ISSN 0378-6978

Official Journal of the European Communities

L 25

Volume 40

28 January 1997

English edition

Legislation

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EN

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 140/97 of 27 January 1997 on the supply of cereals as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated cereals to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid [2], as amended by Regulation (EEC) No 790/91 [3]; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Cereals shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ No L 166, 5. 7. 1996, p. 1.
(2) OJ No L 204, 25. 7. 1987, p. 1.
(3) OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** (1): 1327/91
2. **Programme:** 1991
3. **Recipient** (2): Chad
4. **Representative of the recipient:** Office Nationale des Céréales (ONC) BP 21, N'Djaména Tel. (235) 52 37 31/52 37 30/51 40 14 (contact: Mr Mahamat Ali Assaballa)
5. **Place or country of destination** (5): Chad
6. **Product to be mobilized:** milled rice (product codes 1006 30 92 900, 1006 30 94 900, 1006 30 96 900, 1006 30 98 900)
7. **Characteristics and quality of the goods** (3) (7): see OJ No C 114, 29. 4. 1991, p. 1 (under II.A. (1) (f))
8. **Total quantity (tonnes):** 2 300
9. **Number of lots:** 1 in 7 parts (A1: 1 000 tonnes; A2: 200 tonnes; A3: 200 tonnes; A4: 200 tonnes; A5: 200 tonnes; A6: 250 tonnes; A7: 250 tonnes)
10. **Packaging and marking** (6) (8):

    see OJ No C 267, 13. 9. 1996, p. 1 (1.0 A 1.a, 2.a and B.3)

    see OJ No C 114, 29. 4. 1991, p. 1 (II.A. (3))

    Language to be used for the marking: French
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at destination
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** Entrepôts ONC à: A1: N'Djamena; A2: Abéché; A3: Moundou; A4: Sarh; A5: Mongo; A6: Biltine; A7: Mao
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 10. — 23. 3. 1997
18. **Deadline for the supply:** 4. 5. 1997
19. **Procedure for determining the costs of supply:** invitation to tender
20. **Date of expiry of the period allowed for submission of tenders:** 12 noon (Brussels time) on 11. 2. 1997
21. **In the case of a second invitation to tender:**

    (a) deadline for the submission of tenders: 12 noon (Brussels time) on 25. 2. 1997

    (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 24. 3. — 6. 4. 1997

    (c) deadline for the supply: 18. 5. 1997
22. **Amount of tendering security:** ECU 5 per tonne
23. **Amount of delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, à l'attention de Mr T. Vestergaard, bâtiment Loi 130, bureau 7/46, 200 rue de la Loi/Wetstaat, B-1049 Bruxelles/Brussel telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively).
25. **Refund payable on application by the successful tenderer** (4): refund applicable on 31. 01. 1997, fixed by Commission Regulation (EC) No 2454/96 (OJ No L 333, 21. 12. 1996, p. 38)

LOT B

1. **Operation No** ([1]): 1231/95
2. **Programme:** 1995
3. **Recipient** ([2]): CICR, 19 avenue de la Paix, CH-1202 Genève (tel: (41 22) 734 60 01; telex: 22269 CICR CH)
4. **Representative of the recipient:** ICRC Tbilissi, Dutu Megreli Road 1, 380003 Tbilissi. (Tel.: (78832) 93 55 11; fax: (78832) 935520)
5. **Place or country of destination:** Georgia
6. **Product to be mobilized:** common wheat flour
7. **Characteristics and quality of the goods** ([3]) ([7]): see OJ No C 114, 29. 4. 1991, p. 1 (under II.B (1) (a))
8. **Total quantity (tonnes):** 100
9. **Number of lots:** 1
10. **Packaging and marking** ([6]) ([8]): see OJ No C 267, 13. 9. 1996, p. 1 (2. 2 A 1.a, 2.a and B.2)

    see OJ No C 114, 29. 4. 1991, p. 1 (II.B (3))

    Language to be used for the marking: English

    Supplementary markings: 'ZZC-0277'
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at destination
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** ICRC Tbilissi, Dutu Megreli Road 1, 380003 Tbilissi
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 3. — 16. 3. 1997
18. **Deadline for the supply:** 6. 4. 1997
19. **Procedure for determining the costs of supply:** invitation to tender
20. **Date of expiry of the period allowed for submission of tenders** : 12 noon (Brussels time) on 11. 2. 1997
21. **In the case of a second invitation to tender:**

    (a) deadline for the submission of tenders: 12 noon (Brussels time) on 25. 2. 1997

    (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 17. — 30. 3. 1997

    (c) deadline for the supply: 20. 4. 1997
22. **Amount of tendering security:** ECU 5 per tonne
23. **Amount of delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ([1]): Bureau de l'aide alimentaire, à l'attention de Monsieur T. Vestergaard, bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Brussels

    telex: 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** ([4]): refund applicable on 31. 1 1997, fixed by Commission Regulation (EC) No 2454/96 (OJ No L 333, 21. 12. 1996, p. 38)

LOT C

1. **Operation No** (1): 1404/95
2. **Programme:** 1995
3. **Recipient** (2): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland (tel.: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)
4. **Representative of the recipient** (10): to be designated by the recipient
5. **Place or country of destination:** Peru
6. **Product to be mobilized:** common wheat flour
7. **Characteristics and quality of the goods** (3) (7): see OJ No C 114, 29. 4. 1991, p. 1 (II.B. (1) (a))
8. **Total quantity (tonnes):** 80
9. **Number of lots:** 1
10. **Packaging and marking** (6) (8) (9): see OJ No C 267, 13. 9. 1996, p. 1 (2.2 A 1.d, 2.d and B.4)
    see OJ No C 114, 29. 4. 1991, p. 1 (II.B. (3))
    Language to be used for the marking: Spanish
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at port of shipment
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** —
17. **Period for making the goods available at the port of shipment:** 3. — 23. 3. 1997
18. **Deadline for the supply:** —
19. **Procedure for determining the costs of supply:** invitation to tender
20. **Date of expiry of the period allowed for submission of tenders:** (12 noon (Brussels time)) 11. 2. 1997
21. **In the case of a second invitation to tender:**
    (a) deadline for the submission of tenders: (12 noon (Brussels time)) 25. 2. 1997
    (b) period for making the goods available at the port of shipment: 17. — 30. 3. 1997
    (c) deadline for the supply: —
22. **Amount of tendering security:** ECU 5 per tonne
23. **Amount of delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels telex: 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** (4): refund applicable on 31. 1. 1997, fixed by Commission Regulation (EC) No 2454/96 (OJ No L 333, 21. 12. 1996, p. 38)

LOT D

1. **Operation No** (1): 1401/95

2. **Programme:** 1995

3. **Recipient** (2): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland (tel: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)

4. **Representative of the recipient** (10): to be designated by the recipient

5. **Place or country of destination:** Haiti

6. **Product to be mobilized:** milled rice (product code 1006 30 96 900 and 1006 30 98 900)

7. **Characteristics and quality of the goods** (3) (7): see OJ No C 114, 29. 4. 1991, p. 1 (II.A. (1) (f))

8. **Total quantity (tonnes):** 2 160

9. **Number of lots:** 1

10. **Packaging and marking** (6) (8) (9): see OJ No C 267, 13. 9. 1996, p. 1 (1.0 A 1.c, 2.c and B.6)
    see OJ No C 114, 29. 4. 1991, p. 1 (II.A. (3))
    Language to be used for the marking: French

11. **Method of mobilization:** the Community market

12. **Stage of supply:** free at port of shipment

13. **Port of shipment:** —

14. **Port of landing specified by the recipient:** —

15. **Port of landing:** —

16. **Address of the warehouse and, if appropriate, port of landing:** —

17. **Period for making the goods available at the port of shipment:** 3. — 23. 3. 1997

18. **Deadline for the supply:** —

19. **Procedure for determining the costs of supply:** invitation to tender

20. **Date of expiry of the period allowed for submission of tenders:** (12 noon (Brussels time)) 11. 2. 1997

21. **In the case of a second invitation to tender:**
    (a) deadline for the submission of tenders: (12 noon (Brussels time)) 25. 2. 1997
    (b) period for making the goods available at the port of shipment: 17. 3. — 6. 4. 1997
    (c) deadline for the supply: —

22. **Amount of tendering security:** ECU 5 per tonne

23. **Amount of delivery security:** 10 % of the amount of the tender in ecus

24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, rue de la Loi/Wetstraat 200, B-1049 Brussels telex: 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)

25. **Refund payable on application by the successsful tenderer** (4): refund applicable on 31. 1. 1997, fixed by Commission Regulation (EC) No 2454/96 (OJ No L 333, 21. 12. 1996, p. 38)

LOT E

1. **Operation No** (1): 1403/95
2. **Programme:** 1995
3. **Recipient** (2): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland (tel: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)
4. **Representative of the recipient** (10): to be designated by the recipient
5. **Place or country of destination:** Peru
6. **Product to be mobilized:** oat flakes
7. **Characteristics and quality of the goods** (3) (7): see OJ No C 114, 29. 4. 1991, p. 1 (II.B. (1) (e))
8. **Total quantity (tonnes):** 60
9. **Number of lots:** 1
10. **Packaging and marking** (6) (8) (9): see OJ No C 267, 13. 9. 1996, p. 1 (2.3 A 1.c, 2.c and B.4)
    see OJ No C 114, 29. 4. 1991, p. 1 (II.B. (3))
    Language to be used for the marking: Spanish
11. **Method of mobilization:** the Community market
12. **Stage of supply:** free at port of shipment
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** —
17. **Period for making the goods available at the port of shipment:** 3. — 23. 3. 1997
18. **Deadline for the supply:** —
19. **Procedure for determining the costs of supply:** invitation to tender
20. **Date of expiry of the period allowed for submission of tenders:** (12 noon (Brussels time)) 11. 2. 1997
21. **In the case of a second invitation to tender:**
    (a) deadline for the submission of tenders: (12 noon (Brussels time)) 25. 2. 1997
    (b) period for making the goods available at the port of shipment: 17. 3. — 6. 4. 1997
    (c) deadline for the supply: —
22. **Amount of the tendering security:** ECU 5 per tonne
23. **Amount of the delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1): Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, 200 rue de la Loi/Wetstraat, B-1049 Brussels telex: 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** (4): refund applicable on 31. 1. 1997, fixed by Commission Regulation (EC) No 2454/96 (OJ No L 333, 21. 12. 1996, p. 38)

Notes:

[1] The operation number should be mentioned in all correspondence.

[2] The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.

[3] The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

[4] Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.

The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22) shall not apply to this amount.

[5] Commission delegation to be contacted by the successful tenderer: OJ No C 114, 29. 4. 1991, p. 33.

[6] Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

[7] The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:

— phytosanitary certificate (C, E + expiry date),

— lots A, B, C, D: fumigation certificate (the cargo shall be fumigated before shipment with phosphine gas).

[8] Notwithstanding OJ No C 114, points II.A (3) (c) or II.B (3) (c) are replaced by the following: 'the words "European Community"'.

[9] Shipment to take place in 20-foot containers, FCL/FCL (each containing 20 tonnes (lots C, D) or 12 tonnes (lot E) net).

The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal. The provisions of Article 13 (2), second subparagraph, of Regulation (EEC) No 2200/87 shall not apply.

The successful tenderer has to submit to the recipient's agent a complete packing list of each container, specifying number of bags belonging to each shipping number as specified in the invitation to tender.

The successful tenderer has to seal each container with a numbered locktainer (SYSKO locktainer 180 seal), the number of which is to be provided to the beneficiary's forwarder.

[10] The supplier should send a duplicate of the original invoice to: Scheuer Assurantie, Postbus 1315, NL-1000 BH Amsterdam.

COMMISSION REGULATION (EC) No 141/97
of 27 January 1997
on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated vegetable oil to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid [2], as amended by Regulation (EEC) No 790/91 [3]; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilize either rapeseed oil or sunflower oil; whereas the contract for the supply of such each lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

The supply shall cover the mobilization of vegetable oil produced in the Community. Mobilization may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders relating to the lots specified in the Annex shall cover either rapeseed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 166, 5. 7. 1996, p. 1.
[2] OJ No L 204, 25. 7. 1987, p. 1.
[3] OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** (1): 1166/95
2. **Programme:** 1995
3. **Recipient** (2): CICR, 19 avenue de la Paix, CH-1202 Genève (tel.: (41-22) 734 60 01; telex: 22269 CICR CH)
4. **Representative of the recipient:** ICRC Tbilissi, Dutu Megrelli Road 1, 380003 Tbilissi (tel.: (78832) 935511; fax: (78832) 935520)
5. **Place or country of destination:** Georgia
6. **Product to be mobilized:** vegetable oil: refined rapeseed oil or refined sunflower oil
7. **Characteristics and quality of the goods** (3) (7) (8): see OJ No C 114, 29. 4. 1991, p. 1 (III.A.(1) (a) or (b))
8. **Total quantity (tonnes net):** 200
9. **Number of lots:** 1
10. **Packaging and marking** (5) (6): see OJ No C 267, 13. 9. 1996, p. 1 (10.2 A, B and C.2)

    see OJ No C 114, 29. 4. 1991, p. 1 (III.A.(3))
    Language to be used for the marking: English
    Supplementary markings 'ZZC-267'
11. **Method of mobilization:** mobilization of refined vegetable oil produced in the Community.

    Mobilization may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Stage of supply:** free at destination
13. **Port of shipment:** —
14. **Port of landing specified by the recipient:** —
15. **Port of landing:** —
16. **Address of the warehouse and, if appropriate, port of landing:** see point 4
17. **Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:** 10. — 23. 3. 1997
18. **Deadline for the supply:** 13. 4. 1997
19. **Procedure for determining the costs of supply:** invitation to tender
20. **Date of expiry of the period allowed for submission of tenders:** (12 noon (Brussels time)) 11. 2. 1997
21. **In the case of a second invitation to tender:**

    (a) deadline for the submission of tenders: (12 noon (Brussels time)) 25. 2. 1997
    (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: 24. 3. — 6. 4. 1997
    (c) deadline for the supply: 27. 4. 1997
22. **Amount of tendering security:** ECU 15 per tonne
23. **Amount of delivery security:** 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** (1):

    Bureau de l'aide alimentaire,
    Attn. Mr T. Vestergaard,
    Bâtiment Loi 130, bureau 7/46,
    Rue de la Loi/Wetstraat 200,
    B-1049 Bruxelles/Brussel
    telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** (4): —

Notes:

(1) The operation number should be mentioned in all correspondence.

(2) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.

(3) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.

(4) Article 7 (3) (g) of Regulation (EEC) No 2200/87 shall not be applicable to tenders submitted.

(5) The free holding period for containers must be at least 15 days.

(6) Notwithstanding OJ No C 114, point III.A (3) (c) is replaced by the following: 'the words "European Community"'.

(7) The successful tenderer shall supply to the beneficiary or its representative, on delivery, a sanitary certificate.

(8) Tenders shall be rejected unless they specify the type of oil to which they relate.

COMMISSION REGULATION (EC) No 142/97

of 27 January 1997

concerning the delivery of information about certain existing substances as foreseen under Council Regulation (EEC) No 793/93

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances ([1]), and in particular Article 12 (2) thereof,

Whereas the Commission needs relevant information on certain substances in order to initiate the review procedure under Articles 69, 84 and 112 of the Accession Treaty of provisions not yet applicable in the new Member States, whereas this information must be available before all the information required by Articles 3 and 4 of Regulation (EEC) No 793/93 is available;

Whereas Article 12 foresees that for certain substances suspected of presenting serious risks to man or the environment, the manufacturers and importers may be obliged to deliver available information;

Whereas Commission Regulation (EEC) No 1488/94 ([2]) outlines the principles for the assessment of risks to man and the environment of existing substances in accordance with Regulation (EEC) No 793/93;

Whereas, the provisions of this Regulation are in accordance with the opinion of the Committee established pursuant to Article 15 of Regulation (EEC) No 793/93,

HAS ADOPTED THIS REGULATION:

Article 1

The manufacturer(s) and importer(s) of the substances listed in the Annex to this Regulation shall deliver all relevant and available information concerning exposure to man and the environment of these substances to the Commission within four months of the entry in force of this Regulation.

The information relevant to the exposure information concerns the emission of, or exposure to, the chemical to human populations or environmental spheres at various stages during the life cycle of the substance according Article 3 (3) and Annex 1A of Regulation (EC) No 1488/94 where:

— the human populations are workers, consumers and man exposed via the environment;

— the environmental spheres are aquatic, terrestrial and atmosphere, as well as information related to fate of the chemical in waste water treatment plants and it's accumulation in the food chain;

— the life cycle of a substance is seen as manufacture, transport, storage, formulation into a preparation or other processing, use and disposal or recovery.

Article 2

This Regulation shall enter into force on 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, 27 January 1997.

For the Commission

Ritt BJERREGAARD

Member of the Commission

([1]) OJ No L 84, 5. 4. 1993, p. 1.

([2]) OJ No L 161, 29. 6. 1994, p. 3.

ANNEX

	Einecs No	Cas No	Substance name
1	200-268-0	56-35-9	Bis(tributyltin) oxide
2	215-147-8	1306-23-6	Cadmium sulfide
3	215-717-6	1345-09-1	Cadmium mercury sulfide
4	218-743-6	2223-93-0	Cadmium distearate
5	220-017-9	2605-44-9	Cadmium dilaurate
6	231-901-9	7778-39-4	Arsenic acid
7	232-466-8	8048-07-5	Cadmium zinc sulfide yellow
8	235-758-3	12656-57-4	Cadmium sulfoselenide orange
9	261-218-1	58339-34-7	Cadmium sulfoselenide red

COMMISSION REGULATION (EC) No 143/97

of 27 January 1997

concerning the third list of priority substances as foreseen under Council Regulation (EEC) No 793/93

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances (1) and in particular Articles 8 and 10 thereof,

Whereas Regulation (EEC) No 793/93 envisages a system of evaluation and control of the risks of existing substances and whereas in order to undertake the risk evaluation of such substances, it is appropriate to identify priority substances requiring attention;

Whereas in consequence, Article 8 of Regulation (EEC) No 793/93 requires that the Commission shall draw up a list of priority substances; whereas Article 8 further indicates the factors which shall be taken into account in drawing up the said list;

Whereas Article 10 of Regulation (EEC) No 793/93 foresees that for each substance on the priority list a Member State shall be given responsibility for its evaluation and whereas the allocation of substances shall ensure a fair sharing of the burden between Member States;

Whereas a first and a second priority list have been adopted by Commission Regulations (EC) No 1179/94 of May 25 1994 (2) and No 2268/95 of 27 September 1995 (3);

Whereas the provisions of this Regulation are in accordance with the opinion of the Committee established under Article 15 of Regulation (EEC) No 793/93,

HAS ADOPTED THIS REGULATION:

Article 1

1. The third list of priority substances as foreseen in Article 8 (1) of Regulation (EEC) No 793/93 is set out in the Annex to this Regulation.

2. This list of priority substances also indicates the Member State which is responsible for each of the substances.

Article 2

This Regulation shall enter into force on 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, 27 January 1997.

For the Commission

Ritt BJERREGAARD

Member of the Commission

(1) OJ No L 84, 5. 4. 1993, p. 1.

(2) OJ No L 131, 26. 5. 1994, p. 3.

(3) OJ No L 231, 28. 9. 1995, p. 18.

ANNEX

	Einecs No	CAS No	Substance name	Member State
1	234-390-0	11138-47-9	Perboric acid sodium salt	A
2	215-146-2	1306-19-0	Cadmium oxide	B
3	231-152-8	7440-43-9	Cadmium	B
4	247-714-0	26447-40-5	Methylenediphenyl diisocyanate	B
5	202-716-0	98-95-3	Nitrobenzene	D
6	204-539-4	122-39-4	Diphenylamine	D
7	225-768-6	5064-31-3	Trisodium nitrilotriacetate	D
8	233-118-8	10039-54-0	Bis (hydroxylammonium) sulphate	D
9	239-148-8	15096-52-3	Trisodium hexafluoroaluminate	D
9 *bis*	237-410-6	13775-53-6	Trisodium hexafluoroaluminate	D
10	250-378-8	30899-19-5	Pentanol	D
11	231-111-4	7440-02-0	Nickel	DK
12	232-104-9	7786-81-4	Nickel Sulfate	DK
13	216-653-1	1634-04-4	Tert-butyl methyl ether	FIN
14	221-221-0	3033-77-0	2,3-epoxypropyltrimethylammonium chloride	FIN
15	222-048-3	3327-22-8	(3-chloro-2-hydroxypropyl) trimethylammonium chloride	FIN
16	204-371-1	120-12-7	Anthracene	GR
17	231-959-5	7782-50-5	Chlorine	I
18	201-622-7	85-68-7	Benzyl butyl phthalate	N
19	200-915-7	75-91-2	Tert-butyl hydroperoxide	NL
20	201-178-4	79-11-8	Chloroacetic acid	NL
21	201-328-9	81-14-1	4′-tert-butyl-2′,6′-dimethyl-3′,5′-dinitroacetophenone	NL
22	201-329-4	81-15-2	5-tert-butyl-2,4,6-trinitro-m-xylene	NL
23	266-028-2	65996-93-2	Pitch, coal tar, high-temp	NL
24	203-808-3	110-85-0	Piperazine	S
25	201-245-8	80-05-7	4,4′-isopropylidenediphenol	UK
26	215-607-8	1333-82-0	Chromium trioxide	UK
27	231-889-5	7775-11-3	Sodium chromate	UK
28	231-906-6	7778-50-9	Potassium Dichromate	UK
29	232-143-1	7789-09-5	Ammonium Dichromate	UK
30	234-190-3	10588-01-9	Sodium Dichromate	UK
31	287-477-0	85535-85-9	Alkanes, C14-17, chloro	UK

COMMISSION REGULATION (EC) No 144/97

of 27 January 1997

on the stocks of agricultural products in Austria, Sweden and Finland exceeding normal carryover stock on 1 January 1995

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Austria, Sweden and Finland, and in particular Article 145 (2) thereof,

Whereas Article 145 (2) of that Act provides that any stock of products in free circulation within the territory of the new Member States on 1 January 1995 and exceeding the quantity which could be regarded as constituting a normal carryover of stock must be eliminated by these Member States at their cost under Community procedures to be specified and within deadlines to be determined in accordance with the procedure referred to in Article 149 (1) of the Act of Accession; whereas under Article 145 (2) the concept of normal carryover stock must be defined for each product on the basis of the criteria and objectives particular to each market organization;

Whereas that definition need cover only products which may be eligible for export refunds within the meaning of Article 2 or give rise to intervention measures within the meaning of Article 3 of Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy [1], as last amended by Regulation (EC) No 1287/95 [2], since those products are the only ones concerning which the question arises of dividing the costs to be borne between Member States and the Community; whereas, however, that definition need not cover the sugar sector, for which the issue of excess stocks is already dealt with by Commission Regulation (EC) No 3300/94 of 21 December 1994 laying down transitional measures in the sugar sector following the accession of Austria, Finland and Sweden [3];

Whereas both the criteria and objectives particular to each market organization and the relationship between prices in the new Member States before accession and Community prices mean that normal carryover stock should be assessed in the light of factors varying from sector to sector; whereas in certain sectors (cereals, rice, wine and olive oil) those different factors mean that it is appropriate to use the method traditionally applied at the time of accessions and at the time of German unification; whereas that method consists in considering normal carryover stock to be stock necessary, in the light of the results of the 1994/95 marketing year and the previous marketing years, to cover consumption requirements for a period that varies according to the production and marketing conditions specific to each product and which takes account, with regard to rice, of the particular difficulties of supply in Finland; whereas in other sectors, on the other hand, those factors mean that it is appropriate to use only comparison of the 1994/95 marketing year stocks with those of the previous marketing years;

Whereas the application of these methods of assessment has led to the conclusion that on 1 January 1995 stocks exceeding normal carryover stock existed only in the rice sector in Austria, Sweden and Finland and in the olive oil sector in Austria;

Whereas exports with refunds are rare in the case of the sectors and Member States concerned; whereas, in a single market where products circulate freely, it was possible to export, with refunds, the quantities of rice and olive oil exceeding the normal carryover quantities established via other Member States; whereas, irrespective of whether actual export is proven, the most appropriate method for calculating the financial consequences of the stock concerned consists in a flat-rate evaluation of their disposal cost based on the average rate of the exports refunds in national currency applicable on the first day of each month during 1995 increased, in the case of olive oil, by the amount of consumption aid in national currency applicable on the same dates; whereas according to current rules, this aid is also granted for oil that is exported;

Whereas, as regards broken rice, export refunds were granted in 1995 only when it was exported in the form of processed products; whereas, nevertheless, it seems appropriate, having regard to the objective sought by this operation, to determine the financial consequences of the excess stocks established on the basis of the refunds fixed for the processed products;

Whereas the financial consequences concerned are to be booked when advances are fixed on the booking provided for by Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed

(1) OJ No L 94, 28. 4. 1970, p. 13.
(2) OJ No L 125, 8. 6. 1995, p. 1.
(3) OJ No L 341, 31. 12. 1994, p. 39.

under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 (1);

Whereas in order to avoid double penalization in this respect, the taxes levied in application of Article 4 of Commission Regulation (EC) No 3108/94 of 19 December 1994 on transitional measures to be adopted on account of the accession of Austria, Finland and Sweden in respect of trade in agricultural products (2), as last amended by Regulation (EC) No 572/95 (3), should be deducted from amounts thus withheld to the extent that those taxes have been transferred under the heading of own resources to the Community budget;

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

HAS ADOPTED THIS REGULATION:

Article 1

The following quantities of products in storage in Austria, Sweden and Finland on 1 January 1995 shall be considered to exceed normal carryover stock within the meaning of Article 145 (2) of the Act of Accession:

AUSTRIA

Wholly milled rice (CN ex 1006 30):	8 068 tonnes
Broken rice (CN 1006 40 00):	16 810 tonnes
Olive oil (CN 1509 10, 1509 90 and 1510 00):	1 617 tonnes

SWEDEN

Wholly milled rice (CN ex 1006 30):	6 400 tonnes

FINLAND

Wholly milled rice (CN ex 1006 30):	3 726 tonnes

Article 2

1. The financial consequences of Article 1 shall be booked when the monthly advances provided for in Regulation (EC) No 296/96 are fixed, not later than in the course of the second month following the entry into force of this Regulation.

2. The amounts to be charged to Austria, Sweden and Finland shall be calculated by multiplying the tonnes fixed in Article 1 by the following amounts expressed in national currency:

(a) AUSTRIA

Wholly milled rice (CN ex 1006 30):	ÖS 3 951
Broken rice (CN 1006 40 00):	ÖS 902
Olive oil (CN 1509 10, 1509 90 and 1510 00):	ÖS 7 786;

(b) SWEDEN

Wholly milled rice (CN ex 1006 30):	Skr 2 785;

(c) FINLAND

Wholly milled rice (CN ex 1006 30):	FM 1 710.

3. The taxes charged in application of Article 4 of Regulation (EC) No 3108/94 and transferred under the heading of own resources to the Community budget shall be deducted from the amounts referred to in paragraph 2.

Article 3

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, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

(1) OJ No L 39, 17. 2. 1996, p. 5.
(2) OJ No L 328, 20. 12. 1994, p. 42.
(3) OJ No L 58, 16. 3. 1995, p. 4.

COMMISSION REGULATION (EC) No 145/97

of 27 January 1997

opening an invitation to tender for the reduction in the duty on maize imported into Portugal from third countries

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), and in particular Article 12 (1) thereof,

Whereas, pursuant to the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations, the Community has undertaken to import a certain quantity of maize into Portugal;

Whereas Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the tariff quotas for maize and sorghum into Spain and maize into Portugal (3), as amended by Regulation (EC) No 1963/95 (4), lays down the rules governing the administration of those special arrangements; whereas this Regulation lays down the special additional detailed rules necessary for implementing the invitation to tender, in particular those relating to the lodging and release of the security to be lodged by operators to ensure compliance with their obligations and, in particular, the obligation to process or use the imported product on the Portuguese market;

Whereas in the light of current market needs in Portugal, an invitation to tender for the reduction in the duty on imports of maize should be opened in the framework of these special arrangements for imports;

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

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10 (2) of Regulation (EEC) No 1766/92 on maize to be imported into Portugal.

2. The invitation to tender shall be open until 13 March 1997. During that period, weekly invitations shall be issued with quantities and closing dates as shown in the notice of invitation to tender.

3. Regulation (EC) No 1839/95 shall apply save as otherwise provided for in this Regulation.

Article 2

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued, within the meaning of Article 10 (4) of Regulation (EC) No 1839/95.

Article 3

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

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 126, 24. 5. 1996, p. 37.
(3) OJ No L 177, 28. 7. 1995, p. 4.
(4) OJ No L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 146/97

of 27 January 1997

opening an invitation to tender for the reduction in the duty on maize imported into Spain from third countries

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], and in particular Article 12 (1) thereof,

Whereas, pursuant to the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations, the Community has undertaken to import a certain quantity of maize into Spain;

Whereas Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the tariff quotas for maize and sorghum into Spain and maize into Portugal [3], as amended by Commission Regulation (EC) No 1963/95 [4], lays down the rules governing the administration of those special arrangements; whereas this Regulation lays down the special additional detailed rules necessary for implementing the invitation to tender, in particular those relating to the lodging and release of the security to be lodged by operators to ensure compliance with their obligations and, in particular, the obligation to process or use the imported product on the Spanish market;

Whereas in the light of current market needs in Spain, an invitation to tender for the reduction in the duty on imports of maize should be opened in the framework of these special arrangements for imports;

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

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10 (2) of Regulation (EEC) No 1766/92 on maize to be imported into Spain.

2. The invitation to tender shall be open until 27 February 1997. During that period, weekly invitations shall be issued with quantities and closing dates as shown in the notice of invitation to tender.

3. Regulation (EC) No 1839/95 shall apply save as otherwise provided for in this Regulation.

Article 2

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued, within the meaning of Article 10 (4) of Regulation (EC) No 1839/95.

Article 3

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

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 126, 24. 5. 1996, p. 37.
[3] OJ No L 177, 28. 7. 1995, p. 4.
[4] OJ No L 189, 10. 8. 1995, p. 22.

COMMISSION REGULATION (EC) No 147/97

of 27 January 1997

opening an invitation to tender for the reduction in the duty on sorghum imported into Spain from third countries

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], and in particular Article 12 (1) thereof,

Whereas, pursuant to the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations the Community has undertaken to import a certain quantity of sorghum into Spain;

Whereas Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the tariff quotas for maize and sorghum into Spain and maize into Portugal [3], as amended by Commission Regulation (EC) No 1963/95 [4], lays down the rules governing the administration of those special arrangements; whereas this Regulation lays down the special additional detailed rules necessary for implementing the invitation to tender, in particular those relating to the lodging and release of the security to be lodged by operators to ensure compliance with their obligations and, in particular the obligation to process or use the imported product on the Spanish market;

Whereas Council Regulation (EEC) No 715/90 of 5 March 1990 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the ACP States or in the overseas countries and territories (OCT) [5], as last amended by Regulation (EC) No 619/96 [6], provides in particular for a reduction of 60 % in the duty applicable to grain sorghum up to a quota of 100 000 tonnes per calendar year and of 50 % in excess of that quota; whereas, if that benefit is combined with the reduction provided for under this Regulation, this is likely to disturb the Spanish market for cereals; whereas such combined benefits should be ruled out for the sake of the satisfactory functioning of the invitation to tender;

Whereas in the light of current market needs in Spain an invitation to tender for the reduction in the duty on imports of sorghum should be opened in the framework of these special arrangements for imports;

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

1. An invitation to tender is hereby opened for the reduction in the import duty referred to in Article 10 (2) of Regulation (EEC) No 1766/92 on sorghum to be imported into Spain.

2. Under this invitation to tender, the reduction in the import duty on grain sorghum provided for in Article 11 of Regulation (EEC) No 715/90 shall not apply.

3. The invitation to tender shall be open until 27 February 1997. During that period, weekly invitations shall be issued with quantities and closing dates as shown in the notice of invitation to tender.

4. Regulation (EC) No 1839/95 shall apply save as otherwise provided for in this Regulation.

Article 2

Import licences issued under these invitations to tender shall be valid 50 days from the date they are issued, within the meaning of Article 10 (4) of Regulation (EC) No 1839/95.

Article 3

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

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 126, 24. 5. 1996, p. 37.
[3] OJ No L 177, 28. 7. 1995, p. 4.
[4] OJ No L 189, 10. 8. 1995, p. 22.
[5] OJ No L 84, 30. 3. 1990, p. 85.
[6] OJ No L 89, 10. 4. 1996, p. 1.

COMMISSION REGULATION (EC) No 148/97

of 27 January 1997

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 2375/96 [2], and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as last amended by Regulation (EC) No 150/95 [4], and in particular Article 3 (3) 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 28 January 1997.

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 337, 24. 12. 1994, p. 66.
[2] OJ No L 325, 14. 12. 1996, p. 5.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 27 January 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code [1]	Standard import value
0702 00 15	204	50,9
	212	105,3
	624	131,2
	999	95,8
0707 00 10	052	114,3
	053	186,8
	068	81,2
	999	127,4
0709 10 10	220	132,9
	999	132,9
0709 90 71	052	113,2
	204	132,6
	999	122,9
0805 10 01, 0805 10 05, 0805 10 09	052	36,1
	204	48,1
	212	46,9
	220	31,3
	448	26,8
	600	59,0
	624	49,6
	999	42,5
0805 20 11	204	68,0
	624	54,9
	999	61,5
0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	51,5
	204	91,6
	400	95,8
	624	82,1
	662	45,2
	999	73,2
0805 30 20	052	76,4
	528	70,8
	600	83,6
	999	76,9
0808 10 51, 0808 10 53, 0808 10 59	052	68,1
	060	59,3
	064	45,3
	400	86,8
	404	83,0
	720	47,7
	728	98,2
	999	69,8
0808 20 31	052	127,2
	064	26,3
	400	122,0
	512	79,1
	624	73,6
	999	85,6

[1] Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 149/97

of 27 January 1997

determining the percentages of quantities which may be allowed in respect of import licence applications lodged in January 1997 under tariff quotas for meat provided for in Regulation (EC) No 2512/96 for the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2512/96 of 23 December 1996 setting for 1997 rules of application for the tariff quotas for beef and veal provided for by Council Regulation (EC) No 3066/95 for the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania ([1]), and in particular Article 3 (4) thereof,

Whereas Article 1 (1) and (3) of Regulation (EC) No 2512/96 fixes the quantities of fresh, chilled or frozen beef and veal originating in Poland, Hungary, the Czech Republic, Slovakia, Romania and Bulgaria, and of processed products originating in Poland which may be imported on special terms in respect of the period 1 January to 31 March 1997; whereas the quantities of fresh, chilled or frozen beef and veal originating in Poland, the Czech Republic, Slovakia, Romania and Bulgaria, covered by import licence applications submitted are such that applications may be accepted in full; whereas, however, quantities covered by applications in respect of beef and veal originating in Hungary and processed products must be reduced proportionately in accordance with Article 3 (4) of that Regulation;

Whereas Article 1 (4) of Regulation (EEC) No 2512/96 states that if for the year 1997 the quantities for which applications for import licences have been submitted for the first, second or third period specified in paragraph 3 of the Article are less than the quantities available, the remaining quantities are to be added to the quantities in respect of the first period, the quantities available for the six countries concerned for the second period running from 1 April to 30 June 1997 should accordingly be determined,

([1]) OJ No L 345, 31. 12. 1996, p. 26.

HAS ADOPTED THIS REGULATION:

Article 1

1. The following percentages of quantities covered by import licence applications submitted in respect of the period 1 January to 31 March 1997 under the quotas referred to in Regulation (EC) No 2512/96 may be allowed:

(a) 100 % of quantities covered by applications in respect of products falling within CN codes 0201 and 0202 originating in Poland, the Czech Republic, Slovakia, Romania and Bulgaria;

(b) 86,478 % of quantities covered by applications in respect of products falling within CN codes 0201 and 0202 originating in Hungary;

(c) 14,286 % of quantities covered by applications in respect of products falling within CN codes 1602 50 31 and 1602 50 39 originating in Poland.

2. The quantities available for the period referred to in Article 1 (3) of Regulation (EC) No 2512/96 running from 1 April to 30 June 1997 shall amount to:

(a) beef and veal falling within CN codes 0201 and 0202:

— 3 195,0 tonnes for meat originating in Poland,

— 1 787,5 tonnes for meat originating in Hungary,

— 1 215,0 tonnes for meat originating in the Czech Republic,

— 520,0 tonnes for meat originating in Slovakia,

— 90,0 tonnes for meat originating in Bulgaria,

— 548,58 tonnes for meat originating in Romania;

(b) 110 tonnes of processed products falling within CN codes 1602 50 31 and 1602 50 39 originating in Poland.

Article 2

This Regulation shall enter into force on 28 January 1997.

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

Done at Brussels, 27 January 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COUNCIL DIRECTIVE 97/2/EC

of 20 January 1997

amending Directive 91/629/EEC laying down minimum standards for the protection of calves

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Whereas, pursuant to Article 6 of Directive 91/629/EEC [3], the Scientific Veterinary Committee gave an opinion on 9 November 1995, on the basis of which the Commission drew up a report which was submitted to the European Parliament and the Council;

Whereas, on the basis of the conclusions of that report, it is appropriate to amend certain provisions of Directive 91/629/EEC in order to ensure that the rules are based on scientific evidence and do not go beyond what is necessary to enable the common organization of markets to function effectively;

Whereas Declaration No 24 annexed to the Final Act of the Treaty on European Union calls upon the European institutions and the Member States, when drafting and implementing Community legislation, to pay full regard to the welfare requirements of animals;

Whereas the harmonization of rules concerning the conditions of calf-rearing in the framework of the common organization of the markets is necessary to ensure the rational development of production under satisfactory conditions of competition; whereas in this regard it is recognized scientifically that calves should benefit from an environment corresponding to their needs as a herd-living species; whereas, for that reason, they should be reared in groups; whereas calves, both group-housed and individually penned, must have sufficient space for exercise, contact with other cattle, and for normal movements when standing up or lying down;

Whereas it is necessary to allow time for holdings to make the necessary arrangements to comply with the new rules,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 91/629/EEC is hereby amended as follows:

1. Article 3 (3) shall be replaced by the following:

   '3. From 1 January 1998, the following provisions shall apply on all newly built or rebuilt holdings and on all those brought into use after that date:

   (a) no calf shall be confined in an individual pen after the age of eight weeks, unless a veterinarian certifies that its health or behaviour requires it to be isolated in order to receive treatment. The width of any individual pen for a calf shall be at least equal to the height of the calf at the withers, measured in the standing position, and the length shall be at least equal to the body length of the calf, measured from the tip of the nose to the caudal edge of the tuber ischii (pin bone), multiplied by 1,1.

   Individual pens for calves (except those for isolating sick animals) must not have solid walls, but perforated walls which allow the calves to have direct visual and tactile contact;

   (b) For calves kept in groups, the unobstructed space allowance available to each calf shall be at least equal to 1,5 m^2 for each calf with a live weight of less than 150 kilograms, at least equal to 1,7 m^2 for each calf with a live weight of 150 kilograms or more but less than 220 kilograms, and at least equal to 1,8 m^2 for each calf with a live weight of 220 kilograms or more.

   However, the provisions of this paragraph shall not apply to:

   — holdings with fewer than six calves;

   — calves kept with their mothers for suckling.

   From 31 December 2006, the provisions provided for above shall apply on all holdings.'

2. The second indent of Article 3 (4) shall be deleted.

3. Article 4 (2) shall be deleted.

4. In Article 6, the date '1 October 1997' shall be replaced by '1 January 2006'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply

[1] OJ No C 85, 22. 3. 1996, p. 19.
[2] OJ No C 320, 28. 10. 1996, p. 259.
[3] OJ No L 340, 11. 12. 1991, p. 28.

with this Directive not later than 31 December 1997. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. However, as from the date set in paragraph 1, Member States may, in compliance with the general rules of the Treaty, maintain or apply within their territories stricter provisions for the protection of calves than those laid down in this Directive. They shall inform the Commission of any such measures.

Article 3

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities.*

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 20 January 1997.

For the Council

The President

J. VAN AARTSEN

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 July 1996

concerning aid granted by the Austrian Government to Head Tyrolia Mares in the form of capital injections

(Only the German text is authentic)

(Text with EEA relevance)

(97/81/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having given notice to the parties concerned, in accordance with the aforementioned Articles, to submit their comments, and having regard to those comments,

Whereas:

1. Case history

On 26 June 1995 the Commission received a letter from a French producer of articles for winter sports (skis, ski-boots and ski-bindings), containing a request for the Commission to investigate alleged State aid granted to the Austrian company Head Tyrolia Mares (HTM) by its shareholder, the public holding company Austria Tabakwerke (AT).

Since April 1995 the press has been reporting on rescue packages granted by AT to HTM, to offset the high losses incurred over the previous three years. In particular, two decisions of AT to inject new capital into HTM were reported in April and August 1995, the second decision to be actually implemented by means of several injections over the years 1995 to 1997. In September the press further reported that an agreement had been reached between AT and an international group of investors to privatize HTM.

On 8 August 1995 the Austrian authorities sent a letter to the Commission informing it of AT's intention to inject ÖS 1 500 million (ECU 111 million [1]) into HTM, claiming this to be a mere commercial investment and refuting the unfavourable reactions of the media.

The Commission sent a letter to the Austrian Government on 1 September 1995 in which it requested detailed information on the alleged aid measures, on HTM's commercial and financial situation, on all restructuring measures undertaken or planned and on the company's future plans and forecasts. The Austrian Government replied by letter dated 21 September 1995. A first meeting with Austrian representatives was held on 27 September 1995.

Two further complaints were received by the Commission from Austrian competitors of HTM on 6 and 16 October 1995. Both asked the Commission to investigate the financial support granted to HTM by its public shareholder AT. Also, a person interested in acquiring HTM submitted his observations on the matter to the Commission by four communications dated 4, 10 and 18 October and 8 November 1995 and at a meeting held on 23

[1] The exchange rates for the ecu applied in this Decision are: ecu 1 = ÖS 13,46 = US $ 1,25 = DM 1,91.

October 1995, claiming that AT had rejected his offer without sufficient justification. The Commission met one complainant on 29 November 1995 who submitted that he had never been invited to participate in the acquisition of HTM, nor had his expressions of interest along those lines been taken into account by AT.

The Austrian authorities and AT/HTM's representatives, assisted by their consultants, submitted further information and explanations through several communications dated 6, 11, 13, 20, 25 and 31 October 1995 as well as in the course of meetings with Commission officials held on 27 September, 11 and 18 October, and 7 and 21 November 1995.

By fax dated 30 November 1995 the Austrian Government asked the Commission for all injections effected by AT into HTM during 1995 and planned up to and including June 1996 to be authorized as rescue aid, after having been converted into shareholder loans bearing commercial interest at a rate of 7,78 % per year.

On 20 December 1995 the Commission decided to initiate formal proceedings pursuant to Article 93 (2) and to approve the injections as rescue aid. That decision was notified to the Austrian Government on 2 February 1996. In a meeting on 14 February 1996 and after further contacts, agreement was reached with the Austrian authorities on the passages of the text that were commercially sensitive and had to be deleted in the published version.

Due to translation errors in the German version of the Commission decision, on 13 March 1996 the Commission decided on an amended version. The decision was notified to the Austrian Government on 25 March 1996. It was published in the *Official Journal of the European Communities* on 27 April 1996 (OJ No C 124, p. 5).

The Commission received the comments of the Austrian Government by letter dated 25 April 1996 and of three interested parties by letters of 30 April, 21 May, 24 May and 28 May 1996. The observations of the interested parties were submitted to the Austrian authorities by letters dated 5 and 14 June 1996. A meeting with representatives of the Austrian authorities, AT and HTM took place on 25 June and a further meeting with one of the complainants on 27 June 1996. The Austrian Government responded to the comments of the interested third parties and to a request from the Commission for additional information (28 June 1996) by letter of 8 July 1996.

2. **Austria Tabak and Head Tyrolia Mares**

AT is wholly owned by the Republic of Austria, represented by the Ministry of Finance. AT's core activity (still the only one apart from the sports sector and some real estate business) is the management of the Austrian State tobacco monopoly. In compliance with Community legislation, this market was liberalized as from 1 January 1995, apart from certain activities, such as distribution, where AT retains special rights for a certain period.

HTM is the holding company of a group operating in the manufacturing and marketing of sports articles, mainly for winter sports, tennis and diving. In 1994 the group had a turnover of about ÖS 5 200 million (ECU 386 million), almost totally realized in the USA, Japan and western Europe. In June 1995 the group employed about 2 700 workers.

In 1993, AT acquired the controlling stake in HTM held by Swiss, US and Japanese investors. This diversification move, which resembles those of other tobacco-related holding companies such as Philip Morris or Amer Group, was prompted by the tobacco market decline and by the expected ban on the tobacco monopoly once Austria entered the EEA.

At the time of its acquisition, HTM was burdened with a high indebtedness level, owing to two recent leveraged buy-out operations, so that the acquisition price was very low (US $ 20 million (ECU 16 million)). For the same reason HTM was immediately recapitalized with US $ 100 million (ECU 80 million) — this measure being a condition of the sales contract — and received in addition a shareholder loan of DM 85,25 million (ECU 45 million).

In spite of the announced rationalization, diversification and new investment programmes, the HTM group incurred heavy losses in 1993 and 1994. For 1995, forecasts showed a considerable negative operating margin, namely − 13 % on the group turnover. The negative results are mainly due to the sharp decline in the world ski market (demand falling by 45 % in the last five years), and to the highly negative performance of some activities such as sportswear and golf equipment. High financial charges and some restructuring and extraordinary items further depressed the financial performance.

In January 1995 AT sought the assistance of the merchant bank SBC Warburg in elaborating a plan for HTM's turnaround. In March 1995, SBC Warburg was entrusted with developing a project for HTM's privatization. In May, SBC Warburg started a selection procedure of potential buyers for HTM which was extended in June by sending letters to some 40 candidates.

In order to avoid HTM's becoming insolvent, AT was forced to inject a further ÖS 400 million (ECU 30 million) in April 1995 and to convert its 1993 loan into new equity.

In July 1995 a restructuring plan was drafted that should allow HTM to return to viability and to be in profit by 1997. This plan provides for concentration on the core businesses of alpine skis, bindings and boots, tennis and

diving, and the abandonment of golf, sportswear and sports shoes (excluding tennis shoes). To finance this plan and to ward off a new insolvency procedure, AT's shareholder, the Ministry of Finance, in August 1995, approved the decision of AT to inject further capital of up to ÖS 1 500 million (ECU 111 million) into HTM. The recapitalization was scheduled in various tranches, to be effected in 1995, 1996 and 1997. ÖS 373 million (ECU 28 million) was paid to HTM in August and September. AT adopted the restructuring plan and at the same time continued the search for a buyer for the group. Also, in connection with AT's decision and on condition that AT carried out the restructuring plan, agreement was reached with the main banks financing HTM. They agreed to write off part of their outstanding debt (ÖS 430 million (ECU 32 million)), to reschedule their debts and waive part of the interest (ÖS 200 million (ECU 15 million)).

At the same time, AT's top management resigned, and two interim managers (previous members of the Supervisory Board) were appointed. In September 1995 the restructuring option was abandoned in favour of immediate sale. This was due to the dramatic deterioration of HTM's situation, as the new management of AT claimed not to have the necessary skills to manage HTM. Furthermore a long restructuring process would oblige the Austrian Government to postpone the planned privatization of AT, or would prejudice its proceedings, by reducing the price offered by the market.

In September 1995 AT's Board of Directors decided, on SBC Warburg's advice, to accept the preliminary offer of a group of international investors led by Johan Eliasch (hereinafter called Eliasch), and to negotiate an immediate privatization of the whole of HTM.

The share-purchase agreement with Eliasch stipulated a sales price of ÖS 10 million (ECU 0,7 million) and a capital grant to HTM of ÖS 1 190 million (ECU 88 million) by AT, to be paid according to the following schedule: ÖS 400 million on 30 September 1995 (ÖS 373 million actually paid in August and September), ÖS 250 million on 31 December 1995, ÖS 250 million on 30 June 1996, ÖS 145 million on 31 December 1997 and ÖS 145 million on 31 March 1998. Eliasch committed himself to injecting a further ÖS 300 million (ECU 22 million) into HTM in 1998 after all instalments of AT's contribution have been paid. (This agreement was partly changed later: Eliasch has undertake to inject ÖS 25 million (ECU 1,9 million) of the amount on approval of AT's measures by the Commission.) In addition, AT will receive 15 % of any capital gain that Eliasch may realize if and when he decides to sell HTM or parts of HTM to third parties, by means of either a sale of shares or a public offering. Finally, Eliasch will maintain production at the Austrian plants for at least three years, and keep employment at the production plant in Schwechat at 50 % of the current level and at the production plants of Hörbranz and Kennelbach at 80 % of the current level.

The bank agreement on debt write-off and rescheduling became void as a consequence of the new developments, and new negotiations were entered into.

To sum up, the measures undertaken by AT in favour of HTM are as follows:

Capital injection April 1995:	ÖS 400 million (ECU 30 million)
Capital grant on the sale to Eliasch:	ÖS 1 190 million (ECU 88 million)
Total amount:	ÖS 1 590 million (ECU 118 million)

Furthermore, under the new ownership, HTM would keep the benefit of the tax credits attached to the past losses, which will be carried forward. As at 31 December 1994 these losses were estimated at approximately US $ 370 million (ECU 296 million) for the whole group.

In the last week of November the Commission was informed that the lender banks had again agreed to confirm their contribution, slightly reduced, for HTM's restructuring under the new ownership, by means of the debt write-off (ÖS 391 million (ECU 29 million)), debt rescheduling and interest waiving (ÖS 200 million, (ECU 15 million)). The new agreement provides for an additional injection by Eliasch of ÖS 25 million (ECU 1,9 million), on top of the ÖS 10 million (ECU 0,7 million) laid down in the share purchase agreement.

At the beginning of February the Commission was informed that the conclusion of the share purchase agreement had actually taken place by the transfer of the share ownership in HTM from AT to Eliasch.

3. **Competitive position, industrial and financial situation of HTM**

In the middle of 1995 the HTM group consisted of five main operations: Head, Tyrolia, Mares, Brixia and Head Sportswear. Head manufactures and markets tennis, squash and racketball rackets, tennis shoes, alpine skis and equipment and golf equipment. Tyrolia manufactures and markets alpine skis, ski-bindings, ski-boots and cross-country ski-bindings and shoes. Mares manufactures and markets skin and scuba-diving equipment. Brixia manufactures and markets ski-boots and hiking boots (brand names San Marco and Munari). Head Sportswear designs, produces and distributes sportswear bearing the brand names Head and Tyrolia. HTM also sells tennis balls and related accessories under the Penn brand and acts as the Italian distributor for Puma footwear and Uvex eyewear.

Operations are located in the United States and in Europe (Germany, Austria, Italy, the Czech Republic and Estonia). The Austrian production sites are located in Kennelbach (536 employees), Hörbranz (279), Schwechat (395) and Neusiedl (80).

In 1994, HTM's turnover was ÖS 5 200 million (ECU 386 million). The different products break down as follows:

— Tennis	16,2 %
— Skis	13,6 %
— Ski-bindings	21,9 %
— Ski-boots	9,3 %
— Diving	9,6 %
— Sportswear	15,9 %
— Sport and trekking shoes	9,3 %
— Golf	1,9 %
— Others	2,3 %

As for geographical areas, in 1994 HTM sold 27,4 % of its turnover in the USA and Canada, 22,1 % in Japan and around 45 % in Western Europe (Germany 13,2 %; Italy and Spain 10,6 %; Austria 7,8 %; France 4,4 %).

In the main sectors of its activity, in 1994 HTM held the following market shares and ranked amongst its competitors as follows (on the European market, HTM held approximately the same rankings, excluding tennis, where Head was market leader with a share of 18,8 %):

	World market share (%)	Ranking	Main competitors
Alpine skis (Head/Tyrolia):	11	3	Rossignol, Atomic, Salomon
Ski-bindings (Tyrolia)	32	2	Salomon, Marker
Ski-boots (San Marco/Munari)	11	4	Nordica, Salomon, Rossignol
Tennis equipment	18	3	Wilson, Prince
Diving equipment (Mares)	11	1	US Divers, Scubapro

The following table presents the economic and financial situation of HTM, giving a picture of the negative evolution of the group's performance:

(million US $)

HTM group	1991	1992	1993	1994	1995 (estimation (*))
Turnover	346	372	376	447	420
Opening profit	[...]	[...]	[...]	[...]	[...](**)
Net result	(10)	(25)	(19)	(48)	(149)
Total assets	453	453	511	561	562
Bank borrowing	355	369	302	378	308
Equity (inclusive of shareholder loan from AT)	1	0	133	87	148
Equity injections by AT			150		151

(*) figures include: provisions for restructuring costs; an assumed debt forgiveness by the banks of US $ 60 million, which is reflected in an increase in the equity; value of equity injection includes present value of payments for the period 1996 to 1998.

(**) In the published version of the Decision, some business information in square brackets has been omitted.

The expected massive net loss for 1995 includes a number of non-recurring charges and costs for the ongoing restructuring. Roughly it breaks down as follows (in million US $):

— Write-down golf, sportswear, others	[. . .]
— Operational restructuring	[. . .]
— Unshipped sales Japan/USA	[. . .]
— Interest	[. . .]
— 'Adjusted' operating loss	[. . .]
— Total loss 1995	149

The capital injections made by AT have allowed HTM to offset a major part of the losses incurred, to re-establish the equity capital at a positive level and to be relieved partially of an unsustainable level of indebtedness.

4. **Market situation and trends**

All traditional markets where HTM operates, apart from diving, which shows substantial growth, have been going through a difficult period since the end of the 1980s, suffering from the sharp decline in demand at world level.

Alpine skis

This is a mature market suffering from substantial overcapacity. Japan and the USA are the biggest markets. World sales have dropped by 45 % in the last five years and are expected to stabilize at a level of about 5 million pairs, mainly due to the ageing of the skiing population, environmental concerns, competition from snowboards and other forms of winter tourism. Prices are stagnant and weak and are not expected to increase. Some attractive niches and some emerging markets may offer some scope for growth, but in general the market trend is towards concentration on a few big producers.

Ski-bindings

The same situation applies as in the ski market. In the absence of new technologies, such as the use of electronics, which are not expected in the short term, bindings will become more of a commodity to be sold in 'sets' with the skis, with little differentiation between brands.

Ski-boots

This market is developing in parallel with skis and bindings.

Tennis

The market has been in decline since 1991, world sales having dropped by about 34 % to 8 million units, due to the trend among the younger generation towards more fashionable sports and the drifting of the aged population to other sports such as golf. The total market is expected to decline further, with specific geographic regions still having potential for growth. Average prices are likely to decline further, and only a successful product differentiation could allow producers to maintain or increase their prices. The general trend is towards global products and concentration on the global tennis companies.

Diving

The market has enjoyed steady growth, particularly since the early 1990s, and is expected to continue growing at a rate of 3 to 4 % over the next few years.

5. **Restructuring of HTM**

A comprehensive business plan for the turnaround of HTM, including the necessary restructuring and financial measures, was submitted to the Commission. The plan was worked out by Eliasch together with the management of HTM, with the assistance of SBC Warburg, M&C Saatchi and Gutmann & Cie.

The strategic objective is a return to HTM's core activities (tennis, skis, bindings, boots and diving) with emphasis, in the short term, on the Head brand, on marketing activities, on innovative and high technology products and on the US market. Once restructuring is completed, long-term objectives include extending activities by entering new product markets (by licensing) and new geographical areas. The restructuring plan includes operational break-even in 1996, return to profitability by 1997, and, as an ultimate objective, the offering of part of HTM's equity on the stock market in 1998 or 1999.

This restructuring plan is based on the following cornerstones:

— re-dimensioning of production capacity in the winter sports lines (skis, boots, bindings) and in rackets to reflect the decline in the market. This includes use of outsourcing and the transfer of labour-intensive manufacturing processes to East European locations to bring down manufacturing costs,

— phasing-out of unprofitable product lines and reduction of stock-keeping,

— rationalization and reduction of fixed costs of the sales and administrative organization including the merger of legal entities,

— development and installation of a logistics system to facilitate centralized control of inventory management, inventory and shipping as well as a modernization of internal management systems and procedures.

As regards the main individual products, the following actions are envisaged:

Ski production (Kennelbach)

The company's capacity in 1994 was [. . .] (1) skis per year. It is planned to phase out certain production lines in

(1) In the published version of the Decision, some business information in square brackets has been omitted.

1996/97. This will enable capacity to be reduced by [. . .] skis a year (– 39 %), mainly by discontinuing those processes which utilize sandwich and PU-cap sandwich technology. In addition, an already approved project to build up PU-cap technology manufacturing by [. . .] units will not be carried out. Accordingly, HTM will scrap some of its equipment. At the same time, the plant's labour force will be reduced by [. . .] ([. . .] direct labour). The plan for 1996 envisages sales of about [. . .] skis (part of this being bought in from other producers) after 596 000 in 1995. Operating profit before fixed costs is expected to be about [. . .] of turnover. HTM's strategy will be based mainly on the Head brand, which relies on high-technology standards and is strong in the high performance segments.

Binding production (Schwechat)

The plant will be scaled back from its current capacity of [. . .] bindings to [. . .] (– 59 %). The assembly operation in Neusiedl will be closed. The process will lead to a total reduction of about [. . .] of the labour force ([. . .] direct labour). Sales are envisaged at [. . .] units in 1996 (1 371 000 in 1995), increasing to [. . .] in 1997 (partly outsourced). Operating margin before fixed costs is expected to be [. . .]. The product range is to be reduced significantly. Tyrolia will rely on its strong position in technology, focusing on the high-performance segments, to be consistent with Head's brand image and to benefit from higher margins.

Boot production

Key actions are the transfer of production to the plant in Tallinn, Estonia, measures to improve productivity and a reduction in employees. The production site in Italy will be scaled down from a capacity of [. . .] units in 1994 and 1995 to [. . .] in 1997. The plant in Tallinn has a capacity of approximately [. . .] units, which means that overall capacity will be reduced by 9 %. Sales of [. . .] pairs are expected in 1996 (626 000 in 1995). Operating profit before fixed costs is forecast at about [. . .].

Tennis racket production (Hörbranz)

The manufacturing operations will be reorganized, partly by the ongoing shift from conventional techniques to thermo-diffusion technology, and partly through upgrading and increased utilization of the plant in Budweis (Czech Republic). The thermo-diffusion technology will provide cost savings and reduce environmental problems. The production capacity in Budweis will go up from [. . .] to [. . .] rackets (+ 109 %). In Hörbranz production will be scaled back from [. . .] to [. . .] (– 56 %). In all, capacity will be reduced by [. . .] units (– 38 %). This new production set-up will allow important cost savings. Specifically, the direct labour force will be reduced by [. . .]. Head's high technology will be expanded, through the new Twin Tube technology, which allows better performance, lower manufacturing costs and higher sales prices. A strong marketing policy is envisaged, especially in the USA, which is regarded as a key market. The plan forecasts sales of [. . .] units in 1996 after 1 030 000 in 1995 (a large part of this will be outsourced). Operating profit before fixed costs is forecast at [. . .] of turnover.

Diving equipment production

No significant restructuring is planned in this profit-making branch. Sales are expected at [. . .] in 1996 (US $ 48 million in 1995), increasing to [. . .] in 1998. Operating profit before fixed costs is forecast at about [. . .].

Other products

The loss-making marketing activity of golf articles was halted in 1995. Similarly, the marketing activity of Head Sportswear in USA was discontinued in 1995. HTM continues to operate a sportswear business in Europe, which is expected to grow in 1996 to 1998 from [. . .] to [. . .] ([. . .] and [. . .]), with an operating profit before fixed costs of around [. . .] of turnover.

Streamlining of sales organization and administration

The primary objective is to rationalize the sales organization and the administrative functions. Intervention will be concentrated on merging entities, closing subsidiaries and improving procedures and electronic systems. In addition, capacity reductions, elimination of marginal lines and reductions of stock-keeping units will allow further cutback of selling, general and administration expenses. Overall employee reduction in various European countries is forecast at 164 employees.

Cost of restructuring

The forecast cost of the restructuring measures from 1995 to 1997 amounts to US $ 159 million (ECU 127 million). Main cost items are the closure of the golf business, the abandoning of the sportswear business and the capacity reductions and reorganization of the facilities in Kennelbach, Schwechat and Hörbranz, including severance pay for the personnel made redundant.

Financial forecasts

The following table shows the global financial forecasts for the HTM group, up to 1998, based on implementation of the restructuring programme:

(million US $)

HTM group	1995	1996	1997	1998
Turnover	420	361	393	415
Operating profit	[...]	[...]	[...]	[...]
Net result	(149)	(23)	1	20
Operating cash flow	[...]	[...]	[...]	[...]
Free cash flow	[...]	[...]	[...]	[...]
Total assets	562	471	442	414
Bank borrowing	308	262	227	176
Equity (inclusive of shareholder loan of AT)	148	128	131	151
Equity injections by AT	151			

The recapitalization plan which is part of the restructuring programme provides, in addition to the grants from AT and a debt forgiveness and an interest waiver of the banks, two capital injections from Eliasch of US $ 2,5 and 27,5 million (ECU 2 and 22 million) by 1998 and an international public offer which will earn US $ 60 million (ECU 48 million). The projected equity ratio of HTM in 1998 (7 %) is regarded as being too low to compete successfully with its international competitors. The final equity contribution of Eliasch and the public offer are therefore vital to HTM's capital structure by further reducing the company's debts.

6. Comments from the Austrian authorities and interested parties

During its preliminary investigation and after publication of the initiation decision, the Commission received observations from the Austrian authorities, AT, HTM and several competitors and other interested parties.

6.1. *Austrian authorities, Austria Tabak and HTM*

6.1.1. ***State aid character of capital injections***

Independence and commercial behaviour of AT

AT, the Austrian State tobacco monopoly, is wholly owned by the Republic of Austria, represented by the Ministry of Finance. The Austrian authorities claim that AT is not a body established or appointed by the State to administer subsidies out of public funds. It is provided with full autonomy and has always acted independently of the government. Its choices regarding HTM have always been taken on a purely commercial basis, aiming at maximizing profit and minimizing losses. Public ownership alone is not sufficient — it is argued — to classify AT's resources as public funds within the meaning of Article 92 (1). The same holds true for the right of the State as sole shareholder to appoint the members of the Supervisory Board. AT is established in the legal form of a public limited company, which ensures maximum independence from the owners. The capital injections have been decided on by the Board of Directors and (in line with Austrian company law) agreed on by the Supervisory Board as the responsible bodies. The consent of the shareholder's meeting was legally not necessary. All the funds used by AT in its activities are its own funds generated from its business and not those of the State.

It was also argued that AT has constantly been in profit and has always provided adequate dividends of a minimum of 14 % of the stockholding capital to its shareholders over the last decade. The dividend payments amounted to a total of ÖS 3 040 million (ECU 226 million) for the period 1991 to 1995. Only in 1994 did it incur a substantial loss, owing to HTM's negative results. Evidence was submitted that the Finance Minister, at the time of the HTM acquisition, voiced his concerns about the operation.

AT claimed that, according to the 'market economy investor principle', public undertakings must exercise a certain amount of entrepreneurial judgment. A distinction had to be made between the short-term considerations of a private investor and the long-term prospects of a holding. The decisive factor in this case was the return to viability of the subsidiary. The limit to the costs of the support were those of a liquidation. Furthermore, reflections on the image of the group had also to be taken into consideration. The first two payments were made to bridge the time necessary to devise possible solutions and take a final decision on HTM's future.

In order to show that AT did exercise its control over HTM's development with due diligence, a list of restructuring measures decided since the purchase of the company in 1993 was submitted to the Commission. Furthermore, it was argued that, even in the event of negligence, private mismanagement would not constitute State aid. HTM's poor results were due mainly to its high financial charges while the operating results were decreasing over the last few years but would have been positive up to 1994.

Similar cases

The Austrian authorities, in order to demonstrate AT's 'commercial' behaviour with respect to HTM, in particular as regards its disposal for a substantially negative sales price, have submitted to the Commission evidence of similar operations undertaken by private corporations. These examples are Trygg-Hansa (a leading Swedish insurance group), which withdrew from a loss-making involvement in a US insurer, Home Holding; Hanson (an Anglo-American conglomerate), which decided a demerger of 34 small US subsidiaries; AEG (the German electronics arm of the Daimler-Benz group), which divested some businesses as part of a thorough restructuring process; Eemland (Dutch-registered consortium of international investors), which decided to sell Wilkinson Sword, a razor and toiletries company, with a debt-free balance sheet; Schörghuber (German group operating in the real-estate investments and breweries sectors), which sold the controlled construction company Heilit & Woerner for a symbolic price while providing a final contribution to its equity; Klöckner-Humbold-Deutz (German manufacturing company), which was rescued by a large contribution from its largest owner, Deutsche Bank; and Dornier Luftfahrt (German aircraft manufacturer), 80 % of which was disposed of by its parent company Daimler-Benz Aerospace for nothing, after a final financial contribution.

Sale versus other possible solutions

The Austrian authorities stressed that the sale to Eliasch was the best course of action for AT and the Austrian Government. Apart from AT's claiming not to have sufficient managerial capacity to restructure HTM itself, such a restructuring would require an additional ÖS 300 million funding by AT (the part to be injected by Eliasch under the purchase agreement), without holding out sufficient prospects of this money being recovered in the form of an increased capital value of HTM after restructuring. AT claimed that the sale was based on a broad and open tender procedure carried out by SBC Warburg, with more than 50 potential investors being approached. The decision on Eliasch's bid was taken on open criteria based on economic considerations.

AT claimed that, with the sale, it was not foregoing any possible future return on its injections because 15 % of any profit deriving from a future sale of HTM by Eliasch would have to be transferred to AT. Going public was envisaged for 1998 and the likely return for AT from that action was claimed to amount to US $ 2,25 to 3 million (ECU 1,8 to 2,4 million). AT furthermore claimed that the agreement to maintain the Austrian-based production plants did not constitute State aid but was intended to prevent Eliasch from breaking up the group.

The sale of HTM was claimed to be the best option for AT also in comparison with the various forms of winding-up and liquidation (Konkurs, Liquidationsausgleich, Fortführungsausgleich, Insolvenzfreie Liquidation). The option of winding up HTM, which would have been the least costly of these alternatives, was viewed less favourably by AT, in particular owing to three factors: firstly, the delay in the privatization of AT itself; secondly, the deterioration of the financing conditions of the AT group; and thirdly, a possible financial responsibility for HTM's liabilities.

1. According to AT, the options of restructuring or liquidating HTM would entail a delay in AT's privatization, estimated at two years and nine months. AT compared the potential interest income from the privatization proceeds with the dividends for the same period and calculated a discounted loss to the Austrian State of [...].

2. AT stated that the insolvency of its subsidiary HTM would affect its image. The banks would doubt the financial soundness of AT itself, and this would lead to an increase in the interest charged by the banks on their lendings to the AT group. It referred again to the Schörghuber case, where the Commission accepted future credit standing and image as reasonable indirect economic considerations. The additional costs were estimated by AT at [...] over the next three years.

3. AT said there was a high risk of its being held responsible for HTM's liabilities. The claims were regarded by AT as completely groundless. Nevertheless, AT

stated there were certain risks of litigation. The possible amount of these liabilities, which were very difficult to estimate, together with the costs of the privatization delay and the increased interest rates, would be higher than the 'cost' of the sale to Eliasch.

Behaviour of the banks

Furthermore, the Austrian authorities submitted that the readiness of the banks to write off part of their loans, which represented a significant part of the funding required for HTM's rescue and restructuring, constituted a substantial private contribution to the overall investment. Thus, the funding decided by AT should be regarded as normal market economy investor practice. A list of the lending banks, including their outstanding position towards HTM, was submitted to the Commission. At the Commission's request, details of the bank's shareholders were also presented. It appeared that 70 % of HTM's bank debts were held by publicly-controlled banks. AT claimed that the public banks acted independently and their actions could not be regarded as State measures. They acted, not alone, but within a consortium of 10 Austrian banks which all agreed on writing off the debt.

Financial exposure of Eliasch

The Austrian authorities argued that Eliasch's financial stake in HTM was well above the initial purchase price of ÖS 10 million (ECU 0,7 million). This contribution was afterwards increased by an injection of a further ÖS 25 million (ECU 1,9 million). Furthermore, Eliasch undertook to inject an additional ÖS 275 million (ECU 20 million) within the next three years. Unless this contribution was made, he was not allowed to receive any dividend payment or to sell the company either in whole or in part. Moreover, the Austrian authorities confirmed that Eliasch had additionally entered into an irrevocable guarantee agreement in favour of AT for [...]. In all, his financial exposure in the deal therefore amounts, for the time being, to about [...] and will increase to a total of [...].

Licence fees

The Austrian authorities claimed that the alleged payment of ÖS 50 million from AT to HTM for the use of the Head brand name was incorrect. The actual royalty paid amounted to only ÖS 101 000 (ECU 7 500), which was a reasonable amount.

6.1.2. ***Article 92 (3) (c)***

The Austrian authorities claimed that, even if the measures taken by AT were regarded as State aid, they could be justified within the meaning of Article 92 (3) (c) of the EC Treaty. HTM would regain viability by the restructuring process. In 1998, it would show a positive net result, albeit still carrying high debts. The public flotation in 1998 or 1999 would improve the company's financial structure. HTM would reduce its capacity and thereby contribute to the restructuring of the sector. The capital injections were limited to the strict minimum and would not result in any surplus liquidity.

6.2. *Other interested parties and complainants*

6.2.1. ***First interested party and complainant***

One competitor of HTM claimed that he was barred from the tender procedure for HTM. He argued that he had not received an invitation to submit an offer and in addition had not been given the opportunity of entering into negotiations even after stating his interest in July 1995 to the Ministry of Finance and in August 1995 to AT. He told the Commission's departments that he was still prepared to pay a higher price for HTM compared with the purchase terms as made public.

As to the State aid character of AT's measures, the competitor pointed out that AT held the State tobacco monopoly and was thereby generating high profits which had to be regarded as public resources. By not skimming off these funds, the State allowed AT to effect the sale of HTM. Furthermore, the clause requiring maintenance of the Austrian production plants clearly showed the influence exerted by the government over AT's decision.

The sale was claimed not to be the cheapest solution for AT. A private holding company would only carry the losses of a subsidiary if there was a prospect of a reasonable return in the medium term. This was not the case when the company was sold. The possible 15 % share in a future sale of HTM was not proportionate to the funds injected. Furthermore, AT had no reason to be concerned about its image as, owing to its monopolistic position, its business did not depend on its reputation. It would be able to generate huge profits from its core business independently of its decision concerning HTM.

HTM's creditors, which were dominated by the public banks, supported HTM by way of a considerable foregoing of debts. This was done without receiving further security for the remaining claims or requesting a significant amount of fresh capital from Eliasch.

HTM had been experiencing severe problems for a couple of years but could maintain its business and capacity because of general confidence in the offsetting of losses by AT. HTM's low-price policy hindered competitors in their competitive scope. They had to restructure and downsize their activities at their own expense. If HTM's restructuring was funded by public subsidies, this clearly distorted competition. The development of the industry would be jeopardized and not promoted by this aid. The

guarantee that a certain employment level would be maintained in Austria distorted competition between Member States. Given the large number of international transactions in the sports goods sector, intra-Community trade was clearly affected.

6.2.2. *Second interested party*

A second competitor argued that the purchase of HTM by AT in 1993 was aimed, not at a diversification based on commercial considerations, but at supporting an ailing Austrian company. The grant was not justified in economic terms and therefore constituted State aid.

The market for winter sports articles had been characterized in recent years by dwindling turnover and demand figures. All undertakings were struggling for survival and had to cut capacity. The company in question had borne the burden of these restructuring measures itself. If, in the case of HTM, the costs of restructuring were borne by the State, this would clearly distort competition.

6.2.3. *Third interested party and complainant*

A third competitor described the market for winter sports articles as being characterized by overcapacity. The market would be further destabilized and competition distorted by the State aid to HTM. HTM's capacity reductions would be considered positive for the sector but the cost should not be borne by the State.

The State aid character was said to be clear from several factors: there was no prospect of a return on the funds. The decision to sell HTM was not the cheapest alternative for AT. The injections were not justified by the sales price. And 70 % of the support by the banks came from State-owned institutions.

The conformity of the State aid with the rules of the Treaty was questioned: according to the restructuring scheme, HTM wanted to concentrate on high-tech products. The existence of such technology was questioned or refuted by the competitor in question. Furthermore, the aid was out of proportion to HTM's size.

6.2.4. *Fourth interested party and complainant*

A fourth competitor claimed that AT's measures in favour of HTM in recent years distorted competition and that this effect was now intensified by the subsidy granted in the course of the sale.

6.2.5. *Fifth interested party and complainant*

One other interested party announced that it had been interested in acquiring HTM on better terms from AT's point of view, but its offer had not been properly considered by AT.

7. Assessment of AT's measures — existence of aid

7.1. *State resources*

As stated above, the Austrian authorities claim that AT has always acted independently of the government. Moreover, they stress that AT has constantly been profit-making and has always paid dividends to its State shareholder over the last decade, except in 1994, when it incurred a substantial loss owing to HTM's poor results. It is added that in 1995 HTM's losses will increase substantially, and AT's results are therefore expected to be negative once more.

The Commission observes that AT is a 100 % State-owned undertaking. The members of its Supervisory Board are appointed by its public shareholder, the Ministry of Finance. The Supervisory Board in turn selects the members of the Board of Directors. Certain decisions of the Board of Directors — such as the acquisition and sale of holdings in other companies — need the consent of the Supervisory Board. Furthermore, the Board of Directors can submit issues to the shareholder's meeting for approval.

AT's capital constitutes public property, which may therefore be considered as covered by the concept of State resources in Article 92 (1) of the EC Treaty if its use and allocation are not determined solely on the basis of market economy criteria [1]. AT's successful activities allowed a regular distribution of dividends to the State from the monopoly tobacco business. The dividends distributed were part of the net profit realized, while the remaining part was retained as equity reserves. Retained profits, as well as the whole of AT's equity capital, must be employed on the basis of strict market economy principles. Otherwise State aid is involved.

In the case of a profitable State-owned undertaking such as AT, the investment of its capital as a grant to HTM, without any prospect of a return, will result in a reduced future level of AT's profits (dividends plus retained profit), that is to say, a reduced level of return on the State's stake in AT. Such a lack of return may be a granting of State resources in favour of HTM.

In addition, it has to be noted that AT's core activity is management of the tobacco monopoly in Austria. AT's positive results are therefore not surprising. Although this market was liberalized (not completely) from 1 January 1995, it is clear that the investments and losses in HTM have been financed by proceeds from the tobacco monopoly. The Commission considers that cross-financing from a State-owned protected sector to a loss-making non-protected one may involve State aid, especially if it cannot be justified as stemming from a strategic plan for long-term profitability, nor — as it appears in the HTM case — as involving a net benefit to the AT group as a whole.

[1] See Case C-303/88, Italy v. Commission [1991] ECR I-1433; see also Case C-305/89, Italy v. Commission [1991] ECR I-1603.

7.2. *'Market economy investor principle'*

The Commission applies the market economy investor principle in order to assess whether funds injected by the State into an undertaking constitute market risk capital, which a private investor would also make readily available, or State aid [1].

Certain decisions with regard to HTM appear to be related to considerations that cannot be regarded as normal for a market economy investor. The final decision to sell with a 'dowry' instead of liquidating or restructuring HTM seems strongly related to the wish to privatize AT quickly. This fact underlines the strong influence of the intentions of the Austrian Government on AT's decisions. Nor can the constraint to keep HTM's Austrian units going for the next three years be considered as a private investor choice as it seems rather a clause to safeguard HTM's activities in Austria.

7.2.1. ***Return on investment***

The April injection of ÖS 400 million (ECU 30 million) was made with the sole purpose of preventing HTM from becoming insolvent, independently of any restructuring plan or other operations intended to solve HTM's poor situation, which were apparently only being studied. It was a sudden, substantial rescue measure undertaken by AT after the deterioration in HTM's accounts had become unsustainable. In this respect, it is true that the Court recognized, in the ENI/Lanerossi case [2], that a parent company may, for a short period of time, bear the losses of a subsidiary, for reasons such as the likelihood of an indirect material profit, the desire to redirect the activities of the group — for example, by ensuring the winding-up of a subsidiary in the most favourable manner — and the desire to protect the group's image, all of which offer a chance of obtaining a profit at least in the long term.

It seems, however, that a private investor should and would have perceived HTM's real situation much earlier. The Austrian authorities have submitted a list of decisions taken from 1993 on, aimed at improving HTM's situation. This list contains changes in management, new concepts for marketing, re-dimensioning, cost-reducing programmes and so on. In all, the decisions seem to be half-hearted, to repeat themselves and were obviously not properly implemented. A private parent company would presumably in the absence of any improvement have intervened more powerfully at a much earlier stage, thus avoiding the loss caused by delayed action.

The August and September injections, totalling a further ÖS 400 million, were also made with the only purpose of rescuing HTM from insolvency. Also, they are part of the 'dowry' that AT is to pay as part of the conditions for the sale to Eliasch, namely a capital grant without any prospect of positive return.

AT stressed that the time between the first rescue injection and AT's decision to divest HTM is relatively short (less than six months), and argued that such a period is appropriate and necessary to elaborate a proper plan for HTM and finally to decide to sell it. Nevertheless, it seems that AT could and should have intervened at a much earlier stage in HTM in order to avoid the accumulation of huge losses and the costly decision it eventually took.

Capital injections and the offsetting of losses in connection with the privatization of a company are generally considered as State aid when they are not compensated by the sale price received by the State, in which case the final financial balance of the operation would be positive. In the HTM case, the sale price is insignificant compared with the capital injections/grants provided/to be provided by AT, so that the final sale value is highly negative. Also, AT's right, provided by the share purchase agreement, to receive 15 % of any capital gain that Eliasch may realize in the event of a future sale of HTM has to be put in perspective. Firstly, it is uncertain whether, when, and at what level it will actually materialize. Secondly, even if HTM is sold on the market as planned in 1998 or 1999 for US $ 15 to 20 million (ECU 12 to 16 million), AT's share (ECU 1,8 to 2,4 million) will not constitute a reasonable return on the injections of ÖS 1 190 or 1 590 million (ECU 88 or 118 million) respectively. In fact, according to the financial plan, HTM's equity forecast for 1998 approximates to the current level.

7.2.2. ***Allegedly similar cases***

The Commission understands that the capital injection of ÖS 400 million (ECU 30 million) of April 1995, which although in its view it had occurred too late, was a provisional measure pending a solution for HTM. The decision to sell HTM and to grant a 'dowry' of ÖS 1 190 million (ECU 88 million) is a measure meant to produce a final solution to HTM's financial difficulties. The Austrian authorities claim that similar painful decisions are sometimes taken by private holding companies as well, which may decide to sell their ailing subsidiaries at a negative price. Some of these cases were submitted to the Commission. While some of these examples can be taken as proof that 'negative price' sales of public undertakings should not automatically be interpreted as State aid, they

(1) Commission communication on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ No C 307, 13. 11. 1993, p. 3).

(2) Case C-303/88, Italy v Commission [1991] ECR I-1433.

are not sufficient to eliminate the presumption of aid in the HTM case. In fact, on the basis of the few elements submitted, they seem to refer to operations having taken place under substantially different circumstances from those existing in the case in question.

In the case of Trygg-Hansa, the holding company sold a loss-making subsidiary operating in the same sector — insurance — to a competitor, also taking into consideration the possible development of a broader business collaboration with it. Hanson decided to demerge 34 small subsidiaries by putting them in a company whose equity was distributed among Hanson's shareholders, therefore maintaining a link with them.

AEG, the holding company of a group in serious financial difficulties, divested some businesses within the framework of a comprehensive and coherent industrial restructuring plan which involved the whole group structure. In any case, no precise information is given of AEG's disposal of subsidiaries at a negative price.

Eemland's decision to sell Wilkinson with a debt-free balance sheet, while Eemland's shareholders shared its financial liabilities between them, is the operation that most resembles that of AT. However, the sale depends on other factors as well, such as the need to comply with an antitrust authority's order to Gillette (operating in the same business as Wilkinson) to end its involvement in Eemland on the ground that it was anticompetitive.

Daimler-Benz Aerospace injected DM 300 million (ECU 157 million) into the loss-making subsidiary Dornier Luftfahrt and afterwards disposed of 80 % of its shares to Fairchild Aircraft, without charging any purchase price. Unlike AT, Daimler-Benz Aerospace remains a shareholder of Dornier Luftfahrt and is therefore interested in its survival. Furthermore, Daimler-Benz with its subsidiary Aerospace is still engaged in the industry. Additionally, it has to be mentioned that other aspects, which the Austrian authorities did not mention, such as existing obligations towards former owners, seem to play a part as well.

Klöckner-Humbold-Deutz was rescued from a very serious situation which came to light unexpectedly after manipulations by its management came to light. Its largest owner, Deutsche Bank, contributed approximately half of the funds necessary for the rescue measure (parts of it by a debt forgiveness). Unlike AT, Deutsche Bank has kept its holding in KHD. It therefore has the prospect of a return, even if a positive outcome is uncertain for the time being.

The HTM case presents, however, some similarities to the Neue Maxhütte Stahlwerke case, which was recently the subject of a Commission decision [1]. The Bavarian Government intended to inject a final capital provision into the company at the same time as its sale at a token price, arguing that this would be the behaviour of a private market investor. He would be ready to bear such a 'negative' price on the basis of considerations such as the group's reputation, its social responsibility and its standing in the market. In that case, the Commission decided that the net loss of the operation constituted State aid, precisely because the Bavarian Government did not receive any economic advantage, even in the long term, and furthermore did not undertake to minimize the possible economic disadvantage.

The Austrian authorities took from the Neue Maxhütte Stahlwerke decision another case of a private undertaking, Schörghuber group/Heilit & Woerner Bau AG, claiming that it resembled the HTM case. Schörghuber (operating in the real-estate investment and development business and breweries sector) decided to terminate its holding in Heilit & Woerner (a construction undertaking), and to leave the construction sector in general. Heilit & Woerner was sold to another construction company for a symbolic price while Schörghuber provided a final contribution to its equity of DM 50 million (ECU 26 million). The Commission maintains that the circumstances under which this operation took place were substantially different from the HTM case, in particular as regards the relationship between the divested business and the remaining 'core' business of the group. Schörghuber was remaining active in the real-estate investment business and was therefore interested in maintaining good relations with the other enterprises operating in the sector. Such a relationship does not exist in the AT/HTM case, where AT is divesting itself of a line of activity without any sectoral connection with any of its remaining operations. The doubts concerning the 'private' nature of AT's behaviour cannot therefore be eliminated by this comparison.

On the contrary, the Commission believes that AT is not behaving here in the way a market economy investor would do, in particular as regards the final choice between selling and liquidating HTM. The Commission recalls that the Court of First Instance ruled, in the Hytasa/Imepiel/Intelhorce case [2], that a private shareholder pursuing long-term profitability would not accept, after the company had been loss-making for years, to effect a capital injection which was more expensive than a liquidation of the assets and which did not have any prospect of a (at least indirect) return, even in the long term, due to the sale of the company.

7.2.3. *Bankruptcy versus capital grant*

The Commission is of the opinion, which differs from that of the Austrian authorities, that the sale of HTM was not the choice with the lowest cost for AT.

[1] OJ No L 253, 21. 10. 1995, p. 22.

[2] Joined Cases C-278/92, C-279/92, C-289/92, Spain v. Commission [1994] ECR I-4103.

Liabilities

On the one hand, AT claims that allowing HTM to go bankrupt could entail significant financial risks due to possible legal actions by HTM lending banks and other creditors against AT. Several documents have been submitted to support this argument. On the other hand, AT holds that these claims are regarded as being completely groundless. However, having regard to all different sources of possible liabilities for AT and taking into account the opinions of lawyers and analysts consulted by AT on the matter, the Commission is of the opinion that these costs would not run up to a sum which would, together with the two other sources of costs mentioned by AT, match the injections agreed on.

In addition, it has to be noted that the bulk of the possible risks claimed by AT do not arise in the event of HTM becoming insolvent but from the fact that AT did not inform the creditors of its intention to sell its subsidiary. Therefore, these risks cannot be taken into account in any comparison of the costs of an insolvency with those of the sales agreement.

Financing costs

AT argues that other costs must be taken into account in the event of HTM being put into liquidation, particularly those relating to the negative effects on the group's image and to the loss of credibility, which would cause a substantial increase in the financial charges for the group. The existence of 'image' costs does not seem convincing in this case. AT's intention is to divest its sports sector fully, cutting any industrial, commercial and financial links with it. Consequently, no spill-over effect can be expected from this decision on other group activities to justify 'image' considerations. A loss of credibility might be likely if the AT group were to continue to operate or maintain some interests in the same sector, or in similar sectors where HTM operates. Creditors know about the differing financial responsibility of a parent company for 'core' activities and other investments. It is highly improbable that HTM's sale at a negative price would affect AT's image less than its liquidation would. On the contrary, it could be argued that AT's credit standing would be better without the capital grants to HTM because, in this case, the means in question would still belong to the company and thereby improve its financial position.

Apart from that, the estimate of [...] has to be questioned. Firstly, the increase in interest rates by 1,5 percentage points seems a very high 'guesstimate'. Secondly, the calculation does not distinguish between the credit standing of AT itself, that of its subsidiaries within the tobacco industry, and that of other holdings. Thirdly, it is assumed by AT that the increased interest rates would be applied by the banks only for a period of three years and would be reduced gradually. It is difficult to understand why creditors should react at all in such a way. Fourthly, AT claims a deterioration in the conditions of its bank transfers with tobacco stores in Austria. There is no reason why the banks should impose stricter conditions as a result of the bankruptcy of a subsidiary.

In such a sector (tobacco), with good and secure regular income, a negative 'HTM effect' is unlikely. To sum up, the Commission considers that no deterioration of financing conditions would have taken place in this case. On the contrary, it has to be reiterated that AT's financial reserves would be higher without the capital grants to HTM and its credit standing therefore even better.

Privatization of AT

The additional consideration that AT's privatization would be postponed, also causing a financial loss to the State estimated at [...], cannot be accepted. In the cases of voluntary liquidation or public settlement, internal restructuring and privatization, a loss is to be borne by AT. Therefore the value of AT at the end of 1996 will, in any case, except in the case of a winding-up, be reduced by the negative situation of HTM and the least costly alternative would hence also be the best choice for the privatization of AT. Only in the case of a winding-up would AT not have to carry the loss and therefore show an even higher company value.

The winding-up of a subsidiary need not have a negative impact on the market assessment of the parent company or group. This can be seen from, *inter alia,* the Daimler-Benz and Fokker cases. Daimler-Benz supported its ailing subsidiary Fokker for several years with considerable sums of money. Finally, it decided to withdraw its backing. The market price of its shares dropped by only 1 % on announcement of this fact and increased by 6 % within the following three months. This shows that the termination of an unprofitable interest does not automatically result in a decrease in the value of the parent company or group. It is more likely to be regarded by market investors as evidence of reasonable economic behaviour on the part of the company.

The value of AT's capital is estimated at [...]. The Austrian authorities argue that a delayed privatization would cause a loss of 7 % in terms of interest on the amount privatized. This interest income is compared with the possible dividends for the same period. The Commission cannot accept this argument as it leaves aside the capital gain of AT. The Austrian authorities claimed that the holding in AT would be a commercially advantageous investment and always generate a high yield, demonstrated among other things by high dividends. The calcu-

lation would therefore only be true if AT was not able to produce profits at the same level as in the past. If, as the Austrian authorities themselves argue, there is no reason to expect the profitability of AT, excluding HTM, to change substantially compared with the past, it will naturally exceed 7 %. Therefore not a loss, but a profit, would more likely accrue to the State by delaying AT's privatization. In practice, such a difference between profitability and market value would be balanced out by futures, options and risk traders.

In more general terms, the question remains open whether such considerations can be regarded as normal for a private investor. If the market economy investor principle is applied to AT's behaviour, it cannot take into account considerations linked to the privatization of the holding company, as these would not concern any private holding company in a comparable situation. The intention of selling the holding is of no relevance to AT itself. This argument therefore clearly shows that the objectives of the owner (the State) have been taken into account when deciding on the funds to be granted to HTM. This contradicts the statement by the Austrian Government that AT acted independently and underlines the assessment of the Commission that the decisions of AT can be related to the State as regards Article 92 (1).

On the other hand, if the market economy investor principle is applied directly to the Austrian Government, being AT and HTM's ultimate shareholder, the Commission believes again that it failed to intervene at a much earlier stage in order to avoid such a strong depreciation of its investment.

To sum up, the possible costs arising from the three sources are highly questionable or have to be denied completely. In any case, the sum would remain considerably lower than the total funding provided by AT for HTM. The sale to Eliasch therefore cannot be regarded as the cheapest solution for AT.

7.2.4. ***Behaviour of the banks***

As regards the participation of the banks in the rescue of HTM, the Commission observes that of the write-off of ÖS 630 million (ECU 47 million) by the Austria-based banks, 70 % would be given by publicly-controlled banks, mainly Creditanstalt-Bankverein (48,6 % of the share capital, but 70 % of the voting rights in the hands of the Austrian State) and Bank Austria (20% held by the Austrian State, 46 % indirectly controlled by the municipality of Vienna, which also guarantees its liabilities). Doubts about the behaviour of the public banks were also raised in the comments by competitors.

Nevertheless, it has to be taken into account that, in the event of a winding-up procedure, the banks would have lost a higher proportion of their outstanding loans. Furthermore, the investigations showed that the behaviour of the public banks is in line with that of the private banks involved. Firstly, the write-off by the Austrian institutions is accompanied by similar measures by foreign banks. Secondly, the Austrian public banks act within a consortium of 10 (public and private) Austrian banks involved in the HTM case. Each of the banks has a veto right, and therefore the decision on the debt forgiveness and the interest waiver was taken unanimously, with the agreement of the private banks involved. As there is no evidence to indicate that the conduct of the public banks is not based on commercial considerations, the Commission does not consider that any State aid is involved in the actions of the public banks.

7.2.5. ***Sales procedure***

In March 1995 SBC Warburg was commissioned with the task of counselling AT as to its privatization and the possible solutions to its commitment in HTM. In addition to elaborating a restructuring plan, SBC Warburg started to contact several potential investors about their interest in an investment in HTM. The procedure was extended in June and more than 40 investors were approached. Only three of them were interested and two submitted a purchase offer for the company. On the basis of the presented offers the Supervisory Board of AT decided to accept that of Eliasch as the more advantageous for AT.

One interested party declared during the Commission's preliminary investigations that it was interested in purchasing HTM but its offer was not treated fairly by AT. The party outlined its views to the Commission. On the basis of the submitted material, the Commission considers that this offer cannot seriously call into question the correctness of AT's choice.

As already mentioned, one of the competitors stated that he was barred from acquiring the company. He alleged that he did not receive any information on the possible purchase and was not allowed to enter into negotiations. The Austrian authorities submitted evidence that the competitor in question was in fact informed in May 1995 and then in June 1995 of AT's intention of selling HTM but had said he was not interested. He had claimed to be fully occupied with other projects and to have no free management capacity to engage in negotiations with HTM.

Consequently, although AT's intention to sell HTM was not publicly announced, the Commission assumes that the sale was based on a broad procedure, equal to a normal public tender, from which AT chose the best available offer. Hence the privatization procedure itself seems not to involve State aid elements.

7.2.6. ***Employment guarantees***

The share purchase agreement with Eliasch includes the condition that he should maintain the Austria-based production sites and ensure a certain level of employment. The Austrian authorities claimed that AT was obliged to impose such a condition in order to avoid the risk of being sued by HTM's creditors after the sale. They also claimed that the same conditions were imposed by the previous owner when it sold HTM to AT. However, it remains highly questionable whether the clauses in the purchase agreement with Eliasch, especially those referring to the maintenance of employment, can be related to these grounds. The case nevertheless differs as the former buyer AT, a State company, may by such an obligation be executing State policy in the form of maintenance of employment. This even points to the possibility of State aid being involved in the purchase in 1993.

Furthermore, AT claimed that the production plants and employees were in fact necessary for both HTM's continued operation and the turnaround, and hence Eliasch's guarantee was no real obligation. This argument contradicts the agreement because, if this had been the case, it would not have been necessary at all to include the clause in the purchase agreement.

It is not in the interest of a market economy investor to ensure, without clear economic reasons, a certain employment level when taking his divesting decisions. Without the condition in question, a potential buyer would gain entrepreneurial independence and HTM's value would increase, which could result in a higher sale price or reduced funding by AT. On that basis, the condition is clearly intended to safeguard the activity level at some Austrian plants owing to political considerations. This means that the clause further supports the Commission's view that the Austrian Government influenced the decision taken by AT.

AT cited the case of Dornier Luftfahrt as an example of a private firm also imposing an employment guarantee on the sale of a subsidiary. This sale is quite different as Daimler-Benz Aerospace, the selling company, retains a stake in Dornier Luftfahrt and is therefore interested in maintaining production. Furthermore, there seem to be obligations towards the former owners of Dornier Luftfahrt which obliged Daimler-Benz Aerospace to impose this condition and which the Austrian authorities did not mention.

7.3. *Conclusion*

In conclusion, the conditions as presented above, under which a grant has been, and will be, awarded to HTM, shows that this financing involves State aid within the meaning of Article 92 (1) of the EC Treaty. An investor operating under normal market economy conditions would not have made the funds available on the same terms. The subsidies are provided through State resources, i.e. AT's assets, and favour a certain undertaking. The aid prevents HTM from being insolvent, allows it to stay in business and thereby distorts competition for the sports articles concerned. As HTM does most of its business outside Austria and within the EU (45 % of its turnover in 1994 was generated in western Europe), the measures affect trade in the common market.

8. **Compatibility of the aid**

As the Commission assumes that the measures constitute State aid, it has to be assessed whether any of the derogations in Article 92 of the EC Treaty are applicable. Given the nature of the aid, which is a capital injection for loss-compensation and restructuring costs, it can only be examined under paragraphs (a) and (c) of Article 92 (3).

However, the aid involved in the capital injections into HTM cannot qualify as promoting the economic development of the regions referred to in Article 92 (3) (a) since HTM has operations in various regions and the aid cannot be considered in relation to either investment or job creation. In fact, only HTM's small bindings assembly operation in Neusiedl is located in an Article 92 (3) (a) region; this operation, according to the plan, is to be halted. For the same reasons, Article 92 (3) (c) cannot be applied as regards the development of economic areas.

Thus the aid could be justified only as facilitating the development of an economic activity without adversely affecting trading conditions to an extent contrary to the common interest. By its nature, the aid must be regarded as being intended for rescuing and restructuring a company in difficulty. The Commission has long since established the criteria that need to be fulfilled if this sort of aid is to be exempted within the meaning of Article 92 (3) [1].

In practice, for the Commission to approve *ad hoc* aid to a company in difficulty, its restructuring must satisfy especially the following basic conditions. Firstly, it must restore the long-term viability of the company within a reasonable time. Secondly, it must avoid undue distortion of competition. Thirdly, it must be in proportion with the restructuring costs and benefits, it must be kept to a strict

(1) Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ No C 368, 23. 12. 1994, p. 12).

minimum and the beneficiary has to make a significant contribution from its own resources. Only if these basic requirements are fulfilled may the effects of the aid be considered not to be contrary to the common interest within the meaning of the Article 92 (3) (c) exemption.

8.1. *Restoration of viability*

According to the Community guidelines, the restructuring plan must 'restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions'. The restructuring of HTM is based on a comprehensive operational and financial plan the substance of which has been described in point 5. It was drawn up by the new owner of the company in cooperation with an independent consulting firm.

The Commission has examined this restructuring and recovery plan carefully, particularly with regard to such elements as

— its underlying assumptions on internal and external developments,

— the restoration of the viability of the company,

— the evolution of its competitive position on the different markets,

— the reduction in its capacity and workforce,

— the proportionality of the aid to the restructuring,

— the development of the financial and commercial key figures, and

— the contribution of the aid recipient to the financing of the restructuring plan.

On the basis of this examination and taking account of the results of the first few months of the implementation of the restructuring plan, the Commission considers that it is based on realistic assumptions as to external developments (e.g. market shares, product sales prices) and internal measures (e.g. cost reductions, reduction of employment). The plan contains drastic internal restructuring measures, including reduction of manufacturing and fixed costs and of capacity and employees and improvement of internal management systems. The activities are streamlined and loss-making lines such as golf equipment and sportswear are abandoned. HTM will focus on several key markets and products, mainly in the higher quality and price segments. Overall, turnover will decrease till 1996, followed by a slow increase, but will still be below the 1994 figures in 1998. Thus the plan is not based on an aggressive overall sales policy.

As already indicated, Eliasch has undertaken an irrevocable guarantee towards AT for a significant amount. This indemnity enlarges his current financial exposure and underlines his commitment to HTM. It proves that he is convinced of the success of the turnaround of HTM.

Fixed costs are currently being reduced. Break-even on an operational basis will be reached in 1996. In 1998 the company should return to profitability. Finally, in 1998 or 1999 HTM will be placed on the stock market, which will be a clear sign of a successful turnaround and the favourable long-term prospects. HTM's going public is therefore of crucial importance to the restoration of long-term viability.

In the course of the State aid procedure, the Commission received evidence from the Austrian authorities that the turnaround process of HTM is progressing satisfactory and is even ahead of schedule. The results of the first half of 1996 indicate that the restructuring plan is based on realistic assumptions. The Commission is convinced that HTM will, on the basis of the present restructuring plan, restore long-term viability.

8.2. *Avoidance of undue distortions of competition through the aid*

Appropriate measures have to be taken to offset as far as possible the adverse effects of restructuring aid on competitors. In the case of overcapacity the Commission normally ensures that the aided company reduces its capacity in order to promote the development of the sector in question. The restructuring plan for HTM includes considerable capacity reductions in the sectors of skis, bindings, ski-boots and rackets, which are characterized by structural excess of production capacity after the plunge in demand over the last few years. The capacity reductions range from 9 % to 59 %. These reductions have to a large extent been put into effect already within the first year of restructuring. Bearing in mind that these sectors are not officially recognized as sectors in difficulty, such reductions can be regarded as significant and proportionate to the aid amount.

Concerning skis and bindings, HTM's world market share declined between 1994 and 1996 and will remain at this lower level in the years ahead. As regards tennis rackets, HTM's world market share (in units) has been stable during the last two years and is expected to increase slightly over the next few years as a result of intensified marketing efforts in the USA.

The capacity reductions contribute to the restructuring of the whole industry. The decline in market shares allows HTM's competitors to expand their business. Furthermore, as HTM is tied up in restructuring and will concentrate on core activities, it cannot enter new profitable product lines, such as in-line skating or snowboards. The reorientation of its activities, which includes the abandonment of certain niches, for example cross-country and rental ski business, enables smaller competitors in particular to enter these niches and thereby to secure their position on the market.

HTM is leaving or has already left some lines of activity, thereby eliminating US $ 245 million (ECU 196 million) in turnover. Hence in these fields there cannot be any distorting effect on competitors at all.

The aid amount is in proportion to the direct restructuring costs (reduction of capacity, elimination of product lines, closure of company plants) of US $ 159 million (ECU 127 million) for the period from 1995 to 1997. As regards the profitable diving branch, no measures are laid down in the restructuring plan. The aid funds and their actual use are therefore concentrated on the activities needing restructuring and do not contribute to the expansion of production capacity in the already money-making diving sector.

Finally, it has to be taken into account that the markets in question are characterized by the existence of three or four large competing companies. Therefore the disappearance of HTM would have a negative effect on the market structure creating tighter oligopolies or even duopolies. Thus the survival of HTM will support the maintenance of a competitive market structure.

8.3. *Aid in proportion to the restructuring costs and benefits*

The aid must be limited to the minimum needed to enable the restructuring to go ahead. The beneficiary is expected to make a significant contribution to the restructuring from its own resources. The aid may not lead to the company having surplus cash in order to avoid distorting activities not linked to the restructuring process, and must not unduly reduce the financial charges of the enterprise by favouring too heavily the equity position of the beneficiary.

As mentioned above, the Austrian authorities submitted evidence that Eliasch, HTM's new owner, is in fact making a significant contribution to the cost of restructuring HTM. In addition to the equity injection of ÖS 25 million (ECU 1,9 million) to be made on approval of the aid by the Commission, he will inject ÖS 275 million (ECU 20 million) by the end of 1998. Furthermore, Eliasch has at present already undertaken an irrevocable guarantee for a considerable amount.

More than a third of the restructuring costs will be borne by HTM's own resources (use of operational cash flow and decrease in working capital). This can be regarded as a reasonable share of the company itself in these costs.

According to the financial forecast, which is part of the restructuring plan for HTM, the aid from AT will be essential in order to reduce HTM's short-term debts especially. The aid is being paid in several tranches and does not lead to HTM having a cash surplus. Despite the subsidy from AT, HTM will not have a comfortable equity share. The equity ratio of 8 % by the end of 1995 will decrease to only 7 % by 31 December 1998. This means that it will remain at a level which makes the undertaken capital contribution of Eliasch in 1998 as well as the going-public within this period crucial to the company's long-term survival. This improvement in the capital structure through fresh equity capital is also considered by HTM itself and its advisers as being decisive for the further, long-term development of the company. It must therefore be ensured that these two capital injections actually take place.

The Commission recalls that, according to the Community guidelines, in order for the aid to qualify for an exemption pursuant to Article 92 (3), if 'aid is used to write off debt resulting from past losses, any tax credit attaching to the losses must be extinguished, not retained to offset against future profits or sold or transferred to third parties, as in that case the firm would be receiving the aid twice'. It therefore has to be ensured that past losses up to the amount of the aid, i.e. ÖS 1 590 million (ECU 118 million), may not be used to reduce taxable income in the future.

8.4. *Conclusion*

As can be seen from the above, the measures correspond to the conditions laid down in the Community guidelines. They restore the long-term viability and health of the company; they avoid undue distortion of competition; they are in proportion to the restructuring costs and benefits; and the beneficiary makes a significant contribution to the restructuring plan.

Of the total aid amount of ÖS 1 590 million (ECU 118 million), a sum of ÖS 1 273 million (ECU 95 million) has already been approved by the Commission in its decision to initiate formal proceedings pursuant to Article 93 (2) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The grants from Austria Tabakwerke AG to Head Tyrolia Mares in the form of capital injections amounting to ÖS 1 590 million (ECU 118 million) constitute State aid within the meaning of Article 92 (1) of the EC Treaty; that aid is considered compatible with the common market pursuant to Article 92 (3) (c) as it facilitates the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest.

The amount of ÖS 1 590 million includes a sum of ÖS 1 273 million (ECU 95 million) already conditionally approved by the Commission as rescue aid. Of the total, ÖS 400 million was already granted in April 1995, ÖS 373 million by 30 September 1995 (plus a tranche of ÖS 27 million scheduled but not actually paid out), ÖS 250 million by 31 December 1995, and ÖS 250 million by 30 June 1996; ÖS 145 million is to be paid by 31 December 1997 and ÖS 145 million by 31 March 1998.

Article 2

In order to ensure the compatibility of the aid with the common market, the Commission requires the Austrian authorities to undertake to guarantee that the following conditions are met:

— the restructuring plan is to be carried out as submitted to the Commission. By the end of August and the end of February each year till 1999, HTM has to deliver a report on the progress of the restructuring, showing the economic development and financial results of the company and their compliance with the restructuring plan. It must also submit the annual reports of the companies of the group for the years 1995 to 1999 by the end of June of the following year at the latest,

— the capacity reductions provided for in the restructuring plan are to be carried out on an irreversible basis,

— the capital injection by Eliasch into HTM of ÖS 25 million is to be effected within one month of the date of this Decision,

— the capital injection by Eliasch into HTM of ÖS 275 million is to be effected by 31 December 1998,

— an additional contribution of fresh equity capital of at least ÖS 600 million by way of an international public offer of HTM on the capital market or by means having the same effect is to be completed by the end of 1999 at the latest,

— past losses of ÖS 1 590 million may not be used for reducing taxable profits.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 30 July 1996.

For the Commission

Erkki LIIKANEN

Member of the Commission