ISSN 0378-6978

# Official Journal

## of the European Communities

L 149

Volume 42

16 June 1999

English edition

# Legislation

Contents





(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Contents (continued)



---

II *Acts whose publication is not obligatory*

**Council**

1999/394/EC, Euratom:



**Commission**

1999/395/EC:



1999/396/EC, ECSC, Euratom:



1999/397/EC:



EN

[1] Text with EEA relevance

I

*(Acts whose publication is obligatory)*

# COMMISSION REGULATION (EC) No 1229/1999

## of 15 June 1999

## establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4 (1) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 16 June 1999.

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

*ANNEX*

**to the Commission Regulation of 15 June 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables**

*(EUR/100 kg)*

| CN code | Third country code (1) | Standard import value |
|---|---|---|
| 0702 00 00 | 052 | 67,5 |
| | 064 | 47,0 |
| | 999 | 57,3 |
| 0707 00 05 | 052 | 79,2 |
| | 628 | 133,7 |
| | 999 | 106,4 |
| 0709 90 70 | 052 | 58,0 |
| | 999 | 58,0 |
| 0805 30 10 | 382 | 53,6 |
| | 388 | 61,2 |
| | 528 | 38,4 |
| | 999 | 51,1 |
| 0808 10 20, 0808 10 50, 0808 10 90 | 388 | 71,6 |
| | 400 | 63,9 |
| | 508 | 80,0 |
| | 512 | 52,2 |
| | 524 | 71,0 |
| | 528 | 48,5 |
| | 804 | 99,5 |
| | 999 | 69,5 |
| 0809 20 95 | 052 | 194,2 |
| | 064 | 190,7 |
| | 068 | 139,9 |
| | 400 | 187,5 |
| | 616 | 153,1 |
| | 999 | 173,1 |
| 0809 40 05 | 624 | 249,2 |
| | 999 | 249,2 |

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22.11.1997, p. 19). Code '999' stands for 'of other origin'.

# COMMISSION REGULATION (EC) No 1230/1999

## of 15 June 1999

## fixing the export refunds on beef and veal and amending Regulation (EEC) No 3846/87 establishing an agricultural product nomenclature for export refunds

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ([1]), as last amended by Regulation (EC) No 1633/98 ([2]), and in particular Article 13 thereof,

Whereas Article 13 of Regulation (EEC) No 805/68 provides that the difference between prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EEC) No 32/82 ([3]), as last amended by Regulation (EC) No 2326/97 ([4]), Regulation (EEC) No 1964/82 ([5]), as last amended by Regulation (EC) No 2469/97 ([6]), and Regulation (EEC) No 2388/84 ([7]), as last amended by Regulation (EEC) No 3661/92 ([8]), lay down the conditions for granting special export refunds on certain cuts of beef and veal and certain preserved beef and veal products;

Whereas it follows from applying those rules and criteria to the foreseeable situation on the market in beef and veal that the refund should be as set out below;

Whereas, given the current market situation in the Community and the possibilities of disposal in certain third countries in particular, export refunds should be granted, on the one hand, on bovine animals intended for slaughter of a live weight greater than 220 kilograms and less than 300 kilograms, and, on the other on adult bovine animals of a live weight of at least 300 kilograms;

Whereas export refunds should be granted for certain destinations on some fresh or chilled meat listed in the Annex under CN code 0201, on some frozen meat listed in the Annex under CN code 0202, on some meat or offal listed in the Annex under CN code 0206 and on some other prepared or preserved meat or offal listed in the Annex under CN code 1602 50 10;

Whereas, in view of the wide differences in products covered by CN codes 0201 20 90 700 and 0202 20 90 100 used for refund purposes, refunds should only be granted on cuts in which the weight of bone does not exceed one third;

Whereas, in the case of meat of bovine animals, boned or boneless, salted and dried, there are traditional trade flows to Switzerland; whereas, to allow this trade to continue, the refund should be set to cover the difference between prices on the Swiss market and export prices in the Member States; whereas there are possibilities for exporting such meat and also salted, smoked and dried meat to certain African, Near and Middle Eastern countries; whereas a refund should accordingly be set;

Whereas, in the case of certain other cuts and preserves of meat or offal shown in the Annex under CN codes 1602 50 31 to 1602 50 80, the Community share of international trade may be maintained by granting a refund corresponding to that at present available;

Whereas, in the case of other beef and veal products, a refund need not be fixed since the Community's share of world trade is not significant;

Whereas Commission Regulation (EEC) No 3846/87 ([9]), as last amended by Regulation (EC) No 565/1999 ([10]), establishes an agricultural product nomenclature for export refunds; whereas for the sake of clarification footnote 2 on the conditions to be met for the refund to be granted on certain boned meat of adult male bovine animals in Sector 5 of the Annex to Regulation (EEC) No 3846/87 and in Annex I hereto should be reworded;

Whereas, in order to simplify customs export formalities for operators, the refunds on all frozen cuts should be brought into line with those on fresh or chilled cuts other than those from adult male bovine animals;

([1]) OJ L 148, 28.6.1968, p. 24.
([2]) OJ L 210, 28.7.1998, p. 17.
([3]) OJ L 4, 8.1.1982, p. 11.
([4]) OJ L 323, 26.11.1997, p. 1.
([5]) OJ L 212, 21.7.1982, p. 48.
([6]) OJ L 341, 12.12.1997, p. 8.
([7]) OJ L 221, 18.8.1984, p. 28.
([8]) OJ L 370, 19.12.1992, p. 16.
([9]) OJ L 366, 24.12.1987, p. 1.
([10]) OJ L 70, 17.3.1999, p. 3.

Whereas experience has shown that in certain cases it is often difficult to determine the relevant quantities of beef, veal and other meat contained in prepared or preserved meat falling within CN code 1602 50; whereas exclusively beef and veal products should accordingly be set apart and a new heading should be created for mixtures of meats or offals; whereas checks on products other than mixtures of meat or offal should be stepped up by making the granting of refunds on these products conditional on manufacture under the arrangements provided for in Article 4 of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products [1], as amended by Regulation (EEC) No 2026/83 [2];

Whereas refunds on female animals should vary depending on their age in order to prevent abuses in the export of certain pure-bred breeding animals;

Whereas opportunities exist for the export to certain third countries of heifers other than those intended for slaughter, but to prevent any abuse control criteria should be laid down to ensure that these animals are not more than 36 months old;

Whereas, notwithstanding the subdivision of the Combined Nomenclature for prepared and preserved meat, other than uncooked, falling within CN code 1602 50, experience has shown that it is possible to delete from the refund nomenclature several products falling within CN code 1602 50 31 and to amend the list of products falling within CN code 1602 50 80;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The list of products on which export refunds as referred to in Article 13 of Regulation (EEC) No 805/68 are granted and the amount thereof shall be as set out in Annex I to this Regulation.

2. The destinations are identified in Annex II to this Regulation.

*Article 2*

The grant of the refund for product code 0102 90 59 9000 of the nomenclature for export refunds and for exports to the third countries in zone 10 listed in Annex II to this Regulation shall be subject to presentation, when the customs formalities for export are completed, of the original and one copy of the veterinary certificate signed by an official veterinarian certifying that these are heifers of an age of not more than 36 months. The original of the certificate shall be returned to the exporter and the copy, certified as being in accordance with the regulations by the customs authorities, shall be attached to the application for payment of the refund.

*Article 3*

Footnote 2 in Sector 5 of the Annex to Regulation (EEC) No 3846/87 is replaced by the following:

'The refund is granted subject to compliance with the conditions laid down in Regulation (EEC) No 1964/82, as amended.'

*Article 4*

This regulation shall enter into force on 16 June 1999.

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 62, 7.3.1980, p. 5.
[2] OJ L 199, 22.7.1983, p. 12.

*ANNEX I*

**to the Commission Regulation of 15 June 1999 fixing export refunds on beef**

*(EUR/100 kg)*

| Product code | Destination | Refund (7) |
|---|---|---|
| | | — Live weight — |
| 0102 10 10 9120 | 01 | 63,00 |
| 0102 10 10 9130 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| 0102 10 30 9120 | 01 | 63,00 |
| 0102 10 30 9130 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| 0102 10 90 9120 | 01 | 63,00 |
| 0102 90 41 9100 | 02 | 60,50 |
| 0102 90 51 9000 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| 0102 90 59 9000 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| | 10 | 60,50 (9) |
| 0102 90 61 9000 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| 0102 90 69 9000 | 02 | 24,50 |
| | 03 | 16,50 |
| | 04 | 8,50 |
| 0102 90 71 9000 | 02 | 60,50 |
| | 03 | 39,50 |
| | 04 | 20,00 |
| 0102 90 79 9000 | 02 | 60,50 |
| | 03 | 39,50 |
| | 04 | 20,00 |
| | | — Net weight — |
| 0201 10 00 9110 (1) | 02 | 94,00 |
| | 03 | 65,00 |
| | 04 | 31,50 |
| 0201 10 00 9120 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0201 10 00 9130 (1) | 02 | 129,00 |
| | 03 | 86,50 |
| | 04 | 43,50 |
| 0201 10 00 9140 | 02 | 51,00 |
| | 03 | 35,00 |
| | 04 | 18,00 |
| 0201 20 20 9110 (1) | 02 | 129,00 |
| | 03 | 86,50 |
| | 04 | 43,50 |

*(EUR/100 kg)*

| Product code | Destination | Refund (7) |
|---|---|---|
| | | — Net weight — |
| 0201 20 20 9120 | 02 | 51,00 |
| | 03 | 35,00 |
| | 04 | 18,00 |
| 0201 20 30 9110 (1) | 02 | 94,00 |
| | 03 | 65,00 |
| | 04 | 31,50 |
| 0201 20 30 9120 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0201 20 50 9110 (1) | 02 | 163,00 |
| | 03 | 109,00 |
| | 04 | 54,00 |
| 0201 20 50 9120 | 02 | 65,00 |
| | 03 | 44,50 |
| | 04 | 22,00 |
| 0201 20 50 9130 (1) | 02 | 94,00 |
| | 03 | 65,00 |
| | 04 | 31,50 |
| 0201 20 50 9140 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0201 20 90 9700 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0201 30 00 9050 | 05 (4) | 53,00 |
| | 07 (4a) | 53,00 |
| 0201 30 00 9100 (2) | 02 | 227,50 |
| | 03 | 156,00 |
| | 04 | 78,50 |
| | 06 | 201,00 |
| 0201 30 00 9120 (2) | 08 | 125,50 |
| | 09 | 116,50 |
| | 03 | 86,00 |
| | 04 | 43,00 |
| | 06 | 110,00 |
| 0201 30 00 9150 (6) | 08 | 33,00 |
| | 09 | 30,00 |
| | 03 | 26,00 |
| | 04 | 13,50 |
| | 06 | 29,50 |
| 0201 30 00 9190 (6) | 02 | 51,00 |
| | 03 | 33,50 |
| | 04 | 16,00 |
| | 06 | 41,00 |

*(EUR/100 kg)*

| Product code | Destination | Refund (7) |
|---|---|---|
| | | – Net weight – |
| 0202 10 00 9100 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0202 10 00 9900 | 02 | 51,00 |
| | 03 | 35,00 |
| | 04 | 18,00 |
| 0202 20 10 9000 | 02 | 51,00 |
| | 03 | 35,00 |
| | 04 | 18,00 |
| 0202 20 30 9000 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0202 20 50 9100 | 02 | 65,00 |
| | 03 | 44,50 |
| | 04 | 22,00 |
| 0202 20 50 9900 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0202 20 90 9100 | 02 | 36,50 |
| | 03 | 26,00 |
| | 04 | 13,00 |
| 0202 30 90 9100 | 05 (4) | 53,00 |
| | 07 (4a) | 53,00 |
| 0202 30 90 9400 (6) | 08 | 33,00 |
| | 09 | 30,00 |
| | 03 | 26,00 |
| | 04 | 13,50 |
| | 06 | 29,50 |
| 0202 30 90 9500 (6) | 02 | 51,00 |
| | 03 | 33,50 |
| | 04 | 16,00 |
| | 06 | 41,00 |
| 0206 10 95 9000 | 02 | 51,00 |
| | 03 | 33,50 |
| | 04 | 16,00 |
| | 06 | 41,00 |
| 0206 29 91 9000 | 02 | 51,00 |
| | 03 | 33,50 |
| | 04 | 16,00 |
| | 06 | 41,00 |
| 0210 20 90 9100 | 02 | 42,50 |
| | 04 | 25,50 |
| 0210 20 90 9300 | 02 | 53,00 |
| 0210 20 90 9500 (3) | 02 | 53,00 |

*(EUR/100 kg)*

| Product code | Destination | Refund (7) |
|---|---|---|
| | | – Net weight – |
| 1602 50 10 9120 | 02 | 59,00 (8) |
| | 03 | 47,00 (8) |
| | 04 | 47,00 (8) |
| 1602 50 10 9140 | 02 | 52,50 (8) |
| | 03 | 41,50 (8) |
| | 04 | 41,50 (8) |
| 1602 50 10 9160 | 02 | 41,50 (8) |
| | 03 | 33,50 (8) |
| | 04 | 33,50 (8) |
| 1602 50 10 9170 | 02 | 28,00 (8) |
| | 03 | 22,00 (8) |
| | 04 | 22,00 (8) |
| 1602 50 10 9190 | 02 | 28,00 |
| | 03 | 22,00 |
| | 04 | 22,00 |
| 1602 50 10 9240 | 02 | — |
| | 03 | — |
| | 04 | — |
| 1602 50 10 9260 | 02 | — |
| | 03 | — |
| | 04 | — |
| 1602 50 10 9280 | 02 | — |
| | 03 | — |
| | 04 | — |
| 1602 50 31 9125 | 01 | 100,00 (5) |
| 1602 50 31 9135 | 01 | 38,00 (8) |
| 1602 50 31 9195 | 01 | 18,50 |
| 1602 50 31 9325 | 01 | 89,00 (5) |
| 1602 50 31 9335 | 01 | 33,50 (8) |
| 1602 50 31 9395 | 01 | 18,50 |
| 1602 50 39 9125 | 01 | 100,00 (5) |
| 1602 50 39 9135 | 01 | 38,00 (8) |
| 1602 50 39 9195 | 01 | 18,50 |
| 1602 50 39 9325 | 01 | 89,00 (5) |
| 1602 50 39 9335 | 01 | 33,50 (8) |
| 1602 50 39 9395 | 01 | 18,50 |
| 1602 50 39 9425 | 01 | 38,00 (5) |
| 1602 50 39 9435 | 01 | 22,00 (8) |
| 1602 50 39 9495 | 01 | 16,00 |
| 1602 50 39 9505 | 01 | 16,00 |
| 1602 50 39 9525 | 01 | 38,00 (5) |
| 1602 50 39 9535 | 01 | 22,00 (8) |
| 1602 50 39 9595 | 01 | 16,00 |

*(EUR/100 kg)*

| Product code | Destination | Refund (7) |
|---|---|---|
| | | – Net weight – |
| 1602 50 39 9615 | 01 | 16,00 |
| 1602 50 39 9625 | 01 | 7,50 |
| 1602 50 39 9705 | 01 | — |
| 1602 50 39 9805 | 01 | — |
| 1602 50 39 9905 | 01 | — |
| 1602 50 80 9135 | 01 | 33,50 (8) |
| 1602 50 80 9195 | 01 | 16,00 |
| 1602 50 80 9335 | 01 | 30,00 (8) |
| 1602 50 80 9395 | 01 | 16,00 |
| 1602 50 80 9435 | 01 | 22,00 (8) |
| 1602 50 80 9495 | 01 | 16,00 |
| 1602 50 80 9505 | 01 | 16,00 |
| 1602 50 80 9515 | 01 | 7,50 |
| 1602 50 80 9535 | 01 | 22,00 (8) |
| 1602 50 80 9595 | 01 | 16,00 |
| 1602 50 80 9615 | 01 | 16,00 |
| 1602 50 80 9625 | 01 | 7,50 |
| 1602 50 80 9705 | 01 | — |
| 1602 50 80 9805 | 01 | — |
| 1602 50 80 9905 | 01 | — |

(1) Entry under this subheading is subject to the submission of the certificate appearing in the Annex to amended Commission Regulation (EEC) No 32/82.

(2) The refund is granted subject to compliance with the conditions laid down in amended Regulation (EEC) No 1964/82.

(3) The refund on beef in brine is granted on the net weight of the meat, after deduction of the weight of the brine.

(4) Carried out in accordance with amended Commission Regulation (EEC) No 2973/79 (OJ L 336, 29.12.1979, p. 44).

(4a) Carried out in accordance with amended Commission Regulation (EEC) No 2051/96 (OJ L 274, 26.10.1996, p. 18).

(5) OJ L 221, 19.8.1984, p. 28.

(6) The lean bovine meat content excluding fat is determined in accordance with the procedure described in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39).

The term 'average content' refers to the sample quantity as defined in Article 2(1) of Regulation (EC) No 2457/97 (OJ L 340, 11.12.1997, p. 29). The sample is to be taken from that part of the consignment presenting the highest risk.

(7) Article 13(10) of amended Regulation (EEC) No 805/68 provides that no export refunds shall be granted on products imported from third countries and re-exported to third countries.

(8) The refund is granted only on products manufactured under the arrangement provided for in Article 4 of amended Council Regulation (EEC) No 565/80.

(9) The grant of the refund is subject to compliance with the conditions referred to in Article 2 of this Regulation.

*NB:* The descriptions corresponding to the product codes and the footnotes are set out in Commission Regulation (EEC) No 3846/87 as amended.

*ANNEX II*

Zone 01: all third countries

Zone 02: zones 08 and 09

| Zone 03 | Zone 07 | Zone 09 |
|---|---|---|
| 022 Ceuta and Melilla | 404 Canada | 224 Sudan |
| 024 Iceland | | 228 Mauritania |
| 028 Norway | | 232 Mali |
| 041 Faeroes | | 236 Burkina Faso |
| 043 Andorra | | 240 Niger |
| 044 Gibraltar | | 244 Chad |
| 045 Vatican City | | 247 Cape Verde |
| 053 Estonia | | 248 Senegal |
| 054 Latvia | | 252 Gambia |
| 055 Lithuania | | 257 Guinea-Bissau |
| 060 Poland | | 260 Guinea |
| 061 Czech Republic | | 264 Sierra Leone |
| 063 Slovakia | | 268 Liberia |
| 064 Hungary | | 272 Côte d'Ivoire |
| 066 Romania | | 276 Ghana |
| 068 Bulgaria | | 280 Togo |
| 070 Albania | | 284 Benin |
| 091 Slovenia | | 288 Nigeria |
| 092 Croatia | | 302 Cameroon |
| 093 Bosnia-Herzegovina | | 306 Central African Republic |
| 094 Federal Republic of Yugoslavia | | 310 Equatorial Guinea |
| 096 Former Yugoslav Republic of Macedonia | | 311 Sao Tomé and Principe |
| 109 The communes of Livigno and Campione d'Italia; the island of Helgoland | | 314 Gabon |
| 406 Greenland | | 318 Congo (Republic) |
| 600 Cyprus | | 322 Congo (Democratic Republic) |
| 950 Stores and provisions (Destinations referred to in Article 34 of Commission Regulation (EEC) No 3665/87, as amended) | | 324 Rwanda |
| | | 328 Burundi |
| | | 329 St Helena and dependencies |
| | | 330 Angola |
| | | 334 Ethiopia |
| | | 336 Eritrea |
| | | 338 Djibouti |
| | | 342 Somalia |
| | | 350 Uganda |
| | | 352 Tanzania |
| | | 355 Seychelles and dependencies |
| | | 357 British Indian Ocean Territory |
| | | 366 Mozambique |
| | | 373 Mauritius |
| | | 375 Comoros |
| | | 377 Mayotte |
| | | 378 Zambia |
| | | 386 Malawi |
| | | 388 South Africa |
| | | 395 Lesotho |
| Zone 04 | Zone 08 | |
| 039 Switzerland | 046 Malta | |
| | 052 Turkey | |
| | 072 Ukraine | |
| | 073 Belarus | |
| | 074 Moldova | |
| | 075 Russia | |
| | 076 Georgia | |
| | 077 Armenia | |
| | 078 Azerbaijan | |
| | 079 Kazakhstan | |
| | 080 Turkmenistan | |
| | 081 Uzbekistan | |
| | 082 Tajikistan | |
| | 083 Kirghistan | |
| | 204 Morocco | |
| | 208 Algeria | |
| | 212 Tunisia | |
| | 216 Libya | |
| | 220 Egypt | |
| | 604 Lebanon | |
| | 608 Syria | |
| | 612 Iraq | |
| | 616 Iran | |
| | 624 Israel | |
| | 625 West Bank and the Gaza Strip | |
| | 628 Jordan | |
| | 632 Saudi Arabia | |
| | 636 Kuwait | |
| | 640 Bahrain | |
| | 644 Qatar | |
| | 647 United Arab Emirates | |
| | 649 Oman | |
| | 653 Yemen | |
| | 662 Pakistan | |
| | 669 Sri Lanka | |
| | 676 Myanmar (Burma) | |
| | 680 Thailand | |
| | 690 Vietnam | |
| | 700 Indonesia | |
| | 708 Philippines | |
| | 720 China | |
| | 724 North Korea | |
| | 740 Hong Kong | |
| Zone 05 | | Zone 10 |
| 400 United States of America | | 075 Russia |
| Zone 06 | | |
| 809 New Caledonia | | |
| 822 Frenche Polynesia | | |

*NB:* The countries are those defined by Commission Regulation (EC) No 2317/97 (OJ L 321, 22.11.1997, p. 19).

# COMMISSION REGULATION (EC) No 1231/1999

## of 15 June 1999

## opening a standing invitation to tender for the export of common wheat of breadmaking quality held by the Swedish intervention agency

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 Commission Regulation (EC) No 923/96 [2], and in particular Article 5 thereof,

(1) Whereas Commission Regulation (EEC) No 2131/93 [3] as last amended by Regulation (EC) No 39/1999 [4] lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

(2) Whereas, given the current market situation, a standing invitation to tender should be opened for the export of 35 113 tonnes of common wheat of breadmaking quality held by the Swedish intervention agency;

(3) Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

(4) Whereas, where removal of the common wheat of breadmaking quality is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

(5) Whereas this invitation to tender for the export of intervention stocks is unusual in that it will also operate at the end of the marketing year, i.e. in June 1999; whereas, therefore, in the case of tenders made between 17 and 30 June 1999, deliveries will be possible only from 1 July 1999; whereas provision must accordingly be made to derogate from the first paragraph of Article 16 of Regulation (EEC) No 2131/93, which stipulates that payment must be made no later than one month after acceptance of the tender;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Subject to the provisions of this Regulation the Swedish intervention agency issues a standing invitation to tender for the export of common wheat of breadmaking quality held by it in accordance with Regulation (EEC) No 2131/93.

*Article 2*

1. The invitation to tender shall cover a maximum of 35 113 tonnes of common wheat of breadmaking quality to be exported to all third countries. However, the customs export formalities for tenders submitted on or after 17 June 1999 may be completed only on or after 1 July 1999.

2. The regions in which the 35 113 tonnes of common wheat of breadmaking quality are stored are set out in Annex I.

*Article 3*

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

*Article 4*

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 126, 24.5.1996, p. 37.
[3] OJ L 191, 31.7.1993, p. 76.
[4] OJ L 5, 9.1.1999, p. 64.

2. Between 17 and 30 June 1999, tenders submitted under this invitation to tender shall not be admissible unless they are accompanied by a written undertaking to export only on or after 1 July 1999. The tenders may not be accompanied by applications for export licences submitted under Article 44 of Commission Regulation (EEC) No 3719/88 [1].

*Article 5*

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 17 June 1999.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 30 September 1999.

4. Tenders shall be lodged with the Swedish intervention agency.

*Article 6*

In the case of tenders submitted between 17 and 30 June 1999, the following conditions shall apply:

— notwithstanding the first paragraph of Article 16 of Regulation (EEC) No 2131/93, the cereals must be paid for by 31 July 1999, at the latest.

— notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that indicated in the tender.

*Article 7*

In the case of licences applied for between 17 and 30 June 1999, without prejudice to Article 17(3) of Regulation (EEC) No 2131/93, the security referred to in the second indent of Article 17(2) of that Regulation shall be released only when proof is provided that the customs export formalities were completed on or after 1 July 1999.

*Article 8*

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analysis results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

— two kilograms per hectolitre as regards specific weight, which must not, however, be less than 72 kg/hl,

— one percentage point as regards moisture content,

— 20 percentage points for the Hagberg falling index,

— half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 [2] and

— half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention common wheat of breadmaking quality of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with

[1] OJ L 331, 2.12.1988, p. 1.

[2] OJ L 74, 20.3.1992, p. 18.

another lot of intervention common wheat of breadmaking quality of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat of breadmaking quality is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

*Article 9*

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 [1] the documents relating to the sale of wheat of breadmaking quality in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

— Trigo blando panificable de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 1231/1999

— Bageegnet blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 1231/1999

— Interventions-Brotweichweizen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 1231/1999

— Μαλακός αρτοποιήσιμος σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 1231/1999

— Intervention common wheat of breadmaking quality without application of refund or tax, Regulation (EC) No 1231/1999

— Blé tendre d'intervention panifiable ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 1231/1999

— Frumento tenero d'intervento panificabile senza applicazione di restituzione né di tassa, regolamento (CE) n. 1231/1999

— Zachte tarwe van bakkwaliteit uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 1231/1999

— Trigo mole panificável de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 1231/1999

— Interventioleipävehnää, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) n:o 1231/1999

— Interventionsvete, av brödkvalitet, utan tillämpning av bidrag eller avgift, förordning (EG) nr 1231/1999

*Article 10*

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 10 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Notwithstanding Article 15(2) of Regulation (EEC) No 3002/92:

— the part of the security lodged when the licence is issued must be released within 20 working days of the date on which the successful tenderer provides proof that the cereals removed have left the customs territory of the Community,

— the remainder must be released within 15 working days of the date on which the successful tenderer provides the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to EUR 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

[1] OJ L 301, 17.10.1992, p. 17.

*Article 11*

Within two hours of the expiry of the time limit for the submission of tenders, the Swedish intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

*Article 12*

This Regulation shall enter into force on the day 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, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

*ANNEX I*

*(tonnes)*

| Place of storage | Quantity |
|---|---|
| Djurön | 1 575 |
| Gullspång | 6 339 |
| Holmsund | 2 746 |
| Otterbäcken | 9 250 |
| Skänninge | 6 082 |
| Surte | 9 121 |

*ANNEX II*

**Communication of refusal of lots under the standing invitation to tender for the export of common wheat of breadmaking quality held by the Swedish intervention agency**

(Article 8(1) of Regulation (EC) No 1231/1999)

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of lot by successful tenderer:

| Lot No | Quantity in tonnes | Address of silo | Reason for refusal to take over |
|---|---|---|---|
| | | | — Specific weight (kg/hl)<br>— % sprouted grains<br>— % miscellaneous impurities (Schwarzbesatz)<br>— % of matter which is not basic cereal of unimpaired quality<br>— Other |

*ANNEX III*

**Standing invitation to tender for the export of common wheat of breadmaking quality held by the Swedish intervention agency**

(Regulation (EC) No 1231/1999)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Tender No | Consignment No | Quantity (tonnes) | Offer price (EUR/tonne) (1) | Price increases (+) or reductions (−) (EUR/tonne) p.m. | Commercial costs (EUR/tonne) | Destination |
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| etc. | | | | | | |

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

*ANNEX IV*

The only numbers to use to call Brussels are (DG VI-C-1):

— fax: 296 49 56,
295 25 15,

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters).

# COMMISSION REGULATION (EC) No 1232/1999

## of 15 June 1999

## opening a standing invitation to tender for the export of common wheat of breadmaking quality held by the German intervention agency

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 Commission Regulation (EC) No 923/96 [2], and in particular Article 5 thereof,

(1) Whereas Commission Regulation (EEC) No 2131/93 [3] as last amended by Regulation (EC) No 39/1999 [4] lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

(2) Whereas, given the current market situation, a standing invitation to tender should be opened for the export of 200 006 tonnes of common wheat of breadmaking quality held by the German intervention agency;

(3) Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

(4) Whereas, where removal of the common wheat of breadmaking quality is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

(5) Whereas this invitation to tender for the export of intervention stocks is unusual in that it will also operate at the end of the marketing year, i.e. in June 1999; whereas, therefore, in the case of tenders made between 17 and 30 June 1999, deliveries will be possible only from 1 July 1999; whereas provision must accordingly be made to derogate from the first paragraph of Article 16 of Regulation (EEC) No 2131/93, which stipulates that payment must be made no later than one month after acceptance of the tender;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Subject to the provisions of this Regulation the German intervention agency issues a standing invitation to tender for the export of common wheat of breadmaking quality held by it in accordance with Regulation (EEC) No 2131/93.

*Article 2*

1. The invitation to tender shall cover a maximum of 200 006 tonnes of common wheat of breadmaking quality to be exported to all third countries. However, the customs export formalities for tenders submitted on or after 17 June 1999 may be completed only on or after 1 July 1999.

2. The regions in which the 200 006 tonnes of common wheat of breadmaking quality are stored are set out in Annex I.

*Article 3*

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

*Article 4*

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 126, 24.5.1996, p. 37.
[3] OJ L 191, 31.7.1993, p. 76.
[4] OJ L 5, 9.1.1999, p. 64.

2. Between 17 and 30 June 1999, tenders submitted under this invitation to tender shall not be admissible unless they are accompanied by a written undertaking to export only on or after 1 July 1999. The tenders may not be accompanied by applications for export licences submitted under Article 44 of Commission Regulation (EEC) No 3719/88 [1].

*Article 5*

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 17 June 1999.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 30 September 1999.

4. Tenders shall be lodged with the German intervention agency.

*Article 6*

In the case of tenders submitted between 17 and 30 June 1999, the following conditions shall apply:

— notwithstanding the first paragraph of Article 16 of Regulation (EEC) No 2131/93, the cereals must be paid for by 31 July 1999, at the latest.

— notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that indicated in the tender.

*Article 7*

In the case of licences applied for between 17 and 30 June 1999, without prejudice to Article 17(3) of Regulation (EEC) No 2131/93, the security referred to in the second indent of Article 17(2) of that Regulation shall be released only when proof is provided that the customs export formalities were completed on or after 1 July 1999.

*Article 8*

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analysis results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

— two kilograms per hectolitre as regards specific weight, which must not, however, be less than 72 kg/hl,

— one percentage point as regards moisture content,

— 20 percentage points for the Hagberg falling index,

— half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 [2] and

— half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention common wheat of breadmaking quality of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with

[1] OJ L 331, 2.12.1988, p. 1.

[2] OJ L 74, 20.3.1992, p. 18.

another lot of intervention common wheat of breadmaking quality of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat of breadmaking quality is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

*Article 9*

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 [1] the documents relating to the sale of wheat of breadmaking quality in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

— Trigo blando panificable de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 1232/1999

— Bageegnet blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 1232/1999

— Interventions-Brotweichweizen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 1232/1999

— Μαλακός αρτοποιήσιμος σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 1232/1999

— Intervention common wheat of breadmaking quality without application of refund or tax, Regulation (EC) No 1232/1999

— Blé tendre d'intervention panifiable ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 1232/1999

— Frumento tenero d'intervento panificabile senza applicazione di restituzione né di tassa, regolamento (CE) n. 1232/1999

— Zachte tarwe van bakkwaliteit uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 1232/1999

— Trigo mole panificável de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 1232/1999

— Interventioleipävehnää, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 1232/1999

— Interventionsvete, av brödkvalitet, utan tillämpning av bidrag eller avgift, förordning (EG) nr 1232/1999

*Article 10*

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 10 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Notwithstanding Article 15(2) of Regulation (EEC) No 3002/92:

— the part of the security lodged when the licence is issued must be released within 20 working days of the date on which the successful tenderer provides proof that the cereals removed have left the customs territory of the Community,

— the remainder must be released within 15 working days of the date on which the successful tenderer provides the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to EUR 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

[1] OJ L 301, 17.10.1992, p. 17.

*Article 11*

Within two hours of the expiry of the time limit for the submission of tenders, the German intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

*Article 12*

This Regulation shall enter into force on the day 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, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

*ANNEX I*

*(tonnes)*

| Place of storage | Quantity |
|---|---|
| Schleswig-Holstein/Hamburg/ Niedersachsen/Bremen/ Nordrhein-Westfalen | 88 195 |
| Hessen/Rheinland-Pfalz/ Baden-Württemberg/Saarland/Bayern | 61 063 |
| Berlin/Brandenburg/ Mecklenburg-Vorpommern | 19 413 |
| Sachsen/Sachsen-Anhalt/Thüringen | 31 335 |

*ANNEX II*

**Communication of refusal of lots under the standing invitation to tender for the export of common wheat of breadmaking quality held by the German intervention agency**

(Article 8(1) of Regulation (EC) No 1232/1999)

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of lot by successful tenderer:

| Lot No | Quantity in tonnes | Address of silo | Reason for refusal to take over |
|---|---|---|---|
| | | | — Specific weight (kg/hl)<br>— % sprouted grains<br>— % miscellaneous impurities (Schwarzbesatz)<br>— % of matter which is not basic cereal of unimpaired quality<br>— Other |

*ANNEX III*

**Standing invitation to tender for the export of common wheat of breadmaking quality held by the German intervention agency**

(Regulation (EC) No 1232/1999)

| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|
| Tender No | Consignment No | Quantity (tonnes) | Offer price (EUR/tonne) (1) | Price increases (+) or reductions (−) (EUR/tonne) p.m. | Commercial costs (EUR/tonne) | Destination |
| 1 | | | | | | |
| 2 | | | | | | |
| 3 | | | | | | |
| etc. | | | | | | |

(1) This price includes the increases or reductions relating to the lot to which the tender refers.

*ANNEX IV*

The only numbers to use to call Brussels are (DG VI-C-1):

— fax: 296 49 56,
295 25 15,

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters).

# COMMISSION REGULATION (EC) No 1233/1999

## of 15 June 1999

## on the sale by tender of beef held by certain intervention agencies and intended for the production of minced meat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal [1], as last amended by Regulation (EC) No 1633/98 [2], and in particular Article 7(3) thereof,

Whereas the application of intervention measures in respect of beef has created stocks in several Member States; whereas, in order to prevent an excessive prolongation of storage, part of these stocks should be sold by tender for the production of minced meat in the Community;

Whereas to ensure efficient management of the markets, sales of intervention stocks should be extended to producers of minced meat approved in accordance with Article 8 of Council Directive 94/65/EC of 14 December 1994 laying down the requirements for the production and placing on the market of minced meat and meat preparations [3];

Whereas the sale should be made subject to the rules laid down by Commission Regulation (EEC) No 2173/79 [4], as last amended by Regulation (EC) No 2417/95 [5], in particular Titles II and III thereof, subject to certain special exceptions on account of the particular use to which the products in question are to be put;

Whereas, with a view to ensuring a regular and uniform tendering procedure, measures should be taken in addition to those laid down in Article 8(1) of Regulation (EEC) No 2173/79;

Whereas provision should be made for derogations from Article 8(2)(b) of Regulation (EEC) No 2173/79, in view of the administrative difficulties which application of this point creates in the Member States concerned;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. The sale shall take place of:

— approximately 1 194 tonnes of boneless beef held by the Irish intervention agency, brought into intervention pursuant to Article 6 of Regulation (EEC) No 805/68 between May 1998 and January 1999 inclusive,

— approximately 3 000 tonnes of boneless beef held by the United Kingdom intervention agency.

Detailed information concerning quantities is given in Annex I.

2. Subject to the provisions of this Regulation the products referred to in paragraph 1 shall be sold in accordance with Regulation (EEC) No 2173/79, in particular Titles II and III thereof.

*Article 2*

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

The intervention agencies concerned shall draw up a notice of invitation to tender which shall include the following:

(a) the quantities of beef offered for sale;

and

(b) the deadline and place for submitting tenders.

2. Interested parties may obtain the details of the quantities available and the places where the products are stored from the addresses listed in Annex II to this Regulation. The intervention agencies shall, in addition, display the notice referred to in paragraph 1 at their head offices and may publish it in other ways.

[1] OJ L 148, 28.6.1968, p. 24.
[2] OJ L 210, 28.7.1998, p. 17.
[3] OJ L 368, 31.12.1994, p. 10.
[4] OJ L 251, 5.10.1979, p. 12.
[5] OJ L 248, 14.10.1995, p. 39.

3. For each product mentioned in Annex I the intervention agencies concerned shall sell first the meat which has been stored the longest. However, with a view to better stock management and after notifying the Commission, the Member States may designate only certain cold stores or parts thereof for deliveries of meat sold under this Regulation.

4. Only tenders which reach the intervention agencies concerned by 12 noon on 22 June 1999 shall be considered.

5. Notwithstanding Article 8(1) of Regulation (EEC) No 2173/79, a tender shall be submitted to the intervention agency concerned in a closed envelope, bearing the reference to the Regulation concerned. The closed envelope shall not be opened by the intervention agency before the expiry of the tender deadline referred to in paragraph 4.

6. Notwithstanding Article 8(2)(b) of Regulation (EEC) No 2173/79, tenders shall not indicate in which cold store or stores the products are held.

*Article 3*

1. Member States shall provide the Commission with information concerning the tenders received not later than the working day following the deadline set for the submission of tenders.

2. After the tenders received have been examined a minimum selling price shall be set for each product or the sale will not proceed.

*Article 4*

1. A tender shall be valid only if presented by or on behalf of an establishment approved in accordance with Article 8(1) of Directive 94/65/EC as a producer of minced meat or minced meat preparations. Member States shall consult with each other where necessary for the application of this paragraph.

2. Tenders shall be accompanied by:

— a written undertaking by the tenderer to use all the meat concerned for the production of minced meat as defined by Article 2(2)(a) and (b) of Directive 94/65/EC within five months of the date of conclusion of the contract of sale with the intervention agency,

— details of the exact location of the establishment or establishments of the tenderer in which the minced meat is to be produced.

3. The tenderers referred to in paragraph 1 may instruct an agent in writing to take delivery, on their behalf, of the products which they purchase. In this case the agent shall submit the bids of the tenderers whom he represents with the written instruction referred to above.

4. The purchasers and agents referred to in the preceding paragraphs shall maintain and keep up to date an accounting system which permits the destination and use of the products to be ascertained with a view in particular to ensuring that the quantities of products purchased and the quantities of minced meat produced correspond. For the purposes of administrative supervision, where appropriate the intervention agency holding the products concerned shall send the competent authority of the Member State in which the minced meat is to be produced a certified copy of the sales contract.

*Article 5*

1. The mincing of meat purchased under this Regulation shall be carried out within five months of the date of conclusion of the contract of sale.

2. Documentation to prove compliance with the requirement referred to in paragraph 1 shall be provided to the competent authority of the Member State in which the minced meat is produced within seven months of the date of conclusion of the contract of sale.

*Article 6*

Member States shall set up a system of physical and documentary supervision to ensure that all meat is minced in accordance with Article 5(1).

To this end, processors shall at any time be able to demonstrate the identity and use of the meat through appropriate production records.

*Article 7*

1. The security provided for in Article 15(1) of Regulation (EEC) No 2173/79 shall be EUR 12 per 100 kilograms.

2. A security intended to cover the mincing of the products shall be lodged with the competent authority of the Member State in which the mincing is to take place, prior to taking over the meat.

The amount shall be the difference in euros between the tender price per tonne and EUR 2 700.

The mincing of all meat purchased shall constitute a primary requirement within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85 [1].

*Article 8*

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

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

[1] OJ L 205, 3.8.1985, p. 5.

*ANEXO I — BILAG I — ANHANG I — ΠΑΡΑΡΤΗΜΑ I — ANNEX I — ANNEXE I — ALLEGATO I — BIJLAGE I — ANEXO I — LIITE I — BILAGA I*

| Estado miembro | Productos (1) | Cantidad aproximada (toneladas) |
|---|---|---|
| Medlemsstat | Produkter (1) | Tilnærmet mængde (tons) |
| Mitgliedstaat | Erzeugnisse (1) | Ungefähre Mengen (Tonnen) |
| Κράτος μέλος | Προϊόντα (1) | Κατά προσέγγιση ποσότητα (τόνοι) |
| Member State | Products (1) | Approximate quantity (tonnes) |
| État membre | Produits (1) | Quantité approximative (tonnes) |
| Stato membro | Prodotti (1) | Quantità approssimativa (tonnellate) |
| Lidstaat | Producten (1) | Hoeveelheid bij benadering (ton) |
| Estado-Membro | Produtos (1) | Quantidade aproximada (toneladas) |
| Jäsenvaltio | Tuotteet (1) | Arvioitu määrä (tonneina) |
| Medlemsstat | Produkter (1) | Ungefärlig kvantitet (ton) |

**Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

| | | |
|---|---|---|
| IRELAND | — Intervention flank (INT 18) | 655 |
| | — Intervention shoulder (INT 22) | 500 |
| | — Intervention forequarter (INT 24) | 39 |
| UNITED KINGDOM | — Intervention flank (INT 18) | 2 000 |
| | — Intervention shoulder (INT 22) | 500 |
| | — Intervention forequarter (INT 24) | 500 |

(1) Véanse los anexos V y VII del Reglamento (CEE) nº 2456/93 de la Comisión (DO L 225 de 4.9.1993, p. 4), cuya última modificación la constituye el Reglamento (CE) nº 2812/98 (DO L 349 de 24.12.1998, p. 47).

(1) Se bilag V og VII til Kommissionens forordning (EØF) nr. 2456/93 (EFT L 225 af 4.9.1993, s. 4), senest ændret ved forordning (EF) nr. 2812/98 (EFT L 349 af 24.12.1998, s. 47).

(1) Vgl. Anhänge V und VII der Verordnung (EWG) Nr. 2456/93 der Kommission (ABl. L 225 vom 4.9.1993, S. 4), zuletzt geändert durch die Verordnung (EG) Nr. 2812/98 (ABl. L 349 vom 24.12.1998, S. 47).

(1) Βλέπε παραρτήματα V και VII του κανονισμού (ΕΟΚ) αριθ. 2456/93 της Επιτροπής (ΕΕ L 225 της 4.9.1993, σ. 4), όπως τροποποιήθηκε τελευταία από τον κανονισμό (ΕΚ) αριθ. 2812/98 (ΕΕ L 349 της 24.12.1998, σ. 47).

(1) See Annexes V and VII to Commission Regulation (EEC) No 2456/93 (OJ L 225, 4.9.1993, p. 4), as last amended by Regulation (EC) No 2812/98 (OJ L 349, 24.12.1998, p. 47).

(1) Voir annexes V et VII du règlement (CEE) nº 2456/93 de la Commission (JO L 225 du 4.9.1993, p. 4). Règlement modifié en dernier lieu par le règlement (CE) nº 2812/98 (JO L 349 du 24.12.1998, p. 47).

(1) Cfr. allegati V e VII del regolamento (CEE) n. 2456/93 della Commissione (GU L 225 del 4.9.1993, pag. 4), modificato da ultimo dal regolamento (CE) n. 2812/98 (GU L 349 del 24.12.1998, pag. 47).

(1) Zie de bijlagen V en VII bij Verordening (EEG) nr. 2456/93 van de Commissie (PB L 225 van 4.9.1993, blz. 4), laatstelijk gewijzigd bij Verordening (EG) nr. 2812/98 (PB L 349 van 24.12.1998, blz. 47).

(1) Ver anexos V e VII do Regulamento (CEE) n.º 2456/93 da Comissão (JO L 225 de 4.9.1993, p. 4). Regulamento com a última redacção que lhe foi dada pelo Regulamento (CE) n.º 2812/98 (JO L 349 de 24.12.1998, p. 47).

(1) Katso komission asetuksen (ETY) N:o 2456/93 (EYVL L 225, 4.9.1993, s. 4), sellaisena kuin se on viimeksi muutettuna asetuksella (EY) N:o 2812/98 (EYVL L 349, 24.12.1998, s. 47) liitteet V ja VII.

(1) Se bilagorna V och VII i förordning (EEG) nr 2456/93 (EGT L 225, 4.9.1993, s. 4), senast ändrad genom förordning (EG) nr 2812/98 (EGT L 349, 24.12.1998, s. 47).

*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II — ALLEGATO II — BIJLAGE II — ANEXO II — LIITE II — BILAGA II*

**Direcciones de los organismos de intervención — Interventionsorganernes adresser — Anschriften der Interventionsstellen — 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**

IRELAND

Department of Agriculture and Food
Johnstown Castle Estate
Country Wexford
Ireland
Tel. (353 53) 634 00
Fax (353 53) 428 42

UNITED KINGDOM

Intervention Board Executive Agency
Kings House
33, Kings Road
Reading RG1 3BU
Berkshire
United Kingdom
Tel. (01 189) 58 36 26
Fax (01 189) 56 67 50

# COMMISSION REGULATION (EC) No 1234/1999

## of 15 June 1999

## fixing, in respect of the 1998/99 marketing year, the actual production of unginned cotton and the amount by which the guide price is to be reduced

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 1964/87 of 2 July 1987 adjusting the system of aid for cotton introduced by Protocol No 4 annexed to the Act of Accession of Greece [2], as last amended by Regulation (EC) No 1553/95, and in particular Article 2(3) and (4) thereof,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 [3], as last amended by Regulation (EC) No 1419/98 [4], and in particular Article 9 thereof,

(1) Whereas Article 9 of Regulation (EC) No 1554/95 provides that actual production in each marketing year is to be determined before the end of June of that year, account being taken in particular of the quantities for which aid has been requested; whereas application of that criterion results in actual production in respect of the 1998/99 marketing year being set at the level set out below;

(2) Whereas Article 2(3) of Regulation (EEC) No 1964/87 stipulates that, if actual production in Spain and Greece exceeds the maximum guaranteed quantity, the guide price referred to in paragraph 8 of Protocol No 4 is to be reduced in each Member State where production exceeds its guaranteed national quantity (GNQ); whereas such reduction is calculated differently depending on whether the GNQ is exceeded both in Greece and Spain or only in one of those Member States; whereas in the case under consideration there has been an overrun both in Greece and Spain; whereas, therefore, pursuant to Article 6(a) of Regulation (EEC) No 1554/95, the amount by which actual production exceeds the GNQ in each Member State is to be calculated as a percentage of its GNQ and the guide price is to be reduced by a percentage equal to half the percentage excess;

(3) Whereas Article 2(4) of Regulation (EEC) No 1964/87 provides for the aid to be increased in each Member State where actual production exceeds its GNQ provided certain conditions are met; whereas those conditions have not been met for the 1998/99 marketing year;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

1. (a) For the 1998/99 marketing year, actual production of unginned cotton is fixed at 1 548 467 tonnes, of which 1 210 900 tonnes for Greece and 337 567 tonnes for Spain.

(b) For the 1998/99 marketing year, actual production of unginned cotton is fixed at 147 tonnes for Portugal.

2. The amount by which the guide price is to be reduced for the 1998/99 marketing year is fixed at:

— EUR 29,126/100 kg for Greece,

— EUR 18,921/100 kg for Spain.

*Article 2*

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

[1] OJ L 148, 30.6.1995, p. 45.
[2] OJ L 184, 3.7.1987, p. 14.
[3] OJ L 148, 30.6.1995, p. 48.
[4] OJ L 190, 4.7.1998, p. 4.

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

# COMMISSION REGULATION (EC) No 1235/1999

## of 15 June 1999

## definitively fixing the aid for unginned cotton from 1 September 1998 to 31 March 1999 for the 1998/99 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular paragraph 10 of Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95 ([1]),

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 ([2]), as last amended by Regulation (EC) 1419/98 ([3]), and in particular Article 5(1) thereof,

(1) Whereas, pursuant to Article 3 of Regulation (EC) No 1554/95, the world market price for unginned cotton is fixed periodically during the marketing year;

(2) Whereas Commission Regulation (EC) No 1234/1999 ([4]) fixes actual production of unginned cotton and the amount by which the guide price is to be reduced in each Member State for the 1998/99 marketing year;

(3) Whereas Article 5(1) of Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton ([5]), as last amended by Regulation (EC) No 1664/98 ([6]), provides for the aid on unginned cotton applicable to each period for which a world market price has been determined to be fixed before 15 July;

(4) Whereas Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro ([7]) provides for every reference in a legal instrument to the ecu to be replaced by a reference to the euro at a rate of one euro to one ecu as from 1 January 1999;

(5) Whereas the aid for the 1998/99 marketing year should accordingly be fixed definitively,

([1]) OJ L 148, 30.6.1995, p. 45.
([2]) OJ L 148, 30.6.1995, p. 48.
([3]) OJ L 190, 4.7.1998, p. 4.
([4]) See page 26 of this Official Journal.
([5]) OJ L 123, 4.5.1989, p. 23.
([6]) OJ L 211, 29.7.1998, p. 9.
([7]) OJ L 162, 19.6.1997, p. 1.

HAS ADOPTED THIS REGULATION:

*Article 1*

The aid on unginned cotton corresponding to the world prices fixed in Commission Regulations (EC) No 1865/98 [1], (EC) No 1954/98 [2], (EC) No 2010/98 [3], (EC) No 2048/98 [4], (EC) No 2087/98 [5], (EC) No 2146/98 [6], (EC) No 2195/98 [7], (EC) No 2243/98 [8], (EC) No 2302/98 [9], (EC) No 2312/98 [10], (EC) No 2372/98 [11], (EC) No 2478/98 [12], (EC) No 2571/98 [13], (EC) No 2707/98 [14], (EC) No 2859/98 [15], (EC) No 85/1999 [16], (EC) No 238/1999 [17], (EC) No 262/1999 [18], (EC) No 306/1999 [19], (EC) No 355/1999 [20], (EC) No 371/1999 [21], (EC) No 396/1999 [22], (EC) No 426/1999 [23], (EC) No 474/1999 [24], and (EC) No 687/1999 [25], shall be as set out in the Annex hereto, which amount shall be fixed definitively from the entry into force of each of the Regulations concerned.

*Article 2*

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

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

Done at Brussels, 15 June 1999.

*For the Commission*
Franz FISCHLER
*Member of the Commission*

---

[1] OJ L 242, 1.9.1998, p. 3.
[2] OJ L 253, 15.9.1998, p. 17.
[3] OJ L 258, 22.9.1998, p. 20.
[4] OJ L 263, 26.9.1998, p. 30.
[5] OJ L 266, 1.10.1998, p. 22.
[6] OJ L 270, 7.10.1998, p. 46.
[7] OJ L 276, 13.10.1998, p. 5.
[8] OJ L 281, 17.10.1998, p. 29.
[9] OJ L 287, 24.10.1998, p. 23.
[10] OJ L 288, 27.10.1998, p. 20.
[11] OJ L 293, 31.10.1998, p. 75.
[12] OJ L 308, 18.11.1998, p. 37.
[13] OJ L 322, 1.12.1998, p. 8.
[14] OJ L 340, 16.12.1998, p. 21.
[15] OJ L 358, 31.12.1998, p. 77.
[16] OJ L 8, 14.1.1999, p. 20.
[17] OJ L 23, 30.1.1999, p. 50.
[18] OJ L 30, 4.2.1999, p. 27.
[19] OJ L 37, 11.2.1999, p. 23.
[20] OJ L 44, 18.2.1999, p. 16.
[21] OJ L 45, 19.2.1999, p. 37.
[22] OJ L 48, 24.2.1999, p. 13.
[23] OJ L 52, 27.2.1999, p. 9.
[24] OJ L 56, 4.3.1999, p. 38.
[25] OJ L 86, 30.3.1999, p. 13.

*ANNEX*

**AID FOR UNGINNED COTTON**

*(EUR/100 kg)*

| Regulation (EC) No | Aid amount | | |
|---|---|---|---|
| | Spain | Greece | Portugal |
| 1865/98 | 54,306 | 44,101 | 73,227 |
| 1954/98 | 57,923 | 47,718 | 76,844 |
| 2010/98 | 58,716 | 48,511 | 77,637 |
| 2048/98 | 59,328 | 49,123 | 78,249 |
| 2087/98 | 59,612 | 49,407 | 78,533 |
| 2146/98 | 60,642 | 50,437 | 79,563 |
| 2195/98 | 61,391 | 51,186 | 80,312 |
| 2243/98 | 61,939 | 51,734 | 80,860 |
| 2302/98 | 65,028 | 54,823 | 83,949 |
| 2312/98 | 64,856 | 54,651 | 83,777 |
| 2372/98 | 65,273 | 55,068 | 84,194 |
| 2478/98 | 65,744 | 55,539 | 84,665 |
| 2571/98 | 65,626 | 55,421 | 84,547 |
| 2707/98 | 65,559 | 55,354 | 84,480 |
| 2859/98 | 65,808 | 55,603 | 84,729 |
| 85/1999 | 65,361 | 55,156 | 84,282 |
| 238/1999 | 65,010 | 54,805 | 83,931 |
| 262/1999 | 61,952 | 51,747 | 80,873 |
| 306/1999 | 64,797 | 54,592 | 83,718 |
| 355/1999 | 62,017 | 51,812 | 80,938 |
| 371/1999 | 64,818 | 54,613 | 83,739 |
| 396/1999 | 61,592 | 51,387 | 80,513 |
| 426/1999 | 61,683 | 51,478 | 80,604 |
| 474/1999 | 61,017 | 50,812 | 79,938 |
| 687/1999 | 60,467 | 50,262 | 79,388 |

# COMMISSION REGULATION (EC) No 1236/1999
## of 15 June 1999
## fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2],

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

Whereas Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question; however, that duty may not exceed the rate of duty in the Common Customs Tariff;

Whereas, pursuant to Article 10 (3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market;

Whereas Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing;

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

Whereas application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The import duties in the cereals sector referred to in Article 10 (2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

*Article 2*

This Regulation shall enter into force on 16 June 1999.

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 126, 24.5.1996, p. 37.
[3] OJ L 161, 29.6.1996, p. 125.
[4] OJ L 135, 25.11.1998, p. 7.

*ANNEX I*

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

| CN code | Description | Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne) | Import duty by air or by sea from other ports (2) (EUR/tonne) |
|---|---|---|---|
| 1001 10 00 | Durum wheat high quality | 42,49 | 32,49 |
| | medium quality (1) | 52,49 | 42,49 |
| 1001 90 91 | Common wheat seed | 49,95 | 39,95 |
| 1001 90 99 | Common high quality wheat other than for sowing (3) | 49,95 | 39,95 |
| | medium quality | 81,20 | 71,20 |
| | low quality | 99,78 | 89,78 |
| 1002 00 00 | Rye | 105,89 | 95,89 |
| 1003 00 10 | Barley, seed | 105,89 | 95,89 |
| 1003 00 90 | Barley, other (3) | 105,89 | 95,89 |
| 1005 10 90 | Maize seed other than hybrid | 97,64 | 87,64 |
| 1005 90 00 | Maize other than seed (3) | 97,64 | 87,64 |
| 1007 00 90 | Grain sorghum other than hybrids for sowing | 105,89 | 95,89 |

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

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

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

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

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

*ANNEX II*

**Factors for calculating duties**

(period from 01 June to 14 June 1999)

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

| Exchange quotations | Minneapolis | Kansas-City | Chicago | Chicago | Minneapolis | Minneapolis | Minneapolis |
|---|---|---|---|---|---|---|---|
| Product (% proteins at 12 % humidity) | HRS2. 14 % | HRW2. 11,5 % | SRW2 | YC3 | HAD2 | Medium quality (*) | US barley 2 |
| Quotation (EUR/t) | 119,36 | 101,23 | 90,75 | 83,20 | 137,39 (**) | 127,39 (**) | 73,99 (**) |
| Gulf premium (EUR/t) | — | 8,99 | 0,88 | 10,57 | — | — | — |
| Great Lakes premium (EUR/t) | 10,57 | — | — | — | — | — | — |

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

2. Freight/cost: Gulf of Mexico — Rotterdam: EUR 14,17/t; Great Lakes — Rotterdam: EUR 25,71/t.

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

# COMMISSION REGULATION (EC) No 1237/1999

## of 15 June 1999

## fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [1], as last amended by Commission Regulation (EC) No 1516/96 [2], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [3], as last amended by Commission Regulation (EC) No 2916/95 [4], and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin [5], as last amended by Commission Regulation (EC) No 2916/95, and in particular Article 3(4) thereof,

Whereas Commission Regulation (EC) No 1484/95 [6], as last amended by Regulation (EC) No 1034/1999 [7], fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin;

Whereas it results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin; whereas, therefore, representative prices should be published;

Whereas it is necessary to apply this amendment as soon as possible, given the situation on the market;

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

*Article 2*

This Regulation shall enter into force on 16 June 1999.

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

Done at Brussels, 15 June 1999.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

---

[1] OJ L 282, 1.11.1975, p. 49.
[2] OJ L 189, 30.7.1996, p. 99.
[3] OJ L 282, 1.11.1975, p. 77.
[4] OJ L 305, 19.12.1995, p. 49.
[5] OJ L 282, 1.11.1975, p. 104.
[6] OJ L 145, 29.6.1995, p. 47.
[7] OJ L 126, 20.5.1999, p. 17.

*ANNEX*

*'ANNEX I*

| CN code | Description | Representative price EUR/100 kg | Security referred to in Article 3(3) EUR/100 kg | Origin (1) |
|---|---|---|---|---|
| 0207 14 10 | Boneless cuts of fowls of the species *gallus domesticus*, frozen | 217,3 | 25 | 01 |
| | | 215,8 | 25 | 02 |
| | | 291,2 | 3 | 03 |
| | | 296,0 | 1 | 04 |
| 1602 32 11 | Preparations uncooked of Fowls of the species *gallus domesticus* | 234,1 | 16 | 01 |
| | | 232,3 | 16 | 02 |

(1) Origin of imports:
01 Brazil
02 Thailand
03 Chile
04 Argentina.'

II

*(Acts whose publication is not obligatory)*

# COUNCIL

## COUNCIL DECISION

**of 25 May 1999**

**concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests**

(1999/394/EC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 207(3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121(3) thereof,

Having regard to the Council's Rules of Procedure, and in particular Article 21(2) thereof,

(1) Whereas Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 [1] and Council Regulation (Euratom) No 1074/1999 of 25 May 1999 [2] concerning investigations conducted by the European Anti-Fraud Office (OLAF) provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies, offices and agencies established by or on the basis of the EC or Euratom Treaties;

(2) Whereas the responsibility of the European Anti-Fraud Office as established by the Commission extends beyond the protection of financial interests to include all activities by the Office relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings;

(3) Whereas the scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;

(4) Whereas therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter 'the Staff Regulations'), detrimental to the interests of those Communities and liable to result in disciplinary or, where appropriate, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members, managers or members of staff of the institutions, bodies, offices and agencies of the Communities not subject to the Staff Regulations or a failure to comply with the obligations imposed by Community Law on Members of the Council and of its bodies in the context of the professional duties they perform in that capacity;

[1] OJ L 136, 31.5.1999, p. 1.
[2] OJ L 136, 31.5.1999, p. 8.

(5) Whereas such investigations should be carried out under equivalent conditions in all the Community institutions, bodies, offices and agencies; whereas assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;

(6) Whereas, pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the Members of the institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations;

(7) Whereas Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999 provide, in Article 4(6), that each institution, body, office and agency is to adopt a deicison which shall in particular include rules concerning a duty on the part of Members, managers, officials and other servants of the institutions, bodies, offices and agencies to cooperate with and supply information to the Office's employees, the procedures to be observed by the Office's employees when conducting internal investigations and guarantees of the rights of persons concerned by an internal investigation;

(8) Whereas the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union of the Commission the European Community concerning internal investigations by the European Anti-Fraud Office (OLAF) [1] commits the signatory institutions, and the institutions, bodies, offices and agencies which accede to the Agreement, to adopting an internal decision in accordance with the model attached to the Agreement and not to deviate from that model save where their own particular requirements make such deviation a technical necessity;

(9) Whereas there are no particular requirements which make it a technical necessity to deviate from the model decision in respect of the officials and other servants of the General Secretariat of the Council (hereinafter referred to as the 'General Secretariat');

(10) Whereas the Council should confer on the Office the task of undertaking within it administrative enquiries for the purpose of investigating serious situations which could constitute failure to comply with obligations imposed by Community law on persons who are Members of the Council and its bodies; whereas, however, account should be taken of the fact that, unlike the members of the other institutions, the Members of the Council and its bodies exercise essentially national functions and that, in the exercise thereof, they remain subject to national law, whereas, therefore, the application of this Decision should be limited to the professional activities of such persons undertaken in their capacity as member of the institution or of its bodies;

(11) Whereas the Office has no judicial powers and conducts only administrative investigations; whereas such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, the texts implementing them and the Staff Regulations;

(12) Whereas such investigations are to be conducted in accordance with the terms and conditions laid down by the regulations of the European Community and the European Atomic Energy Community; whereas those regulations do not however confer on the Office any right of access to the buidlings occupied by the Member States, in particular their permanent representations;

(13) Whereas the internal decision provided for in the Interinstitutional Agreement is strictly limited to defining the duty to cooperate with the Office and to supply it with information, the duty on the part of the Security Office to assist the Office's employees and the reciprocal duty on the part of the Office to inform the persons against whom allegations have been made as a result of one of its investigations,

HAS DECIDED AS FOLLOWS:

*Article 1*

**Duty to cooperate with the Office**

The Secretary-General, the services and any official or servant of the General Secretariat shall be required to cooperate fully with the Office's employees and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's employees with all useful information and explanations.

Without prejudice to the relevant provisons of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and the texts implementing them, Members of the Council, and of its bodies, shall cooperate fully with the Office.

[1] OJ L 136, 31.5.1999, p. 15.

*Article 2*

**Duty to supply information**

Any official or servant of the General Secretariat who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the obligations imposed by Community law on Members of the Council and its bodies in the context of the duties they perform in that capacity, where that failure is detrimental to the interests of the Communities, shall without delay inform his Head of Service or Director-General or, if he considers it useful, the Secretary-General or the Office directly.

The Secretary-General, the Directors-General and the Heads of Service of the General Secretariat shall transmit without delay to the Office any evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.

Officials or servants of the General Secretariat must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.

Members of the Council and Permanent Representatives who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the Council or, if they consider it useful, the Office directly. Delegates of the Member States who acquire knowledge of facts as referred to in the first paragraph shall inform the Permanent Representative of their Member State.

*Article 3*

**Assistance from the Security Office**

At the request of the Director of the Office, the Security Office of the General Secretariat shall assist the Office in the practical conduct of investigations.

*Article 4*

**Informing the interested party**

Where the possible personal implication of a Member of the Council or one of its bodies, or of an official or servant of the General Secretariat emerges, the interested party shall be informed rapidly provided that this does not jeopardise the investigation. In any event, conclusions referring by name to one of those persons may not be drawn once the investigation has been completed without the interested party having been enabled to express his views on all the facts which concern him.

In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the person concerned to give his views may be deferred in agreement with the President of the Council or the Secretary-General as appropriate.

*Article 5*

**Information on the closing of the investigation with no further action taken**

If, following an internal investigation, no case can be made out against the person against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing.

*Article 6*

**Waiver of immunity**

Any request from a national police or judicial authority regarding the waiver of immunity from judicial proceedings of an official or servant of the General Secretariat concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for a waiver of immunity concerns a Member of the Council or one of its bodies the Office shall be informed.

*Article 7*

**Effective date**

This Decision shall take effect on 1 June 1999.

Done at Brussels, 25 May 1999.

*For the Council*

*The President*

H. EICHEL

**Information relating to the entry into force of the Agreement of scientific and technical cooperation between the European Communtiy and the State of Israel** [1]

The Agreement for scientific and technical cooperation between the European Community and the State of Israel which the Council decided to conclude on 22 February 1999 shall enter into force on 8 March 1999, the Contracting Parties having notified on 8 March 1999 the completion of the procedures necessary for that purpose.

[1] OJ L 83, 27.3.1999, p. 51.

# COMMISSION

## COMMISSION DECISION

**of 28 October 1998**

**on State aid implemented by Spain in favour of SNIACE SA, located in Torrelavega, Cantabria**

*(notified under document number C(1998) 3437)*

**(Only the Spanish text is authentic)**

**(Text with EEA relevance)**

(1999/395/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities and, in particular, the first subparagraph of Article 93(2) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1], and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) By letter dated 17 April 1997 the Commission received a detailed complaint from a law firm representing the Austrian company Lenzing AG, the largest Community producer of viscose fibres, concerning various elements of illegal aid awarded to its Spanish competitor 'Sociedad Nacional de Industrias y Aplicaciones de Celulosa Espanola' SA (hereinafter referred to as SNIACE). The complaint included new information not provided with its original complaint dated 4 July 1996, in respect of which the Commission had found that there was insufficient evidence of State aid. The new information provided to the Commission included a copy of a viability plan for SNIACE produced by a private consultancy firm. The complainant alleged that SNIACE had received significant sums of State aid over a period of several years, stretching back to the late 1980s. That aid had not been notified to the Commission in accordance with Article 93(3) of the EC Treaty nor with the Code on aid to the synthetic fibres industry. The aid had distorted competition in a sector suffering from structural overcapacity and had served to keep SNIACE alive artificially.

(2) There followed a lengthy preliminary investigation, which included meetings between DG IV, the complainant, and the Spanish authorities on 17 May 1997 and 16 June 1997 respectively. The complaint was registered as non-notified aid under NN 118/97 on 17 July 1997.

(3) By letter dated 7 November 1997 the Commission informed the Spanish Government of its decision to initiate the procedure laid down in Article 93(2) of the Treaty in respect of several elements of presumed aid (see below).

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the presumed aid.

[1] OJ C 49, 14.2.1998, p. 2.

(5) By letter dated 19 December 1997, the Spanish Government replied to the Commission's letter opening the procedure which provided further information in support of its view that none of the matters under investigation constituted aid within the meaning of Article 92(1) of the EC Treaty.

(6) By letter dated 23 February 1997, the Commission requested clarification on certain points. The Spanish Government replied by letter dated 16 April 1998.

(7) The Commission received comments from interested parties. It forwarded them to the Spanish authorities, which was given the opportunity to react; its comments were received by letter dated 24 June 1998.

## II. SNIACE

(8) SNIACE was founded in 1939 and is a producer of cellulose, paper, viscose fibres, synthetic fibres and sodium sulphate. It is based in Torrelavega, Cantabria, which since September 1995 has been a region eligible for aid pursuant to Article 92(3)(a). Before that date it had been a region eligible for aid pursuant to Article 92(3)(c).

(9) SNIACE currently has approximately 600 employees. It is one of five viscose fibres producers in the European Union with a capacity of approximately 32 000 tonnes (about 9 % of Community capacity). SNIACE also produces synthetic fibres, including polyamide filament yarn. SNIACE has obtained the following results in recent years:

*(ESP million)*

| | 1994 | 1995 | 1996 | 1997 |
|---|---|---|---|---|
| Turnover | 6 540 | 10 970 | 5 750 | 5 600 |
| Profit (loss) | (1 780) | 153 | (1 951) | (500) |

(10) When opening the Article 93(2) procedure, the Commission noted that the company had suffered financial difficulties for several years, which had featured in numerous press reports. Following an application made by the company in 1992, the Spanish Courts ordered suspension of payments in March 1993. This was lifted following a creditors' agreement in October 1996, whereby SNIACE's private creditors agreed to convert 40 % of their debts into shares. The public creditors did not participate in the agreement.

(11) At the end of 1997 the company's current liabilities totalled ESP 8,37 billion compared with ESP 4,54 billion of current assets and the net worth of the company was ESP 1,73 billion. In recent years the problems facing the company, which have included industrial relations disputes, have led to periodic shut-downs of production. The company ceased production for much of 1993. Production was again stopped for much of 1996 and early 1997. Production resumed in February 1997 and the company is currently trading as a going concern.

## III. DETAILED DESCRIPTION OF THE AID MEASURES

(12) The Commission opened Article 93(2) proceedings in respect of the following elements of presumed aid:

(a) *the non payment of environmental levies owed by SNIACE since 1987.* The Commission noted the possibility of an element of State aid arising from the withholding over a period of several years of environmental levies owed by the company to the public Water Authority (Confederation Hidrogràfica del Norte). Given that the company appeared to have been in financial difficulties for some years, the effect of not paying these levies may have been to avoid the liquidation of the company;

(b) *non-enforcement of social security contributions since 1991.* The Commission expressed doubted whether the terms and conditions of two debt rescheduling agreements with the Social Security Treasury reflected market conditions:

(i) an agreement dated 8 March 1996 covering rescheduled debts totalling ESP 2,9 billion for the period February 1991 to February 1995 and imposing terms of 96 monthly payments from 1996 to March 2004 at the legal interest rate of 9 %; and

(ii) an agreement dated 7 May 1996 allowing a first year's grace and 84 monthly payments at the legal interest rate of 9 %;

(c) *a loan guarantee approved totalling ESP I billion approved by law 7/93.* The Commission expressed doubts that law 7/93 by which the Cantabrian regional government authorised a loan guarantee of ESP 1 billion to SNIACE contains a degree of State aid;

(d) *the financing arrangements for the planned construction of a waste treatment plant.* The Commission said it could not state with certainty that there would be no aid involved in the financing arrangements for a planned waste water treatment plant;

(e) *partial cancellation by Torrelavega City Council of debts totalling ESP 116 million.* The Commission noted that the actions taken by the Torrelavega City Council appeared to have reduced *de facto* the company's debts by ESP 116 million and that the fact that the City Council had reached a 'special agreement' with the company implied that it has used discretionary powers and that consequently State aid could be involved; and

(f) *agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE:*

| Date of agreement | Principal (ESP) | Interest (ESP) | Rate of interest (legal interest) | Other terms/conditions |
|---|---|---|---|---|
| 5.11.1993 | 897 million | 465 million | 10 % | Eight years repayment; mortgage on SNIACE's assets |
| 31.10.1995 | 229 million | 110 million | 9 % | Eight years repayment; mortgage on SNIACE's assets |

(13) The Commission doubted whether the terms and conditions of the above agreements reflected market conditions.

## IV. COMMENTS FROM INTERESTED PARTIES

(14) Comments were received from one Member State (the United Kingdom), several Community competitors of SNIACE and the International Rayon and Synthetic Fibres Committee (CIRFS). Comments by the Bavarian Ministry of Economy, Transport and Technology were submitted well after the expiry of the deadline and consequently may not be taken into account in the context of this procedure.

(15) Säteri, a producer of viscose staple fibres, stated it had experienced unfair competition from SNIACE, particularly in Italy, the United Kingdom, Germany and France. As a result of illegal aid SNIACE had been able to set its prices at 10 to 20 % below those of Säteri. Svenska Rayon, a producer of viscose staple fibre, stated that in its view SNIACE had disturbed the viscose staple-fibre market over several years by selling at artificially low prices. This had particularly affected Svenska Rayon in the Italian market.

(16) Nylstar said it had been hit by unfair competition from SNIACE in the polyamide textile filament sector, particularly in the Spanish market. Textil Finanz, part of the Radici Group, said it was also particularly concerned about the possibility of the effect of illegal aid to SNIACE in the polyamide textile filament yarn sector. Bemberg referred to unfair competition from SNIACE in the polyamide textile filament yarn sector, especially in Italy, Germany, the United Kingdom, Spain, France and Switzerland due to the loss of sales and contracts caused by yarn price levels quoted by SNIACE which did not reflect current market conditions.

(17) Courtaulds plc, the second largest producer of viscose staple fibre in Europe, referred to overcapacity in the industry and to the action it had taken over the previous 10 years to reduce capacity and costs which had led to job losses in the United Kingdom, Germany and France. It stated that the migration of textile manufacturing to lower-cost economies had resulted in a long-term reduction in mill consumption in Europe of between 1,5 and 2 % per annum. This consumption had been replaced by imports of yarns, fabrics and garments, primarily from Asia and India. As a result, capacity had fallen in Europe from 687 000 tonnes in 1980 to 355 000 tonnes in 1998. Courtaulds alone had reduced capacity by 195 000 tonnes over the last 20

years, including a reduction of 30 000 tons at its Grimsby site in 1997. Courtaulds stated that there was clear evidence from trade data that SNIACE priced below other competitors. It stated that in the United Kingdom, Germany, Italy, Spain, France and Belgium SNIACE's prices were at least 20 % below Courtaulds' average prices. Moreover, it believed that the size of SNIACE's plant was uneconomic.

(18) The law firm representing Lenzing AG, whose original complaint had led to the opening of the proceedings, reiterated its view that the various elements of aid were illegal and incompatible with the common market. In particular it stressed that they were discretionary measures and did not constitute, as was claimed by the Spanish Government, general measures. It also reiterated its view that the aid measures had served to keep the company alive artificially.

(19) CIRFS stated that it was the representative body for the European man-made fibres industry. Its membership accounted for 92 % of production of viscose staple fibre and 76 % of production of polyamide textile filament yarn (the two main fibre types produced by SNIACE). It favoured the strict application of the State aid rules by the Commission. It emphasised that the viscose staple market in the Community is a mature market, with consumption in long-term decline. It forecast a further 7 % fall in consumption by 2002. Capacity was continuing to be reduced by European producers to bring it more closely into line with demand. Furthermore, capacity utilisation was at an unsatisfactory level for such a capital-intensive sector at about 81 and 84 % in 1996 and 1997 respectively. Viscose staple producers normally aimed for at least 90 % capacity utilisation in order to achieve a reasonable return on capital. It believed that in 1997 all of the five European Community producers had made losses on their viscose production. With regard to the polyamide textile filament yarn sector, CIRFS stated that this, too, was in a gradually declining long-term trend. Capacity in the Community was being gradually reduced, by a market-driven process of rationalisation and restructuring, to bring it more closely into line with demand. Capacity utilisation remained at below the 90 % level required to achieve satisfactory levels of profitability.

(20) The United Kingdom Representation to the European Union supported the view that aid had been used to allow SNIACE to continue in business and that this would inevitably lead to unemployment elsewhere in Europe, given the existing overcapacity in the synthetic fibres industry.

(21) In addition, Lenzing and Courtaulds expressed their concern, based on press reports, that a further new aid measure had been granted to SNIACE by a State-owned savings bank Caja de Cantabria, in the form of a loan with profit participation amounting to ESP 2 000 million which did not conform to normal market conditions.

## V. COMMENTS FROM THE SPANISH GOVERNMENT

(22) In general terms, the Spanish Government reiterated the views it had expressed prior to the opening of the procedure, notably that the various public authorities concerned had followed the normal procedures laid down in Spanish law for the management of tax and social security debts and that they had in no way granted the company preferential treatment.

### Non-payment of environmental levies owed by SNIACE since 1987

(23) The Spanish Government stated that in accordance with the provisions of the Water Act (Law 29/1985 of 2 August 1985) and implementing regulations, the Confederacion Hidrografica del Norte began in 1988 issuing assessments of the amount of waste levy payable for discharges made in 1987 and subsequent years, by individuals and businesses discharging waste water in the catchment area for which it was responsible. It issued SNIACE in 1988 with assessment No 282/1988, which calculated the company's tax liability at ESP 210 million in respect of effluents generated by its production processes during 1987.

(24) The company brought an economic/administrative complaint against this assessment before the Regional Economic Administrative Court of Asturias (TEARA), contesting its legality.

(25) Article 81 of the Rules of Procedure for Economic/Administrative Complaints, which were approved by Decree 1999/1981 of 20 August 1981 and were in force in 1988, provides that enforcement of decisions which have been challenged is to be suspended if the complainant lodges with the economic court a bank guarantee covering payment of the debt. In accordance with that provision, SNIACE provided TEARA with a guarantee amounting to ESP 210 million issued by Banco Espanol de Credito and covering assessment No 282/1988. The TEARA considered this to constitute a sufficient guarantee and suspended enforcement of the tax assessment pending its decision on the complaint. It eventually adopted a decision in which it upheld SNIACE's complaint and revoked and cancelled the effects of the tax assessment, returning the bank guarantee which the company had presented. The Confederacion Hidrografica del Norte refused to accept this decision and brought an appeal before the Central Economic Administrative Court (TEAC).

(26) In 1989 the Confederacion Hidrografica del Norte issued an assessment for 1988 which put SNIACE's tax liability in respect of that year at ESP 315 million (assessment No 271/89) and SNIACE, as in the case of the levy for the previous year, lodged a complaint with the TEARA and provided a bank guarantee issued by Banco Espanol de Crédito, as a result of which enforcement was suspended in accordance with the above rules of procedure. On the basis of the same legal arguments, the TEARA upheld SNIACE's complaint and revoked and cancelled the effects of tax assessment No 271/89 and, as in the previous case, returned the bank guarantee which SNIACE had presented. The Confederacion Hidrografica del Norte in turn brought an appeal against this second decision before the TEAC.

(27) The TEAC joined the two appeals and ruled on them in a single judgment which it delivered on 28 November 1990 and which upheld and confirmed the legality of the assessments for 1987 and 1988 (assessments Nos 282/88 and 271/89). Since the bank guarantees had been returned to SNIACE pursuant to the earlier decisions of the TEARA, the Confederacion Hidrografica handed over the two assessments to the State Tax Agency (Agencia Tributaria del Estado) for collection through the enforcement procedure.

(28) In April 1990 SNIACE was issued with waste levy assessment No 421/90, which put its liability in respect of 1989 at ESP 525 million and against which, as in the case of the assessments for 1987 and 1988, it lodged a complaint with the TEARA and provided a bank guarantee issued by Banco Espanol de Crédito.

(29) In the light of the ruling by the TEAC of 28 November 1990, the TEARA rejected the company's complaint on this occasion (on 8 March 1991 ) and confirmed the legality of assessment No 421/90, retaining the bank guarantee pending the outcome of the appeal brought by SNIACE. Since the bank guarantee presented had been retained, once the Court had dismissed SNIACE's appeal Banco Espanol de Crédito made over to the Confederacion Hidrografica the ESP 525 million covered by the guarantee plus the corresponding interest on late payment.

(30) The Spanish Government emphasised that the Rules of Procedure for Economic/Administrative Complaints, approved by Decree 1999/1981 of 20 August 1981 leaves the decision on whether or not to provide a guarantee to the discretion of the complainant; the advantage of the guarantee is that, once it has been accepted, enforcement of the contested decision is suspended until the court rules on the complaint.

(31) Given this situation, it was in the Spanish Government's view reasonable, from a legal standpoint, for SNIACE to provide bank guarantees when contesting the waste levy assessments issued in 1988, 1989 and 1990, since there was no uniform view of their legality. However, once the TEAC had ruled on 28 November 1990 that the assessments were lawful and the Confederación Hidrográfica had called in the guarantee covering assessment No 421/90 (amounting to ESP 525 million plus interest), this being the only guarantee that could be put into effect since, as mentioned above, those corresponding to 1987 and 1988 had been returned by the TEARA, it can be assumed that SNIACE would have found it difficult to persuade banks to issue guarantees in respect of complaints that would probably be rejected.

(32) Consequently, the assessments issued in 1991 and subsequent years, although challenged before the TEARA, were not guaranteed, nor was the enforcement procedure suspended: once the periods of time allowed for voluntary payment had expired, the assessments were in every case handed over to the State Tax Agency for collection throught the enforcement procedure.

(33) According to the Spanish authorities, the debts run up by SNIACE are as follows:

*(ESP)*

| Period | Principal | Surcharge | Collected | Interest | Total due |
|---|---|---|---|---|---|
| 1987 | 210 000 000 | 42 000 000 | 54 129 095 | 167 318 219 | 473 447 314 |
| 1988 | 315 000 000 | 63 000 000 | 31 254 644 | 250 977 329 | 628 977 329 |
| 1990 | 525 000 000 | 105 000 000 | | 400 172 260 | 1 030 172 260 |
| 1991 | 525 000 000 | 105 000 000 | | 339 761 301 | 969 761 301 |
| 1992 | 525 000 000 | 105 000 000 | | 263 470 890 | 893 470 890 |
| 1993 | 525 000 000 | 105 000 000 | | 200 327 055 | 830 327 055 |
| 1994 | 525 000 000 | 105 000 000 | | 147 323 630 | 777 323 630 |
| 1995 | 525 000 000 | 105 000 000 | | 89 415 411 | 719 415 411 |
| Total | 3 675 000 000 | 735 000 000 | 85 383 739 | 1 858 766 095 | 6 354 149 834 |

(34) Interest for late payment has been calculated up to 1 March 1998. This interest is calculated from the due date for payment at the official interest rate for each year; interest is payable on repayment of the debt.

(35) All debts arising from waste disposal levies to be paid by SNIACE and entrusted to the State Tax Agency for collection are now subject to compulsory collection procedure, in accordance with Book III of the General Regulations for Collection (Royal Decree 1684/1990 of 20 December, amended by Royal Decree 448/1995 of 24 March).

(36) The compulsory collection procedure for the payments has now reached the attachment (embargo) stage. This means that measures have been implemented ordering the attachment of goods and titles belonging to the debtor, to an amount sufficient to cover the total debt to be collected.

(37) The proceeds from the attachment of monies and short-term credits have already been applied to repayment of the debts and are included in the 'collected' column of the debts table above. The next step in the compulsory collection procedure is execution, by means of public auction, against immovable goods, including the factory and its plant and equipment belonging to SNIACE and subject to attachment.

(38) The Spanish authorities have stated that execution against attached immovable goods belonging to SNIACE creates problems deriving both from the company's situation and from the nature of the goods attached:

(a) The site of the attached factory and its plant and equipment are officially classified as land for industrial use, and both the factory and its plant and equipment are designed for SNIACE activities. This means the market for any sale is very limited, given that the land may not be utilised otherwise than for industrial purposes and that the modification of the facilities for any other activity would be too costly. Besides, the property has already been mortgaged for over ESP 5 000 million with a number of banking institutions as a result of trading loans granted to SNIACE prior to the institution of procedures for the redemption of debts for waste disposal levies. These mortgages, which date from before attachment, would remain effective in case of the sale of immovable goods, which very much diminishes the chances of sale.

(b) SNIACE is a going concern with a large workforce. The sale of the factory and its plant and equipment would very probably mean ending production and closing down the company. This in turn would lead to the creation of further debts for unpaid wages and compensation paid out for extinguishment of work contracts. Even if a purchaser were to be found for SNIACE's immovable goods, the proceeds would go to paying off these wage credits, which have priority over amounts due to the tax authorities in accordance with Spanish regulations.

(c) The debts which resulted in the attachment of the company's immovable goods are at present the subject of a number of administrative and legal proceedings and, as such, are not sound. Even though execution has not been suspended because SNIACE has not offered a guarantee before the courts, the tax authorities must at least act with due caution before proceeding with the sale of the immovable goods, since this is an irreversible action which could be declared invalid if the courts were to find in SNIACE's favour. Due caution has, indeed, characterised administrative behaviour in such cases up to now. Law 1 of 26 February 1998 on Rights and Duties of Tax Payers expressly covers this question, furnishing further proof of the sensitivity with which the tax authorities should proceed when taking irreversible decisions in regard to debts which are not definitive. This rule, which came into effect on 19 March 1998, limits the powers of the tax authorities to proceed with the disposal of goods attached in cases where repayment of the debt justifying attachment has been guaranteed. As for the steps taken by the Agenda Tributaria in order to ensure the payment of debts, the Spanish authorities stress that in this case the Agenda Tributaria has implemented all possible actions provided for in the law. Credits and titles have been attached, along with the factory, plant and equipment used for company activities.

(39) According to the Spanish authorities, the difficulties which have arisen during the execution procedure for the collection of the debt have led to discussions with the company and with the Confederacion Hidrografica del Norte, the body charged with redemption of the waste disposal levies owed by SNIACE, in order to reach a negotiated settlement for repayment of the debt in accordance with the stipulations of the General Collection Regulations in regard to deferred payment and payment in instalments. The terms and conditions for payment in instalments and the guarantees which SNIACE would have to pledge are at present under discussion.

(40) The Spanish authorities stressed that the fact that payment in instalments is being discussed with the company does not necessarily mean that this option will be adopted; the outcome will depend on conformity with relevant legal requirements, especially those regarding guarantees.

**Non-enforcement of social security contributions since 1991**

(41) The Spanish Government stated that a further rescheduling agreement for the outstanding debt to the social security system had been made, in accordance with the provisions of Article 40 and following the General Regulations on Collection of Social Security Contributions, approved by Royal Decree 1637/1995, of 6 October (Official State Gazette of 24.10.1995), namely an agreement dated 30 September 1997 covering rescheduled debts totalling ESP 3 510 387 323 for the period February 1991 to February 1997 plus surcharges of ESP 615 056 349 and imposing terms of 120 monthly instalments with interest payments only payable in the first and second years at the legal interest rate of 7,5 % followed by repayments in years three to 10 of the principal plus interest at increasing annual rates of 5, 5, 10, 10, 15, 15, 20 and 20 % respectively.

(42) As at April 1998 SNIACE, SA had made ESP 216 118 863 in repayments to Social Security under the new deferment Agreement.

(43) The Spanish Government stated that this new deferral of debt repayment incorporates the debt referred to in the aforementioned agreement of 8 March 1996, amended by the deferral granted on 7 May 1996, which was rendered invalid due to non-payment of the repayment schedule instalments, no sum relating to the same having been deposited by the company.

(44) The Spanish Government reiterated that the General Social Security Treasury had acted in accordance with the applicable rules and regulations and that their behaviour cannot be deemed to involve the grant of State aid. The rules and regulations in question are generally applicable to all firms in any of the situations specified therein, and do not relate to specific companies or sectors. Action taken by the Social Security authorities with a view to collecting the monies owed by SNIACE had at all times followed the procedure laid down by law in the General Regulations for the Collection of Social Security Revenue.

(45) The Spanish Government stressed that postponement of debt is allowed for as a general measure and is not decided on a discretionary basis by the authorities. The procedure for such postponement is laid down in Articles 40 to 43 of the General Regulations for the Collection of Social Security Revenue, which were approved by Royal Decree No 1637/1995 of 6 October 1995. According to those Regulations, social security debts may be postponed or paid in instalments, at the request of

those liable for payment, where their economic or financial situation prevents them from paying their debts (Article 40). In other words, postponement is granted whenever a firm so requests and fulfils the conditions laid down in the Regulations. Postponement decisions are in the interests of recovery of the debt by the social security system, since any other course of action would result in closure of the firm concerned, destroying any chances of securing payment.

(46) The Spanish Government added that as a guarantee for the repayment of the debt, the company offered to take out a first mortgage on the factory, plant and equipment located at Torrelavega in favour of the General Treasury for Social Security and the Salary Guarantee Fund (FOGASA), jointly. According to an evaluation made by American Appraisal Espana SA on 31 December 1996, the real value of the assets concerned amounted to ESP 25 580 000 000 However, because of the complexity and difficulty of the measures required to ensure that the security offered had full legal effect, SNIACE requested an extension to the deadline for setting up the guarantee. This extension was granted by the Director-General of the General Social Security Treasury on 19 December 1997, for a maximum of six months, in accordance with the provisions of Article 21 of the Order of 22 February 1996, during which time the notices of seizure issued by the General Social Security Treasury would not be acted upon.

(47) During the extension period, since the difficulties mentioned above persisted and the enterprise could not specify a definite date for final settlement, the company made a request for 'substitution of the security' in order to ensure that notices of seizure would not be acted upon. According to the Spanish authorities, an examination is underway to determine whether the new security would sufficiently cover the deferred debt.

(48) According to the Spanish authorities, this postponement cannot be deemed to constitute State aid to the company concerned since the terms under which the debt has to be paid, with interest payable at the statutory rate applicable on the date the postponement was granted, are in accordance with generally applicable and mandatory rules laid down in Spanish legislation.

(49) However, by letter dated 24 June 1998 the Spanish authorities stated that their position did not contradict the view of the complainant that deferment of debt is a discretionary government measure adopted after examination of each individual case; but while they accept that Article 20 of the General Social Security Law uses the word 'podran' (may) when referring to the authority's power to grant a deferment of payment of social security debts, only by an absolutely literal interpretation could the authority be said in the Spanish Government's view to have discretionary power. It argued that discretionary is not the same as arbitrary, which would imply the capricious and nonuniform application of the law to similar situations. The reality was that whenever an enterprise requested deferment because it is in an economic or financial situation that makes it impossible for it to pay its debts, and provided that it complies with the legal requirements laid down by current law (which would, of course, imply individual examination of the case), such a deferment is granted. In this context, the Spanish authorities argue that this measure is general practice and that the same criteria are applied in all cases.

(50) Finally, the Spanish Government maintains its argument that the granting of deferments protects the interests of the social security system, in terms of recovering debts, better than any other form of action that would imply the closure of enterprises, thus making it absolutely impossible for all, or even a significant part, of the debts involved to be recovered. Hence, preference is given to the method that is most advantageous to the social security system.

**Loan guarantee approved totalling ESP 1 billion approved by Law No 7/93**

(51) The Spanish Government maintained its view that there was no aid involved since the loan guarantee had never been formalised. It reiterated that Article 2 of Law No 7/1993 of 16 September 1993 simply authorised the Regional Government to award SNIACE a guarantee covering an ESP 1 billion loan. This had not in fact occurred, since the Law laid down a number of strict conditions that had to be met if the Regional Government was to provide the guarantee and which had not so far been met. Thus the guarantee had not been granted and had not been put into effect. Indeed, the company had not even requested it. The Spanish Government repeated that prior to any possible formalisation of this guarantee, it would submit a prior notification to the European Commission.

(52) The Spanish Government further argued that under Spanish private law (Article 440 of the Commercial Code and Articles 1822 to 1856 of the Civil Code) a guarantee is defined as a formal transaction: this means that, if a guarantee document is not supplied to the entity which is to undertake the risk, the guarantee does not exist and no rights or obligations are created by it. A guarantee is more than a mere declaration of intent. In order for the guarantee in question to be implemented, the following conditions would have to be fulfilled:

(a) confirmation of conformity with provisions of Law 7/93;

(b) a legal report on the guarantee document to be drawn up;

(c) a general audit report;

(d) a proposal for offering a guarantee by the Regional Government Minister for the Economy and Taxation;

(e) regional Government approval of the guarantee;

(f) drawing up of the guarantee document.

**Financing arrangements for the planned construction of a waste treatment plant**

(53) The Spanish Government stated that the construction of a treatment line is planned as part of the integrated water treatment plan for the River Besaya and not for the exclusive use of SNIACE, but that the project was currently only at the planning stage.

(54) The company is currently taking steps to install a waste recovery plant. Any action taken with regard to the treatment of discharges made by the company into the River Besaya is linked to measures taken under the general plan for waste water treatment in the Saja/Besaya basin, which has been declared as being in the national interest and is currently undergoing technical appraisal. Until this phase has been completed it is impossible to indicate what measures will ultimately have to be taken by firms making discharges into the River Besaya.

(55) According to the technical studies carried out so far under the general plan for waste water treatment in the Saja/Besaya basin, waste water discharged by industrial firms in the area, including SNIACE, will have to be treated at source by the firms themselves, and treated effluents will be allowed to be fed into the waste water system in accordance with the limits laid down in the Regulations on Discharges and subject to the payment of user charges reflecting the permissible pollutant load. The option of treating all the industrial waste water in a specific treatment line alongside the municipal water treatment plant has been rejected on the grounds of the complexity of such a solution.

(56) By letter dated 16 April 1998 the Spanish authorities added that SNIACE had already acquired the constituent parts of the waste water treatment plant without any form of public assistance and that there are consequently no concrete plans for the granting of any assistance of this nature.

**Partial cancellation by the Torrelavega City Council of debts totalling ESP 116 million**

(57) The Spanish authorities stated that the Municipality of Torrelavega had acted in all respects within its powers and that the 'release' of the said amount of taxes did not constitute in Spanish law a 'cancellation' of debt.

(58) The Torrelavega City Council had not participated in the Creditors' Agreement of October 1996 within the framework of the suspension of payments procedure, but had instead reached a separate special agreement based on the 'release' ('quita') and postponement ('espera') provisions of Spanish tax law and by which they accepted the same sacrifices as private creditors. That is, they agreed to grant the reduction of amount and extension of time laid down in the creditors' agreement and to allow payment in instalments over a period of five years, with a grace period and interest rates as laid down in the Creditors Agreement. The sole purpose of signing the special agreement was to guarantee the recovery of SNIACE's tax liability with regard to the municipal authorities, since the amounts 'released' were not covered by any form of guarantee and there were no assets free of lien. The agreement was strictly in accordance with Article 129, paragraph 4 of the General Tax Law.

(59) According to the Spanish authorities, Spanish bankruptcy law draws a clear distinction between the concept of cancellation and that of reduction of amount and extension of time. Cancellation may be granted only by law and usually concerns disaster situations that make it appropriate to waive taxes. Reductions of amount and extensions of time are granted purely with a view to the recovery or possibility of enforcing payment of at least part of a debt and are granted only in respect of bankruptcy proceedings in which, as in the case in question, the incontestable preference of mortgage creditors (Banco Espanol de Crédito) with a lien on land and buildings renders impossible any recovery measures.

(60) The Spanish authorities supplied the Commission with a copy of Mayoral Decision of the Torrelavega City Council No 4358/97 of 15 December 1997, which states *inter alia* that the amount of SNIACE's tax debts reached, at that date, a principal of ESP 216 245 424 plus business tax for 1996 of ESP 37 523 859 to which surcharges and statutory interest payments may be added. An amount of ESP 10 193 800 was guaranteed by distraint and some ESP 45 000 000 is pending compensation; under Article 73 of the General Tax Law, property tax has special preference under an Implicit Legal Mortgage.

(61) The Spanish authorities emphasised that the 'release' of debts relates to tax assessments not covered by priority claims or prior distraint and those which, like business tax (impuesto sobre actividades economicos — IAE), could and should have been annulled since they are based on a complete year's activity (circumstances which do not apply in the case of 1995 and 1996 when the company was closed down for many months):

*(ESP)*

| | |
|---|---|
| Water and refuse collection fourth quarter 1994 | 3 808 525 |
| Water and refuse collection first quarter 1995 | 1 230 231 |
| Water and refuse collection second quarter 1995 | 1 410 205 |
| Water and refuse collection third quarter 1995 | 1 205 407 |
| Water and refuse collection fourth quarter 1995 | 1 217 353 |
| Business tax 1995 | 37 854 610 |
| Surcharges for enforced collection | 24 837 978 |
| Water and refuse collection first quarter 1996 | 1 254 510 |
| Water and refuse collection second quarter 1996 | 1 404 795 |
| Road tax 1996 | 6 700 |
| Business tax 1996 | 37 523 859 |
| Direct assessment of business tax 1995 | 4 449 635 |
| Total | 116 197 108 |

(62) According to the Spanish Government, the release from debt of ESP 116 million cannot be deemed to constitute direct or indirect aid because the City Council's decision was confined to eliminating, so to speak, those debts that could not be collected, some of which (such as the assessments of business tax for 1995 and 1996 and the surcharges for enforced collection) must be partly cancelled since the assessment was made on the basis of a year's full activity, whereas the company was hardly active at all in 1995 and 1996. Business tax is a tax whose rate is set by Central Government and is based on full economic activity. That is, they assume a full workforce and energy consumption in line with the enterprise's normal level of activity. In fact, production was suspended during this period and the amounts for both years should be automatically cancelled.

(63) Consequently, of the total amount covered by the agreement to 'release' debts, ESP 100 216 447 represented unenforceable debts — the amount for business tax because of the invalidity of the charge, and the surcharges which were an accounting item relating to the actual tax debt concerned by the release, so that the amount of this item should be understood as nothing more than accounting information without any practical effects whatsoever.

(64) The remaining amounts, for water rates and waste-collection charges, were also the subject of serious miscalculation, since the rate charged for waste collection, at least, is based on the assumption of full economic activity, which did not apply in the years 1994, 1995 and 1996. Those assessments will consequently be replaced with new assessments reflecting the real level of activity. The assessments of business tax for the years 1995 and 1996, amounting to ESP 79 497 353 were therefore completely unrealistic and ultimately have to be partly cancelled.

(65) The remainder of the debt included in the decision could under no circumstances be recovered through enforcement procedures since it enjoys no priority, and the City Council's decision therefore has no practical effect on the company since it relates to amounts that cannot be collected and amounts that had to be cancelled on account of the firm's lack of real economic activity.

(66) The Spanish authorities concluded that the municipal authorities of Torrelavega acted simply to ensure real and effective protection of their financial interests, doing everything possible to recover the SNIACE debt. Their actions had been in full compliance with the law and had never had the effect of diminishing the Municipality of Torrelavega's funds; neither could they be deemed to involve direct or indirect aid to SNIACE, since the release from debt was confined to amounts which, for a variety of reasons, could not actually be recovered.

**Agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE**

(67) The Spanish Government reiterated that FOGASA pays to employees the amounts owing to them for wages and compensation from enterprises that are insolvent or involved in bankruptcy proceedings. These benefits are paid to the workers, which means that entitlement to wage guarantees is exclusive to workers and never involves the provision of aid or loans to enterprises with labour-related debts. the Ministerial Order of 20 August 1985 governs the conclusion of agreements for the repayment of amounts paid by the Wages Guarantee Fund and expressly includes the possibility of agreements for the deferment and payment in instalments of debts, which may be entered into by the Wages Guarantee Fund, subject to the regulations laid down by the Order.

(68) In accordance with the Order of 20 August 1985, which enforces Article 32 of Royal Decree 505/85 of 6 March 1985, FOGASA signed two repayment agreements with SNIACE:

(a) dated 5 November 1993

Total amount including interest: ESP 1 362 708 700

Payment period: eight years

Instalments due: every six months

Interest rate: 10 %, which was the legal interest rate for 1993, in accordance with the provisions of the Order of 20 August 1985

Security: property mortgage

(b) dated 31 October 1995

Total amount including inte rest: ESP 339 459 878

Payment period: eight years

Instalments due: every six months

Interest rate: 9 %, which was the legal interest rate for 1995, in accordance with the provisions of the Order of 20 August 1985

Security: property mortgage

(69) The amount repaid by the enterprise under the two agreements as at June 1998 amounted to ESP 186 963 594.

(70) According to the Spanish authorities, the agreements do not involve an aid or subsidy granted by the State, as defined in Article 81 of the revised text of the General Budget Law: that is to say any free provision of public funds by the State or its autonomous bodies to public or private individuals or bodies to promote an activity of social interest or to facilitate the achievement of a public aim, or, in a more general sense, as in the case of any form of aid that is granted and charged to the State budget

or the budget of any of its autonomous bodies, as well as subsidies or aids financed, in whole or in part, by European Union funds. Rather, they concern credits to which the body in question is entitled with regard to enterprises because of subrogation of the rights and actions of workers who have received benefits.

(71) Finally, the Spanish Government argued that the rules and regulations in question are generally applicable to all firms in any of the situations specified therein, and do not relate to specific companies or sectors. Fogasa pays employees the amounts that are owed to them and never makes any payment to the companies concerned; it is forbidden from doing so by the applicable legislation.

(72) In addition to commenting on the issues under investigation under the procedure, the Spanish Government also reacted to the observations by third parties that the reported loan of ESP 2 000 million by the Caja Cantabria in favour of SNIACE contained State aid. It refuted the allegations and stated *inter alia* that the Caja is a credit institution governed by private law which has to take its investment decisions on the basis of profitability and solvency criteria. In the light of the information available at this stage, the Commission accepts that the alleged aid awarded by the Caja Cantabria does not fall within the scope of the procedure. However it can by no means exclude the possibility that aid may be involved and reserves the right to continue its investigation into this matter outside the context of this procedure.

## VI. ASSESSMENT OF THE PRESUMED AID

(73) The Commission must first determine whether or not the various measures subject to the procedure contain State aid within the meaning of Article 92(1) of the EC Treaty. In the light of the information available the Commission's assessment is as follows.

(74) SNIACE is one of five viscose fibres producers in the Community. Its products are traded between Member States, and there is competition among producers. Intra-Community trade for viscose fibre (Combined Nomenclature number 5504 10 00) amounted to approximately 101 000 tonnes in 1997. SNIACE operates in a sector in decline, which has resulted in rationalisations in capacity being made by some of its competitors. Production in the EEA of these fibres declined from 760 000 tonnes in 1992 to 684 000 tonnes in 1997 (a reduction of 10 %) and consumption fell in the same period by 11 %. The average capacity utilisation rate in that period was about 84 %, which is low for such a capital-intensive sector. In addition to supplying the Spanish market, SNIACE has traditionally supplied other European markets, notably Italy and France. In addition SNIACE produces synthetic fibres, namely polyamide filament yarn. This is a sector which also suffers from substantial overcapacity, with an average capacity utilisation rate in 1995 to 1997 of only 76 %.

### Non-payment of environmental levies owed by SNIACE since 1987

(75) As at l March 1998, it appears that the total value of unpaid debts on environmental levies for waste, including surcharges and interest charges for the period 1987 to 1995 had risen to about ESP 6 268 766 095 (rather than the ESP 6 354 149 834 stated by the Spanish authorities, which did not take account of the amounts already collected in 1987 and 1988). Yet the enforcement procedure for the collection of these debts was apparently instituted some eight years ago, following the ruling made on 28 November 1990 by the Central Economic Administrative Court on the legality of the assessments for 1987 and 1988. As the Spanish authorities themselves admit, the enforcement procedure has no suspensory effect in this case, since SNIACE has not secured bank guarantees against the contested environmental levy assessments (except for 1988).

(76) However, the Commission accepts that under Spanish law it is the tax authority and not the Confederación Hidrográfica del Norte which is the responsible body for managing the collection of these debts from SNIACE. As at June 1998 ESP 85 383 739 had been recovered, which represents little more than a mere 1 % of the total claim. Meanwhile the amount of debts, including interest at the legal interest rate and surcharges, continues to rise.

(77) The Commission notes that it has proved difficult to execute the collection of the debts, notably because of the serious financial situation facing SNIACE and the legal challenges brought by SNIACE against the annual assessments. By not proceeding to execution so far and thereby possibly provoking the liquidation of the company, the tax authority may have acted in such a way as to maximise its prospects of recovering at least a proportion of the unpaid environmental levies which would otherwise have been impossible due to the existence of other creditors with a higher priority.

(78) In conclusion, the investigation carried out by the Commission has not allowed it to conclude at this stage that the non-payment of environmental levies definitely constitutes State aid. In view of the complex legal issues surrounding the question of whether or not the public authorities have offered SNIACE preferential treatment by not recovering the unpaid levies, the Commission intends to defer a decision on this element until a later stage.

**Non-enforcement of social security contributions since 1991**

(79) The Commission does not dispute the Spanish authorities' argument that the Social Security Treasury has acted in such a way as to protect its claims. The Commission must also stress that it in no way questions the general social security system in Spain.

(80) Nevertheless the Spanish authorities have acknowledged that if the Social Security Treasury had proceeded to enforce its claims, the consequence could have been the closure of the company. It is thus evident that in this case tolerance by the Social Security Treasury of deferred payment of SNIACE's social security contributions over a period of many years has conferred an appreciable advantage on the company.

(81) It is also evident that the applicable Social Security regulations afford the authorities a margin of discretion in the treatment of individual cases and that this is precisely what has occurred in this case. The Commission must stress that it is the degree of discretion which the Social Security Treasury was able to exercise in this particular case, and moreover to a firm which appeared to be suffering from a lack of viability, which leads the Commission to reject the Spanish authorities' contention that the action taken by the Social Security Treasury with regard to SNIACE constitutes general measures [1].

(82) Notwithstanding the fact that the Social Security Treasury has acted in accordance with the applicable legislation, the treatment of SNIACE's debts, through various rescheduling agreements, does not seem to have been consistent with prevailing market conditions. The Commission's practice has been to make a comparison with the value at the relevant time of the reference rate fixed for the Member State concerned. However, no such rate was fixed for Spain until August 1996. Therefore, in determining whether or not such a rate is consistent with market conditions, in previous cases involving rescheduling of social security debts [2], the Commission has made a comparison with the prevailing average rate of interest charged by private banks in Spain on loans over more than three years. In this case, according to statistics published by the Spanish Central Bank, the average rate of interest charged by private banks on loans longer than three years during the period in question was as follows: 1991 18,24 %; 1992 17,28 %; 1993 16,19 %; 1994: 12,51 %; 1995: 13,09 %; 1996: 11,06 % [3]. The other conditions of the rescheduling agreements, with the bulk of the repayments of principal and interest timed towards the end (apparently in order to facilitate the company's recovery) are also not in confomity with credits under normal market conditions.

(83) It must therefore be concluded that the agreements contained State aid within the meaning of Article 92(1) of the Treaty which was illegal not having been been notified to the Commission pursuant to Article 93(3) of the Treaty. It is difficult to quantify the precise amount of illegal aid involved but it is at least equal to the financial advantage arising from the reduced interest rate applied and effective from when the debts were incurred.

**Loan guarantee approved totalling ESP 1 billion approved by Law No 7/93**

(84) While it is unfortunate that the Spanish authorities did not notify the Commission of the intention of the Cantabrian regional assembly to authorise the granting of the guarantee in question, especially bearing in mind the fact that the company produces *inter alia* polyamide fibre, a product falling within the scope of control of the Code on aid to the synthetic fibres industry, the Commission can accept that the regional assembly itself does not grant guarantees and that a number of separate additional administrative steps would have been required to put the guarantee into effect. In addition, the Commission is unaware of any

[1] Advocate-General Jacobs indicates in his opinion of 24 September 1998 in Case C-256/97 D. M. Transport SA that 'it is clear that in certain circumstances continued and generous tolerance of late payment of social security contributions may confer an appreciable commercial advantage on the recipient undertaking and in extreme cases be tantamount to relief from those contributions' (point 33).

[2] For example in the Tubacex Case; OJ L 8, 11.1.1997.

[3] The reference rates which have subsequently applied to Spain are as follows: 1.8.1996 to 1.11.1996: 13,45 %; 1.11.1996 to 1.1.1997: 11,40 %; 1.1.1997 to 1.8.1997: 10,56 %; 1.8.1997 to 1.1.1998: 6,22 %; 1.1.1999 to date 0,620 %.

evidence demonstrating that the passing of the Law conferred a commercial advantage on SNIACE. Consequently, on condition that the Spanish Government notifies the Commission in advance of any proposal to formalise the guarantee, the Commission concludes that Law 7/93 of itself does not confer any special advantage on SNIACE and does not therefore constitute a State aid.

**Financing arrangements for the planned construction of a waste treatment plant**

(85) The Commission notes that according to the information provided by the Spanish Government the implementation of the regional plan for treatment of waste in the Saja/Besaya basin is at the technical appraisal stage and that until this phase has been completed it will not be known what measures may ultimately have to be taken with regard to discharges made by firms (including SNIACE) into the River Besaya. The Commission also notes the assurances given by the Spanish Government that action already taken by SNIACE with regard to the installation of waste water treatment facilities has been made without any form of public intervention and moreover that no such public assistance is envisaged. Accordingly, the investigation by the Commission has not allowed it to establish the existence of aid elements in this respect.

**Partial cancellation by the Torrelavega City Council of debts totalling ESP 116 million**

(86) On the basis of the information provided by the Spanish Government, Torrelavega City Council appears to have acted in such a manner as to protect all those claims against SNIACE which it is legally able to enforce under Spanish law. The Commission has also examined whether the public creditor's behaviour in this case was determined by the intention to maximise the chances of recovery of the unpaid taxes and whether its actions were comparable to those of the private creditors. As the Commission acknowledged when opening the procedure, by not subscribing to the private creditors' agreement of October 1996 (which stipulated *inter alia* the conversion of 40 % of the debts into shares) within the framework of the suspension of payments procedure, the public authorities were able, in principle, to protect their entire claims. In addition, the Commission can accept that the separate agreement between Torrelavega City Council and SNIACE, which effectively went in parallel with the creditors' agreement, does not appear to have accorded SNIACE any more generous treatment than that reached in the private creditors' agreement. On the contrary, the 'release' from debts was confined essentially to amounts which could not actually be recovered, notably since the company was not economically active for much of 1995 and 1996 and that the amounts due have consequently to be reassessed, though no details of the modified assessments have yet been provided to the Commission.

(87) Accordingly, on the basis of the available information the Commission can accept that the actions of the municipal authorities in Torrelavega coming within the scope of the proceedings did not confer any undue advantage on SNIACE or result in the cancellation of debts and did not therefore constitute State aid.

**Agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE**

(88) The Commission reiterates, as it stated in the opening of the procedure, that it does not object to the intervention of FOGASA in so far as it settles on behalf of the company, in accordance with its (FOGASA's) regulations, the valid claims of employees of SNIACE that they would not otherwise have received. However, in accordance with constant Commission practice any discretionary contribution by the State to these costs must be regarded as aid and not as a general measure if it conferred financial advantages on the company regardless of whether the payments are directly to the company or are administered to the employees through a government agency.

(89) According to the Commission's understanding of these arrangements, FOGASA has discretionary power to postpone or split up the repayments up to a period of eight years. The deferred payments accrue at the legal interest rate. Notwithstanding that these arrangements are in accordance with the applicable legislation, they do not seem to have been consistent with the prevailing market conditions. For the same reasons as given in relation to the social security debts above (the fact that there was no reference rate fixed for Spain until August 1996), the Commission has made a comparison with the average rate of interest charged by private banks on loans longer than three years during the period in question, which was as follows:- 1993: 16,19 %; 1994: 12,51 %; 1995: 13,09 %; 1996: 11,06 %. These rates are considerably more than

the rates payable under the agreements. Furthermore, the Commission continues to have doubts that the company is able to meet the terms of the agreements in the light of its financial difficulties. Despite repeated requests, the Spanish Government failed to provide specific details of the nature of the mortgage put up as security to FOGASA.

(90) Consequently, following the approach adopted above in relation to social security debts it must therefore be concluded that the rescheduling agreements with FOGASA contained State aid within the meaning of Article 92(1) of the EC Treaty which was illegal, not having been notified to the Commission. As in the case of the social security debts, quantification of the precise amount of the illegal aid is difficult, but the aid is at least equal to the financial advantage arising from the fact that the interest rate payable under the rescheduling agreements were only 10 and 9 % respectively.

(91) Having established that illegal State aid is contained in the non-payment of environmental levies, rescheduling of the social security debt and the FOGASA repayment agreements, the Commission must decide whether or not such aid is incompatible with the common market and the working of the EEA Agreement.

(92) Article 92(1) of the EC Treaty lays down the principle that aid having the characteristics specified therein is incompatible with the common market. The derogations from that principle set out in Article 92(2) of the EC Treaty do not apply to the case in point, given the nature and objectives of the aid.

(93) With regard to the exceptions provided for in Article 92(3)(a) and (c) for aid that promotes or facilitates the development of certain areas, the Commission notes that the region in which SNIACE is located has since September 1995 been a region eligible for regional aid pursuant to Article 92(3)(a) and prior to that date was eligible for regional aid pursuant to Article 92(3)(c). However, the assistance afforded to SNIACE does not have the requisite features to facilitate the development of certain economic areas within the meaning of this Article, inasmuch as it was granted in the form of operating aid, that is to say, not conditional on investment or job creation. Furthermore, operating aid in Article 92(3)(a) areas could only exceptionally be covered by this exception when granted under restricted and controlled conditions in relation to firms in difficulty (see below).

(94) As far the derogation pursuant to Article 92(3)(b) is concerned, the aid was clearly not intended to promote a project of common European interest or to remedy a serious disturbance in the Spanish economy. Nor has the Spanish Government attempted to justify the aid on such grounds.

(95) As regards the derogation pursuant to Article 92(3)(d) of the Treaty, the aid was clearly not intended to promote culture and heritage conservation.

(96) Thus, for the measures in favour of SNIACE the Commission's assessment concentrates on the non-regionally specific element of Article 92(3)(c) of the Treaty, which lays down an exception for 'aid to facilitate the development of certain activities' where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The aid to SNIACE could be categorised as an aid to a firm in difficulty, given its financial position during the period when the aid was awarded.

(97) The Commission considers that aid to firms in difficulties carries the greatest risk of transferring unemployment and industrial problems from one Member State to another; it acts as a means of preserving the status quo by preventing forces at work in the market economy from their normal consequences in terms of disappearance of uncompetitive firms in their process of adaptation to changing conditions in competition; at the same time, such aid may bring about disruptive effects on competition and trade through its influence upon the pricing policies of beneficiaries opting for undercutting strategies to stay on the market.

(98) For this reason, the Commission has over the years developed a special approach for the assessment of aid to firms in difficulty. The Community guidelines on State aid for rescuing and restructuring firms in difficulty [1] define a number of conditions which such aid must fulfil. They distinguish between rescue aid and restructuring aid.

[1] OJ C 368, 23.12.1994, p. 12.

(99) Rescue aid, that is, aid merely granted to keep a firm in business while the causes of their difficulties are discovered and a remedy worked out, can be authorised as compatible with the common market if it:

(a) consists of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates;

(b) is restricted to the amount needed to keep the firm in business (for example, covering wage and salary costs and routine supplies);

(c) is paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; and

(d) is warranted on the grounds of serious social difficulties and would not have any adverse effects on the industrial situation in other Member States.

(100) The general principle is that restructuring aid will only be authorised where it is in the Community interest and is linked to a viable restructuring/recovery programme submitted in detail to the Commission. A restructuring plan must satisfy all of the following conditions:

(a) the plan must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic forecasts of future operating conditions;

(b) the plan must offset as far as possible any potential adverse effects on competitors;

(c) the amount and intensity of the restructuring aid must be restricted to the minimum needed to enable the restructuring to take place and be related to the benefits anticipated from the Community's perspective. Therefore, restructuring aid beneficiaries are normally expected to make a significant contribution to the restructuring plan from internal resources or from external commercial financing.

(101) Finally, since 1977, the freedom of Member States to award aid to the synthetic fibres industry has been subject to constraints, which were introduced to curb the provision of aid that would result in an increase in capacity for the production of the main synthetic fibres. As SNIACE is a producer of synthetic fibres and as the aid in question appears in part to be by way of support for such activities, the measures in question could only be considered compatible with the common market if they also conformed with the Code on aid to the synthetic fibres industry. Although the aid goes back over a period of several years, it must be examined against the terms of the current version of the Code. The Code covers *inter alia* investment aid for the extrusion and texturisation of four fibres — polyester, polyamide, acrylic and polypropylene. The Code states clearly that, with respect to larger firms (that is, firms which are not SMEs), the Commission will only authorise such aid (at up to 50 % of the applicable aid ceiling) if the aid would result in a significant reduction in the relevant capacity, or if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in capacity.

(102) In this case the Spanish Government did not seek to argue that the measures constituted rescue or restructuring aid. Nor did it put forward any evidence of any valid restructuring plan or a proposed reduction in SNIACE's market presence. This would appear to confirm that the aid had the effect simply of allowing the company to continue in business.

(103) As far as the viability plan submitted to the Commission by the complainant prior to the opening of the procedure is concerned, the Spanish Government merely confirmed its view that the consultant's conclusion 'the viability of SNIACE is only possible through the granting of subsidies which would enable investment projects to be undertaken and debts renegotiated' was purely a private opinion reflected in a private study and did not necessarily reflect the views of the Spanish authorities.

(104) Moreover, with regard to SNIACE's synthetic fibres activities, the Commission is not aware of any plans which would lead to a significant reduction in capacity. In addition, capacity utilisation rates in this sector, in which there is substantial intra-Community trade, remain unsatisfactory.

VII. **CONCLUSIONS**

(105) Accordingly, the Commission finds that Spain has unlawfully implemented aid in the form of the rescheduling of the social security debt and of two FOGASA repayment agreements contrary to Article 93(3) of the Treaty and that it is incompatible with the common market and the functioning of the EEA Agreement.

(106) Since the aid is illegal and incompatible with the common market, it should be recovered and its economic effect annulled,

HAS ADOPTED THIS DECISION:

*Article 1*

The following State aid which Spain has granted to Sociedad Nacional de Industrias y Aplicaciones de Celulosa Espanola SA (SNIACE) is incompatible with the common market:

(a) in so far as the rate of interest was below market rates, the agreement 8 March 1996 (as amended by agreement of 7 May 1996) between SNIACE and the Social Security Treasury to reschedule debts covering ESP 2 903 381 848 in principal, as further amended by agreement of 30 September 1997 to reschedule debts covering ESP 3 510 387 323 in principal; and

(b) in so far as the rate of interest was below market rates, the agreements of 5 November 1993 and 31 October 1995 between SNIACE and the wage guarantee fund FOGASA covering ESP 1 362 708 700 and ESP 339 459 878 respectively (including interest).

As regards the other matters that were the subject of the proceedings opened pursuant to Article 93(2) of the EC Treaty, namely a loan guarantee approved totalling ESP 1 billion approved by Law No 7/93, the financing arrangements for the planned construction of a waste treatment plant and the partial cancellation of debts by the Torrelavega City Council, these measures do not constitute aid and the procedure can be closed. However, Spain must inform the Commission within a period of two months from the date of this decision of the modified assessments made by Torrelavega City Council in respect of SNIACE's business taxes for the years 1995 to date. As regards the unpaid environmental levies during the period 1987 to 1995, the Commission will take a separate decision in due course.

*Article 2*

1. The Kingdom of Spain shall take the necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to it.

2. Recovery shall be effected in accordance with the procedures of national law. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until their actual recovery. Interest shall be calculated on the basis of the applicable reference rate.

*Article 3*

The Kingdom of 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 4*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 28 October 1998.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

# COMMISSION DECISION

**of 2 June 1999**

**concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests**

*(notified under document number SEC(1999) 802)*

(1999/396/EC, ECSC, Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 218 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 16 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 131 thereof,

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council [1] and Council Regulation (Euratom) No 1074/1999 [2] concerning investigations conducted by the European Anti-Fraud Office (hereinafter 'the Office') provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies and offices and agencies established by or on the basis of the EC Treaty or Euratom Treaty;

(2) the responsibility of the Office as established by the Commission extends beyond the protection of financial interests, to include all activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal procedings;

(3) the scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;

(4) therefore, on the basis of its administrative autonomy, the Commission should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of those Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members of the Commission or members of the Commission's staff not subject to the Staff Regulations;

(5) such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, and in particular the Protocol on privileges and immunities, the texts implementing them and the Staff Regulations;

(6) such investigations should be carried out under equivalent conditions in all the Community institutions, bodies and offices and agencies; assignment of this task to the Office should not affect the responsibilities of the institutions, bodies or agencies themselves and should in no way reduce the legal protection of the persons concerned;

(7) pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the Members of the Commission and its officials and servants are to cooperate in the smooth operation of the internal investigations;

(8) the Commission's Decision of 14 July 1998 concerning investigations carried out by the Task Force 'Coordination of the fight against fraud', together with its implementing rules of 9 December 1998, should be repealed,

[1] OJ L 136, 31.5.1999, p. 1.
[2] OJ L 136, 31.5.1999, p. 8.

HAS DECIDED AS FOLLOWS:

*Article 1*

**Duty to cooperate with the Office**

The Secretary-General, the services and any official or servant of the Commission shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's agents with all useful information and explanations.

Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and the texts implementing them, Members of the Commission shall cooperate fully with the Office.

*Article 2*

**Duty to supply information**

Any official or servant of the Commission who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the Members of the Commission or members of the Commission's staff not subject to the Staff Regulations, shall inform without delay his Head of Service or Director-General or, if he considers it useful, the Secretary-General of the Commission or the Office direct.

The Secretary-General, the Directors-General and the Heads of Service of the Commission shall transmit without delay to the Office any evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.

Officials or servants of the Commission shall in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragrpahs.

Members of the Commission who acquire knowledge of facts as referred to in the first paragraph shall inform the President of the Commission or, if they consider it useful, the Office direct.

*Article 3*

**Assistance from the Security Office**

At the request of the Director of the Office, the Commission's Security Office shall assist the Office in the practical conduct of investigations.

*Article 4*

**Informing the interested party**

Where the possible implication of a Member, official or servant of the Commission emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a Member, official or servant of the Commission may not be drawn once the investigation has been completed without the interested party's having been enabled to express his views on all the facts which concern him.

In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the Member, official or servant of the Commission to give his views may be deferred in agreement with the President of the Commission or its Secretary-General respectively.

*Article 5*

**Information on the closing of the investigation with no further action taken**

If, following an internal investigation, no case can be made out against a Member, official or servant of the Commission against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing.

*Article 6*

**Waiver of immunity**

Any request from a national police or judicial authority regarding the waiver of immunity from judicial proceedings of an official or servant of the Commission concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for waiver of immunity concerns a Member of the Commission, the Office shall be informed.

*Article 7*

**Repeal**

The Commission's Decision of 14 July 1998 concerning investigations carried out by the Task Force 'Coordination of the fight against fraud', together with its implementing rules of 9 December 1998, are hereby repealed.

*Article 8*

**Effective date**

This Decision shall take effect on 1 June 1999.

Done at Brussels, 2 June 1999.

*For the Commission*

*The President*

Jacques SANTER

# COMMISSION DECISION

**of 14 June 1999**

**terminating the anti-dumping and the anti-subsidy proceedings concerning imports of polyester textured yarn originating in India and the Republic of Korea**

*(notified under document number C(1999) 1539)*

(1999/397/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as last amended by Regulation (EC) No 905/98 [2], and in particular Article 9 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community [3], and in particular Article 14 thereof,

After consulting the Advisory Committees,

Whereas:

## A. PROCEDURE

(1) On 7 July 1998, the Commission received two complaints concerning alleged injurious dumping and injurious subsidisation by imports into the Community of polyester textured filament yarn originating in India and the Republic of Korea.

(2) Both complaints were lodged by CIRFS (International Committee of Rayon and Synthetic Fibres), on behalf of Community producers representing a major proportion of the total Community production of polyester textured filament yarn pursuant to Article 4(1) and Article 5(4) of Regulation (EC) No 384/96 and to Article 9(1) and Article 10(8) of Regulation (EC) No 2026/97.

(3) These complaints contained *prima facie* evidence of dumping and subsidisation, and of material injury resulting therefrom, considered sufficient to justify the initiation of both an anti-dumping and an anti-subsidy proceeding.

(4) The Commission, after consultation, by two separate notices published on 21 August 1998 in the *Official Journal of the European Communities* [4], accordingly initiated an anti-dumping and an anti-subsidy proceeding concerning imports into the Community of polyester textured filament yarn, currently classifiable within CN code 5402 33 00, originating in India and the Republic of Korea.

(5) The Commission officially advised the exporting producers, importers, upstream suppliers of raw materials, downstream industrial users of polyester textured filament yarn known to be concerned, the representatives of the exporting countries and the complainant Community producers. Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the notices of initiation.

## B. WITHDRAWAL OF THE COMPLAINT AND TERMINATION OF THE PROCEEDINGS

(6) By a letter of 28 April 1999 to the Commission, CIRFS formally withdrew its anti-dumping and anti-subsidy complaints concerning imports of polyester textured yarn originating in India and the Republic of Korea.

(7) In accordance with Article 9(1) of Council Regulation No 384/96 and with Article 14(1) of Council Regulation No 2026/97, when the complainant withdraws its complaint the proceeding may be terminated unless such termination would not be in the Community interest.

(8) The Commission considered that the present proceedings should be terminated since the investigation had not brought to light any considerations showing that such termination would not be in the Community interest. Interested parties were informed accordingly and were given the opportunity to comment. No comments were received indicating that such termination would not be in the Community interest.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 128, 30.4.1998, p. 18.
[3] OJ L 288, 21.10.1997, p. 1.
[4] OJ C 264, 21.8.1998, pp. 2 and 5.

(9) The Commission therefore concludes that the anti-dumping and the anti-subsidy proceedings concerning imports into the Community of polyester textured filament yarn originating in India and the Republic of Korea, should be terminated without the imposition of measures.

HAS DECIDED AS FOLLOWS:

*Sole Article*

The anti-dumping and the anti-subsidy proceedings concerning imports into the Community of polyester textured filament yarn currently classifiable within CN code 5402 33 00 and originating in India and the Republic of Korea are hereby terminated.

Done at Brussels, 14 June 1999.

*For the Commission*

Leon BRITTAN

*Vice-President*