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Contents

Acts adopted pursuant to Title VI of the Treaty on European Union

2000/130/JHA:

- ★ **Council Common Position of 31 January 2000 on the proposed protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organised crime** 1

I Acts whose publication is obligatory

Commission Regulation (EC) No 316/2000 of 11 February 2000 establishing the standard import values for determining the entry price of certain fruit and vegetables 3

Commission Regulation (EC) No 317/2000 of 11 February 2000 amending Regulation (EC) No 2799/1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder 5

Commission Regulation (EC) No 318/2000 of 11 February 2000 fixing the minimum selling price for skimmed-milk powder for the 3rd individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2799/1999 6

Commission Regulation (EC) No 319/2000 of 11 February 2000 fixing the maximum purchasing price for butter for the 3rd invitation to tender carried out under the standing invitation to tender governed by Regulation (EEC) No 2771/1999 7

Commission Regulation (EC) No 320/2000 of 11 February 2000 fixing the maximum aid for concentrated butter for the 219th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90 8

Commission Regulation (EC) No 321/2000 of 11 February 2000 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 47th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97	9
Commission Regulation (EC) No 322/2000 of 11 February 2000 suspending the buying-in of butter in certain Member States	11
★ Commission Regulation (EC) No 323/2000 of 11 February 2000 concerning the classification of certain goods in the Combined Nomenclature	12
Commission Regulation (EC) No 324/2000 of 11 February 2000 fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2176/1999	14
Commission Regulation (EC) No 325/2000 of 11 February 2000 fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2177/1999	15
Commission Regulation (EC) No 326/2000 of 11 February 2000 fixing the maximum export refund on wholly milled medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2178/1999	16
Commission Regulation (EC) No 327/2000 of 11 February 2000 fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2179/1999	17
Commission Regulation (EC) No 328/2000 of 11 February 2000 fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2180/1999	18
★ Commission Regulation (EC) No 329/2000 of 11 February 2000 amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office	19
Commission Regulation (EC) No 330/2000 of 11 February 2000 on the issue of system B export licences in the fruit and vegetables sector	21
II Acts whose publication is not obligatory	
Commission	
2000/131/EC:	
★ Commission Decision of 26 October 1999 on the State aid implemented by Spain in favour of the publicly owned shipyards ⁽¹⁾ (notified under document number C(1999) 3864)	22
2000/132/EC:	
★ Commission Decision of 25 November 1999 on the measure which Germany is planning to implement for the promotion of agricultural products of Mecklenburg-Vorpommern (notified under document number C(1999) 4227)	31

- ★ Corrigendum to Commission Regulation (EC) No 238/2000 of 28 January 2000 amending Regulation (EC) No 1222/94 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds (OJ L 24 of 29.1.2000) 35
- ★ Corrigendum to Council Directive 1999/38/EC of 29 April 1999 amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens (OJ L 138 of 1.6.1999) 35

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

COUNCIL COMMON POSITION

of 31 January 2000

on the proposed protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organised crime

(2000/130/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(a) thereof,

Having regard to the initiative of the Portuguese Republic,

Whereas:

- (1) The importance is recognised of international co-operation in criminal matters for the purposes of preventing and combating all serious forms of crime, including illicit arms trafficking, as provided for in Article 29 of the Treaty.
- (2) Arrangements have been made for the development and negotiation of a protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organised crime.
- (3) The United Nations General Assembly has decided that the final text of the draft Convention and the Protocols thereto should be submitted to it for early adoption prior to a high-level signing conference which will take place in Palermo.
- (4) A number of international instruments adopted in the Union and in other fora already provide for the adoption of measures to combat the illegal manufacture of and trafficking in destructive devices.
- (5) A Joint Action was adopted on 17 December 1998 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons ⁽¹⁾.
- (6) It is desired to contribute as fully as possible to the negotiation of the proposed Protocol and to avoid

incompatibility between the proposed Protocol and instruments drawn up in the Union.

- (7) The Council in its Conclusions of 5 October 1998 requested the Presidency to propose one or several joint positions, in accordance with the Treaty on European Union, in relation to the draft United Nations Convention and its Protocols.
- (8) Account is taken of the Joint Position adopted by the Council on 29 March 1999 on the proposed United Nations Convention against organised crime ⁽²⁾,

HAS ADOPTED THIS COMMON POSITION:

Article 1

In the negotiation of the draft United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, the Member States of the European Union shall support the definition of a firearm based on the concept of a lethal barrelled weapon that expels, is designed to expel, or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, but excluding antique firearms or their replicas. In that context the definition of an antique firearm should be dealt with under domestic law but should not include a firearm manufactured after 1870.

Article 2

For the purposes of the draft Protocol, explosive weapons, such as bombs, grenades, rockets or missiles, should not be regarded as firearms. However, provision should be made in the text for the criminalisation of the illicit manufacture of and trafficking in such weapons.

⁽¹⁾ OJ L 9, 15.1.1999, p. 1.

⁽²⁾ OJ L 87, 31.3.1999, p. 1.

Article 3

1. Member States agree that further consideration of any question relating to the illicit manufacture of and trafficking in explosives by criminals and their use for criminal purposes should await the outcome of the study to be carried out by the ad hoc expert group identified in United Nations General Assembly Resolution E/1999/30 and the possible elaboration of an international instrument on the illicit manufacture of and trafficking in explosives by the United Nations Ad Hoc Committee on elaboration of a convention against transnational organised crime.

2. Member States shall support the work of the United Nations ad hoc expert group and shall seek to ensure that its activities will be completed as quickly as possible.

Article 4

The Council shall endeavour to achieve further Common Positions, as necessary, in relation to the draft Protocol.

Done at Brussels, 31 January 2000.

For the Council

The President

J. PINA MOURA

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 316/2000
of 11 February 2000
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 12 February 2000.

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

Done at Brussels, 11 February 2000.

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 11 February 2000 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	204	48,6
	212	104,9
	624	212,2
	999	121,9
0707 00 05	052	116,8
	628	159,4
	999	138,1
0709 10 00	220	217,7
	999	217,7
0709 90 70	052	125,9
	204	60,6
	628	144,3
	999	110,3
0805 10 10, 0805 10 30, 0805 10 50	052	38,3
	204	43,7
	212	36,5
	624	61,2
	999	44,9
0805 20 10	052	53,6
	204	64,6
	999	59,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	63,0
	204	66,7
	464	143,4
	600	77,7
	624	68,3
	999	83,8
0805 30 10	052	40,0
	600	57,9
	999	49,0
0808 10 20, 0808 10 50, 0808 10 90	060	49,2
	400	91,3
	404	82,2
	720	76,2
	728	76,8
	999	75,1
0808 20 50	388	91,3
	400	94,8
	528	109,5
	720	53,6
	999	87,3

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 317/2000**of 11 February 2000****amending Regulation (EC) No 2799/1999 laying down detailed rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Article 26 of Commission Regulation (EC) No 2799/1999 ⁽²⁾, as amended by Regulation (EC) No 88/2000 ⁽³⁾, intervention agencies have organised a standing invitation to tender for skimmed milk powder taken into storage before 1 May 1998.

- (2) In view of the quantity still available and the market situation, that date should be amended to 1 July 1998.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 26(2) of Regulation (EC) No 2799/1999, '1 May 1998' is hereby replaced by '1 July 1998'.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 340, 31.12.1999, p. 3.

⁽³⁾ OJ L 11, 15.1.2000, p. 3.

COMMISSION REGULATION (EC) No 318/2000**of 11 February 2000****fixing the minimum selling price for skimmed-milk powder for the 3rd individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2799/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) Pursuant to Article 26 of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder ⁽²⁾, as amended by Regulation (EC) No 88/2000 ⁽³⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.
- (2) According to Article 30 of the said Regulation, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award; whereas the amount of the processing security shall also be fixed taking account of the difference between the

market price of skimmed-milk powder and the minimum selling price.

- (3) In the light of the tenders received, the minimum selling price should be fixed at the level specified below and the processing security determined accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 3rd individual invitation to tender pursuant to Regulation (EC) No 2799/1999, in respect of which the time limit for the submission of tenders expired on 8 February 2000, the minimum selling price and the processing security are fixed as follows:

- minimum selling price: EUR 201,52/100 kg,
— processing security: EUR 40,00/100 kg.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 340, 31.12.1999, p. 3.

⁽³⁾ OJ L 11, 15.1.2000, p. 3.

COMMISSION REGULATION (EC) No 319/2000**of 11 February 2000****fixing the maximum purchasing price for butter for the 3rd invitation to tender carried out under the standing invitation to tender governed by Regulation (EEC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 13 of Commission Regulation (EEC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, as amended by Regulation (EC) No 88/2000 ⁽³⁾, provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender.

- (2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 3rd invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 8 February 2000, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 333, 24.12.1999, p. 11.

⁽³⁾ OJ L 11, 15.1.2000, p. 3.

COMMISSION REGULATION (EC) No 320/2000**of 11 February 2000****fixing the maximum aid for concentrated butter for the 219th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽²⁾, as last amended by Regulation (EC) No 124/1999 ⁽³⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly.

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 219th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

- | | |
|---------------------|-----------------|
| — maximum aid: | 117 EUR/100 kg |
| — end-use security: | 129 EUR/100 kg. |

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 45, 21.2.1990, p. 8.

⁽³⁾ OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 321/2000**of 11 February 2000****fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 47th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽²⁾, as last amended by Regulation (EC) No 494/1999 ⁽³⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price

or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 47th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 350, 20.12.1997, p. 3.

⁽³⁾ OJ L 59, 6.3.1999, p. 17.

ANNEX

to the Commission Regulation of 11 February 2000 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 47th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		95	91	95	91
	Butter < 82 %		—	88	—	88
	Concentrated butter		117	113	117	113
	Cream		—	—	40	38
Processing security	Butter		105	—	105	—
	Concentrated butter		129	—	129	—
	Cream		—	—	44	—

COMMISSION REGULATION (EC) No 322/2000
of 11 February 2000
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 2 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾ lays down the criteria for opening or suspending the buying-in of butter by invitation to tender in the Member States.
- (2) Commission Regulation (EC) No 235/2000 of 28 January 2000 suspending the buying-in of butter in certain Member States ⁽³⁾ establishes the list of Member States in which intervention is suspended. As a result of the market prices communicated by the Member States, intervention must be suspended in the United Kingdom and must no longer be suspended in the Netherlands.

The list of Member States established by Regulation (EC) No 235/2000 adjusted accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Germany, Belgium, Denmark, France, Greece, Luxembourg, Austria, the United Kingdom and Sweden.

Article 2

Regulation (EC) No 235/2000 is hereby repealed.

Article 3

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 333, 24.12.1999, p. 11.

⁽³⁾ OJ L 24, 29.1.2000, p. 41.

COMMISSION REGULATION (EC) No 323/2000
of 11 February 2000
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 Regulation (EC) No 254/2000 ⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) In order to ensure uniform application of the Combined Nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation.
- (2) Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the Combined Nomenclature. Those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods.
- (3) Pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the CN codes indicated in column 2, by virtue of the reasons set out in column 3.
- (4) It is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature

and which does not conform to the provisions of this Regulation, can continue to be invoked, under the provisions in Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽³⁾, as last amended by European Parliament and Council Regulation (EC) No 955/1999 ⁽⁴⁾, for a period of three months by the holder.

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

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the Combined Nomenclature under the CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which does not conform to the provisions of this Regulation can continue to be invoked under the provisions of Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 21st 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, 11 February 2000.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

⁽¹⁾ OJ L 256, 7.9.1987, p. 1.
⁽²⁾ OJ L 28, 3.2.2000, p. 16.

⁽³⁾ OJ L 302, 19.10.1992, p. 1.
⁽⁴⁾ OJ L 119, 7.5.1999, p. 1.

ANNEX

Description of goods	CN code	Reasons
(1)	(2)	(3)
Pellets, consisting of a mixture of maize-milling products (approximately 70 % by weight) and barley forage meal (approximately 30 % by weight) with the following analytical characteristics (percentage by weight): — dry matter (105 °C) 87,5 — ash (800 °C) 2,1 — starch (determined by the modified Ewers polarimetric method) 47,2	2309 90 51	Classification is determined by General Rules 1 and 6 for the interpretation of the Combined Nomenclature and by the wording of CN codes 2309, 2309 90 and 2309 90 51 This product which is a mixture of maize-milling products and barley forage meal is to be considered as a preparation of a kind used in animal feeding of heading 2309

COMMISSION REGULATION (EC) No 324/2000**of 11 February 2000****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2176/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2176/1999 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2176/1999 is hereby fixed on the basis of the tenders submitted from 4 to 10 February 2000 at 258,00 EUR/t.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 267, 15.10.1999, p. 4.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 325/2000**of 11 February 2000****fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2177/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion ⁽³⁾ as amended by Regulation (EC) No 1453/1999 ⁽⁴⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2177/1999 ⁽⁵⁾ opens an invitation to tender for the subsidy on rice exported to Réunion.
- (2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum subsidy.

(3) The criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89 should be taken into account when fixing this maximum subsidy. Successful tenderers shall be those whose bids are at or below the level of the maximum subsidy.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 7 to 10 February 2000 at 289,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2177/1999.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 261, 7.9.1989, p. 8.

⁽⁴⁾ OJ L 167, 2.7.1999, p. 19.

⁽⁵⁾ OJ L 267, 15.10.1999, p. 7.

COMMISSION REGULATION (EC) No 326/2000**of 11 February 2000****fixing the maximum export refund on wholly milled medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2178/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2178/1999 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in European Regulation (EC) No 2178/1999 is hereby fixed on the basis of the tenders submitted from 4 to 10 February 2000 at 175,00 EUR/t.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 267, 15.10.1999, p. 10.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 327/2000**of 11 February 2000****fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2179/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2179/1999 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2179/1999 is hereby fixed on the basis of the tenders submitted from 4 to 10 February 2000 at 155,00 EUR/t.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 267, 15.10.1999, p. 13.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 328/2000**of 11 February 2000****fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2180/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2180/1999 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2180/1999 is hereby fixed on the basis of the tenders submitted from 4 to 10 February 2000 at 160,00 EUR/t.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 267, 15.10.1999, p. 16.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 329/2000**of 11 February 2000****amending Regulation (EC) No 1238/95 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights ⁽¹⁾, as amended by Regulation (EC) No 2506/95 ⁽²⁾, and in particular Article 113 thereof,

Whereas:

(1) Commission Regulation (EC) No 1238/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards the fees payable to the Community Plant Variety Office ⁽³⁾ has specified the acts and circumstances for which fees are payable to the Community Plant Variety Office, and the respective levels of such fees.

(2) The financial situation of the Community Plant Variety Office has developed such as to conclude that the annual revenues of the Community Plant Variety Office mainly based on the fees as currently specified will in future likely exceed, in principle, the annual expenditures of the Office.

(3) Moreover, no subsidies from the general budget of the European Communities have been included in the annual revenues.

(4) The Administrative Council of the Community Plant Variety Office has forwarded draft amendments relating to that financial situation to the Commission, pursuant to Article 36(2) second indent, of Regulation (EC) No 2100/94.

(5) Therefore a reduction in the level of certain fees charged to applicants for, and holders of, Community plant variety rights is now justified.

(6) It is necessary to clarify the power to fix the administrative fee for the delivery of extracts from the registers of the Community Plant Variety Office, referred to in Article 82(2) of Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant

Variety Office ⁽⁴⁾, as amended by Regulation (EC) No 448/96 ⁽⁵⁾.

(7) In order to minimise cases of dispute, the description of genera or species on which is based the categorisation of varieties into one of the three examination fee groups in Annex I to Regulation (EC) No 1238/95, requires greater precision.

(8) Regulation (EC) No 1238/95 should be amended accordingly.

(9) It is necessary to apply the new measures with effect of the beginning of the budget year 2000.

(10) Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro ⁽⁶⁾ provides that any reference to the ecu is replaced by a reference to the euro.

(11) The Administrative Council has been consulted, pursuant to Article 113(4) of Regulation (EC) No 2100/94.

(12) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plant Variety Rights,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1238/95 is hereby amended as follows:

1. In Article 7(1), '1 000' shall be replaced by '900'.

2. In Article 8:

- in paragraph 2, 'one month after' shall be deleted, and
- in paragraph 5, 'Implementing Rules' shall be replaced by 'Proceedings Regulation'.

3. In Article 12:

- in paragraph 1(c), 'issued by the Office.' shall be replaced by 'issued by the Office; and',
- in paragraph 1, the following shall be added:
'(d) the administrative fee referred to in Article 82(2) of the Proceedings Regulation.'
- in paragraph 2, 'paragraph 1(b) and (c)' shall be replaced by 'paragraph 1(b), (c) and (d)'.

⁽¹⁾ OJ L 227, 1.9.1994, p. 1.

⁽²⁾ OJ L 258, 28.10.1995, p. 3.

⁽³⁾ OJ L 121, 1.6.1995, p. 31.

⁽⁴⁾ OJ L 121, 1.6.1995, p. 37.

⁽⁵⁾ OJ L 62, 13.3.1996, p. 3.

⁽⁶⁾ OJ L 162, 19.6.1997, p. 1.

4. Annex I shall be replaced by the following:

'ANNEX I

The examination fee due to be paid pursuant to Article 8 shall be as follows:

Group A EUR 1 000

Group A covers the following genera or species:

Avena sativa L., *Beta vulgaris* L. ssp. *vulgaris* var. *altissima* Döll, *Beta vulgaris* L. ssp. *vulgaris* var. *crassa* (Alef.) Wittm, *Brassica napus* L., *Glycine max* (L.) Merril, *Gossypium* L., *Helianthus annuus* L., *Hordeum vulgare* L. sensu lato, *Oryza sativa* L., *Phalaris canariensis* L., *Sorghum bicolor* (L.) Moench, *Sorghum sudanense* (Piper) Stapf., *Sorghum bicolor* (L.) Moench x *Sorghum sudanense* (Piper) Stapf., *Secale cereale* L., *Solanum tuberosum* L., *Triticum aestivum* L. emend. Fiori et Paol., *Triticum durum* Desf., *Triticum spelta* L., X *Triticosecale* Wittm., *Zea mays* L.

Group B EUR 800

Group B covers:

1. agricultural crops (including grasses), other than those covered by Group A; and
2. the following genera or species:

Allium cepa L. var. *cepa* L., *Capsicum annuum* L., *Cichorium endivia* L., *Citrullus lanatus* (Thunb.) Matsum et. Nakai, *Cucumis melo* L., *Cucumis sativus* L., *Cucurbita pepo* L., *Cucurbita moschata* L. (Duch.) Duch. Ex. Prior, *Cucurbita maxima* Duch., *Lactuca sativa* L., *Lycopersicon lycopersicum* (L.) Karst. ex. Farw., *Phaseolus vulgaris* L., *Pisum sativum* L. (partim), *Solanum melongena* L., *Vicia faba* L. (partim);
Alstroemeria L., *Anthurium* Schott, *Begonia-Elatior-Hybriden*, *Calibrachoa-Hybriden*, *Chrysanthemum* L., *Dianthus* L., *Euphorbia pulcherrima* Willd. ex Klotzsch,

Fuchsia L., *Gerbera* L., *Impatiens* L., *Kalanchoe* Adans., *Lilium* L., *Orchidaceae*, *Pelargonium* L'Hérit. ex Ait., *Pentas Benth.*, *Petunia* Juss., *Rhododendron* L., *Rosa* L., *Saintpaulia* H. Wendl., *Spathiphyllum* Schott.

Group C EUR 700

Group C covers all genera or species, other than those covered by Group A or Group B.'

5. Annex II shall be replaced by the following:

'ANNEX II

On the basis of the groups referred to in Annex I, the annual fee to be paid pursuant to Article 9 shall be as follows.

Year	Group		
	A	B	C
1	400	400	300
2	600	500	400
3	800	600	500
4 and subsequent years	1 000	700	600'

Article 2

1. This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.
2. It shall apply to fees which become due to the Office on 1 January 2000 or later, pursuant to the relevant provisions of Regulation (EC) No 1238/95.

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

Done at Brussels, 11 February 2000.

For the Commission

David BYRNE

Member of the Commission

COMMISSION REGULATION (EC) No 330/2000
of 11 February 2000
on the issue of system B export licences in the fruit and vegetables sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 298/2000 ⁽²⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2782/1999 ⁽³⁾, amended by Regulation (EC) No 41/2000 ⁽⁴⁾, fixes the indicative quantities for system B export licences for apples other than those sought in the context of food aid.
- (2) In the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for apples for destination group FO1 will shortly be exceeded. This

overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector.

- (3) To avoid this situation, applications for system B licences for apples for destination group FO1 exported after 11 February 2000 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for apples for destination group FO1 submitted pursuant to Article 1 of Regulation (EC) No 2782/1999, export declarations for which are accepted after 11 February 2000 and before 17 March 2000, are hereby rejected.

Article 2

This Regulation shall enter into force on 12 February 2000.

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

Done at Brussels, 11 February 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15.11.1996, p. 12.

⁽²⁾ OJ L 34, 9.2.2000, p. 16.

⁽³⁾ OJ L 334, 28.12.1999, p. 26.

⁽⁴⁾ OJ L 5, 8.1.2000, p. 43.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 October 1999

on the State aid implemented by Spain in favour of the publicly owned shipyards

(notified under document number C(1999) 3864)

(Only the Spanish version is authentic)

(Text with EEA relevance)

(2000/131/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, 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 Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding ⁽¹⁾, as prolonged by Regulation (EC) No 3094/95 ⁽²⁾;

Having regard to Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring ⁽³⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽⁴⁾ and having regard to their comments,

Whereas:

(2) The Spanish Government submitted a regular monitoring report on 15 September 1998, which was supplemented by information provided during a monitoring visit from 30 September to 2 October of the same year. By letter dated 22 October 1998 the Commission raised certain questions about the volume of tax credits granted to the yards. The Spanish authorities commented by letter dated 13 November 1998.

(3) By letter dated 15 February 1999 the Commission informed Spain of its decision to initiate the procedure laid down in Article 93(2) of the EC Treaty.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽⁵⁾. The Commission invited interested parties to submit their comments on the matter.

(5) The comment received were forwarded by the Commission to Spain, which was given the opportunity to make observations.

I. PROCEDURE

(1) By letter D/6715 dated 6 August 1997 the Commission approved restructuring aid for the publicly owned yards in Spain pursuant to Regulation (EC) No 1013/97. The aid was approved subject to a number of conditions, including the volume of aid, compliance with which the Commission monitors.

⁽¹⁾ OJ L 380, 31.12.1990, p. 27.

⁽²⁾ OJ L 332, 30.12.1995, p. 1.

⁽³⁾ OJ L 148, 6.6.1997, p. 1.

⁽⁴⁾ OJ C 113, 24.4.1999, p. 14.

II. DETAILED DESCRIPTION OF THE AID

(6) Under its August 1997 Decision in State aid Case C 56/95 ⁽⁶⁾, the Commission State aids totalling a maximum of ESP 229,008 billion in support of the restructuring of the publicly owned yards in Spain. The package of approved aids included 'special' tax credits of up to ESP 58 billion in the period 1995 to 1999.

⁽⁵⁾ See footnote 4.

⁽⁶⁾ OJ C 354, 21.11.1997, p. 2.

- (7) The reason for the inclusion of these special tax credits was as follows. When the restructuring plan was originally drawn up, the yards were still part of the INI group (Instituto Nacional de Industria) and able to reduce by 28 % after tax losses through INI, in accordance with generally applicable Spanish national legislation, offsetting losses against profits elsewhere in the group. The financial projections under the plan assumed that such tax credits would continue to be available despite the fact that as from 1 August 1995 the yards had formed part of the loss-making State holding company Agencia Industrial del Estado (AIE). Legislation was accordingly passed (Law 13/96 of 30 December ⁽⁷⁾) allowing companies in such a position to continue, up until 31 December 1999, to receive from the State equivalent amounts to what they would have been entitled under a tax consolidation system. On the basis of the forecast losses under the restructuring plan, it was estimated that these tax credits for the publicly owned shipyards would amount to 58 billion pesetas. The Commission considered that this was a specific measure in favour of the yards and thus constituted a State aid.
- (8) On 1 September 1997, the yards were absorbed into Sociedad Estatal de Participaciones Industriales (SEPI), which like INI, is able to take advantage of general tax consolidation rules to offset losses against profits.
- (9) The aid package was approved on the condition that the total sum, as well as the amounts per category of aid were maximum amounts. Such conditions were set to ensure that the aids were used for the purposes intended and to limit the distortive effect of the aid on the shipbuilding industry. According to the information available to the Commission within the context of its monitoring of the restructuring plan, the yards received in 1998 a special tax credit of ESP 148,451 billion, notwithstanding the fact the yards also received a tax credit under general measures in 1998, corresponding to their losses in 1997, based on general Spanish tax consolidation rules, as a result of their integration SEPI.
- (10) For this reason the Commission doubted whether the special tax credits of ESP 18,451 billion paid in 1998 were in accordance with its previous aid decision and compatible with the common market.

III. COMMENTS FROM INTERESTED PARTIES

- (11) The Commission has received comments from a Member State (Denmark) and the Association of Danish Shipbuilders (Foreningen af Jernskibs- og Maskinbyggerier i Danmark).
- (12) The Association of the Danish Shipbuilders commented that the tax credits concerned constituted illegal aid that should be repaid given the serious market situation and the major loss of employment in the sector.

- (13) These views were echoed by the Danish authorities, which referred to the difficult global market situation and the problems of yard closures and workforce reductions in Denmark since 1992. They emphasised that the Spanish yards are in direct competition with Danish yards and have obtained a competitive advantage through the State aids that have been granted.

IV. COMMENTS FROM SPAIN

- (14) Spain submitted its comments by letters dated 6 April 1999 and 18 August 1999 (the latter providing supplementary observations essentially reiterating the substance of the previous letter).
- (15) The Spanish authorities considered that the decision to initiate the procedure was imprecise as to the nature of the supposed infringement that it refers to. In their view the text suggests that there have been two infringements: firstly, non-compliance with the Commission Decision authorising the aid package; and secondly, the granting of aid in the form of special tax credits, which may be incompatible with the common market.
- (16) They maintain that this conclusion is not substantiated and causes confusion when it comes to presenting observations. They consider that it is unclear what non-compliance is referred to, as this supposed infringement appears to be distinct from the problem of special tax credits. Since there is no reference to any other infringement related to the latter issue, they assume that the Commission has doubts about the compatibility the special tax credits amounting to ESP 18,451 billion. Given that this type of aid was authorised, the Commission's concern must be that the amount approved has supposedly been exceeded by this figure.
- (17) The Spanish authorities point out that the yards have received aid matching the exact amount authorised. It is therefore erroneous to suggest that more aid has been granted than was approved and that there has been any infringement of the Decision.
- (18) In their view, the Commission's doubts are based on a false premise, by totalling amounts that cannot be added together. There is a fundamental difference in nature between State aid and tax credits under general measures. In effect, aid in the form of 'tax credits' as laid down in the Commission's August 1997 ⁽⁸⁾ Decision approving the restructuring aid package is public aid since these amounts are not justified under the general tax system in Spain. However tax credits derived from the financial consolidation of the SEPI group are automatic operations derived from the applicable general legislation, which are not considered State aid under Community law.

⁽⁷⁾ BOE 315, 31 December 1996, p. 38974.

⁽⁸⁾ See footnote 6.

- (19) Had the Commission not made the addition, it could not have concluded that the aid granted was excessive. Therefore, according to the Spanish authorities, it seems that if the shipyards had not been integrated into SEPI's financial consolidation regime, the Commission would not have considered that more aid had been granted than was authorised.
- (20) Spain disputes a conclusion which in essence declares that certain amounts that may be received legally and that do not amount to aid in any way, may be considered the cause of an infringement. The incorporation of the shipyards into a legal tax system cannot be the cause of a supposed infringement when the aid has not been excessive in a global sense or in a specific sense.
- (21) According to the Spanish argumentation, one of the consequences deriving from the Commission's interpretation (if correct) is that from the moment the shipyards were integrated into SEPI, the Commission Decision authorising aid to the shipyards should have been considered substantially modified as regards aid in the form of tax credits.
- (22) The Spanish authorities further argue that, indeed, the Commission appears to recognise that the new tax credits under the SEPI tax system are general measures, which are not considered aid and which do not give rise to any legal infringement of the Decision. Although these tax credits have begun to take effect since 1998, for the 1997 fiscal year, the Commission is now saying in practice that the original Decision, authorising ESP 58 billion of special tax credits, should be considered modified as from the moment when the shipyards returned to a regime of financial consolidation.
- (23) According to the Spanish authorities, this interpretation has no foundation, particularly since nowhere in the August 1997 Decision does it state that this aid of ESP 58 billion is subject to the condition that the shipyards are not integrated into a new regime of financial consolidation in the future.
- (24) Furthermore, if the integration of the shipyards into SEPI affected the aid limit, the Commission should have alerted the Spanish authorities and taken steps to modify its decision. In the absence of such action, there is no way that a de facto change is possible, since a change of this nature, under the principles of legal security, would require a formal modification of the act fixing the aid limit. In the absence of such a modification, the new facts (i.e. the disappearance of AIE, the incorporation of the shipyards into SEPI and the application of certain taxation norms) do not constitute elements that give rise to the authorised limits being exceeded.
- (25) The Spanish authorities note that the text of the opening of the procedure states that if it had been known that the shipyards were to be incorporated into SEPI, 'the amount of aid ... would have been reduced appropriately'. However they maintain that this argument is not valid for demonstrating that the aid was excessive. Rather, it implies that there was no such excess. If instead of authorising ESP 58 billion, a smaller amount had been authorised, then there would have been an excess, but as the authorisation was for ESP 58 billion, there was no excess.
- (26) Furthermore, the Spanish authorities argue that if the Decision had been modified to take account of the shipyards' integration into SEPI, this change could only impact on the aid amounts for tax credits after the month of September 1997, when the integration took place. They maintain that the amount of aid up to this date was within the authorised limit, emphasising that Decision fixed only global amounts per heading, valid over the entire period of the restructuring.
- (27) Spain has never considered that aid should be added to measures that do not constitute aid; or that the incorporation of the shipyards into SEPI would have the immediate effect of substantially modifying the 1997 Decision, in particular, the immediate and substantial reduction of the aid of ESP 58 billion. The 1997 Decision reflected a global and combined package of assistance to publicly owned shipyards, divided into separate categories but in any case being accounted for jointly.
- (28) The Spanish authorities recalled that up until 1997, they had estimated that the amount of this aid in the form of special tax credits would reach ESP 48 billion. However, in the final negotiations prior to the Commission's Decision approving the aid, various figures in the restructuring plan were revised in order to take into account the delays in its approval and implementation. Additional aid was agreed on top of that initially proposed, including, as part of the overall package, an increased figure for special tax credits of ESP 58 billion. The increase was justified by the delays in approval and implementation of the restructuring plan, which resulted in greater losses than foreseen (and a shorter time available in which to disburse the aid). Therefore, had it been known that the shipyards were to be integrated into SEPI and that this would mean a loss or reduction in aids, their inclusion in another chapter would have been negotiated.
- (29) Finally, the Spanish authorities that when complex cases such as this are being negotiated, the overall aid under negotiation is the main focus of discussion.
- (30) Having made these observations, the Spanish authorities presented data seeking to demonstrate that the special tax credits granted were within the limits.

- (31) They explained that this aid was directly related to the years 1995, 1996 and 1997, mainly because significant losses were forecast for those three years. It was calculated as 28 % of net results before tax, which amounted to ESP 57,963 billion, i.e. the ESP 58 billion finally approved as aid. The following table shows the basis for this calculation.

(ESP million)

	1995	1996	1997	1998	TOTAL ⁽¹⁾
Net result before tax	(90 463)	(90 458)	(27 422)	834	
Taxes (28%)		50 299	7 664	(248)	57 963
Net result after tax	(90 463)	(40 159)	(19 758)	586	

⁽¹⁾ The 1998 tax is not taken into account as positive results were expected.

- (32) According to the Spanish authorities, the forecast was carried out at the beginning of 1997, based on 1995 results and estimated results for the following period. The deductions were calculated as 28 % of forecast losses. No request was made for an estimation of possible changes in assessment bases and the tax credit that could result.
- (33) With regard to this aspect, the Spanish authorities consider that if the aid was calculated as 28 % of losses before tax this is how it should be applied. It could not be applied any other way since the shipyards did not belong to any other financial consolidation group; and therefore neither the AIE nor any other public body could provide fiscal compensation for the taxable assessment bases. For Spain, the fact that the shipyards were integrated into SEPI has no practical relevance, since during the period when the shipyards were under AIE control, their real losses justified granting consistent aid amounting to 28 % of net results before tax, up to the approved limit. It would be wrong for the Commission to conclude that the yards were only entitled to a smaller amount of aid when the actual losses were much greater than originally foreseen.
- (34) According to the figures the Spanish authorities presented in their observations, the losses amounted to ESP 90,463 billion in 1995, ESP 97,056 billion in 1996 and ESP 19,883 billion up to September 1997, the month in which the shipyards were incorporated into SEPI. The total losses for this period therefore amounted to ESP 207,402 billion and the 28 % aid generated was 58,073 billion. However the actual amount of aid paid was in fact slightly less than would have been due by applying the deduction of 28 % for the period in question. According to the Spanish authorities, payment of the aid was effected in two tranches: ESP 39,549 billion in March 1997 and ESP 18,451 billion in July 1998. The timing of these payments was late because of budgetary constraints, which explains the apparent inconsistency between entitlements and payments, particularly as regards the 1998 payment which does not correspond to the 1997 results. If the basis for calculating the entitlements had been general tax consolidation rules, the yards would have been able to receive interest due to the late payments. However no such interest payments were made, confirming that the method of calculation used was 28 % of net losses before tax.
- (35) In conclusion, the Spanish authorities therefore consider that the aid figure under the heading of tax credits is within the amount laid down in the Commission's decision, with the overall amount of aid authorised also being respected.
- (36) As regards observations on the comments from third parties under the procedure, Spain submitted its views by letter dated 18 June 1999. It shared the concerns expressed about the overall market situation, and considered that the problems facing Danish yards were similar to those encountered by Spanish yards against unfair competition practices from the Far East. It denied any suggestion that its yards had received any illegal aids.

V. ASSESSMENT

- (37) The Commission notes that the aid it approved as being in compliance with the provisions of the Regulation (EC) No 1013/97 was considered compatible with the common market as it complied with former Article 92(3)(e) of the EC Treaty. However, this applies only provided that the conditions laid down in the Commission Decision approving the aid in accordance with the Regulation are respected. Should the conditions for approving the aid not be complied with, the aid falls under the general prohibition of Article 87(1) of the EC Treaty and may therefore be considered incompatible with the common market, unless it can be declared compatible for other reasons.
- (38) Regulation (EC) No 1013/97 contained a derogation from the normal rules on aid to shipbuilding (applicable to other Community yards) for the publicly owned shipyards in Spain in order to create the possibility for these yards to undergo further comprehensive restructuring and to become competitive. According to Article 1(4) of the Regulation, a package of aids, which would otherwise have been incompatible with the shipbuilding aid directive, may be considered compatible with the common market subject to certain conditions. One of

the conditions laid down in this provision is that the overall aid package is a maximum. Moreover for each category of aid approved, including the special tax credits, the amount approved is expressly stated to be a maximum by the use of the words 'up to'. This is reflected in the Commission's August 1997 Decision, which makes it clear that the basis for approving the otherwise incompatible aid, including the special tax credits is Article 1(4) of Regulation (EC) No 1013/97.

(39) Against this background, the Commission finds it very difficult to understand why the Spanish authorities should claim that the reasons for initiating the Article 88(2) procedure are unclear. The facts of the case, which are not in any way disputed by the Spanish authorities, are that in 1998 the yards received aid totalling ESP 18,451 billion as special tax credits, notwithstanding the fact that the yards also benefited from tax credits under general measures. In opening the procedure, the Commission was therefore concerned about the compatibility of the 1998 payment (in whole or in part) on the grounds that this resulted in the yards receiving the full amount of approved special tax credits when this was supposed to be a maximum. If the yards were also receiving tax credits under general measures (the previous absence of which was the sole reason for the special tax credits in the first place), the justification for paying the maximum amount of aid seemed questionable and a possible infringement of the Commission's Decision. The Commission's doubts in this respect have been fully confirmed by the procedure, as will be explained below.

(40) The three main arguments presented by Spain can be summarised as follows:

- the various aid measures approved (including the special tax credits) were negotiated as a package and should be treated as such. In the case of both the overall package and the specific provision for tax credits the total amounts finally approved (which were increased from those originally envisaged due to delays in approval of the plan) have not been exceeded, despite the fact that actual losses have been greater than foreseen,
- the Decision did not prohibit the yards from getting tax credits under general measures in addition to special tax credits, nor was it subsequently modified to that effect following the yards' integration into SEPI. It is wrong to add special and general tax

credits together. These are different concepts and general measure tax credits based on reintegration in SEPI do not constitute State aids,

- the amount of ESP 58 billion special tax credits approved was based on a forecast of net accounting results before tax in the period 1995 to 1998. On this basis the approved amount has not been exceeded.

(41) So far as the first argument is concerned, it is perfectly true that there were delays in approving the plan. This is not however relevant for the Commission's assessment since additional aids were provided for to take account of the delay (including an increase in the maximum for tax credits from ESP 48 billion to ESP 58 billion). More importantly, the Commission notes that although the total amount of aid was a package, a maximum for each type of aid was clearly specified to ensure that the aid was used for the purposes intended and was not simply used as an operating aid to enable the yards to continue in business as before without proper restructuring. This is fully in line with Commission policy in such cases. It has also been consistent Commission practice not to allow transferability of aids from one category to another. Moreover this would in any case require a qualified majority of Member States in the Council to agree to an amendment to Regulation (EC) No 1013/97 providing the legal basis for the aids to be approved in the first place.

(42) The Commission also agrees that the maximum overall amount of aid approved, including the maximum sum allocated for tax credits, appears not to have been exceeded. However all the figures were maximal; they were not automatic entitlements. It has been consistent Commission policy that aid must not be granted if the need for it is not clearly established. It cannot be used in cases where other means would be sufficient to achieve the same end without aid. Moreover aid may only be considered compatible with the common market if it is kept to the minimum necessary to achieve its objectives. It cannot simply be used to improve the situation of the recipient undertaking. Such an approach, which was confirmed by the Court of Justice judgement of 17 September 1980 in Case 730/79, *Philip Morris BV Commission* ⁽⁹⁾, is even more imperative in cases such as this where the aid is being granted by way of derogation from the strict rules that normally apply to the ship-building sector.

(43) Linked to their argument that the aids approved should be seen as a package, the Spanish authorities argue that had it been known prior to the 1997 Commission Decision that integration into SEPI would follow (and the volume of approved special tax credits reduced accordingly) they would simply have proposed additional aid to make up the difference. It is difficult for the Commission to see how such an approach could have been reconciled with the need to keep the aid to the strict minimum necessary (which already included loss

⁽⁹⁾ Rec. 1980, p. 2671, paragraph 17.

compensation as well as tax credits to reduce losses sufficient to enable a return to viability at the end of the restructuring). It is unclear what purpose the 'new' aid could justifiably have served and it would probably have impacted on the necessary counterpart measures imposed to minimise the possible distortion to competition.

(44) As regards Spain's second argument, the Commission acknowledges that tax credits under nationally applicable general measures would not constitute State aid provided that they apply without distinction to all firms and to the production of all goods. The Commission is not in any way seeking to challenge Spain's right to apply such general measures to the publicly owned shipyards following their integration into a group (SEPI) able to benefit from Spanish tax consolidation rules. Notwithstanding this, however, the granting of such credits, in addition to the special tax credits approved under the previous decision, has resulted in the yards receiving greater public financial support than was foreseen when the aid was approved. The justification for approving the special tax credits was that general tax credits would not be available to the yards. Examining the availability of general tax credits granted is thus highly relevant for determining whether all the special tax credits can be justified. It is not a question of adding together measures that should not be added together, but an appropriate basis for assessing whether any infringement of the Commission's Decision in respect of special tax credits is involved.

(45) In that context, the Commission would underline, as noted above, that the amount of tax credits approved by the Council and the Commission as aid was expressly stated to be a maximum, not an automatic entitlement. As was made clear in the Commission's proposals to the Council (points 3.9, 5.21 and 5.22 of Annex 3 to COM(97) 132 final), it was assumed that no tax credits under general measures would be possible. It was clearly not the intention to allow the yards to obtain special tax credits as well as credits under general measures. Had it been known that such a possibility could arise, the volume of aid proved at the time under this head would have been reduced accordingly.

(46) Spain criticises the Commission for not drawing attention to the implications of the integration of the yards into SEPI. However the onus is on the Member State to whom a Decision is addressed to ensure that it is fully respected. The Commission did not consider it necessary or appropriate to amend the previous Decision, since the

terms and conditions of the original Decision were perfectly clear. Moreover since the full amount of special tax credits had not been paid at the time of the yards' absorption into SEPI, there were no grounds for the Commission not to assume that following this event, and the resulting provision of tax credits under general tax consolidation rules, the maximum approved amount of special tax credits would not be needed. As soon as the Commission became aware of the possible breach of the Decision (after receipt of the September 1998 monitoring report confirming the July 1998 aid payment and of the final 1997 accounts confirming the tax credits under general rules), it began the preliminary investigation which led to the opening of the Article 88(2) procedure.

(47) As regards Spain's third main argument, the method of calculation for estimating the amount of aid needed in the form of special tax credits, the Commission does not dispute that the estimates submitted at the time by the Spanish authorities were based on net results before tax. The Commission accepted these estimates as such, precisely because the amount approved was a maximum. In fact, as explained below, under Spanish tax law (including the specific law passed to allow the yards to get special tax credits) the basis for determining tax credit entitlements is not the before tax accounting results, but the amount of the tax base. However the fact that the amount was stated to be a maximum meant that it was not necessary at the time to scrutinise in detail the method used to calculate the tax credits. What matters for the purposes of controlling the aids, (and ultimately the effect on competition) is the amount of actual losses which could be used in practice for tax credit purposes.

(48) In that context it should be noted that Law 13/96, enabling the yards to benefit from special tax credits, states that companies that before 31 December 1994 were classified within a group capable of making a consolidated tax declaration and therefore with a right to compensation for losses from profits generated by other companies in the same group, and have lost the right to such possibilities, shall receive from the State the same amount of company tax that would have been due to them had they remained in a tax consolidation system, in accordance with current legislation. Article 27 of Law 43/95 of 27 December on company tax law⁽¹⁰⁾ makes it clear that the amount to be paid shall be calculated on the taxable base, which Article 10 of the same law defines as the accounting result, corrected by permanent differences (i.e. non-eligible items) and temporary differences (for example restructuring provisions not allowed for when costs generated but only when paid subsequently). It is evident from the audited accounts for the separate yards that the special tax credits corresponding to 1995 and 1996 losses were determined on this basis and not on the net results before tax. It is also clear from the 1997 accounts that the tax credit granted under general tax consolidation rules was calculated on exactly the same basis.

⁽¹⁰⁾ BOE 310 of 28 December 1995, p. 37072.

- (49) The Spanish calculation of the amount of aid justified does not therefore correspond to the actual taxable results. Nor does it explain why any payment in 1998 on the basis of Law 13/96 was justified given the SEPI-generated general tax credit in 1998 which, in accordance with Spanish fiscal law does not correspond to the results in the last four months of 1997. (i.e. the period as from the yard's integration into SEPI), but to the full year. The Spanish claim that the aid was justified by the worse than expected results is also debatable. Even on the basis of their own figures actual net results before tax in 1995 and 1996 were not significantly different from those foreseen under the plan. Losses in 1997 (and 1998) were indeed higher, but as indicated above (and confirmed below) these were fully covered by general tax credits.
- (50) The Commission has made an analysis on the basis of the taxable base according to the published audited accounts, and calculated what tax credits the yards were entitled to receive in the period 1995 to 1997 on the basis of each yard being taxed separately. On this basis it is estimated that the entitlement was as follows (payments would normally be made in the year following entitlement):

(ESP million)

	1995	1996	1997
Result before tax (per accounts)	(99 100)	(103 034)	(41 398)
Add permanent differences	9 239	6 663	6 048
Add temporary differences	42 376	(17 416)	(7 728)
Taxable result	(47 485)	(113 787)	(43 078)
Credit at 28 %	13 296	31 860	12 062

The total entitlement for the three years is thus ESP 52,218 billion, of which ESP 45,156 billion corresponds to 1995 and 1996 combined. However account needs to be taken of certain pre-1995 temporary differences amounting to ESP 5,607 billion, thereby reducing the relevant figure for 1995 to 1996 ESP 39,549 billion.

- (51) The total of special and general tax credits actually paid amounted to ESP 70,062 billion, comprising ESP 58 billion in special tax credits plus the above 1997 tax credit paid in 1998 under general measures. As acknowledged above, the latter general tax credit, which, in accordance with Spanish fiscal law does not correspond to the results in the last four months of 1997 (i.e. the period as from the yards' integration into SEPI), but to the full year, does not constitute aid. The only question that therefore needs to be examined is whether the tax credits due for 1995 and 1996 were covered by aid in the form of special tax credits and if so to what extent the ESP 58 billion paid up to 1998 can be justified on this basis. As noted above, the payments actually received were ESP 39,549 billion in March 1997 and ESP 18,451 billion in July 1998. The 1997 payment corresponds exactly to the 1995/1996 entitlement. There is no apparent justification under the applicable tax laws for the 1998 payment since the 1997 entitlement was covered in full by a tax credit under general measures.
- (52) There remains the possibility that the yards might have been owed interest due to late payments of the 1995 and 1996 tax credit entitlements. This has been alluded to by the Spanish authorities in presenting their figures, but in a negative sense, stating that no such interest payments were made because the basis of determining the credits due was not normal tax consolidation rules (which provide for such payments). As noted above, the Commission does not accept the Spanish figures. Nor does it accept that the credits were not calculated in accordance with general tax consolidation rules. On the basis of the information available the Commission is unable to judge whether the yards were legally entitled to such interest payments in the event that tax credits were paid late. However even if that were so, and even if it were accepted that the 1995/1996 entitlement was paid late (which may not be the case since data provided by the Spanish authorities prior to the Commission Decision, supported by data submitted by the yards within the framework of the monitoring, appear to suggest that there may have in fact been an anticipated payment in 1996), interest due, if any, would not be such as to explain the payment of ESP 18,451 billion in 1998.

- (53) It must therefore be concluded that the yards received their full entitlement to tax credits on the basis of the special tax credits paid in 1997 (corresponding to the results in 1995/1996) and the general tax credit paid in 1998 (corresponding to the 1997 results), despite the greater than foreseen losses. The 1998 payment of special tax credits must be considered a breach of the Commission's Decision since it cannot be justified as a special tax credit. The ESP 18,451 billion seems to have served an altogether different purpose, being used effectively as an operating aid to enable the yards further to reduce their losses. Under Article 4 of Council directive 90/684/EEC, which applied during the period in question, all operating aid was subject to a common maximum aid ceiling. As far as the Commission is aware the public yards have always received contract-related aid up to this maximum ceiling, leaving no headroom for any additional aid.
- (54) Therefore, the Commission concludes that the payment of ESP 18,451 billion in 1998 was no longer compatible with Article 87(3)(e) of the EC-Treaty. As no other basis of compatibility exists or has indeed been invoked by Spain, this aid is incompatible with the common market pursuant to Article 87(1) of the EC-Treaty.
- (55) The Commission notes that aid which is incompatible with the common market shall be recovered. The aim of recovery of aid is to seek to re-create the status quo *ex ante* by annulling the negative effect on competition caused by the illegal aid.
- (56) The Commission stresses that the sums to be recovered shall bear interest from the date on which they were made available to the recipient until their actual recovery. The recovery shall be effected in accordance with the procedures of national law and the interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aids.

VI. CONCLUSIONS

- (57) The Commission concludes that the publicly owned yards in Spain received aid in the form of special tax credits of ESP 18,451 billion that cannot legally be justified. The overall limit on such aid payment has not been exceeded, but was a maximum. Within that maximum the aid was to correspond only to taxable losses and was on the assumption that the yards were unable to benefit from tax credits under Spain's general tax consolidation system. This was as an essential condition for approval of the aid and thereby for the compatibility of the aid with the common market pursuant to Article 87(3)(e) of the EC Treaty.
- (58) Since it is the opinion of the Commission that ESP 18,451 billion is no longer compatible with Article 87(3)(e) of the EC Treaty and thereby incompatible with the common market pursuant to Article 87(1) of the EC Treaty, this sum shall be recovered. The sum to be recovered shall bear interest from the date on which the aid was made available to the recipient until actual recovery,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Spain in favour of its publicly owned shipyards amount to EUR 110 892 743,38 (ESP 18,451 billion), is incompatible with the common market.

Article 2

1. Spain shall take the necessary measures to recover from the recipient the aid referred to in article 1.
2. Recovery shall be effected in accordance with the procedures of national law. The aid to be recovered shall bear interest from the date on which it was made available to the recipient until recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aids.

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, 26 October 1999.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 25 November 1999
on the measure which Germany is planning to implement for the promotion of agricultural
products of Mecklenburg-Vorpommern

(notified under document number C(1999) 4227)

(Only the German version is authentic)

(2000/132/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 called on interested parties to submit their comments pursuant to those provision(s) ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) By letter dated 24 December 1997, Germany notified the Commission of a measure granting aid for the promotion of agricultural products. It provided the Commission with further information by letters dated 20 May 1998, 17 September 1998 and 17 February 1999.
- (2) As the aid concerned both aids for fishery products and for agricultural products the dossier was split. State aid N 22/A/98 (now C 23/99) concerned the aid related to agricultural products, State aid N 22/B/98 concerned the aid related to fishery products. State aid N 22/B/98 was approved by the Commission by letter SG (98) D/4799 of 15 June 1998. The present Decision only concerns State aid N 22/A/98 (now C 23/99).
- (3) By letter dated 3 May 1999, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the measure.
- (4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (5) The German authorities submitted their comments by letter of 8 September 1999. The Commission received no comments from interested parties.

II. DESCRIPTION

- (6) The measure is meant to promote the development towards a market driven production process in the agricultural sector in Mecklenburg-Vorpommern, Germany. Especially small and medium sized enterprises encounter difficulties in adjusting their production process and in organising their marketing activities. Therefore, the State

of Mecklenburg-Vorpommern wants to lower the threshold to start marketing activities and wants to promote the development of marketing skills among the agricultural entrepreneurs in the area.

- (7) The measure subsidises promotional activities and measures to improve the marketing possibilities in general. The measure concerns in particular subsidies for:
 - the organisation of the restaurant competition 'Essen und Trinken in Mecklenburg-Vorpommern'
 - the development of promotional concepts,
 - participation in fairs and trade markets,
 - the development of quality labels and trademarks,
 - the participation in seminars and workshops concerning sales promotion,
 - market research,
 - promotional activities and sales supporting activities (advertising),
 - the development and maintenance of a regional label,
 - the use of brochures and leaflets.
- (8) The measure grants support to producer associations, undertakings that are active in the processing and marketing of agricultural products, organisations for the support of sales promotion, and agricultural associations. According to the original notification the beneficiaries had to have a legal seat in Mecklenburg-Vorpommern in order to be eligible for support. The aid is given in the form of direct grants. Maximally 50 % of the eligible costs may be reimbursed (60 % if the beneficiary is a small or medium sized undertaking). However, the maximum amount that may be granted as subsidy is DEM 150 000. The measure will be in force in the period 1999 to 2002.
- (9) The aid consists of several measures that can be divided into 'soft aids' and promotional aids. In the decision initiating the procedure under Article 88(2) of the Treaty the Commission stated that she had no objections to the measure in as far as it concerned soft aids as such. This concerned the organisation of the restaurant competition, the participation in fairs and trade markets, the participation in seminars and workshops concerning sales promotion, the development of promotional concepts, the development of quality labels and trademarks, and market research.

⁽¹⁾ OJ C 213, 24.7.1999, p. 19.

⁽²⁾ See footnote 1.

(10) The promotional aids have to comply with the Commission communication concerning State involvement in the promotion of agricultural and fisheries products ⁽¹⁾ and, if the promotion is in the form of advertising, the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products ⁽²⁾.

(11) One of the main conditions for promotional aids is compliance with Article 28 of the Treaty. According to point 2.3.1 of the Annex to the abovementioned Commission communication of 1986 there is a danger of an infringement of Article 28 if '... undue emphasis is placed on the national origin of the product in promotional campaigns. Identification of the producing country in word or symbol may be made providing that a reasonable balance between references, on the one hand, its national origin is kept. The references should be subsidiary to the main message put over to the consumers by the campaign and not constitute the principal reason why consumers are being advised to buy the product'.

(12) In earlier decisions ⁽³⁾ the Commission concluded that the measure did comply with Article 28 of the Treaty. However, the Commission re-examined the material the German authorities sent as an example. The example consists of a picture of agricultural products, a few text lines and two signs 'Mecklenburg-Vorpommern'. The text lines say 'Hier schmeckt's' (Here it tastes well), 'Bei uns kommt alles frisch auf den Tisch' (Everything is fresh on our table), and a text saying that a good soil and a temperate climate are the best conditions for a rich harvest of fruits and vegetables and potatoes. It seemed there was hardly any other message than the fact that the products were from Mecklenburg-Vorpommern. Therefore, the Commission had doubts as to the existence of a reasonable balance between references to the qualities and varieties.

(13) Furthermore, the measure would grant aid to undertakings that had a legal seat in Mecklenburg-Vorpommern only. According to Article 43 of the Treaty restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State are prohibited. This prohibition applies as well to restrictions on the freedom of establishing agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

As the Court has held on several occasions ⁽⁴⁾, the said prohibition is concerned not solely with the specific rules on the pursuit of an occupation but also with the

rules relating to the various general facilities which are of assistance in the pursuit of that occupation. Therefore, the Commission had doubts about the compatibility of the measure with Article 43 and Article 48 of the Treaty.

III. COMMENTS FROM GERMANY

(14) In their letter of 8 September 1999, the German authorities stated that the promotion material that was submitted with the notification will not be supported under the measure. New promotion concepts will be designed to make this part of the measure operational. The rules and conditions for such promotion activities as mentioned in the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products will be respected. A report giving information about the way the measure is made operational will be yearly submitted to the Commission.

(15) Furthermore, the German authorities indicated that they have crossed out the condition of having a legal seat in Mecklenburg-Vorpommern in order to become eligible for support under the measure.

(16) Finally, the German authorities mentioned that the budget for the total measure (State aids N 22/A/98 and N 22/B/98) has been increased to DEM 750 000 per year. Of this budget DEM 230 000 per year will be dedicated to measures concerning fisheries as such a budget was approved for fisheries by Commission Decision concerning N 22/B/98, letter SG (98) D/4799.

IV. ASSESSMENT OF THE MEASURE

(17) Under Article 87(1) of the Treaty any aid granted by a Member State or through State resources in any form whatsoever 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.

(18) The measures grant aid for the promotion of agricultural products out of State resources to a restricted group of beneficiaries that are active in the marketing and processing of products that are traded within the Community. Therefore, the measure manifestly concerns State aid in the sense of Article 87(1) of the Treaty. The German authorities have not contested this.

⁽¹⁾ OJ C 272 of 28.10.1986.

⁽²⁾ OJ C 302 of 12.11.1987.

⁽³⁾ See NN 27/97, Promotion Directive and N 22/B/98, promotion of fishery products of Mecklenburg-Vorpommern.

⁽⁴⁾ See Case 305/87, *Commission Versus Hellenic Republic*, ECR 1989, p. 1461.

Article 87(3)(c) of the Treaty

- (19) Aid to facilitate the development of certain economic activities or of certain economic areas may be deemed by the Commission to be compatible with the common market under Article 87(3)(c) of the Treaty if the aid does not adversely affect trading conditions to an extent contrary to the common interest.

Soft aid

- (20) As stated in the description of the measure the Commission had not objections against the measures that could be considered as soft aids as such. The Commission could not approve this part of the measure because of the objections against the eligibility criteria, namely the requirement to have a legal seat in Mecklenburg-Vorpommern. Since the German authorities have now withdrawn this requirement, the Commission has no objection to the granting of this aid since it meets the conditions of the derogation in Article 87(3)(c).

Promotion and advertising aids

- (21) The development and maintenance of a regional label has to be evaluated as a promotional activity for which the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and, as the promotion is in the form of advertising as well, the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products apply.
- (22) The abovementioned communication and framework are equally applicable when examining the promotional activities, the sales supporting activities, and the use of brochures and leaflets.
- (23) Both the communication and the framework stress the fact that aid for promotion cannot be considered compatible with the common market if the promotion material infringes Article 28 of the Treaty. Furthermore, the framework prohibits aid for advertising related to particular firms and sets a condition that the advertising should concern at least one of the following categories:
- surplus agricultural products,
 - new products or replacement products not yet in surplus,
 - the development of certain regions,
 - the development of small and medium-sized undertakings,
 - or the advertising of high-quality products and health foods.

Finally, the aid intensity for aids granted under the abovementioned framework should not exceed 50 % of the eligible costs.

- (24) The Commission initiated the procedure provided for under Article 88(2) of the Treaty because she had doubts about the compatibility of submitted promotional material with Article 28 of the Treaty. However, in their letter of 8 September 1999 the German authorities stated that the promotion material that was submitted with the notification would not be supported under the measure. New promotion concepts will be designed to make this part of the measure operational. The rules and conditions for such promotion activities as mentioned in the Commission communication concerning State involvement in the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products will be respected. A report giving information about the way the measure is made operational will be yearly submitted to the Commission. Therefore, the Commission now considers the measure to be compliant with Article 28 of the Treaty.
- (25) The German authorities have guaranteed that no aid will be given to make promotion for a particular firm.
- (26) The abovementioned framework states that the advertising which is subsidised should concern at least one of the following categories:
- surplus agricultural products,
 - new products or replacement products not yet in surplus,
 - the development of certain regions,
 - the development of small and medium-sized undertakings,
 - the advertising of high-quality products and health foods.

The measure is aimed at the development of agriculture in Mecklenburg-Vorpommern. Most of its beneficiaries will be small or medium-sized undertakings. The measure is meant to promote the sales of agricultural products of which a considerable number are in surplus. Therefore, the Commission considers this condition to be fulfilled.

- (27) The framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products state that the beneficiaries of the aid for advertising should at least contribute 50 % of the costs. However, point 4.3 of the framework allows the possibility to raise the abovementioned maximum rate of direct aid (of 50 %), particularly in the case of products from small and medium-sized undertakings.
- (28) The notified draft grants a maximum aid of 50 % but makes an exception for aids to small and medium-sized undertakings (SMEs). SMEs may be granted aids of 60 % of the eligible costs.

- (29) The basic aid intensity complies with the abovementioned framework. In similar cases the Commission has approved advertising aids for SMEs with an aid intensity of 60 % or even 75 % (N 703/95, N 624/95 and NN 27/97). Therefore, the Commission considers this condition to be fulfilled.

Compliance with Article 43 and 48

- (30) As mentioned above the Commission initiated the procedure provided for by Article 88(2) of the EC Treaty because it seemed the requirement to have a legal seat in Mecklenburg-Vorpommern to become eligible for support would be an infringement of Article 43 and Article 48 of the Treaty.
- (31) In their letter of 8 September 1999, the German authorities indicated that they have crossed out the condition of having a legal seat in Mecklenburg-Vorpommern in order to become eligible for support under the measure. Therefore the Commission considers the measure to be compliant with Articles 43 and 48 of the Treaty.

Increased budget

- (32) Finally, in their letter of 8 September 1999, the German authorities indicated that they planned to increase the budget for the measure from DEM 230 000 to DEM 750 000 per year.
- (33) The increase of the budget however, does not alter the Commission evaluation of the measure as the aid intensities remain the same.

V. CONCLUSION

- (34) Following the amendments of the measure by the German authorities the Commission considers the measure to be compliant with the Commission practice regarding soft aids or to be compliant with the Commission communication concerning State involvement in

the promotion of agricultural and fisheries products and the framework for national aids for advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products.

- (35) Therefore, the Commission considers the notified draft to be a measure that facilitates the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest as meant in Article 87(3)(c),

HAS ADOPTED THIS DECISION:

Article 1

The measure which Germany is planning to implement concerning the promotion of agricultural, food industry, forestry, and fisheries products — the 'Richtlinien für die Gewährung von Zuwendungen des Landes zur Förderung des Absatzes und zur Verbesserung der Marktposition land-, ernährungs-, forst-, und fischwirtschaftliche Erzeugnisse' originally notified by letter of 24 December 1997 is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Implementation of the measure is accordingly authorised.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 25 November 1999.

For the Commission

Franz FISCHLER

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 238/2000 of 28 January 2000 amending Regulation (EC) No 1222/94 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds

(Official Journal of the European Communities L 24 of 29 January 2000)

On page 52, in the title of column 3 of the table 'Record sheet':

for: 'Amount granted',

read: 'Amount requested'.

Corrigendum to Council Directive 1999/38/EC of 29 April 1999 amending for the second time Directive 90/394/EEC on the protection of workers from the risks related to exposure to carcinogens at work and extending it to mutagens

(Official Journal of the European Communities L 138 of 1 June 1999)

On page 68, Article 1(3):

for: 'In Article 1(1), Article 3(1), (2), first and second indents, [...] Article 14(3), Article 16(1) and Article 17(2), the word "carcinogens" shall be replaced by "carcinogens or mutagens";'

read: 'In Article 1(1), Article 3(1), (2), first and second subparagraphs, [...] Article 14(3) and (8), Article 16(1) Article 17(2) and Annex II, point 1, the word "carcinogens" shall be replaced by "carcinogens or mutagens";'.
