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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1191/2002
of 3 July 2002
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 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 3 July 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	34,2
	070	52,8
	999	43,5
0707 00 05	052	100,2
	220	143,3
	999	121,8
0709 90 70	052	78,8
	999	78,8
0805 50 10	388	64,5
	528	56,3
	999	60,4
0808 10 20, 0808 10 50, 0808 10 90	388	84,8
	400	95,8
	404	75,2
	508	83,5
	512	89,3
	524	72,9
	528	70,6
	720	144,6
	804	99,2
	999	90,7
	388	92,6
	512	82,0
0808 20 50	528	88,7
	800	65,2
	804	50,1
	999	75,7
	052	180,3
0809 10 00	064	164,1
	999	172,2
	052	348,8
0809 20 95	060	181,2
	068	140,2
	400	253,2
	999	230,9
	624	234,4
0809 40 05	999	234,4

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1192/2002
of 2 July 2002
establishing unit values for the determination of the customs value of certain perishable goods

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 444/2002 ⁽⁴⁾, and in particular Article 173(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 July 2002.

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

Done at Brussels, 2 July 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 68, 12.3.2002, p. 11.

ANNEX

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.10	New potatoes 0701 90 50	—	—	—	—
1.30	Onions (other than seed) 0703 10 19	37,95	281,94	345,40	24,66
1.40	Garlic 0703 20 00	216,52	1 608,60	1 970,70	140,70
1.50	Leeks ex 0703 90 00	80,00	594,34	728,12	51,98
1.60	Cauliflowers 0704 10 00	55,28	410,69	503,13	35,92
1.80	White cabbages and red cabbages 0704 90 10	41,13	305,56	374,34	26,73
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	61,43	456,38	559,11	39,92
1.100	Chinese cabbage ex 0704 90 90	42,28	314,11	384,81	27,47
1.110	Cabbage lettuce (head lettuce) 0705 11 00	90,36	671,30	822,41	58,72
1.130	Carrots ex 0706 10 00	226,68	1 684,05	2 063,13	147,30
1.140	Radishes ex 0706 90 90	132,46	984,07	1 205,58	86,07
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	390,42	2 900,48	3 553,38	253,69
1.170	Beans:				
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	138,19	1 026,64	1 257,74	89,80
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus</i> Savi) ex 0708 20 00	54,23	402,89	493,57	35,24
1.180	Broad beans ex 0708 90 00	157,74	1 171,88	1 435,67	102,50
1.190	Globe artichokes 0709 10 00	—	—	—	—
1.200	Asparagus:				
1.200.1	— green ex 0709 20 00	492,63	3 659,81	4 483,63	320,11
1.200.2	— other ex 0709 20 00	282,23	2 096,72	2 568,69	183,39
1.210	Aubergines (eggplants) 0709 30 00	84,94	631,01	773,06	55,19

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	100,48	746,49	914,52	65,29
1.230	Chantarelles 0709 51 30	478,47	3 554,65	4 354,79	310,91
1.240	Sweet peppers 0709 60 10	157,62	1 170,97	1 434,56	102,42
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	81,49	605,39	741,67	52,95
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	176,48	1 311,11	1 606,23	114,68
2.30	Pineapples, fresh ex 0804 30 00	61,51	456,98	559,85	39,97
2.40	Avocados, fresh ex 0804 40 00	135,97	1 010,16	1 237,54	88,35
2.50	Guavas and mangoes, fresh ex 0804 50 00	138,35	1 027,83	1 259,19	89,90
2.60	Sweet oranges, fresh:				
2.60.1	— Sanguines and semi-sanguines 0805 10 10	71,70	532,67	652,58	46,59
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins 0805 10 30	48,00	356,63	436,90	31,19
2.60.3	— Others 0805 10 50	71,70	532,67	652,58	46,59
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkings and similar citrus hybrids, fresh:				
2.70.1	— Clementines ex 0805 20 10	99,68	740,54	907,23	64,77
2.70.2	— Monreales and satsumas ex 0805 20 30	112,36	834,72	1 022,62	73,01
2.70.3	— Mandarines and wilkings ex 0805 20 50	70,37	522,79	640,47	45,73
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	99,35	738,09	904,23	64,56
2.85	Limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh ex 0805 30 90 ex 0805 90 00	109,87	816,24	999,98	71,39
2.90	Grapefruit, fresh:				
2.90.1	— white ex 0805 40 00	52,28	388,42	475,85	33,97
2.90.2	— pink ex 0805 40 00	59,97	445,54	545,83	38,97

Code	Description	Amount of unit values per 100 kg			
	Species, varieties, CN code	EUR	DKK	SEK	GBP
2.100	Table grapes 0806 10 10	178,59	1 326,79	1 625,45	116,05
2.110	Water melons 0807 11 00	46,06	342,19	419,22	29,93
2.120	Melons (other than water melons):				
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	42,33	314,48	385,27	27,51
2.120.2	— Other ex 0807 19 00	73,98	549,61	673,33	48,07
2.140	Pears				
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>), Pears — Ya (<i>Pyrus bretschneideri</i>) ex 0808 20 50	—	—	—	—
2.140.2	Other ex 0808 20 50	—	—	—	—
2.150	Apricots ex 0809 10 00	—	—	—	—
2.160	Cherries 0809 20 95 0809 20 05	—	—	—	—
2.170	Peaches 0809 30 90	—	—	—	—
2.180	Nectarines ex 0809 30 10	—	—	—	—
2.190	Plums 0809 40 05	—	—	—	—
2.200	Strawberries 0810 10 00	131,51	977,01	1 196,94	85,46
2.205	Raspberries 0810 20 10	352,05	2 615,45	3 204,18	228,76
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	614,33	4 563,98	5 591,32	399,19
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	128,78	956,73	1 172,08	83,68
2.230	Pomegranates ex 0810 90 85	334,16	2 482,54	3 041,36	217,14
2.240	Khakis (including sharon fruit) ex 0810 90 85	374,99	2 785,84	3 412,93	243,67
2.250	Lychees ex 0810 90 30	293,30	2 178,96	2 669,44	190,58

COMMISSION REGULATION (EC) No 1193/2002**of 3 July 2002****fixing the quantities which may be transferred to another group of varieties under the guarantee threshold for the 2002 harvest in the raw tobacco sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco ⁽¹⁾, as last amended by Regulation (EC) No 546/2002 ⁽²⁾, and in particular Article 9(4) thereof,

Whereas:

- (1) Article 9 of Regulation (EEC) No 2075/92 introduces production quotas for the different groups of varieties of tobacco. The individual quotas are divided between producers on the basis of the guarantee thresholds for the 2002 harvest fixed in Annex II to Regulation (EC) No 546/2002.
- (2) This Regulation should apply as soon as possible, well before the deadline for the conclusion of cultivation contracts laid down in Article 55(2) of Commission Regulation (EC) No 2848/98 of 22 December 1998 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 as regards the premium

scheme, production quotas and the specific aid to be granted to producer groups in the raw tobacco sector ⁽³⁾, as last amended by Regulation (EC) No 1005/2002 ⁽⁴⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 2002 harvest, Member States shall be authorised to transfer, under the guarantee threshold and before 30 June 2002, quantities from one group of varieties to another in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the third 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, 3 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 215, 30.7.1992, p. 70.

⁽²⁾ OJ L 84, 28.3.2002, p. 4.

⁽³⁾ OJ L 358, 31.12.1998, p. 17.

⁽⁴⁾ OJ L 153, 13.6.2002, p. 3.

ANNEX

Guarantee threshold quantities which each Member State is authorised to transfer from one group of varieties to another

Member State	Group of varieties from which transfer is made	Group of varieties to which transfer is made
Germany	87,8 t light air-cured (group II)	78,8 t flue-cured (group I)
	160,5 t dark air-cured (group III)	138,6 t flue-cured (group I)
Spain	1 323,2 t dark air-cured (group III)	440,5 t flue-cured (group I)
		772,5 t light air-cured (group II)
France	1 090,3 t dark air-cured (group III)	538,8 t flue-cured (group II)
		358,3 t light air-cured (group II)
Greece	159 t light air-cured (group II)	127 t flue-cured (group I)
	3 757 t sun-cured (group V)	2 704 t flue-cured (group I)
	340 t Katerini (group VII)	340 t flue-cured (group I)
	3 796 t Kaba Koulak classic (group VIII)	1 651 t flue-cured (group I)
		1 110 t Basmas (group VI)
Italy	2 604,2 t dark air-cured (group III)	398,3 t flue-cured (group I)
		2 106,3 t light air-cured (group II)
	425,8 t fire-cured (group IV)	374,6 t flue-cured (group I)
	1 610,9 t sun-cured (group V)	1 449,8 t light air-cured (group II)
	55 t Katerini (group VII)	55 t flue-cured (group I)

COMMISSION REGULATION (EC) No 1194/2002

of 3 July 2002

amending Regulation (EEC) No 2234/92 laying down detailed rules for the application of the aid for the consumption of fresh milk products in Madeira

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira and repealing Regulation (EEC) No 1600/92 (Poseima) ⁽¹⁾, and in particular Article 15(5) thereof,

Whereas:

- (1) Article 15 of Regulation (EC) No 1453/2001 sets the amount of aid for human consumption of milk products produced in Madeira at EUR 12/100 kg of whole milk delivered to a dairy. That aid is granted for the human consumption of locally produced fresh cows' milk products, within the limits of the consumption needs of Madeira as assessed periodically. That Article also allows the production in Madeira, for local consumption, of UHT milk reconstituted from milk powder originating in the Community, in so far as this measure ensures that locally produced milk is collected and finds outlets.
- (2) It is estimated that the consumption needs of Madeira will not exceed the limit of 4 000 tonnes which corresponds to the limit of local production within which the additional levy scheme applicable to producers of cows' milk provided for in Council Regulation (EEC) No 3950/92 of 28 December 1992 establishing an additional levy in the milk and milk products sector ⁽²⁾, as last amended by Commission Regulation (EC) No 582/2002 ⁽³⁾, does not apply to Madeira. As a result, the volume of milk for which the aid provided for in Regulation (EC) No 1453/2001 paid to dairies for all products resulting from the processing of milk produced locally should be limited to a quantity of 4 000 tonnes.
- (3) Rules should also be laid down on the use of fresh cows' milk produced in Madeira for which the aid for human consumption is granted and the minimum volume that must be incorporated into reconstituted UHT milk intended for local consumption. A minimum volume of incorporation of 15 % is appropriate to ensure that locally produced milk is collected and finds outlets.

(4) Commission Regulation (EEC) No 2234/92 ⁽⁴⁾, as last amended by Regulation (EC) No 1802/95 ⁽⁵⁾, must therefore be amended.

(5) Provisions on the amount of the aid and eligible products are laid down in Regulation (EC) No 1453/2001. This Regulation should therefore apply from the date of entry into force of that Regulation.

(6) 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

Regulation (EEC) No 2234/92 is amended as follows:

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

'1. The aid for the human consumption of milk products produced in Madeira provided for in Article 15(2) of Regulation (EC) No 1453/2001 shall be paid, subject to the limit of 4 000 tonnes of whole milk, for a period of 12 months.'

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

'2. Milk produced in Madeira for which the aid referred to in paragraph 1 is granted shall be used entirely in the local manufacture of milk products intended for local consumption only.'

3. The following Article 1a is added:

'Article 1a

The reconstituted UHT milk referred to in Article 15(4) of Regulation (EC) No 1453/2001 shall incorporate at least 15 % of fresh milk produced locally.'

4. The Annex is deleted.

⁽¹⁾ OJ L 198, 21.7.2001, p. 26.

⁽²⁾ OJ L 405, 31.12.1992, p. 1.

⁽³⁾ OJ L 89, 5.4.2002, p. 7.

⁽⁴⁾ OJ L 218, 1.8.1992, p. 102.

⁽⁵⁾ OJ L 174, 26.7.1995, p. 27.

Article 2

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

It shall apply from 1 July 2001.

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

Done at Brussels, 3 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1195/2002

of 3 July 2002

laying down detailed rules for applying the specific import measures for the Canary Islands as regards tobacco, repealing Regulation (EEC) No 2179/92 and adapting Council Regulation (EC) No 1454/2001 as regards the codes of the Combined Nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1454/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Canary Islands and repealing Regulation (EEC) No 1601/92 (Poseican) ⁽¹⁾, and in particular Article 16(2) thereof,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products ⁽²⁾, as last amended by Regulation (EC) No 3290/94 ⁽³⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 16 of Regulation (EC) No 1454/2001 provides for exemption from customs duties for direct imports into the Canary Islands of a quantity of 20 000 tonnes of raw and semi-manufactured tobacco intended for the local manufacture of tobacco products.
- (2) For the purpose of managing this arrangement, the annual period should be defined for calculating the maximum quantity referred to in Article 16 of Regulation (EC) No 1454/2001 and the term 'local manufacture of tobacco products' should be defined. In addition, in order to ensure maximum flexibility for imports of tobacco-based products into the Canary Islands, it should be permitted for the overall quantity of stripped raw tobacco to be used for imports of other products, on the basis of a coefficient of equivalence, in the light of the requirements of the local industry.
- (3) For the purposes of managing this arrangement, in the interests of simplicity and administrative uniformity, Commission Regulation (EC) No 20/2002 of 28 December 2001 laying down detailed rules for implementing the specific supply arrangements for the outermost regions introduced by Council Regulations (EC) No 1452/2001 ⁽⁴⁾, as amended by Regulation (EC) No 474/2002 ⁽⁵⁾, should be applied wherever possible.
- (4) In the interests of legal clarity, Commission Regulation (EEC) No 2179/92 of 30 July 1992 laying down detailed rules for the application of the specific import measures for the Canary Islands as regards tobacco ⁽⁶⁾ should be repealed.
- (5) Regulation (EEC) No 2179/92 provides that the annual quota of 20 000 tonnes is to be managed on the basis of

the period from 1 July of a given year to 30 June of the following year. To harmonise this with the specific supply arrangements, the period for managing the scheme should be amended and the quantity should be made available on a calendar year basis. For the purposes of applying the scheme during the transitional period from 1 July to 31 December 2002, the maximum quantity available referred to in Article 16 of Regulation (EC) No 1454/2001 should be set at 10 000 tonnes.

- (6) The CN code for cigarette rag has been amended. Article 16 of Regulation (EC) No 1454/2001 should be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Tobacco,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation lays down detailed rules for importing tobacco into the Canary Islands under Article 16 of Regulation (EC) No 1454/2001.

Article 2

For the purposes of applying this Regulation:

- the annual period for calculating the maximum annual quantity shall run from 1 January of any year to 31 December of the same year,
- 'local manufacture of tobacco products' means any operation carried out in the Canary Islands to process the products listed in the Annex to this Regulation into manufactured products ready to smoke,
- the quantities of raw and semi-manufactured tobacco shall be converted into quantities of stripped raw tobacco on the basis of the coefficients of equivalence given in the Annex hereto.

Article 3

Importation of the products listed in the Annex hereto shall be subject to the presentation of a certificate of exemption.

Section 20 of applications for certificates and certificates shall contain the words: 'product intended for industries manufacturing tobacco products'.

⁽¹⁾ OJ L 198, 21.7.2001, p. 45.

⁽²⁾ OJ L 34, 9.2.1979, p. 2.

⁽³⁾ OJ L 349, 31.12.1994, p. 105.

⁽⁴⁾ OJ L 8, 11.1.2002, p. 1.

⁽⁵⁾ OJ L 75, 16.3.2002, p. 25.

⁽⁶⁾ OJ L 217, 31.7.1992, p. 79.

Except where otherwise provided in this Regulation, Articles 2, 5, 9, 10, 11, 12, 13, 15, 25 and 26 of Regulation (EC) No 20/2002 shall apply *mutatis mutandis*.

The competent authorities shall ensure that the products covered by this Regulation are used in compliance with the relevant Community rules, in particular Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 444/2002 ⁽²⁾.

Article 4

Regulation (EEC) No 2179/92 is repealed.

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

Done at Brussels, 3 July 2002.

Article 5

For the period from 1 July to 31 December 2002, the maximum quantity of stripped raw tobacco equivalent exempt from customs duties under Article 16 of Regulation (EC) No 1454/2001 shall be 10 000 tonnes.

Article 6

In the seventh indent of Article 16(1) of Regulation (EC) No 1454/2001 the code 'ex 2403 10 00' is replaced by 'ex 2403 10 90'.

Article 7

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

It shall apply from 1 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 253, 11.10.1993, p. 1.

⁽²⁾ OJ L 68, 12.3.2002, p. 11.

ANNEX

Coefficients of equivalence for products exempt from customs duties on direct importation into the Canary Islands

CN code	Description	Coefficient of equivalence
2401 10	Tobacco, not stemmed/stripped	0,72
2401 20	Stripped raw tobacco	1,00
2401 30 00	Tobacco waste	0,28
ex 2402 10 00	Unfinished cigars without wrapping	1,05
ex 2403 10 90	Cigarette rag (finished mixtures of tobacco for the manufacture of cigarettes, cigars, cheroots and cigarillos)	1,05
ex 2403 91 00	Homogenised or reconstituted tobacco	1,05
ex 2403 99 90	Expanded tobacco	1,05

COMMISSION REGULATION (EC) No 1196/2002
of 3 July 2002
altering the export refunds on milk and milk products

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⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 31(3), last indent thereof,

Whereas:

- (1) The export refunds on milk and milk products were fixed by Commission Regulation (EC) No 1131/2002 ⁽³⁾.
- (2) Negotiations on the liberalisation of trade between the EU and certain candidate countries relate to concessions that will apply retroactively from 1 July 2002. To avoid prejudicing the application of the concessions on the

planned date, the refunds for milk products exported from the EU to those countries should be abolished,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds referred to in Article 31 of Regulation (EC) No 1255/1999 on products exported in the natural state, as fixed in the Annex to Regulation (EC) No 1131/2002 are hereby altered, in respect of the products set out in the Annex hereto, to the amounts set out therein.

Article 2

This Regulation shall enter into force on 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 169, 28.6.2002, p. 24.

ANNEX

to the Commission Regulation of 3 July 2002 altering the export refunds on milk and milk products

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0401 10 10 9000	970	EUR/100 kg	2,458	0402 91 39 9300	L06	EUR/100 kg	8,058
0401 10 90 9000	970	EUR/100 kg	2,458	0402 91 99 9000	L06	EUR/100 kg	43,93
0401 20 11 9100	970	EUR/100 kg	2,458	0402 99 11 9350	L06	EUR/kg	0,1734
0401 20 11 9500	970	EUR/100 kg	3,798	0402 99 19 9350	L06	EUR/kg	0,1734
0401 20 19 9100	970	EUR/100 kg	2,458	0402 99 31 9150	L06	EUR/kg	0,1816
0401 20 19 9500	970	EUR/100 kg	3,798	0402 99 31 9300	L06	EUR/kg	0,2629
0401 20 91 9000	970	EUR/100 kg	4,806	0402 99 31 9500	L06	EUR/kg	0,4530
0401 20 99 9000	970	EUR/100 kg	4,806	0402 99 39 9150	L06	EUR/kg	0,1816
0401 30 11 9400	970	EUR/100 kg	11,09	0403 90 11 9000	L06	EUR/100 kg	70,50
0401 30 11 9700	970	EUR/100 kg	16,66	0403 90 13 9200	L06	EUR/100 kg	70,50
0401 30 19 9700	970	EUR/100 kg	16,66	0403 90 13 9300	L06	EUR/100 kg	94,30
0401 30 31 9100	L06	EUR/100 kg	40,46	0403 90 13 9500	L06	EUR/100 kg	99,18
0401 30 31 9400	L06	EUR/100 kg	63,20	0403 90 13 9900	L06	EUR/100 kg	106,84
0401 30 31 9700	L06	EUR/100 kg	69,70	0403 90 19 9000	L06	EUR/100 kg	107,40
0401 30 39 9100	L06	EUR/100 kg	40,46	0403 90 33 9400	L06	EUR/kg	0,9430
0401 30 39 9400	L06	EUR/100 kg	63,20	0403 90 33 9900	L06	EUR/kg	1,0684
0401 30 39 9700	L06	EUR/100 kg	69,70	0403 90 51 9100	970	EUR/100 kg	2,458
0401 30 91 9100	L06	EUR/100 kg	79,43	0403 90 59 9170	970	EUR/100 kg	16,66
0401 30 91 9500	L06	EUR/100 kg	116,74	0403 90 59 9310	L06	EUR/100 kg	40,46
0401 30 99 9100	L06	EUR/100 kg	79,43	0403 90 59 9340	L06	EUR/100 kg	59,20
0401 30 99 9500	L06	EUR/100 kg	116,74	0403 90 59 9370	L06	EUR/100 kg	59,20
0402 10 11 9000	L06	EUR/100 kg	71,50	0403 90 59 9510	L06	EUR/100 kg	59,20
0402 10 19 9000	L06	EUR/100 kg	71,50	0404 90 21 9120	L06	EUR/100 kg	61,00
0402 10 91 9000	L06	EUR/kg	0,7150	0404 90 21 9160	L06	EUR/100 kg	71,50
0402 10 99 9000	L06	EUR/kg	0,7150	0404 90 23 9120	L06	EUR/100 kg	71,50
0402 21 11 9200	L06	EUR/100 kg	71,50	0404 90 23 9130	L06	EUR/100 kg	94,86
0402 21 11 9300	L06	EUR/100 kg	94,86	0404 90 23 9140	L06	EUR/100 kg	100,14
0402 21 11 9500	L06	EUR/100 kg	100,14	0404 90 23 9150	L06	EUR/100 kg	107,80
0402 21 11 9900	L06	EUR/100 kg	107,80	0404 90 29 9110	L06	EUR/100 kg	108,57
0402 21 17 9000	L06	EUR/100 kg	71,50	0404 90 29 9115	L06	EUR/100 kg	109,39
0402 21 19 9300	L06	EUR/100 kg	94,86	0404 90 29 9125	L06	EUR/100 kg	110,52
0402 21 19 9500	L06	EUR/100 kg	100,14	0404 90 29 9140	L06	EUR/100 kg	120,92
0402 21 19 9900	L06	EUR/100 kg	107,80	0404 90 81 9100	L06	EUR/kg	0,7150
0402 21 91 9100	L06	EUR/100 kg	108,52	0404 90 83 9110	L06	EUR/kg	0,7150
0402 21 91 9200	L06	EUR/100 kg	109,40	0404 90 83 9130	L06	EUR/kg	0,9486
0402 21 91 9350	L06	EUR/100 kg	110,46	0404 90 83 9150	L06	EUR/kg	1,0014
0402 21 91 9500	L06	EUR/100 kg	120,86	0404 90 83 9170	L06	EUR/kg	1,0780
0402 21 99 9100	L06	EUR/100 kg	108,52	0404 90 83 9936	L06	EUR/kg	0,1734
0402 21 99 9200	L06	EUR/100 kg	109,40	0405 10 11 9500	L05	EUR/100 kg	170,73
0402 21 99 9300	L06	EUR/100 kg	110,46	0405 10 11 9700	L05	EUR/100 kg	175,00
0402 21 99 9400	L06	EUR/100 kg	118,04	0405 10 19 9500	L05	EUR/100 kg	170,73
0402 21 99 9500	L06	EUR/100 kg	120,86	0405 10 19 9700	L05	EUR/100 kg	175,00
0402 21 99 9600	L06	EUR/100 kg	131,12	0405 10 30 9100	L05	EUR/100 kg	170,73
0402 21 99 9700	L06	EUR/100 kg	136,79	0405 10 30 9300	L05	EUR/100 kg	175,00
0402 21 99 9900	L06	EUR/100 kg	143,49	0405 10 30 9700	L05	EUR/100 kg	175,00
0402 29 15 9200	L06	EUR/kg	0,7150	0405 10 50 9300	L05	EUR/100 kg	175,00
0402 29 15 9300	L06	EUR/kg	0,9488	0405 10 50 9500	L05	EUR/100 kg	170,73
0402 29 15 9500	L06	EUR/kg	1,0017	0405 10 50 9700	L05	EUR/100 kg	175,00
0402 29 15 9900	L06	EUR/kg	1,0780	0405 10 90 9000	L05	EUR/100 kg	181,41
0402 29 19 9300	L06	EUR/kg	0,9488	0405 20 90 9500	L05	EUR/100 kg	160,07
0402 29 19 9500	L06	EUR/kg	1,0017	0405 20 90 9700	L05	EUR/100 kg	166,47
0402 29 19 9900	L06	EUR/kg	1,0780	0405 90 10 9000	L05	EUR/100 kg	222,36
0402 29 91 9000	L06	EUR/kg	1,0852	0405 90 90 9000	L05	EUR/100 kg	175,00
0402 29 99 9100	L06	EUR/kg	1,0852	0406 10 20 9100	A00	EUR/100 kg	—
0402 29 99 9500	L06	EUR/kg	1,1804	0406 10 20 9230	L03	EUR/100 kg	—
0402 91 11 9370	L06	EUR/100 kg	6,804		L04	EUR/100 kg	36,83
0402 91 19 9370	L06	EUR/100 kg	6,804		400	EUR/100 kg	—
0402 91 31 9300	L06	EUR/100 kg	8,058		A01	EUR/100 kg	36,83

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 10 20 9290	L03	EUR/100 kg	—	0406 30 31 9910	L03	EUR/100 kg	—
	L04	EUR/100 kg	34,26		L04	EUR/100 kg	7,57
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	34,26		A01	EUR/100 kg	14,18
0406 10 20 9300	L03	EUR/100 kg	—	0406 30 31 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	15,04		L04	EUR/100 kg	11,09
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	15,04		A01	EUR/100 kg	20,80
0406 10 20 9610	L03	EUR/100 kg	—	0406 30 31 9950	L03	EUR/100 kg	—
	L04	EUR/100 kg	49,96		L04	EUR/100 kg	16,13
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	49,96		A01	EUR/100 kg	30,26
0406 10 20 9620	L03	EUR/100 kg	—	0406 30 39 9500	L03	EUR/100 kg	—
	L04	EUR/100 kg	50,67		L04	EUR/100 kg	11,09
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	50,67		A01	EUR/100 kg	20,80
0406 10 20 9630	L03	EUR/100 kg	—	0406 30 39 9700	L03	EUR/100 kg	—
	L04	EUR/100 kg	56,56		L04	EUR/100 kg	16,13
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	56,56		A01	EUR/100 kg	30,26
0406 10 20 9640	L03	EUR/100 kg	—	0406 30 39 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	83,12		L04	EUR/100 kg	16,13
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	83,12		A01	EUR/100 kg	30,26
0406 10 20 9650	L03	EUR/100 kg	—	0406 30 39 9950	L03	EUR/100 kg	—
	L04	EUR/100 kg	69,26		L04	EUR/100 kg	18,25
	400	EUR/100 kg	—		400	EUR/100 kg	—
	A01	EUR/100 kg	69,26		A01	EUR/100 kg	34,21
0406 10 20 9660	A00	EUR/100 kg	—	0406 30 90 9000	L03	EUR/100 kg	—
0406 10 20 9830	L03	EUR/100 kg	—		L04	EUR/100 kg	19,14
	L04	EUR/100 kg	25,69		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	35,89
0406 10 20 9850	A01	EUR/100 kg	25,69	0406 40 50 9000	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	87,98
	L04	EUR/100 kg	31,15		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	87,98
0406 10 20 9870	A00	EUR/100 kg	—	0406 40 90 9000	L03	EUR/100 kg	—
0406 10 20 9900	A00	EUR/100 kg	—		L04	EUR/100 kg	90,34
0406 20 90 9100	A00	EUR/100 kg	—		400	EUR/100 kg	—
0406 20 90 9913	A01	EUR/100 kg	—		A01	EUR/100 kg	90,34
	L03	EUR/100 kg	—	0406 90 13 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	57,44		L04	EUR/100 kg	99,34
	400	EUR/100 kg	16,18		400	EUR/100 kg	30,81
0406 20 90 9915	A01	EUR/100 kg	57,44		A01	EUR/100 kg	113,75
	L03	EUR/100 kg	—	0406 90 15 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	75,82		L04	EUR/100 kg	102,65
	400	EUR/100 kg	21,56		400	EUR/100 kg	31,76
0406 20 90 9917	A01	EUR/100 kg	75,82		A01	EUR/100 kg	117,54
	L03	EUR/100 kg	—	0406 90 17 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	80,56		L04	EUR/100 kg	102,65
	400	EUR/100 kg	22,92		400	EUR/100 kg	31,76
0406 20 90 9919	A01	EUR/100 kg	80,56		A01	EUR/100 kg	117,54
	L03	EUR/100 kg	—	0406 90 21 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	90,03		L04	EUR/100 kg	100,59
	400	EUR/100 kg	25,57		400	EUR/100 kg	22,78
0406 20 90 9990	A01	EUR/100 kg	90,03		A01	EUR/100 kg	114,90
	A00	EUR/100 kg	—	0406 90 23 9900	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	88,33
	L04	EUR/100 kg	7,57		400	EUR/100 kg	—
0406 30 31 9710	400	EUR/100 kg	—		A01	EUR/100 kg	101,58
	A01	EUR/100 kg	14,18	0406 90 25 9900	L03	EUR/100 kg	—
	L03	EUR/100 kg	—		L04	EUR/100 kg	87,75
	L04	EUR/100 kg	11,09		400	EUR/100 kg	—
0406 30 31 9730	400	EUR/100 kg	—		A01	EUR/100 kg	100,49
	A01	EUR/100 kg	20,80				

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 27 9900	L03	EUR/100 kg	—	0406 90 78 9100	L04	EUR/100 kg	88,21
	L04	EUR/100 kg	79,48		400	EUR/100 kg	11,83
	400	EUR/100 kg	—		A01	EUR/100 kg	100,14
	A01	EUR/100 kg	91,01		L03	EUR/100 kg	—
0406 90 31 9119	L03	EUR/100 kg	—	0406 90 78 9300	L04	EUR/100 kg	85,54
	L04	EUR/100 kg	73,04		400	EUR/100 kg	—
	400	EUR/100 kg	13,06		A01	EUR/100 kg	99,96
	A01	EUR/100 kg	83,78		L03	EUR/100 kg	—
0406 90 33 9119	L03	EUR/100 kg	—	0406 90 78 9500	L04	EUR/100 kg	90,69
	L04	EUR/100 kg	73,04		400	EUR/100 kg	—
	400	EUR/100 kg	13,06		A01	EUR/100 kg	103,59
	A01	EUR/100 kg	83,78		L03	EUR/100 kg	—
0406 90 33 9919	L03	EUR/100 kg	—	0406 90 79 9900	L04	EUR/100 kg	89,84
	L04	EUR/100 kg	66,76		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	102,01
	A01	EUR/100 kg	76,83		L03	EUR/100 kg	—
0406 90 33 9951	L03	EUR/100 kg	—	0406 90 81 9900	L04	EUR/100 kg	73,34
	L04	EUR/100 kg	67,42		400	EUR/100 kg	—
	400	EUR/100 kg	—		A01	EUR/100 kg	84,33
	A01	EUR/100 kg	76,89		L03	EUR/100 kg	—
0406 90 35 9190	L03	EUR/100 kg	—	0406 90 85 9930	L04	EUR/100 kg	92,71
	L04	EUR/100 kg	103,33		400	EUR/100 kg	24,34
	400	EUR/100 kg	31,42		A01	EUR/100 kg	106,18
	A01	EUR/100 kg	118,83		L03	EUR/100 kg	—
0406 90 35 9990	L03	EUR/100 kg	—	0406 90 85 9970	L04	EUR/100 kg	100,13
	L04	EUR/100 kg	103,33		400	EUR/100 kg	30,33
	400	EUR/100 kg	20,54		A01	EUR/100 kg	115,25
	A01	EUR/100 kg	118,83		L03	EUR/100 kg	—
0406 90 37 9000	L03	EUR/100 kg	—	0406 90 85 9999	L04	EUR/100 kg	91,79
	L04	EUR/100 kg	99,34		400	EUR/100 kg	26,54
	400	EUR/100 kg	30,81		A01	EUR/100 kg	105,64
	A01	EUR/100 kg	113,75		A00	EUR/100 kg	—
0406 90 61 9000	L03	EUR/100 kg	—	0406 90 86 9100	A00	EUR/100 kg	—
	L04	EUR/100 kg	109,48	0406 90 86 9200	L03	EUR/100 kg	—
	400	EUR/100 kg	29,24	0406 90 86 9300	L04	EUR/100 kg	84,23
	A01	EUR/100 kg	126,72		400	EUR/100 kg	17,68
0406 90 63 9100	L03	EUR/100 kg	—		A01	EUR/100 kg	99,94
	L04	EUR/100 kg	108,91		L03	EUR/100 kg	—
	400	EUR/100 kg	32,71	0406 90 86 9400	L04	EUR/100 kg	85,45
	A01	EUR/100 kg	125,66		400	EUR/100 kg	19,38
0406 90 63 9900	L03	EUR/100 kg	—		A01	EUR/100 kg	100,99
	L04	EUR/100 kg	104,70	0406 90 86 9900	L03	EUR/100 kg	—
	400	EUR/100 kg	25,02		L04	EUR/100 kg	90,78
	A01	EUR/100 kg	121,38		400	EUR/100 kg	21,93
0406 90 69 9100	A00	EUR/100 kg	—	0406 90 86 9900	A01	EUR/100 kg	106,18
0406 90 69 9910	L03	EUR/100 kg	—		L03	EUR/100 kg	—
	L04	EUR/100 kg	104,70		L04	EUR/100 kg	100,13
	400	EUR/100 kg	25,02		400	EUR/100 kg	25,67
0406 90 73 9900	A01	EUR/100 kg	121,38	0406 90 87 9100	A01	EUR/100 kg	115,25
	L03	EUR/100 kg	—		A00	EUR/100 kg	—
	L04	EUR/100 kg	91,18	0406 90 87 9200	L03	EUR/100 kg	—
	400	EUR/100 kg	26,93		L04	EUR/100 kg	70,20
0406 90 75 9900	A01	EUR/100 kg	104,50		400	EUR/100 kg	15,81
	L03	EUR/100 kg	—		A01	EUR/100 kg	83,27
	L04	EUR/100 kg	91,79	0406 90 87 9300	L03	EUR/100 kg	—
	400	EUR/100 kg	11,36		L04	EUR/100 kg	78,46
0406 90 76 9300	A01	EUR/100 kg	105,64		400	EUR/100 kg	17,85
	L03	EUR/100 kg	—	0406 90 87 9400	A01	EUR/100 kg	92,76
	L04	EUR/100 kg	82,78		L03	EUR/100 kg	—
	400	EUR/100 kg	—		L04	EUR/100 kg	80,51
0406 90 76 9400	A01	EUR/100 kg	94,79		400	EUR/100 kg	19,55
	L03	EUR/100 kg	—	0406 90 87 9951	A01	EUR/100 kg	94,16
	L04	EUR/100 kg	92,71		L03	EUR/100 kg	—
	400	EUR/100 kg	11,83		L04	EUR/100 kg	91,06
0406 90 76 9500	A01	EUR/100 kg	106,18		400	EUR/100 kg	27,03
	L03	EUR/100 kg	—		A01	EUR/100 kg	104,28

Product code	Destination	Unit of measurement	Amount of refund	Product code	Destination	Unit of measurement	Amount of refund
0406 90 87 9971	L03	EUR/100 kg	—	0406 90 87 9975	400	EUR/100 kg	15,39
	L04	EUR/100 kg	91,06		A01	EUR/100 kg	110,64
	400	EUR/100 kg	21,93		L03	EUR/100 kg	—
	A01	EUR/100 kg	104,28		L04	EUR/100 kg	98,97
0406 90 87 9972	L03	EUR/100 kg	—	0406 90 87 9979	400	EUR/100 kg	20,40
	L04	EUR/100 kg	38,79		A01	EUR/100 kg	111,87
	400	EUR/100 kg	—		L03	EUR/100 kg	—
	A01	EUR/100 kg	44,61		L04	EUR/100 kg	88,33
0406 90 87 9973	L03	EUR/100 kg	—	0406 90 88 9100	400	EUR/100 kg	15,39
	L04	EUR/100 kg	89,40		A01	EUR/100 kg	101,58
	400	EUR/100 kg	15,39		A00	EUR/100 kg	—
	A01	EUR/100 kg	102,38		L03	EUR/100 kg	—
0406 90 87 9974	L03	EUR/100 kg	—	0406 90 88 9300	L04	EUR/100 kg	69,31
	L04	EUR/100 kg	97,03		400	EUR/100 kg	19,38
					A01	EUR/100 kg	81,63

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

L03 Ceuta, Melilla, Iceland, Norway, Switzerland, Liechtenstein, Andorra, Gibraltar, Holy See (often referred to as Vatican City), Malta, Turkey, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Canada, Cyprus, Australia and New Zealand,

L04 Albania, Slovenia, Croatia, Bosnia and Herzegovina, Yugoslavia and the Former Yugoslav Republic of Macedonia,

L05 all destinations except Poland, Estonia, Latvia, Lithuania and the United States of America.

L06 all destinations except Estonia, Latvia, Lithuania and the United States of America.

970 includes the exports referred to in Articles 36(1)(a) and (c) and 44(1)(a) and (b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11) and exports under contracts with armed forces stationed on the territory of a Member State which do not come under its flag.

COMMISSION REGULATION (EC) No 1197/2002
of 3 July 2002
on periodical sales by tender of beef held by certain intervention agencies

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EEC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Commission Regulation (EC) No 2345/2001 ⁽²⁾, and in particular Article 28(2) thereof,

Whereas:

- (1) The application of intervention measures in respect of beef has resulted in a build-up of stocks in several Member States. In order to prevent storage being prolonged excessively, part of those stocks should be put up for sale by periodical tender.
- (2) The sale should be conducted in accordance with Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies ⁽³⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁴⁾, and in particular Titles II and III thereof.
- (3) In the light of the frequency and nature of tenders under this Regulation it is necessary to derogate from Articles 6 and 7 of Regulation (EEC) No 2173/79 with regard to the information and deadlines to be provided by the notice of invitation to tender.
- (4) In order to ensure that the sales by tender are conducted properly and uniformly, measures in addition to those provided for in Article 8(1) of Regulation (EEC) No 2173/79 should be adopted.
- (5) Provisions should be made for derogations from Article 8(2)(b) of Regulation (EEC) No 2173/79 in view of the administrative difficulties which the application of that point is creating in the Member States concerned.
- (6) In order to ensure a proper functioning of the tender arrangements it is necessary to provide for a higher amount of security than the one fixed in Article 15(1) of Regulation (EEC) No 2173/79.
- (7) For practical reasons, provision should be made for a derogation from Article 18(1) of Regulation (EEC) No 2173/79 by extending to 45 days the period to take delivery of the products sold under the two tenders in July.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

1. The following approximate quantities of intervention beef shall be put up for sale:

- 4 000 tonnes of bone-in hindquarters held by the German intervention agency,
- 4 000 tonnes of bone-in hindquarters held by the Italian intervention agency,
- 2 000 tonnes of bone-in hindquarters held by the Austrian intervention agency,
- 4 000 tonnes of bone-in hindquarters held by the French intervention agency,
- 4 000 tonnes of bone-in hindquarters held by the Spanish intervention agency.

2. Subject to the provisions of this Regulation, the sale shall be conducted in accordance with Regulation (EEC) No 2173/79, and in particular Titles II and III thereof.

Article 2

1. Tenders shall be submitted for the following closing dates:

- (a) 8 July 2002;
- (b) 22 July 2002;
- (c) 26 August 2002;
- (d) 9 September 2002;

until the quantities put up for sale are used up.

2. Notwithstanding Articles 6 and 7 of Regulation (EEC) No 2173/79, this Regulation shall serve as a general notice of invitation to tender.

The intervention agencies concerned shall draw up notices of invitation to tender for each sale, setting out in particular:

- the quantities of beef put up for sale, and
- the deadline and place for the submission of tenders.

3. Particulars of the quantities and the places where the products are stored may be obtained by the parties concerned at the addresses set out in the Annex. The intervention agencies shall, in addition, display the notices referred to in paragraph 2 at their head offices and may also publish them in other ways.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 315, 1.12.2001, p. 29.

⁽³⁾ OJ L 251, 5.10.1979, p. 12.

⁽⁴⁾ OJ L 248, 14.10.1995, p. 39.

4. The intervention agencies concerned shall sell first meat which has been in storage for the longest time. However, Member States may in exceptional cases and after having obtained authorisation from the Commission derogate from that obligation.

5. Only tender reaching the intervention agencies concerned by 12 noon on the relevant closing date for each sale by tender shall be considered.

6. Notwithstanding Article 8(1) of Regulation (EEC) No 2173/79, tenders must be submitted to the intervention agency concerned in sealed envelopes bearing a reference to this Regulation and the relevant date. The sealed envelopes must not be opened by the intervention agency before the deadline for submission as referred to in paragraph 5 has expired.

7. Notwithstanding Article 8(2)(b) of Regulation (EEC) No 2173/79, tenders shall not specify the store or stores where the products are held.

8. Notwithstanding Article 15(1) of Regulation (EEC) No 2173/79, the security shall be EUR 12 per 100 kilograms.

Article 3

1. Not later than the second day following the closing date for the submission of tenders, the Member States shall send the Commission details of tenders received.

2. Following scrutiny of the tenders, a minimum selling price shall be set or no award shall be made.

Article 4

1. The intervention agency shall send each tenderer the information referred to in Article 11 of Regulation (EEC) No 2173/79 by fax.

2. Notwithstanding Article 18(1) of Regulation (EEC) No 2173/79 the time limit for taking over meat sold by tender referred to in Article 2(1)(a) and (b) of this Regulation shall be 45 days from the day of the notification.

Article 5

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

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

Done at Brussels, 3 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANEXO — ANNEXE — ALLEGATO — BIJLAGE — ANEXO —
LIITE — BILAGA

Direcciones de los organismos de intervención — Interventionsorganernes adresser — Anschriften der Interventionenstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de intervenção — Interventioelinten osoitteet — Interventionsorganens adresser

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Italia

AGEA (Agenzia Erogazioni in Agricoltura)
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COMMISSION REGULATION (EC) No 1198/2002
of 3 July 2002
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

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

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.

- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.
- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

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

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

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

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

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

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

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

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

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	208,47	250,65	266,82	265,79	—
(b) fob price (EUR/tonne)	—	—	—	236,33	235,30	—
(c) Sea freight (EUR/tonne)	—	—	—	30,49	30,49	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1199/2002
of 3 July 2002
on the issuing of system B export licences for 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 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as amended by Regulation (EC) No 1176/2002 ⁽²⁾, and in particular Article 6(7) thereof,

Whereas:

- (1) Commission Regulation (EC) No 678/2002 ⁽³⁾ fixed the indicative quantities laid down for the issue of export licences other than those requested in the context of food aid.
- (2) In the light of information now available to the Commission, the indicative quantities have been exceeded in the case of lemons.
- (3) Those overruns are without prejudice to compliance with the limits resulting from the agreements concluded in accordance with Article 300 of the Treaty. The rate of

refund for all products covered by licences applied for under system B from 15 May to 3 June 2002 should be the indicative rate,

HAS ADOPTED THIS REGULATION:

Article 1

The percentages for the issuing of system B export licences, as referred to in Article 6 of Regulation (EC) No 1961/2001, and applied for between 15 May and 3 June 2002, by which the quantities applied for and the rates of refund applicable must be multiplied, are as fixed in the Annex hereto.

The above subparagraph does not apply to licences applied for in connection with food-aid operations as provided for in Article 10(4) of the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations.

Article 2

This Regulation shall enter into force on 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 268, 9.10.2001, p. 8.

⁽²⁾ OJ L 170, 29.6.2002, p. 69.

⁽³⁾ OJ L 104, 20.4.2002, p. 3.

ANNEX

to the Commission Regulation of 3 July 2002 on the issuing of system B export licences for fruit and vegetables

Percentages for the issuing of licences and rates of refund applicable to system B licences applied for between 15 May and 3 June 2002

Product	Percentage for the issuing of licences	Rate of refund (EUR/t net)
Tomatoes	100 %	14,0
Oranges	100 %	26,0
Lemons	100 %	14,0
Apples	100 %	13,0

COMMISSION REGULATION (EC) No 1200/2002
of 3 July 2002
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 597/2002 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1157/2002 ⁽⁵⁾, as amended by Regulation (EC) No 1190/2002 ⁽⁶⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1157/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1157/2002 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 91, 6.4.2002, p. 9.

⁽⁵⁾ OJ L 170, 29.6.2002, p. 35.

⁽⁶⁾ OJ L 173, 3.7.2002, p. 10.

ANNEX I

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

CN code	Description	Import duty ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality ⁽¹⁾	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00
	medium quality	2,23
	low quality	12,16
1002 00 00	Rye	27,95
1003 00 10	Barley, seed	27,95
1003 00 90	Barley, other ⁽⁴⁾	27,95
1005 10 90	Maize seed other than hybrid	49,72
1005 90 00	Maize other than seed ⁽⁵⁾	49,72
1007 00 90	Grain sorghum other than hybrids for sowing	38,04

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

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

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

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

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

⁽⁴⁾ The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

⁽⁵⁾ The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 28 June to 2 July 2002)

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

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	117,68	119,28	115,01	90,86	182,60 (**)	172,60 (**)	102,89 (**)
Gulf premium (EUR/t)	—	23,59	18,29	14,94	—	—	—
Great Lakes premium (EUR/t)	22,69	—	—	—	—	—	—

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

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico–Rotterdam: 11,61 EUR/t; Great Lakes–Rotterdam: 26,20 EUR/t.

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

COMMISSION REGULATION (EC) No 1201/2002
of 3 July 2002
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 ⁽³⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those

considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 24,255/kg.

Article 2

This Regulation shall enter into force on 4 July 2002.

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

Done at Brussels, 3 July 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 July 2001

on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (Spain)

(notified under document number C(2001) 1761)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/540/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

respect of this aid the procedure laid down in Article 88(2) of the Treaty.

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

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

Having, in accordance with the abovementioned Articles, called on interested parties to submit their comments ⁽¹⁾, and having regard to those comments,

Whereas:

(3) By letter from the Permanent Representation dated 2 December 1999, registered on 6 December 1999, the Spanish authorities submitted their comments under the abovementioned procedure.

(4) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Communities*. ⁽⁴⁾ The Commission invited interested parties to submit their comments on the aid within one month of the date of publication.

I. PROCEDURE

(1) As a result in particular of the information received in response to the procedures initiated following the complaints about the State aid granted to Daewoo Electronics Manufacturing España SA ⁽²⁾, Ramondín SA and Ramondín Cápsulas SA ⁽³⁾, the Commission learned of the existence of a scheme of non-notified investment aid in Spain, in Álava, consisting of tax incentives in the form of a reduction of the tax base for certain newly established firms. It also received unofficial information that similar measures existed in Guipúzcoa, since that territory has the same tax autonomy as Álava.

(2) By letter dated 29 September 1999, SG(99) D/7813, the Commission informed Spain of its decision to initiate in

(5) Comments were received from: the Comunidad Autónoma de Castilla y León on 17 March 2000; the Gobierno de La Rioja on 24 March 2000; the Confederación Empresarial Vasca/Euskal Entrepresarien Konfederakuntza (hereinafter CONFEBASK) on 27 March 2000, plus, outside the time limit, supplementary comments by letter dated 29 December 2000, registered on 3 January 2001; the Colegio Vasco de Economistas/Ekonomilarien Euskal Elkargoa on 27 March 2000; the Círculo de Empresarios Vascos on 27 March 2000; and the Asociación Profesional de Asesores Fiscales de la Comunidad del País Vasco on 28 March 2000. By letter dated 17 May 2000 (D/52998), the Commission sent these comments to Spain, asking for observations; it has not received any.

⁽¹⁾ OJ C 55, 26.2.2000, p. 2.

⁽²⁾ Commission Decision 1999/718/EC (OJ L 292, 13.11.1999, p. 1).

⁽³⁾ Commission Decision 2000/795/EC (OJ L 318, 16.12.2000, p. 36).

⁽⁴⁾ See footnote 1.

- (6) By letter from the Permanent Representation dated 22 June 2000, the Spanish authorities informed the Commission of the derogation as from 18 March 2000, pursuant to Norma Foral (Provincial Law) 3/2000 of 13 March ⁽⁵⁾, from Article 26 of Norma Foral 7/1996 of 4 July of Guipúzcoa ⁽⁶⁾, which constitutes the legal basis for the tax incentives in question.

II. DETAILED DESCRIPTION OF THE AID

- (7) According to the information at the Commission's disposal, which has not been questioned by the Spanish authorities or by anybody else, the tax incentives in question were introduced by Article 26 of Norma Foral 7/1996 of 4 July on Corporation Tax ⁽⁷⁾. The text of the Article reads as follows ⁽⁸⁾:

1. Companies starting their business activity shall be entitled to a reduction over four consecutive tax periods, starting from the first one in which, within four years from start-up, they obtain positive tax bases, of 99 %, 75 %, 50 % and 25 % respectively of the positive tax base resulting from the conduct of their business, before offsetting any negative tax bases from previous periods.

[...]

2. To qualify for this reduction, taxable persons shall meet the following requirements:

- (a) they start their business with a minimum paid-up capital of ESP 20 million;

[...]

- (f) in the first two years of operation they invest in tangible fixed assets worth at least ESP 80 million, all such investments being in assets assigned to the business which are not leased or sold to third parties for their use. To this end, investments in tangible fixed assets shall include assets acquired through financial leasing, provided that they undertake to exercise the option to buy;

- (g) at least ten jobs are generated in the six months following start-up, and the annual average workforce is kept at that figure from that time until the financial year in which the right to apply the reduction to the tax base expires.

[...]

- (i) they have a business plan covering a minimum period of five years.

3. [...]

4. The minimum amount of the investments within the meaning of paragraph 2(f) and the minimum number

of jobs created within the meaning of paragraph 2(g) shall be incompatible with any other tax reduction laid down for such investment or job creation.

5. The reduction laid down in this Article shall be requested from the tax authorities, which, after checking that the requirements set out at the beginning have been met, shall communicate to the applicant company, as appropriate, their provisional authorisation, which shall be adopted with the approval of the Diputación Foral de Guipúzcoa (Provincial Council).

[...].'

- (8) The Commission confirms that, according to the preamble of Norma Foral 7/1996, the object of the aid in question is to promote the emergence of new companies.

- (9) The Commission notes that the tax incentives relate to the positive tax base for corporation tax resulting from the conduct of the business, less the set-off for the negative tax bases from previous financial years. In this case, the recipients are companies which have started their commercial activities since the date of entry into force of the said provincial laws, have invested in tangible fixed assets a minimum of ESP 80 million (EUR 480 810) and have generated at least ten jobs. In addition, recipient companies should, in particular, have a business strategy covering a minimum period of five years and should start their activity with a minimum paid-up capital of ESP 20 million (EUR 120 202).

- (10) The Commission emphasises that the aid consists in a reduction of the positive tax base of 99 %, 75 %, 50 % and 25 % respectively over four consecutive tax periods, starting from the first one in which, within a period of four years from start-up, the recipients obtain a positive tax base.

- (11) The Commission finds that the tax incentive is not intended for firms, which carry out certain activities or belong to certain sectors, since any activity or sector may be eligible. Nor is it intended for certain categories of firms, e.g. SMEs, since any firm may qualify, provided that it satisfies the abovementioned tests.

- (12) The Commission finds that these reductions of the tax base are applicable from the tax year starting on 1 January 1996. As far as combination with other aid is concerned, it is stated that the tax incentives in question may not be combined with any other tax concessions that may be granted in respect of the minimum investment or the minimum creation of jobs. Nevertheless,

⁽⁵⁾ Boletín Oficial del Territorio Histórico de Álava, 5.4.2000.

⁽⁶⁾ Territorio Histórico de Gipuzkoa: Norma Foral 7/1996 dated 4 July concerning the corporation tax.

⁽⁷⁾ Boletín Oficial de Gipuzkoa, 17.7.1996.

⁽⁸⁾ Only the parts essential to the assessment of the aid are cited.

combination with other, non-tax aid, including grants, subsidised loans, guarantees, equity purchases, etc., relating to the same investments is not ruled out. Nor is possible combination with other tax concessions whose operative event, i.e. the circumstance triggering each concession, is different. Such would be the case, for example, with tax incentives in the form of a tax credit.

(13) In its decision initiating the said procedure, the Commission pointed out that as far as the application of the Community State aid rules is concerned, the tax nature of the measures in question is irrelevant, since Article 87 applies to aid measures 'in any form'. The Commission also emphasised, however, that, to be regarded as aid, the measures should meet all four of the criteria which are laid down in Article 87 and which are explained below.

(14) Firstly, the Commission pointed out, at that stage, that the reductions of 99 %, 75 %, 50 % and 25 % give their recipients an advantage, since the charges normally affecting their budgets are reduced by a partial reduction of the normal tax liability.

(15) Secondly, the Commission provisionally considered that the reductions involve a loss of tax revenue and are therefore equivalent to the consumption of public resources in the form of fiscal expenditure.

(16) Thirdly, the Commission considered at that stage that the reduction in the tax base affects competition and trade between Member States. Since the recipients conduct business, which may be the subject of intra-Community trade, the aid strengthens their position vis-à-vis competitors who also trade between Member States. That trade is therefore affected. Furthermore, the recipient firms' profitability is improved by the increase in their net profit (profit after tax). In this way they are able to compete with firms which are not eligible for the aid.

(17) Lastly, the Commission considered, at that stage, that the reduction of the tax base in question is specific or selective in that it favours certain firms. The conditions for granting the incentives specifically state that firms established before the said provincial laws came into force in mid-1996 are ineligible, as are other firms whose investments are below the threshold of ESP 80 million (EUR 480 810), which have created fewer than ten jobs and which do not have a paid-up capital of more than ESP 20 million (EUR 120 202). In addition, the Commission provisionally considered that the tax aid is not justified by the nature or general scheme of the tax system.

(18) Furthermore, the Commission considered, at that stage, that the selective nature of the concession is also due to

a discretionary power of the tax authorities. The aid is not granted automatically, since the recipient's application is studied by the Diputación Foral de Guipúzcoa, which may, subsequently, decide to grant the aid if appropriate.

(19) In short, the Commission considered, at that stage, that the reduction of the tax base is a State aid within the meaning of Article 87(1) of the Treaty and Article 61(1) of the Agreement on the European Economic Area, since it cumulatively meets the criteria of constituting a benefit, being granted by the State from State resources, affecting trade between Member States and distorting competition in favour of certain firms.

(20) Since the tax incentives are not subject, in particular, to the condition that they do not exceed EUR 100 000 for a period of three years, the Commission considered, at that stage, that they cannot be regarded as subject to the *de minimis* rule ⁽⁹⁾.

(21) The Commission stated provisionally that, since State aid was involved which was not governed by the *de minimis* rule, it was subject to the obligation of prior notification laid down in Article 88(3) of the Treaty and Article 62(2) of the EEA Agreement. However, the Spanish authorities did not meet that obligation, and the Commission therefore considered at that stage that the incentives can be regarded as unlawful.

(22) The Commission found provisionally that, although the granting of the incentives was conditional on a minimum investment and the creation of a minimum number of jobs, the tax arrangements did not ensure compliance with the Community rules on regional aid. It therefore considered at that stage that the incentives did not rank as investment or employment aid.

(23) However, the Commission also considered at that stage that the tax incentives have the characteristics of operating aid. Their purpose is to relieve a firm of those costs, which it would have had to meet under normal conditions as part of its everyday management or its usual activities.

(24) The Commission pointed out that operating aid is in principle prohibited. It may nevertheless be granted in exceptional circumstances, i.e. in those regions, which qualify for the regional derogations if they meet certain conditions. However, the incentives are not subject to these conditions. Consequently, the Commission took the view at that stage that there were doubts about the compatibility of the tax incentives with the rules on regional aid.

⁽⁹⁾ See point 3.2 of the Community guidelines on aid for SMEs (OJ C 213, 19.8.1992) and the Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996).

- (25) The reduction of the tax base, which is not restricted to a particular sector, may be granted to firms that are subject to Community sectoral rules. The Commission therefore questioned at that stage whether the incentives are compatible where the recipient belongs to a sector that is subject to special Community rules.
- (26) Lastly, the Commission questioned the compatibility of the tax incentives with the common market in the light of the derogations in Article 87(2) and (3) of the Treaty. The incentives cannot be regarded as aid having a social character under Article 87(2)(a), is not intended to make good the damage caused by natural disasters under Article 87(2)(b) and is not subject to the provisions of Article 87(2)(c) concerning certain areas of the Federal Republic of Germany. As far as the derogations in Article 87(3) other than those in subparagraphs (a) and (c), which have already been discussed, are concerned, the Commission considered that the incentives are not designed to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State under Article 87(3)(b). The incentives do not fall within the scope of Article 87(3)(c), which concern 'aid to facilitate the development of certain economic activities...', since they are not specific in any way to the activities of the recipient firms. Lastly, they are not intended to promote culture and heritage conservation within the meaning of Article 87(3)(d).
- (27) As well as inviting them to submit their comments under the Article 88(2) procedure, the Commission also asked the Spanish authorities to supply all the information necessary for assessing the tax incentives in the form of a reduction of the tax base of certain newly established firms in Guipúzcoa. In this specific case, the relevant information requested is as follows: copies of all decisions granting the reduction of the tax base, and data on the investments made by each recipient, the jobs created, the share capital, the size of the reduction for which each firm is eligible, and the outstanding balance.
- measure, whose purpose is to promote investment, is part of an economic policy, which is much used by governments.
- (29) They argue that the measure is not specific or selective in character. In their opinion, the opening of the measure to all sectors and to all taxpayers that meet the appropriate criteria removes any specific character. Nor is there any *de facto* restriction of this general scope. As to specificity of substance, this does not exist, since the requirements to invest ESP 80 million and create 10 jobs are not discriminatory, but objective conditions deriving from the need to ensure the effectiveness of the measure and thus achieve the proposed objective.
- (30) Furthermore, the Spanish authorities question the discretionary character of the measures in question, since the incentives are granted automatically once the said objective conditions are satisfied. The Diputación Foral de Guipúzcoa can thus check only that all the conditions are satisfied; it cannot alter or add any conditions. Nor is the procedure laid down in the abovementioned Article 26(5) for granting the tax incentives discretionary. Under that Article 'the tax authorities... shall communicate to the applicant company, as appropriate, their provisional authorisation, which shall be adopted with the approval of the Diputación Foral de Guipúzcoa'. The procedure should be interpreted therefore as meaning that the incentives will be granted after a check has been made that all the objective conditions are met. This is why the phrase 'as appropriate' is not discretionary.
- (31) Similarly, the Spanish authorities claim that the Guipúzcoa reduction of the tax base is founded on measures existing in other Member States such as Ireland, or on measures taken by the Spanish Central Government in 1993.⁽¹⁰⁾ However, the Commission did not consider all these measures as State aid within the meaning of Article 87 of the Treaty. Given the similarity between the Guipúzcoa measures and those of the central government, it can be concluded that if one measure is not specific in character, the other ought not to be either. Furthermore, the Spanish authorities state that both the Guipúzcoa measures and those of the Central Government cover only one part of Spain. Therefore, if the Commission did not consider there was anything specific about the tax measure introduced by the Spanish Central Government, it ought to reach the same conclusion about the Guipúzcoa measures.

III. COMMENTS OF THE SPANISH AUTHORITIES

- (28) The Spanish authorities submitted their comments by letter from the Permanent Representation, dated 2 December 1999. Basically, they consider that the reduction of the tax base does not constitute State aid under Article 87 of the Treaty, but a general measure, which is not subject to the State aid rules. They also state that the

⁽¹⁰⁾ Law 22/1993, dated 29 December 1993, on tax measures and the reform of the legal system of the public service and unemployment protection (BOE, 31.12.1993). The measure consisted in the reduction of the corporation tax base by 95 % in the tax years 1994 to 1996 of firms set up in 1994 which invested at least ESP 15 million and created at least three, but less than 20, jobs.

(32) Similarly, the Spanish authorities argue that, even if the Commission were to consider that the measure was specific, it is justified by the nature and general scheme of the system, as provided for in the Commission notice on the application of the State aid rules to measures relating to direct business taxation (98/C 384/03) ⁽¹¹⁾. The measure in question is justified by the nature and general scheme of the tax system, since the conditions that must be met before it can be granted are objective and cross-sector.

(33) The Spanish authorities question the view expressed by the Commission that the tax rules do not satisfy the conditions for sectoral rules. In their opinion, the Commission ought to determine what the specific conditions are that are infringed by the said tax rules. As regards the application of the rules on regional aid, the Spanish authorities consider that this is inappropriate, since in this specific case no State aid is involved.

(34) The Spanish authorities also question the Commission's position in accepting that trade is affected by the fact that the recipient undertakings carry out economic activities that may involve trade between Member States. In their opinion, it cannot be established, *pace* the Commission that trade is affected generally, but only in specific cases, since there is a possibility that in some cases it will not be affected. In other cases, firms could be involved that operate either in sectors, which have not yet been liberalised, or exclusively in local markets. In all these cases, therefore, one of the prerequisites for describing an official measure as State aid is missing.

(35) As regards the operating-aid characteristics which, according to the Commission, the tax measures in question have, the Spanish authorities emphasise that, although the tax advantage derives from the tax base and not from the investment, it still has the character of an investment incentive. The incentives, therefore, cannot be described as operating aid.

(36) In view of the above arguments, the Spanish authorities consider that the Commission should terminate the Article 88(2) procedure by a decision stating that the tax measures in question do not meet the criteria for being regarded as State aid.

(37) For the rest, the Spanish authorities emphasise that, under Spanish tax rules, the tax authorities may disclose information on taxpayers only in certain exceptional cases. Such cases do not include sending information to the Commission. Consequently, the Spanish authorities are not providing any of the information requested in the decision initiating the procedure.

IV. OTHER COMMENTS RECEIVED BY THE COMMISSION

(38) The Commission emphasises that the comments set out below are without prejudice to the question of whether the parties, which submitted them, can be considered interested parties within the meaning of Article 88(2) of the Treaty.

Comments by the Comunidad Autónoma de Castilla y León

(39) The Comunidad Autónoma de Castilla y León points out first of all that the tax measures in question are part of a set of tax measures adopted by the Diputación Foral de Guipúzcoa that have been contested both internally within the Member State and at Community level. It states that, in the case in point, Article 26, which introduces the tax measure in respect of which the procedure was initiated, was quashed by the Tribunal Superior del País Vasco ⁽¹²⁾ in 1999.

(40) The Comunidad Autónoma de Castilla y León goes on to state that the tax measures in question constitute State aid, since they satisfy all four criteria laid down in Article 87 of the Treaty. In support of this contention it basically puts forward the same arguments as those given in the decision initiating the procedure. It states that the measure is also selective on account of the discretionary power of the authorities ⁽¹³⁾. Similarly, the tax measures are not justified by the nature or general scheme of the tax system, since their purpose is to promote the formation of new companies.

(41) For the rest, the Comunidad Autónoma de Castilla y León considers that the tax incentives cannot be regarded as compatible by virtue of the derogations in Article 87. In this respect, it states that the tax measures are operating aid, since they are continuous and not linked to the execution of a specific project. However, pursuant to the derogation in Article 87(3)(a), operating aid can only be compatible, under certain conditions, in assisted areas. As the Basque Country is an assisted area under the derogation in Article 87(3)(c), the operating aid in question cannot be regarded as compatible. Furthermore, the obligation to notify laid down in Article 88(3) has not been complied with.

(42) The Comunidad Autónoma de Castilla y León takes the view therefore that the tax measures in question should be regarded as State aid which is unlawful, since the notification procedure laid down in Article 88(3) has not been followed, and which is incompatible with the common market.

⁽¹²⁾ Judgment No 718/1999 of 30 September 1999.

⁽¹³⁾ See in this respect the judgement rendered by the Court of Justice of the EC on 26 September 1996 regarding Case C-241/94.

⁽¹¹⁾ OJ C 384, 10.12.1998, p. 3.

Comments from the Gobierno de La Rioja

- (43) The Gobierno de La Rioja states that the tax measures constitute State aid, since they satisfy all four criteria set out in Article 87 of the Treaty. In support of this contention, it argues in particular that the purpose and effect of the reduction of the tax base is to relieve the recipient of part of the tax burden, which would otherwise have been imposed on its profits. It therefore constitutes a financial advantage for recipient firms, which, because there are no *quid pro quos* for the authorities, involves a loss of tax revenue. In addition, the economic activity of the recipients will be encouraged by this fact. They thus enjoy a competitive advantage over all other firms. In addition to the specificity of substance, in the form of a minimum share capital of ESP 20 million, a minimum investment of ESP 80 million and a minimum of ten jobs created, the Gobierno de La Rioja states that the discretionary nature of the reduction of the tax base is due partly to the authorities' ability to determine eligible investments, time limits and thresholds and partly to the fact that the granting of the reduction of the tax base is not automatic.
- (44) Moreover, the Gobierno de La Rioja considers that the tax measure cannot be justified on the grounds that there are five tax systems in Spain. It points out that, in the Opinion on Joined Cases C-400/97, C-401/97 and C-402/97, Advocate General Saggio considered that the nature of the competent authorities for tax matters in a territory does not justify discrimination in favour of firms established in that territory. Furthermore, the measures are not justified by the nature or general scheme of the tax system in Guipúzcoa, since their purpose is to improve the competitiveness of recipient firms. The Gobierno de La Rioja also points out that the Tribunal Superior de Justicia del País Vasco ⁽¹⁴⁾ regarded the tax measures in question as disproportionate and inappropriate for achieving the objective of promoting economic activity, since they may indirectly affect the free movement of persons and goods by establishing unacceptable conditions of competitive advantage.
- (45) In addition, the Gobierno de La Rioja considers that the tax incentives cannot be considered compatible with the common market by virtue of the derogations in Article 87. Also, the Spanish authorities did not fulfil the obligation to notify the incentives under Article 88(3) of the Treaty.
- (46) The Gobierno de La Rioja therefore thinks that the tax measures should be regarded as unlawful State aid, since they do not comply with the Article 88(3) notification

procedure, and as aid that is incompatible with the common market.

Comments from the Confederación Empresarial Vasca — Euskal Entrepresarien Konfederakuntza (CONFEBASK)

- (47) To begin with, CONFEBASK emphasises the historical roots underlying the current autonomous tax powers vested in Guipúzcoa. As regards substance, CONFEBASK's views are essentially as follows:
- (a) The presumed reduction of the tax debt: the Commission is wrong to think that there is a tax debt whose reduction involves a loss of tax revenue. If this argument were sound, any tax deduction would always involve a loss of revenue compared with the amount that would have normally been paid. CONFEBASK therefore requests that the Commission reconsider its position, since otherwise it could be argued that taxes were being unlawfully harmonised by establishing a normal amount in relation to which it would be necessary to determine any losses of tax revenue.
- (b) The effect on trade: according to the Commission, where the recipients participate in intra-Community trade, the tax measures in question distort that trade. However, differences between tax systems always affect trade. To determine the extent, to which trade is affected, the Commission should therefore analyse the entire tax system and not specific provisions. CONFEBASK emphasises in this respect that, according to one study, the tax burden in the Basque Country is greater than in the rest of Spain. The Commission should explain why these specific measures and not other tax differences affect trade. In any event, even if such an effect did exist, the way to remove it would be through harmonisation, not State aid.
- (c) The selective character of the aid: in CONFEBASK's opinion, the selective nature of the tax measures should be assessed in one of two ways, either as an enabling rule conferring power on the tax authority subsequently to grant a specific relief, or as a rule directly granting the tax relief without requiring subsequent specification. The Commission, however, is using one argument, which fits the first category, and another, which fits the second. Given that the two are mutually exclusive, the Commission should explain in which category the tax measures question fall, since otherwise it would be contradictory to try and use both.

⁽¹⁴⁾ See the judgments of 30 September and 7 October 1999 with regard to the tax measures in question.

— CONFEBASK questions the approach whereby the tax measures are regarded as enabling rules, since the reduction is granted automatically and the authorities, accordingly, have no discretionary power. The authorities are restricted to checking that the applicant satisfies the tests of eligibility. Moreover, if the tax measures are regarded as enabling rules which subsequently make it possible to grant the aid, it has to be concluded that the current procedure, in so far as it is the rules that are being questioned and not specific instances of their application, is meaningless. Similarly, according to the first paragraph of the Commission's letter to the Member States, ⁽¹³⁾ a general provision conferring relieves is regarded as an aid only if 'legislative machinery enabling it to be granted without further formality has been set up'. By contrast, because it is abstract, an enabling rule cannot be regarded as State aid and, hence, cannot be assessed for its effect on competition and trade between Member States.

— As for regarding the tax measures as rules granting aid directly, CONFEBASK points out that, according to points 19, 20 and 17 of notice 98/C 384/03, a tax measure may be specific and, hence, may be a State aid, if it is aimed solely at public undertakings, certain types of undertaking or undertakings in a given region. However, the tax measures in question have none of these characteristics, not even territorial specificity, since they apply to the whole territory for which the regional authorities that introduced them are competent. As to the specific character of the thresholds, share capital of ESP 20 million, investment of ESP 80 million, and 10 jobs created, CONFEBASK considers that the use of objective thresholds is normal practice in national and Community tax rules. CONFEBASK also draws attention to the basis of various judgments of the Court of Justice and Commission decisions: hitherto, it has never been held that thresholds imply specificity. Moreover, the Commission itself acknowledges, in point 14 of the above notice, that the effect of promoting certain sectors does not necessarily mean that the measures are specific.

— CONFEBASK also maintains that Guipúzcoa's reduction of the tax base is nothing more than an adjustment of a 1993 measure (mentioned above in the comments from the Spanish authorities) introduced by Spain's central government.

It even maintains that the rules are identical, except for the quantitative thresholds. Thus the effect of Guipúzcoa's reduction of the tax base on competition is cancelled, since the territories adjoining the Basque provinces qualify for tax concessions for new firms. Moreover, if there were an effect on competition, this should derive from the central government measures, since they may have a larger number of recipients. CONFEBASK also stresses that there are similar measures in other Member States, but the Commission has not initiated any procedure with regard to them, nor have they been classified as harmful measures by the Primarolo Group. In this respect it states that, in France, new firms have been eligible for corporation tax exemptions and reductions for a period of five years (10 years in some regions, and for even more favourable arrangements in Corsica) since 1994. In Luxembourg, there is a 25 % reduction of corporation tax for a period of eight years. In the south of Italy there are tax holidays from the IRPEG and the ILOR for 10 years. Lastly, in Portugal, there is a 25 % reduction of corporation tax for a period of from seven to 10 years. Everything shows, therefore, that Guipúzcoa's reduction of the tax base is not an exceptional system which gives rise to any specificity. On the contrary, it is a system widely used in the Member States.

(d) The importance of legal certainty: CONFEBASK argues that the Commission's description of the tax reduction as an unlawful aid calls into question the principles of legitimate expectations, a ban on arbitrary decisions by the Institutions, legal certainty and proportionality, since the Commission regarded the Basque tax arrangements as lawful in its 1993 decision. In any event, the Commission may change its position as regards future cases but not as regards past ones.

(e) Incompatibility with the common market: if the tax measures in question are regarded as enabling rules, CONFEBASK considers that their compatibility cannot be assessed while the aid is not granted through an administrative decision. The procedure is meaningless and incapable by definition of yielding any results as to the compatibility of the aid. On the other hand, if the tax measures in question are regarded as rules granting aid directly, CONFEBASK

⁽¹³⁾ Commission letter to Member States SG(89) D/5521 of 27 April 1989.

takes the view that the practice of the Commission and the Court require that measures have to have sectoral specificity before the compatibility of the aid can be assessed. Furthermore, it would be necessary to establish the overall tax burden on firms and the reference tax burden. Lastly, this approach would lead to the absurd conclusion that any tax burden lower than the highest tax burden in all the Member States would constitute State aid. CONFEBASK also questions the Commission's argument that the said tax measures are incompatible, since they do not contain specific provisions on sectoral or regional aid, or aid for large investment projects, etc.: tax measures may not and should not contain this type of provision. According to the Court of Justice⁽¹⁶⁾, the Commission should specify in its decisions what the adverse effects on competition are, determining the real effect of the measures examined. Incompatibility cannot be determined, therefore, in abstract situations specific to a tax system, since in that case any differences between tax systems would necessarily become aid. This leads CONFEBASK to repeat that there is no normal tax debt, which has been reduced by the tax, measures in question.

- (f) CONFEBASK therefore asks the Commission to adopt a final decision terminating the procedure and stating that the tax measures in question comply with Community law.

- (48) CONFEBASK's additional comments, communicated by letter dated 29 December 2000, registered on 3 January 2001, were not taken into account, as they reached the Commission after the deadline had expired⁽¹⁷⁾. Furthermore, CONFEBASK did not apply for an extension of the time limit pursuant to Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁸⁾.

Comments from the Colegio Vasco de Economistas — Ekonomilarien Euskal Elkargoa (hereinafter CVE)

- (49) CVE considers that the tax system of each Basque province does not meet the specificity criterion in Article 87(1) of the Treaty, since it only applies in part of a Member State. In support of this view, it argues that the Commission's usual practice of considering that there is

specificity when the tax measure is applied to part of the Member State is appropriate where there is a single tax system. However, it is not relevant where there are various tax systems in the same Member State. The practice, furthermore, is contrary to the coherence of the Spanish tax system, which is multiple by nature. Each system is applied exclusively in one part of the territory. Thus, each one of the systems is not a regional system, but a unique system applicable to the territory concerned. Moreover, the losses of tax revenue which result from certain tax measures are not the subject of a transfer from the central government. On the contrary, they should be offset, either by increasing the revenues from other taxes or by cutting public expenditure. In addition, the specific nature of the Spanish tax system should not involve penalisation through the application of Community law. For the rest, any distortions of competition resulting from the existence of five tax systems should be tackled through the Community rules on tax harmonisation.

- (50) Nonetheless, CVE does not rule out that, in the exercise of their tax autonomy, the Diputaciones Forales (Provincial Councils) may adopt tax measures that are caught by Article 87(1) of the Treaty. However, in such a case, it considers that the reduction of the tax base is not so caught, since it only meets the criterion of being granted from State resources. It does not distort competition, because its payment implies that there is a positive tax base. Moreover, its amount cannot be determined in advance, since, for example, if there were no profits, the aid would not be paid. The same applies as regards the effect on trade. This should be established on an individual basis: it is not sufficient that trade might be affected. For the rest, it examines whether specificity derives from the thresholds for eligibility for the tax reduction or from the Diputación Foral's discretionary power to grant the reduction. In this respect, it considers that the thresholds do not involve specificity, since they are objective and non-discriminatory. As for the grant of the tax reduction, this does not involve the exercise of a discretionary power, but checking that all the conditions are met.

⁽¹⁶⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, judgement by the Court of Justice dated 14 September 1994.

⁽¹⁷⁾ The deadline for submitting comments was one month from the date of publication in the *Official Journal of the European Communities*, i.e. 26 February 2000.

⁽¹⁸⁾ OJ L 83, 27.3.1999, p. 1.

- (51) CVE concludes that the reduction of the tax base, which is a general measure adopted under the tax powers of the provinces in question, is not caught by Article 87 of the Treaty.

Comments from the *Círculo de Empresarios Vascos* and the *Asociación Profesional de Asesores Fiscales de la Comunidad del País Vasco* (hereinafter CEV-APCPV)

- (52) Since these associations submitted similar or even identical comments, the following summary applies to both of them.
- (53) CEV-APCPV questions the Commission's assessment that the reduction of the tax base is specific or selective because firms set up before it came into force and existing firms are excluded and because of the quantitative thresholds required. Tax rules always apply from the date of their entry into force, and retroactive application is exceptional. Furthermore, as the objective of the measure is to encourage investment, it is logical that the tax reduction should be confined to new firms. As regards the thresholds, everything indicates that they are objective and, moreover, much used in the tax sphere. As to the Diputación Foral's approval before the reduction of the tax base can apply, everything indicates that this is an act of prior verification aimed at checking that all the conditions are met. Once the check has been made, the grant takes place automatically.
- (54) As for the effect on trade, CEV-APCPV emphasises that this should be established on an individual basis, i.e. the opposite of the general analysis made by the Commission. For instance, there may be recipients, which only produce for local markets. In such a case, the tax measures do not affect intra-Community trade. The same applies to the effect on competition. Moreover, the reduction of the tax base for recipients whose activities are carried out on markets that have not yet been liberalised cannot distort competition. For the rest, the loss of tax revenues cannot be assessed if it is regarded as a single measure, in this case the reduction of the tax base, while ignoring the overall tax burden. In this respect, CEV-APCPV state that the overall tax burden in the Basque Country is greater than in the rest of Spain.
- (55) CEV-APCPV consider that, even if the Commission, despite the above comments, continues to think that the said reduction of the tax base is a specific measure, it would be justified by the nature and general scheme of the system. In support of this view, they emphasise that the tax measure is applied to all operators irrespective of their activity. Furthermore, it is necessary for the functioning and efficiency of the system, since to evaluate the inequality of a measure it is necessary to situate it in the system and determine whether this results in a lower tax burden. Moreover, the tax measure complies with the principle of equality, since new firms are not in the same situation as an existing firm.
- (56) In addition, CEV-APCPV ask the Commission to assess the measure in question by taking into account similar

measures in other Member States (e.g. Ireland), similar measures from 1993 introduced by the Spanish Central Government, and the application of the reduction of the tax base in question throughout Spanish territory. In this respect, CEV-APCPV state that the Commission has never considered that these measures are caught by Article 87 of the EC Treaty. Furthermore, they question whether the tax measures can be regarded as operating aid, since the latter is not applicable to new firms, but to the artificial maintenance of existing firms. For the rest, CEV-APCPV consider that the Commission's objective in initiating the procedure against the reduction of the tax base is tax harmonisation. However, for this it is using Articles 87 and 88 of the Treaty, and for this reason there is a misuse of powers.

- (57) In view of the above, CEV-APCPV conclude that the reduction of the tax base is not caught by Article 87 of the Treaty.

V. TRANSMISSION OF THE THIRD PARTIES' COMMENTS TO SPAIN

- (58) By letter to the Spanish Permanent Representation, dated 18 May 2000, the Commission sent, pursuant to Article 6(2) of the aforesaid Regulation (EC) No 659/1999, the third parties' comments to Spain, inviting it to submit its observations within one month of the date of the letter. Spain has not submitted any such observations.

VI. ASSESSMENT OF THE AID

VII. THE CHARACTER OF A STATE AID

- (59) The Commission would point out that, for the purpose of applying the Community rules on State aid, the tax nature of the measures in question does not matter, since Article 87 of the Treaty is applied to aid measures 'in any form'. Nevertheless, the Commission emphasises that, to be regarded as aid, the measures in question should cumulatively satisfy the four criteria set out in Article 87 and explained below.
- (60) Firstly, the measure must confer on recipients an advantage, which relieves them of charges that are normally borne from their budgets. The advantage may be provided through a reduction in the firm's tax burden in various ways, including a total or partial reduction in the amount of tax. The said reduction of the tax base by 99 %, 75 %, 50 % and 25 % meets this criterion, since it reduces the recipient firms' tax burden by an amount equivalent to the result of applying the tax rate to the post-reduction balance. If the tax base were not reduced, the recipient firm would have to pay the particular tax on 100 % of the tax base. The reduction of the base thus implies an exception to the common tax system applicable.

- (61) Secondly, the Commission considers the said reduction of the base involves a loss of tax revenue and is therefore equivalent to the consumption of public resources in the form of fiscal expenditure. This criterion is also applied to aid granted by regional and local bodies in the Member States⁽¹⁹⁾. Furthermore, the intervention of the State can be effected both through tax provisions of a statutory, regulatory or administrative kind and through the practices of the tax authorities. In this specific case, the intervention of the State is effected by the Diputación Foral of Guipúzcoa through a legislative provision.
- (62) As regards the argument put forward in certain comments by third parties, namely that it would be wrong to regard the reduction of the tax base of 99 %, 75 %, 50 % and 25 % as involving a loss of tax revenue compared to the normal amount (established by the Commission) of tax which should be paid, it has to be pointed out that the normal level of tax derives from the tax system in question and not from a Commission decision. Furthermore, according to the second indent in point 9 of notice 98/C 384/03, to qualify as State aid, 'firstly, the measure must confer on recipients an advantage which relieves them of charges that are normally borne from their budgets. The advantage may be provided through a reduction in the firm's tax burden in various ways, including [...] a total or partial reduction in the amount of tax (such as exemption or a tax credit)'. This is the case with the relief in the form of the partial reduction of 99 %, 75 %, 50 % and 25 % of the tax base. The comment is without foundation therefore.
- (63) Thirdly, the measure must affect competition and trade between Member States. It should be pointed out in this respect that, according to a report⁽²⁰⁾ on the external dependency of the Basque economy in the period 1990-95, exports abroad went up⁽²¹⁾, not only in absolute terms but, in particular, in relative terms as well, to the detriment of exports to the rest of Spain. The foreign market thus partly replaced the market, which is the rest of Spain. Furthermore, according to another statistical report⁽²²⁾ on the foreign trade of the Basque Country, at 28,9 % the Basque economy's 'tendency to export' (ratio of exports to GDP) is greater than that of Germany and the other Member States, where it is about 20 %. According to this report, the Basque trade balance was clearly in surplus during the period 1993-1998. In particular, in 1998, for each ESP 100 of imports there were ESP 144 of exports. In short, the Basque economy is very open to the outside, and its production is very much geared to exporting. Given these characteristics of the Basque economy, it is clear that recipient firms may trade between Member States. Consequently, aid strengthens their position vis-à-vis their competitors in intra-Community trade. That trade is therefore affected. Furthermore, the increase in recipient firms' net profit (profit after tax) improves their profitability. This enables them to compete with firms, which are not eligible for the tax incentives.
- (64) Since, in this case, the tax rules examined are general and abstract in character, the Commission would point out that the analysis of their incidence can only be carried out at a general, abstract level; it is not possible to specify the particular incidence on a market, sector or specific product, as we see in the abovementioned comments of third parties. This position has been confirmed in the established case law⁽²³⁾ of the Court of Justice.
- (65) As regards the comment that the effect on trade should be assessed by the Commission on the basis of a comparison of all tax systems, the Commission would point out that the distortions of competition which are the subject of this procedure under Articles 87 and 88 of the Treaty are due to a derogating rule which favours certain firms (in this case certain newly established firms) vis-à-vis the other firms of the Member State; they are not possible distortions of competition which are due to differences between the tax systems of the Member States, which might, as appropriate, be caught by the provisions of Articles 93 to 97 of the Treaty.
- ⁽¹⁹⁾ See Case 248/84 *Germany v Commission* [1994] ECR 4013, judgment rendered by the Court of Justice on 14 October 1987.
- ⁽²⁰⁾ Mr. Paxti Garrido Espinosa and Ms Victoria García Olea, 'La dependencia exterior vasca en el periodo 1990-1995', Euskal Estatistika-Erakundea/Instituto Vasco de Estadística (EUSTAT), the statistical office of the Basque Government.
- ⁽²¹⁾ Exports abroad accounted for 28,5 % of total exports (including sales to the rest of Spain) in 1990, and for 40,8 % five years later in 1995.
- ⁽²²⁾ 'Estadística de Comercio Exterior para la Comunidad Autónoma de Euskadi en el año 1998', prepared by EUSTAT.
- ⁽²³⁾ See Case C-75/97 (*Maribel Belgium v Commission*, paragraphs 48 and 51 (17 June 1999); Case T-298/97 *Alzetta Mauro and others v Commission*, paragraphs 80 to 82 (15 June 2000); the Opinion of Advocate General Ruiz-Jarabo in Case C-310/99 *Italy v Commission*, paragraphs 54 and 55 (17 May 2001); and the Opinion of Advocate General Saggio in Case C-156/98 *Germany v Commission*, paragraph 31 (27 January 2000), which ran thus: 'It should be pointed out in this respect that, with regard to a general aid scheme, to be able to determine the effect of that scheme on trade, it is sufficient if, from an *ex ante* assessment, it can reasonably be considered that the said effect may come about'. If the position of a firm (or, as in the present case, an indefinite number of firms) is reinforced by an aid scheme, this privilege may in principle affect competition between Member States.

(66) As to the specific character which State aid must have, the Commission takes the view that the reduction of the tax base is specific or selective in that it favours certain firms, since the conditions for granting the incentives specifically state that firms established before the said provincial law came into force are ineligible, as are other firms whose investments are below the threshold of ESP 80 million (EUR 480 810), which have created fewer than ten jobs and which do not have a paid-up capital of more than ESP 20 million (EUR 120 202). In this respect, the Commission would point out that, according to the Fifth Report on Enterprise in Europe ⁽²⁴⁾, the number of firms in the European Community in 1995 which had fewer than ten employees, or no employees at all, was 16 767 000, or 92,89 % of the total ⁽²⁵⁾. In Spain's case, the percentage was even higher, at about 95,00 %. ⁽²⁶⁾ It is likely that these percentages are even higher in the case of new firms, since a firm usually starts with a workforce that grows as the firm consolidates and reaches its cruising speed. This was the case in Spain, in 1995, where the percentage was even higher, at about 98,00 %. ⁽²⁷⁾ Consequently, everything indicates, primarily, that one of the conditions of eligibility for the aid means, by itself, that the majority of firms are excluded. For the rest, the objective character of the threshold cited does not prevent it, as some of the third-party comments claim, from being selective and excluding firms which do not satisfy the conditions in question.

(67) As for the possible discretionary power of the tax authorities, the Commission finds that the aid in question is not granted automatically. The application submitted by the recipient is examined beforehand by the Diputación Foral de Guipúzcoa, which, after carrying out the examination, may, if appropriate, grant the aid. According to the Spanish authorities, this is simply to check that all the conditions are met. However, they do not explain why the check should be made beforehand and not, as is the normal practice in the management of tax revenue, *a posteriori*.

(68) As regards the existence of tax measures in the form of a reduction of the tax base in other Member States, which the Commission did not consider selective in scope because they are aimed at new firms, according to certain comments of third parties, this is the origin of a legitimate expectation concerning tax incentives for new firms the Commission would point out that the schemes

mentioned in some of the third-party comments are different in certain respects to this reduction of the tax base. Furthermore, even supposing that certain schemes were similar and that the Commission had not reacted, it would not be justified to follow this misguided approach in this particular case. It must be pointed out that, according to the case law of the Court of Justice, a possible infringement by a Member State of an obligation imposed on it under the Treaty, in connection with the prohibition in Article 92, would not be justified by the circumstance that other Member States had also failed to fulfil that obligation; it should also be pointed out that the effect of different distortions of competition on trade between Member States is not that they cancel each other out; on the contrary it is cumulative in character, so that such distortions increase the harmful consequences for the common market ⁽²⁸⁾.

(69) Concerning the question raised in some of the third-party comments about the character of the enabling rule or the rule granting aid directly, the Commission would point out that, in this case, the rules which introduced the reduction of the tax base have the character of an aid scheme. In support of this assessment, it is sufficient to point out that under Article 1(d) of Regulation No 659/1999, an aid scheme is defined as 'a system on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner...'. However, this character of an aid scheme does not predetermine, as certain third-party comments claim, whether there is any discretionary power in the execution of the scheme or not. Discretionary power in regard to the granting of the aid will depend on the specific characteristics of the scheme. Furthermore, the Commission would point out that, if the tax authorities to have discretion, this is enough, where there are no other specific elements, to establish the existence of aid elements in a tax measure.

(70) As regards invoking the nature or general scheme of the tax system as justification for the reduction of the tax base, the Commission emphasises that what matters is to know whether the tax measures involved meet the objectives inherent in the tax system itself, or whether, on the contrary, they pursue other, possibly legitimate objectives outside the tax system. However, it is up to the Member State concerned ⁽²⁹⁾ to establish that the tax

⁽²⁴⁾ Empresas en Europa, 5º informe, EUROSTAT.

⁽²⁵⁾ Taken from the data in the table on p. 31 of the Report.

⁽²⁶⁾ Taken from the data in the table on p. 224 of the Report.

⁽²⁷⁾ Taken from the data in the table on p. 73 of the Report.

⁽²⁸⁾ See Case C-78/76 *Steinike & Weinlig v Federal Republic of Germany*, paragraph 24, judgement by the Court of Justice on 22 March 1977. On the other hand, Case C-313/90 *Comité International de la rayonne et des fibres synthétiques and others v Commission*, paragraph 45, judgement by the Court of Justice on 24 March 1993, states that neither the principle of equal treatment nor that of the protection of legitimate expectations may be relied upon in order to justify the repetition of an incorrect interpretation of a measure.

⁽²⁹⁾ See paragraph 27 of the Opinion of Advocate General Ruiz-Jarabo in Case C-6/97.

measures in question follow the internal logic of the tax system. In the case at issue, the Spanish authorities state that because the measures are objective and cross-sector in character, they are consistent with the internal logic of the tax system. However, the fact that the measure is objective and cross-sector in character does not demonstrate that it follows the internal logic of the tax system — it is not sufficient evidence that the measure fulfils the principal objective inherent in any tax system, which is to gather the revenue for financing the expenditure of the State, or that it satisfies the principles of equality and progressiveness inherent in the Spanish tax system ⁽³⁰⁾.

involves an aid granted by a State, from State resources, which favours certain undertakings, distorts competition and affects trade between Member States.

VIII. THE UNLAWFUL NATURE OF THE REDUCTION OF THE TAX BASE

(71) Moreover, the Spanish authorities state in their comments that the reduction of the tax base satisfies the objective of promoting investment. It thus helps to achieve the industrial policy objectives pursued by the Government. According to the latter's paper *Política Industrial. Marco General de Actividades 1996-1999*, '[...] tax policies are essential for boosting economic development and, similarly, for promoting industrial projects based on the industrial development of the [Basque] Country' (page 131), and in the chapter 'Tax policy instruments' one reads: '[...] the tax autonomy which we have [in the Basque Country] enables us to search for imaginative made-to-measure tax solutions, e.g. for priority projects or even tax incentives for large firms (page 133)'. The reduction of the tax base in question, therefore, is part of an industrial policy whose objectives are not peculiar to tax systems.

(72) In short, the Commission finds that, as the Spanish authorities point out, the reduction of the tax base in question pursues an economic policy objective which is not inherent in the tax system. The reduction is therefore not justified by the nature or general scheme of the system.

(73) As to the argument put forward in certain third-party comments concerning the existence of a higher overall tax burden in the Basque Country, the Commission repeats that this is not relevant in the case at issue, since the procedure was initiated in respect of a specific measure and not the whole the tax system of each one of the three Basque territories.

(74) To sum up, the Commission finds that the reduction of the tax base is a State aid under Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement, since it

(75) Given that the said scheme does not require a commitment from the Spanish authorities to grant the aid in accordance with the conditions ⁽³¹⁾ for *de minimis* aid, the Commission considers that the aid cannot be regarded as subject to those rules. It should be pointed out in this respect that the Spanish authorities never maintained, in the procedure, that the aid in question should have the character of *de minimis* aid, either in full or in part. Moreover, it could not comply with the *de minimis* rules, since in particular there is no guarantee that the ceiling of EUR 100 000 would not be reached. The incentives do not have the character of existing aid, either, since they do not meet the conditions laid down in Article 1(b) of Regulation (EC) No 659/1999.

(76) The Commission would point out that State aid which is not covered by the *de minimis* rules and is not existing aid is subject to the obligation of prior notification laid down in Article 88(3) of the Treaty and Article 62(2) of the EEA Agreement. However, the Spanish authorities have not fulfilled this obligation, which is why the Commission believes that the aid should be regarded as unlawful. The Commission regrets this failure by the Spanish authorities to fulfil their obligation to notify the aid in advance.

(77) As regards the argument in some of the third-party comments that basically there is an alleged infringement of legitimate expectations and legal certainty, the Commission feels bound to reject this, since firstly the scheme is not an existing aid and, secondly, since it was not notified under Article 88(3) of the Treaty, the Commission has not been able to decide whether it is compatible with the common market. Consequently, the recipients cannot rely on legitimate expectations or legal certainty as regards the State aid nature of the reduction of the tax base. It should be pointed out in this connection that 'it is settled case-law that the right to protection of legitimate expectations may be claimed by any individual who finds himself in a position in which it is shown that the Community administration gave rise to justified

⁽³⁰⁾ Article 31 of the Spanish Constitution.

⁽³¹⁾ The result of the assessment of the aid is the same, whether that assessment is based on the Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996) or on Regulation 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30).

hopes on his part (...). However, no one may plead infringement of the principle of the protection of legitimate expectations in the absence of specific assurances given to him by the administration' ⁽³²⁾. For this reason, the argument that legitimate expectations or legal certainty have been infringed should be rejected in this case. Moreover, the Commission would point out in this respect that in its Decision 93/337/EEC ⁽³³⁾ it had regarded certain tax measures introduced by the provinces of Álava, Guipúzcoa and Vizcaya in 1988 as State aid.

IX. ASSESSMENT OF COMPATIBILITY WITH THE COMMON MARKET

(78) As a preliminary, the Commission would repeat that the reduction of the tax base has the character of an aid scheme. Given the general, abstract nature of an aid scheme, the Commission does not know the circumstances of the firms, which are already, recipients or which will be recipients. It cannot, therefore, examine the particular effect on competition of specific firms. In this context it is sufficient to ascertain that potential recipients could benefit from aid that is not consistent with the directives, guidelines and frameworks applicable on this subject. Moreover, the Commission would emphasise that, in its decision initiating the procedure, it had asked for all relevant information relating to the aid and the particular circumstances of each recipient. However, the Spanish authorities have not provided any of this information. This is why it is contradictory to reproach the Commission, as certain third-party comments do, for the general nature of its assessment and at the same time refuse to supply the detailed data requested.

(79) As the scheme in question covers only the NUTS 3 ⁽³⁴⁾ territory of Guipúzcoa, it is necessary to examine whether aid in this territory can qualify for the regional derogations in Article 87(3)(a) and (c). As regards the admissibility of Guipúzcoa, the Commission would point out that the territory has never been eligible for the Article 87(3)(a) derogation, since the per capita GDP ⁽³⁵⁾ of the NUTS 2 region of the Basque Country, of which it forms part, has always been higher than 75 % of the Community average. According to the rules on regional aid ⁽³⁶⁾, the conditions of eligibility for the derogation in

Article 87(3)(a) of the Treaty are met only if the region, in the case of NUTS 2, has a per capita GDP of not more than 75 % of the Community average.

(80) As regards the aid's eligibility for the derogation in Article 87(3)(c), the Commission would point out that, in its decision ⁽³⁷⁾ of 26 September on the changes in Spain's regional aid map, it proposed, under the procedure laid down in Article 88(1) of the Treaty, that the Spanish authorities should revise the map and consider in future that the whole of Guipúzcoa was a region in which aid for regional development could be regarded as compatible with the common market under the derogation in Article 87(3)(c). By letter from their Permanent Representation dated 26 September 1995, the Spanish authorities accepted this proposal. The new map thus came into force from that date. As regards the subsequent period, the Commission would point out that, in its decision of 11 April 2000, it approved the Spanish regional aid map for the period 2000 to 2006. According to this map, the province of Guipúzcoa continues to be a region in which regional development aid may be considered compatible with the common market in accordance with the derogation in Article 87(3)(c) of the Treaty.

(81) The State aid in the form of a reduction of the tax base has the effect of promoting the creation, in Guipúzcoa, of new firms in which the initial amount of investment and the number of jobs created exceed certain thresholds. However, although the minimum investment and the minimum number of jobs are achieved, the tax incentives in question do not qualify as investment or employment aid. They are not based on the amount of investment, the number of jobs created, or the corresponding wage costs, but on the tax base. Furthermore, they are not paid up to a limit expressed as a percentage of the amount of investment, the number of jobs created or the corresponding wage costs, but up to a ceiling expressed as a percentage of the tax base. In this respect, the Commission would point out that Annex I of the Guidelines on national regional aid (98/C 74/06) states that 'tax aid may be considered to be aid connected with an investment where it is based on an amount invested in the region. In addition, any tax aid may be connected with an investment if one sets a ceiling expressed as a percentage of the amount invested in the region'. Therefore, tax incentives, which, as in this case, do not meet these criteria, cannot qualify as investment aid.

⁽³²⁾ Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and others v Commission* [1999] ECR II-3663, paragraph 300, judgement rendered by the Court of Justice on 15 December 1999.

⁽³³⁾ OJ L 134, 3.6.1993, p. 25.

⁽³⁴⁾ Nomenclature of territorial units for statistics.

⁽³⁵⁾ Per capita gross domestic product (GDP) measured in purchasing power standards (PPS).

⁽³⁶⁾ The references to the regional rules are confined, in the following recitals, to the Guidelines on national regional aid (98/C 74/06). In any event, the result of the assessment would be the same if the analysis were based on the earlier rules. See point 3.5 of the Guidelines on national regional aid (98/C 74/06).

⁽³⁷⁾ OJ C 25, 31.1.1996, p.3

- (82) On the contrary, since they partly reduce the profits tax paid by the recipient firms, the incentives qualify as operating aid. Corporation tax is a tax burden which companies subject to it have to pay regularly and inevitably as part of their everyday management. It is therefore appropriate to examine the tax incentives in the light of any derogations that may apply to the operating aid in question.
- (83) In this respect, the Commission would point out that, in accordance with the said Guidelines (98/C 74/06), regional aid, which has the character of operating aid, is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a), provided that it meets certain conditions laid down in points 4.15 to 4.17 of the said Guidelines, in the outermost regions or in regions of low population density if it is intended to offset additional transport costs. However, the NUTS level 3 territory of Guipúzcoa is not eligible for the derogation in Article 87(3)(a) of the Treaty, and the grant of the said operating aid does not meet the conditions described. The NUTS level 3 territory of Guipúzcoa is not an outermost region⁽³⁸⁾ nor a region of low population density⁽³⁹⁾. This is the reason why the operating aid elements in the reduction of the tax base are prohibited, in particular because they are not granted in a region that is eligible for the derogation in Article 87(3)(a) of the Treaty, in an outermost region or a region of low population density. The incentives are therefore incompatible in this case.
- (84) The Commission therefore considers that the tax incentives scheme in question cannot be regarded as compatible with the common market under the regional derogations in Article 87(a) and (c) of the EC Treaty, since it does not comply with the rules on regional aid.
- (85) The derogation in Article 87(3)(c) has to be examined to see whether it might not apply, in the above cases, for other purposes as well as the development of certain economic activities. It may be concluded in this respect that the object of the reduction of the tax base is not to develop an economic activity within the meaning of Article 87(3)(c), in particular the development of measures to assist small and medium-sized enterprises, research and development, environmental protection, job creation or training in accordance with the appropriate Community rules. Consequently, the tax incentives cannot qualify for the derogation in Article 87(3)(c) in respect of the said purposes.
- (86) Similarly, in the absence of any sectoral limitations, the reduction of the tax base may be granted without any restriction to undertakings in sensitive sectors subject to specific Community rules, such as those applicable to the production, processing and marketing of the agricultural products in Annex I to the Treaty, fisheries, coal-mining, steel-making, transport, shipbuilding, synthetic fibres and the motor industry⁽⁴⁰⁾. In the circumstances, the Commission considers that the tax incentives in the form of a reduction of the tax base cannot comply with the said sectoral rules. In this particular case, the reduction of the tax base does not meet the condition that it should not promote new production capacity so as not to exacerbate the overcapacity problems from which these sectors traditionally suffer. Therefore, where the recipient belongs to one of the abovementioned sectors, the Commission considers that, since it is not subject to the sectoral rules mentioned, the aid is incompatible with the common market and the derogation in Article 87(3)(c) of the EC Treaty on the promotion of certain activities does not apply.
- (87) The aid in question, which cannot qualify for the derogations in Article 87(3)(a) and (c) of the Treaty, cannot qualify either for other derogations in Article 87(2) and (3). It cannot be regarded as aid of a social nature under Article 87(2)(a), since it is not intended to make good the damage caused by natural disasters or, for the purposes of Article 87(2)(b), by other exceptional occurrences. Furthermore, its object is not to promote the execution of an important project of common European interest, nor to remedy a serious disturbance in the economy of a Member State, as provided for in Article 87(3)(b). For the rest, it cannot qualify for the derogation in Article 87(3)(c), since it is not intended to promote culture or heritage conservation. The aid is therefore incompatible with the common market.
- (88) As the reduction of the tax base covers various tax years, there could still be some tax aid currently left to pay. However, this aid is unlawful and incompatible. The

⁽³⁸⁾ It is not in the list of outermost regions in Article 299 of the Treaty.

⁽³⁹⁾ According to point 3.14 of the Guidelines on national regional aid (98/C 74/06).

⁽⁴⁰⁾ For the sectoral rules currently in force see, in addition to the *Official Journal of the European Communities*, the website of the Directorate-General for Competition http://europa.eu.int/comm/competition/state_aid/legislation/

Spanish authorities should therefore cancel the payment of any balance from the reduction of the tax base, which could still be due to certain recipients.

- (89) As regards incompatible aid already paid, it should be pointed out that, in accordance with the above arguments, the recipients may not rely on general principles of Community law such as legitimate expectations or legal certainty. Consequently, there is nothing to prevent the application of Article 14(1) of Regulation (EEC) No 659/1999, according to which 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. In this case, therefore, the Spanish authorities should take all necessary measures to recover the aid already paid in order to restore the economic situation, which the recipient firms would be in without the unlawful grant of the aid. The aid should be recovered in accordance with the procedures and provisions of Spanish law and should include all interest due, calculated from the date the aid was granted to the date of actual repayment on the basis of the reference rate used at that date to calculate the net grant equivalent of regional aid in Spain ⁽⁴¹⁾.
- (90) This decision relates to the scheme and should be implemented immediately, including the recovery of any individual aid granted under that scheme. The Commission would also point out that, as usual, this Decision is without prejudice to whether individual aid may be regarded, in full or in part, as compatible with the common market on its own merits, either in a subsequent Commission decision or under exempting regulations.

X. CONCLUSIONS

- (91) In view of the above, the Commission, concludes that:
- Spain has unlawfully put into effect, in Guipúzcoa, the reduction of the tax base for investments, thereby infringing Article 88(3) of the Treaty,
 - the reduction of the tax base in question is incompatible with the common market,
 - the Spanish authorities shall cancel the payment of any aid balance, which could still be due to certain recipients. As regards the incompatible aid already paid, the Spanish authorities shall take all necessary measures to recover it, so as to restore the economic situation which the recipient firms would be in without the unlawful grant of the aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid in the form of a reduction of the tax base, unlawfully put into effect by Spain in the Historic Territory of Guipúzcoa, in breach of Article 88(3) of the Treaty, through Article 26 of Norma Foral 7/1996 of 4 July, is incompatible with the common market.

Article 2

Spain shall abolish the aid scheme referred to in Article 1, since it is continuing to produce effects.

Article 3

1. Spain shall take all necessary measures to recover from the recipients the aid referred to in Article 1, which has been unlawfully made available to them.

Spain shall cancel all payment of outstanding aid.

2. Recovery shall be effected without delay in accordance with the procedures of national law, provided these allow the immediate and effective execution of this Decision. The sums to be recovered shall bear interest from the date on which they were available to the recipients until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 4

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

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 11 July 2001.

For the Commission

Mario MONTI

Member of the Commission

⁽⁴¹⁾ Commission letter to Member States SG(91)D/4577 of 4 March 1991. See also Case 142/87 *Belgium v Commission* [1990] ECR I-950, judgement by the Court of Justice dated 21 March 1990.