid on such grounds.

- (37) As regards the exception provided for by Article 87(3)(d) of the Treaty, the aid is clearly not intended to promote culture and heritage conservation.

- (38) With regard to the exceptions provided for in Article 87(3)(a) and (c) for aid that promotes or facilitates the development of certain areas, the Commission notes that the region in which Brilén is located is eligible for regional aid pursuant to Article 87(3)(c). The exception provided in Article 87(3)(c) of the Treaty is for 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.

- (39) The Barbastro area is eligible for regional aid under Article 87(3)(c) of the Treaty. In that particular area, the regional incentives scheme approved by the Commission decision ⁽¹⁾, as subsequently amended ⁽²⁾, allows a maximum aid intensity of 20 % of the eligible investment. Aid is granted for investment in new fixed assets and is conditional on the maintenance of existing jobs. Furthermore, in accordance with the guidelines on national regional aid ⁽³⁾, an exception to the incompatibility principle established by Article 87(1) of the Treaty may be granted in respect of regional aid only if the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed.

- (40) In the case in point, the investment chiefly entails the purchase of new machinery and the construction of buildings and ancillary installations. The aim is to introduce new technology which will improve productivity and efficiency while reducing pollution levels. Grant of the aid is conditional on the company safeguarding the existing 266 jobs and creating 25 new ones. The investment in question may therefore facilitate the development of the Barbastro area. The intensity (10 %) and other aspects of the proposal to award aid under the regional incentives scheme in the form of a grant of ESP 201,2 million (EUR 1,21 million) towards an investment of ESP 2012 million (EUR 12,09 million) are in accordance with the terms on which the regional incentives scheme was approved by the Commission.

⁽¹⁾ Commission notice published in OJ C 251, 29.9.1988, p. 4.

⁽²⁾ OJ C 25, 31.1.1996, p. 3.

⁽³⁾ OJ C 74, 10.3.1998, p. 9.

- (41) However, the effects of regional aid on the synthetic fibres industry have to be controlled, even for the least developed areas of the Community. The conditions under which aid may be awarded to synthetic fibres producers have since 1977 been regulated by the Synthetic Fibres Code.
- (42) As Brilén is a producer of synthetic fibres and as the aid in question relates to the upgrading of a polyester yarn production plant, it could only be considered compatible with the common market if it was also in line with the Synthetic Fibres Code.
- (43) The Code requires the notification of any proposal to award aid to synthetic fibres producers in whatever form, irrespective of whether or not the Commission has authorised the scheme concerned and unless the aid would satisfy the *de minimis* ⁽¹⁾ criterion, where the aid would be awarded by way of direct support for:
- 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.
- (44) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals falling within its scope. 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. Under the Code, investment aid will only be authorised:
- (a) for larger firms, that is, firms that are not SMEs, at up to 50 % of the applicable aid ceiling:
- if the aid would result in a significant reduction in the relevant capacity, or
 - if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity,
- (b) for SMEs, at up to 75 % of the applicable aid ceiling if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity,
- (c) for SMEs, at up to 100 % of the applicable aid ceiling:
- if the aid would result in a significant reduction in the relevant capacity, or
 - if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity and the relevant products were innovative.
- (45) Contrary to the position taken by the Spanish authorities and the company, Brilén cannot be considered under the State aid rules to qualify as an SME. The definition laid down in the relevant Commission Recommendation ⁽²⁾ does not allow the size of a company to be determined on the basis of sectors or subsectors of its activity. In any event Brilén does not meet the independence criterion, being a subsidiary of the Samca group. Consequently, the criteria for investment aid to larger firms are applicable.
- (46) According to the notification, 40 % of the eligible cost of the investment relates to activities falling outside the scope of the Synthetic Fibres Code, namely the drawing, warping and sizing operations (i.e. these processes do not form part of the extrusion/texturisation process and are not integrated with such machinery), while the remaining 60 % relates to the extrusion area of production and therefore falls within the scope of the Code. Since the project is for investment in new fixed assets, the risk of diversion of aid between activities covered by the Code and activities outside its scope is necessarily extremely small. The Commission is therefore able to accept, in the same proportion, that 60 % of the proposed aid would be awarded in direct support for the extrusion of one of the generic types of synthetic fibre falling within the scope of control of the Code, namely polyester textile filament yarn, while the remaining 40 % of the proposed aid would be granted under a scheme approved by the Commission but falling outside the scope of the Code.
- (47) As regards the 60 % of the proposed aid which falls within the scope of the Synthetic Fibres Code, the Commission cannot accept the Spanish authorities' assertion that there will be no 'overall' increase in extrusion capacity, since what matters is the extrusion capacity for the individual fibres and yarns covered by the Code in view of their different markets. The extrusion capacity for polyester yarn was 9 500 tonnes per year prior to commencement of the project and will be 11 500 tonnes per year after its completion. Therefore, as the company itself acknowledges, the investment will give rise to an increase of 21 % in extrusion capacity for the relevant yarn.

⁽¹⁾ OJ C 68, 6.3.1996, p. 9.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

- (48) Even though capacity utilisation rates in this sector at EEA level have improved in recent years, they have remained on average rather unsatisfactory and have increased only through rationalisation. The capacity utilisation rate for polyester filament yarn within the EEA was, as the Commission pointed out in its Decision to initiate the procedure, approximately 74 % in 1994, 78 % in 1995 and 82 % in 1996. The Spanish authorities have not challenged these figures. Although capacity utilisation rose to 89 % in 1997, draft figures for 1998 show a utilisation rate of 84 %. According to the Code, the capacity utilisation rate for production of the relevant fibre or yarn, averaged on an annual basis over the previous two years, would be expected to be at least 90 % if there were a structural shortage of supply. Consequently, there does not appear to be a structural shortage of supply in the relevant market, i.e. the market in polyester filament yarn.
- (49) Although, according to available data, consumption of textured polyester fibre within the EEA did increase from 458 000 tonnes in 1995 to 569 000 tonnes in 1997 and imports from outside the EEA rose from 68 000 tonnes to 104 000 tonnes over the same period, the trend would appear to be chiefly the result of strong pressure from suppliers in Asia, where excess capacity is huge and rising, rather than supply factors within the EEA.
- (50) Furthermore, the company points out that the aid requested amounts to only 10 % of the planned investment and represents only 1,6 % of the cost of sales, so that it cannot be regarded as significantly influencing the investment decision.
- (51) The remaining 40 % of the proposed aid relates to processes, namely drawing, warping and sizing operations, that do not form part of the extrusion/texturisation process and are not integrated with such machinery. It therefore falls outside the scope of the Synthetic Fibres Code. As a result of the proportional calculation applied, the aid intensity of 10 % remains unchanged. The investment linked to the aid is for the purchase of new fixed assets and, in any event, the creation of 25 new jobs appears to be ensured in as much as, according to the company, the amount of the aid granted will not perceptibly influence the investment decision as a whole. It consequently satisfies the conditions on which the abovementioned regional incentives scheme was approved by the Commission.

VI. Conclusions

- (52) Brilén is a larger firm producing synthetic fibres that fall within the scope of the Synthetic Fibres Code. 60 % of the notified aid would be awarded in direct support for the extrusion of one of the generic types of synthetic fibre and would lead to an increase in production

capacity for the relevant fibre of 21 %. The capacity utilisation rates for polyester filament yarn within the EEA have in recent years remained on average below the 90 % level. Consequently, there does not appear to be a structural shortage of supply in the relevant market as defined by the Code.

- (53) Accordingly, the Commission finds that the part of proposed aid to Brilén falling within the scope of the Synthetic Fibres Code and amounting to ESP 120 720 000 (EUR 725 541,81) cannot be considered compatible with the Code and is therefore incompatible with the common market and the functioning of the EEA Agreement.
- (54) On the other hand, the Commission does not raise objections in respect of that part of the aid, amounting to ESP 80 480 000 (EUR 483 694,54), which falls within a Commission-approved scheme but outside the scope of the Code,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 725 541,81 which Spain is planning to implement in favour of Brilén SA is incompatible with the common market.

This aid may accordingly not be implemented.

Article 2

The State aid amounting to EUR 483 694,54 which Spain is planning to implement in favour of Brilén SA is compatible with the common market in accordance with Article 87(1) of the Treaty.

Implementation of this aid is accordingly authorised.

Article 3

Spain shall inform the Commission, within two months following notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 20 July 1999

which Germany is planning to implement for Saxonylon Textil GmbH

(notified under document number C(1999) 2535)

(Only the German version is authentic)

(Text with EEA relevance)

(1999/673/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular 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 Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, and in particular Article 7 thereof ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 19 June 1998, Germany notified the Commission of a proposal to grant aid to Saxonylon Textil GmbH in connection with an investment in a plant to produce polyamide yarn in Meerane, Saxony. By letter dated 10 September 1998, it provided further information.
- (2) By letter dated 17 November 1998, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid. Germany responded to the opening of the procedure in its letter dated 7 January 1999.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.
- (4) The Commission received comments from six interested parties. It forwarded them to Germany, which was given the opportunity to react; its comments were received by letter dated 15 June 1999.

II. DETAILED DESCRIPTION OF THE AID

- (5) The proposed aid relates to an investment project by Saxonylon Textil GmbH, a subsidiary of the Tolaram Group, Singapore. The Tolaram group operates in more than twenty countries and manufactures and sells textiles, fibres, yarn, floor coverings, paper, chemicals, telecommunications equipment, food, electronic goods

and household commodities. The plan is to build a state-of-the-art production plant at Meerane for polyamide 6.6 industrial and textile filament yarn, including fully drawn yarn (FDY), partly drawn yarn (PDY), textured yarn, and plied and dyed yarn. The plant is to manufacture micro, fine and medium-weight multifilament yarns with filaments of 0,5 to 1 denier.

- (6) The planned capacity of the plant is 12 140 tonnes per year and production is scheduled to begin in the third quarter of 1999. Output from this plant would replace between 3 000 and 4 000 tonnes a year of nylon products which are currently imported by the Tolaram Group from outside the Community. The project would create at least 150 jobs.
- (7) The eligible project costs total DEM 120,990 million. The proposed financial support comprises DEM 35,208 million under the Commission-approved 26th framework for the joint Federal/Länder programme for improving regional economic structures ⁽³⁾ and an investment allowance of DEM 7,138 million, with an overall aid intensity of 35 %.
- (8) When opening the procedure, the Commission expressed doubts as to the compatibility of the aid with the common market since the project clearly did not comply with the relevant provisions of the Code on aid to the synthetic fibres industry ⁽⁴⁾ (hereinafter referred to as the 'Code').

III. COMMENTS FROM INTERESTED PARTIES

- (9) The International Rayon and Synthetic Fibres Committee (CIRFS) stated that it was clear that a situation of structural overcapacity existed for both polyamide textile filament yarn and polyamide industrial filament yarn and that, consequently, the provisions of the Code relating to structural shortage of supply were not applicable in this case. Since the project involved an increase in the company's capacity in circumstances where no structural shortage of supply could be established, the aid was incompatible with the Code. CIRFS added that many companies active in this sector had modernised and in some cases had added new capacity without infringing the provisions of the Code. There were currently further projects in the pipeline, not involving the use of State aid, which could be put at risk if subsidies were to be permitted for a competing project. CIRFS anticipated

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 39, 13.2.1999, p. 2.

⁽³⁾ Commission letter (SG) D/7104, of 18 September 1997.

⁽⁴⁾ OJ C 94, 30.3.1996, p. 11.

that between 1998 and 2003 demand for polyamide textile filament yarn in the Community would decline by an average of 1,6 % a year, while demand for polyamide industrial filament yarn would remain relatively static. It rejected the German authorities' argument that the aid was intended to help restructure the industry in the new *Länder*. This argument had no foundation in terms of the Code. Moreover, restructuring of the polyamide filament production sites in the former GDR had already been completed in a relatively successful manner.

- (10) The Industrievereinigung Chemiefaser e.V. also argued that the proposed aid was incompatible with the Code. It stated that there was no structural shortage of supply for the relevant products in Germany and that the non-subsidised producers in East Germany would be particularly hard hit by the aid.
- (11) Profibra, the Spanish Association of Chemical Fibres Producers, stated that the proposed aid would harm Spanish competitors, which were already facing difficult market conditions and requested the strict application of the Code.
- (12) Comments were also received from Poliseda SL, a textile company producing polyamide textile and industrial filament yarn; referring to the low capacity utilisation rates in this sector, Poliseda opposed the granting of the aid, which it considered incompatible with the Code. Nurel SA, a producer of polyester fibre and filament textile yarns and polyamide textile yarns, also referred to the difficult situation facing existing producers. The proposed aid would endanger investment financed from internal resources, thus giving subsidised operations an unfair competitive advantage. Nylstar GmbH claimed that, if the aid were granted, it would be obliged, given the adverse market trends, to halt production in the German plants at Freiburg im Breisgau (Baden-Württemberg) and Neumünster (Schleswig-Holstein) with a consequent loss of 525 jobs.

IV. COMMENTS FROM GERMANY

- (13) By letter dated 7 January 1999, Germany responded to the opening of the procedure, stating that the proposed aid would assist the economic development of Meerane, an Objective 1 area. In Germany's view, an assessment of the project should attach just as much importance to the effects of the planned investment on the regional economy as to its effects on competition and trade between the Member States.

- (14) As regards the question of a reduction in capacity, Germany stressed that the project concerned investment in a new plant. Since the enterprise had no existing capacity in the European Economic Area (EEA), it was not dismantling capacity elsewhere in the EEA. As regards the project's impact on the capacity utilisation rate for fibres and yarns, particularly in respect of planned exports and import substitution given the anticipated increase in demand, Germany referred to the comments it had made prior to the opening of the procedure.

- (15) Germany further argued that, following the restructuring of the former GDR's synthetic fibres industry, a substantial proportion of production facilities in the new *Länder* had been closed, with a consequent reduction in capacity. Of the 28 000 people previously employed by the industry, only 3 205 were still working in 1996. It had been hoped that it would be possible for the new *Länder* to create or at least to partially retain their synthetic fibre capacity but restructuring had taken longer than originally foreseen. Even investors not previously involved in manufacturing within the EEA could help to restructure local industry by means of their investment. The construction of a new plant in Saxony would help to convert the chemical industry in the new *Länder* into a competitive, state-of-the-art branch of the economy. It would be regrettable if a potential investor who sought to achieve a substantial expansion in the region's industrial base and thereby to help increase income in this Objective 1 area were obliged to abandon its plans because the Commission decided not to allow aid which it had included in its plans as a major locational factor.

- (16) By letter of 15 June 1999 responding to the comments from third parties, Germany indicated that the information provided by potential competitors and their representatives in some respects contradicted the information it had submitted. The letter also pointed out that all the information necessary for a decision had already been sent to the Commission.

V. ASSESSMENT OF THE AID

- (17) Article 87(1) of the EC Treaty states that, save as 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 among Member States, incompatible with the common market. Similarly, Article 61(1) of the EEA Agreement states that, save as otherwise provided, such aid is incompatible with the functioning of that Agreement.

- (18) The proposal to award aid to Saxonylton Textil GmbH undoubtedly constitutes aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, 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 polyamide industrial and filament yarn, which in 1997 amounted to some 1 million tonnes. It can therefore be assumed that the proposed aid threatens to distort competition and affect trade within the meaning of Article 87(1) EC and Article 61(1) EEA.
- (19) The derogations under Article 87(3)(a) EC and Article 61(3)(a) EEA relate to aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. If the company is allowed to carry out the investment in question, the proposed aid would assist the economic development of Meerane, an Objective 1 area in Saxony. However, it is necessary to monitor the effects of the aid on the synthetic fibres industry, even in the most structurally weak areas of the Community.
- (20) Since 1997 the conditions under which measures may be taken to assist synthetic fibre producers have been prescribed by an aid Code, the terms and scope of which have been regularly revised; its period of validity was last extended in 1999 ⁽¹⁾.
- (21) The current Code requires Member States to notify the Commission of any proposal to award aid in whatever form, irrespective of whether or not the Commission has authorised the scheme concerned, where the aid would not satisfy the *de minimis* criterion in direct support of:
- (a) extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or
 - (b) polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or
 - (c) 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.
- (22) In the present case the aid is to be awarded for the installation of new capacity for the extrusion of BCF polyamide yarn and hence falls within the scope of the Code. It ought therefore to have been notified.
- (23) The Commission notes that the proposed aid is to be granted under Commission-approved schemes. However, the implementation of the schemes in question, i.e. the 26th framework for the joint Federal/Länder programme for improving regional economic structures and the Investment Allowance Law ⁽²⁾, must comply with the provisions of Community law applicable to the cumulation of aid with different objectives and to specific industries, transport, agriculture and fisheries.
- (24) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states, *inter alia*, 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. Investment aid will only be authorised for larger firms, i.e. firms that are not SMEs, at up to 50 % of the applicable aid ceiling if the aid would either result in a significant reduction in the relevant capacity or if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity.
- (25) Capacity utilisation in this sector is rather unsatisfactory throughout the EEA. For polyamide filament yarn it was approximately 75 % in 1995 and 1996 and 79 % in 1997. Clearly, there is no structural shortage of supply on the relevant market since, if such a shortage did exist, then according to the Code the capacity utilisation rate for production of the fibre or yarn concerned, averaged on an annual basis over the previous two years, would be expected to be at least 90 %.
- (26) Since the market is not characterised by a structural shortage of supply, the Commission must be satisfied that the aid results in a significant reduction in the relevant capacity, i.e. the capacity to extrude polyamide filament yarn. Since the parent company of the prospective aid beneficiary does not currently produce synthetic fibres in the EEA, it is self evident that no capacity reduction, significant or otherwise, will occur as a result of the project. On the contrary, capacity will be increased by some 12 140 tonnes per year.
- (27) The Commission notes that the total amount of proposed aid is DEM 42,346 million, equivalent to an aid intensity of 35 % (gross), which is the applicable regional aid ceiling for the Land of Saxony. Even if the other criteria of the Code were satisfied, the proposed aid is therefore twice the maximum allowed under the Code for larger firms.

⁽¹⁾ OJ C 24, 29.1.1999, p. 18.

⁽²⁾ Commission letter SG(95) D/17154, of 27 December 1995, and corrigendum SG(96) D/3794, of 11 April 1996.

- (28) The Commission cannot accept the German argument that the aid should be permitted because the investment will contribute to the restructuring of the synthetic fibres industry in the new *Länder*. Since the investor is not currently a producer in the EEA, it is not apparent that the investment will contribute directly to the restructuring of the domestic industry. Nor have the German authorities supplied any data on the effects of this investment on production capacities in Saxony or the other *Länder*. Moreover, the Code clearly states that the relevant capacity is that of the prospective aid beneficiary.

VI. CONCLUSIONS

- (29) The Commission therefore finds that the proposed aid for Saxonylon Textil GmbH is incompatible with the common market and with the functioning of the EEA Agreement since it does not satisfy the requirements of the Code on aid to the synthetic fibres industry,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Germany is proposing to implement for Saxonylon Textil GmbH, a subsidiary of the Tolaram Group, and which comprises a grant of DEM 35,208 million and an

investment allowance of DEM 7,138 million is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to Germany.

Done at Brussels, 20 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission