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DECISIONS

Commission

EN

[1] Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 1134/2009

of 25 November 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 26 November 2009.

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

Done at Brussels, 25 November 2009.

For the Commission

Jean-Luc DEMARTY

Director-General for Agriculture and Rural Development

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[1] OJ L 299, 16.11.2007, p. 1.

[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	MA	33,9
	MK	37,7
	TR	61,4
	ZZ	44,3
0707 00 05	MA	52,9
	TR	77,9
	ZZ	65,4
0709 90 70	MA	42,1
	TR	117,5
	ZZ	79,8
0805 20 10	MA	65,9
	ZZ	65,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	48,6
	HR	68,1
	MA	68,9
	TR	72,2
	ZZ	64,5
0805 50 10	AR	64,7
	TR	72,5
	ZA	61,6
	ZZ	66,3
0808 10 80	AU	177,7
	CN	90,7
	MK	20,3
	US	97,5
	XS	24,5
	ZA	111,4
	ZZ	87,0
0808 20 50	CN	50,4
	TR	85,0
	US	131,0
	ZZ	88,8

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1135/2009

of 25 November 2009

imposing special conditions governing the import of certain products originating in or consigned from China, and repealing Commission Decision 2008/798/EC

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [1], and in particular Article 53(1)(b) thereof,

Whereas:

(1) Article 53 of Regulation (EC) No 178/2002 provides for the possibility to adopt appropriate Community emergency measures for food and feed imported from a third country in order to protect public health, animal health or the environment, where the risk cannot be contained satisfactorily by means of measures taken by the Member States individually.

(2) The Commission was made aware in September 2008 that high levels of melamine were found in infant milk and other milk products in China. To counter the health risk that may result from exposure to a high melamine content in feed and food products, Commission Decision 2008/798/EC of 14 October 2008 imposing special conditions governing the import of products containing milk or milk products originating in or consigned from China, and repealing Commission Decision 2008/757/EC [2], provides for a prohibition on the importation into the Community of products containing milk or milk products, soya or soya products intended for the particular nutritional use of infants and young children, and requires Member States to perform systematic checks on all consignments originating in or consigned from China of feed and food containing milk, milk products, soya or soya products and of ammonium bicarbonate intended for food and feed. In that Decision the level of 2,5 mg/kg was considered to be the appropriate level to distinguish between the unavoidable background presence of melamine and unacceptable adulteration.

(3) The number of Rapid Alert System for Food and Feed (RASFF) notifications, as provided for in Article 2(4) of Decision 2008/798/EC, as regards unacceptable levels of melamine in those food and feed products from China has significantly decreased since January 2009, and the Chinese authorities have provided guarantees as regards the controls on melamine in such products exported to the Community. It is therefore appropriate to review the measures laid down in Decision 2008/798/EC.

(4) Taking into account that products containing milk or milk products, soya or soya products that are intended for the particular nutritional use of infants and young children represent the primary, and in some cases sole, source of nourishment for infants and young children, it is appropriate to maintain the prohibition on importation into the Community of any such products originating from China. Member States should ensure that any such products found on the market are destroyed without delay.

(5) At the same time, systematic checks on all consignments originating in or consigned from China of feed and food containing milk, milk products, soya or soya products and of ammonium bicarbonate intended for food and feed are no longer necessary given the significant decrease in RASFF notifications, so the intensity of physical checks should be reduced. Since the level of 2,5 mg/kg continues to remain appropriate to distinguish between unavoidable background presence of melamine and unacceptable adulteration, products that contain a higher level of melamine should not enter the feed and food chain and should be safely disposed of.

(6) Therefore, Decision 2008/798/EC should be amended accordingly. However, taking into account the nature of the amending provisions, it is appropriate to replace that Decision with a regulation, which could be reviewed at a later stage on the basis of the results of the controls carried out by the Member States.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, references to China are to be understood as references to the People's Republic of China.

[1] OJ L 31, 1.2.2002, p. 1.
[2] OJ L 273, 15.10.2008, p. 18.

Article 2

Import prohibition

1. The import into the Community of products containing milk, milk products, soya or soya products intended for the particular nutritional use of infants and young children within the meaning of Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses [1], originating or consigned from the People's Republic of China shall be prohibited.

2. Member States shall ensure that any such product found on the market shall be immediately withdrawn and destroyed.

Article 3

Prior notification

Feed and food business operators or their representatives shall give prior notification to the control point referred to in Article 4(3) of the estimated date and time of arrival of all consignments originating in or consigned from China of ammonium bicarbonate intended for food and feed and of feed and food containing milk, milk products, soya or soya products.

Article 4

Control measures

1. The competent authorities of the Member States shall carry out documentary, identity and physical checks, including laboratory analysis on the consignments originating in or consigned from China, which are to be imported into the Community, of ammonium bicarbonate intended for food and feed and of feed and food containing milk, milk products, soya or soya products other than those referred to in Article 2(1).

Identity and physical checks, including sampling and analysis to control the presence of melamine, shall be carried out on approximately 20 % of such consignments.

Member States may carry out random physical checks on other feed and food products with a high protein content originating from China, which are to be imported into the Community.

The physical checks referred to in this paragraph shall in particular aim at ascertaining the level of melamine, if any, in the product. Consignments shall be kept under official control pending the availability of the results of the laboratory analysis.

2. Any product found to contain more than 2,5 mg/kg melamine, following controls performed in accordance with paragraph 1, shall not enter the feed and food chain and shall be safely disposed of.

3. The checks referred to in paragraph 1 shall be carried out at control points specifically designated by the Member States for that purpose.

Member States shall make the list of control points available to the public and communicate it to the Commission.

4. The release for free circulation of consignments shall be subject to the presentation by the feed and food business operator or their representative to the custom authorities of the evidence that the official controls referred to in paragraph 1 have been carried out and favourable results from physical checks, where such checks are required, are known.

Article 5

Reports

Member States shall submit to the Commission every three months a report of all analytical results of the controls referred to in Article 4(1). Those reports shall be submitted during the month following each quarter.

Article 6

Costs

All costs resulting from the official controls referred to in Article 4(1), including sampling, analysis, storage and any measures taken following non-compliance, shall be borne by the feed and food business operator.

Article 7

Repeal

Commission Decision 2008/798/EC is repealed.

References to the repealed Decision shall be construed as references to this Regulation.

(1) OJ L 124, 20.5.2009, p. 21.

Article 8

Entry into force

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

It shall apply from the date of entry into force.

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

Done at Brussels, 25 November 2009.

For the Commission

Androulla VASSILIOU

Member of the Commission

COMMISSION REGULATION (EC) No 1136/2009

of 25 November 2009

amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 1

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards [1], and in particular Article 3(1) thereof,

Whereas:

(1) By Commission Regulation (EC) No 1126/2008 [2] certain international standards and interpretations that were in existence at 15 October 2008 were adopted.

(2) On 27 November 2008, the International Accounting Standards Board (IASB) published the International Financial Reporting Standard 1 *First-time adoption of international financial reporting standards,* hereinafter 'restructured IFRS 1'. The restructured IFRS 1 replaces the existing IFRS 1 in order to make IFRS 1 easier to use and amend in the future. The restructured IFRS 1 also removes from the standard some outdated transition guidance and contains some minor wording changes. The current requirements do not change.

(3) The consultation with the Technical Expert Group (TEG) of the European Financial Reporting Advisory Group (EFRAG) confirms that the restructured IFRS 1 meets the technical criteria for adoption set out in Article 3(2) of Regulation (EC) No 1606/2002. In accordance with Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions [3], the Standards Advice Review Group considered EFRAG's opinion on endorsement and advised the Commission that it is well-balanced and objective.

(4) Regulation (EC) No 1126/2008 should therefore be amended accordingly.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Accounting Regulatory Committee,

HAS ADOPTED THIS REGULATION:

Article 1

In the Annex to Regulation (EC) No 1126/2008, International Financial Reporting Standard (IFRS) 1 *First-time adoption of international financial reporting standards* is replaced by IFRS 1 *First-time adoption of international financial reporting standards* (restructured in 2008) as set out in the Annex to this Regulation.

Article 2

Each company shall apply IFRS 1, as set out in the Annex to this Regulation, at the latest, as from the commencement date of its first financial year starting after 31 December 2009.

Article 3

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

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

Done at Brussels, 25 November 2009.

For the Commission

Charlie McCREEVY

Member of the Commission

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(1) OJ L 243, 11.9.2002, p. 1.
(2) OJ L 320, 29.11.2008, p. 1.
(3) OJ L 199, 21.7.2006, p. 33.

ANNEX

INTERNATIONAL ACCOUNTING STANDARDS

IFRS 1	*First-time adoption of international financial reporting standards*

INTERNATIONAL FINANCIAL REPORTING STANDARD 1

First-time Adoption of International Financial Reporting Standards

OBJECTIVE

1 The objective of this IFRS is to ensure that an entity's *first IFRS financial statements*, and its interim financial reports for part of the period covered by those financial statements, contain high quality information that:

(a) is transparent for users and comparable over all periods presented;

(b) provides a suitable starting point for accounting in accordance with *International Financial Reporting Standards (IFRSs)*; and

(c) can be generated at a cost that does not exceed the benefits.

SCOPE

2 An entity shall apply this IFRS in:

(a) its first IFRS financial statements; and

(b) each interim financial report, if any, that it presents in accordance with IAS 34 *Interim Financial Reporting* for part of the period covered by its first IFRS financial statements.

3 An entity's first IFRS financial statements are the first annual financial statements in which the entity adopts IFRSs, by an explicit and unreserved statement in those financial statements of compliance with IFRSs. Financial statements in accordance with IFRSs are an entity's first IFRS financial statements if, for example, the entity:

(a) presented its most recent previous financial statements:

(i) in accordance with national requirements that are not consistent with IFRSs in all respects;

(ii) in conformity with IFRSs in all respects, except that the financial statements did not contain an explicit and unreserved statement that they complied with IFRSs;

(iii) containing an explicit statement of compliance with some, but not all, IFRSs;

(iv) in accordance with national requirements inconsistent with IFRSs, using some individual IFRSs to account for items for which national requirements did not exist; or

(v) in accordance with national requirements, with a reconciliation of some amounts to the amounts determined in accordance with IFRSs;

(b) prepared financial statements in accordance with IFRSs for internal use only, without making them available to the entity's owners or any other external users;

(c) prepared a reporting package in accordance with IFRSs for consolidation purposes without preparing a complete set of financial statements as defined in IAS 1 *Presentation of Financial Statements* (as revised in 2007); or

(d) did not present financial statements for previous periods.

4 This IFRS applies when an entity first adopts IFRSs. It does not apply when, for example, an entity:

(a) stops presenting financial statements in accordance with national requirements, having previously presented them as well as another set of financial statements that contained an explicit and unreserved statement of compliance with IFRSs;

(b) presented financial statements in the previous year in accordance with national requirements and those financial statements contained an explicit and unreserved statement of compliance with IFRSs; or

(c) presented financial statements in the previous year that contained an explicit and unreserved statement of compliance with IFRSs, even if the auditors qualified their audit report on those financial statements.

5 This IFRS does not apply to changes in accounting policies made by an entity that already applies IFRSs. Such changes are the subject of:

(a) requirements on changes in accounting policies in IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors*; and

(b) specific transitional requirements in other IFRSs.

RECOGNITION AND MEASUREMENT

Opening IFRS statement of financial position

6 An entity shall prepare and present an *opening IFRS statement of financial position* at the *date of transition to IFRSs*. This is the starting point for its accounting in accordance with IFRSs.

Accounting policies

7 **An entity shall use the same accounting policies in its opening IFRS statement of financial position and throughout all periods presented in its first IFRS financial statements. Those accounting policies shall comply with each IFRS effective at the end of its first IFRS reporting period, except as specified in paragraphs 13–19 and Appendices B–E.**

8 An entity shall not apply different versions of IFRSs that were effective at earlier dates. An entity may apply a new IFRS that is not yet mandatory if that IFRS permits early application.

Example: Consistent application of latest version of IFRSs

Background

The end of entity A's first IFRS reporting period is 31 December 20X5. Entity A decides to present comparative information in those financial statements for one year only (see paragraph 21). Therefore, its date of transition to IFRSs is the beginning of business on 1 January 20X4 (or, equivalently, close of business on 31 December 20X3). Entity A presented financial statements in accordance with its previous GAAP annually to 31 December each year up to, and including, 31 December 20X4.

Application of requirements

Entity A is required to apply the IFRSs effective for periods ending on 31 December 20X5 in:

(a) preparing and presenting its opening IFRS statement of financial position at 1 January 20X4; and

(b) preparing and presenting its statement of financial position for 31 December 20X5 (including comparative amounts for 20X4), statement of comprehensive income, statement of changes in equity and statement of cash flows for the year to 31 December 20X5 (including comparative amounts for 20X4) and disclosures (including comparative information for 20X4).

If a new IFRS is not yet mandatory but permits early application, entity A is permitted, but not required, to apply that IFRS in its first IFRS financial statements.

9 The transitional provisions in other IFRSs apply to changes in accounting policies made by an entity that already uses IFRSs; they do not apply to a *first-time adopter's* transition to IFRSs, except as specified in Appendices B–E.

10 Except as described in paragraphs 13–19 and Appendices B–E, an entity shall, in its opening IFRS statement of financial position:

(a) recognise all assets and liabilities whose recognition is required by IFRSs;

(b) not recognise items as assets or liabilities if IFRSs do not permit such recognition;

(c) reclassify items that it recognised in accordance with previous GAAP as one type of asset, liability or component of equity, but are a different type of asset, liability or component of equity in accordance with IFRSs; and

(d) apply IFRSs in measuring all recognised assets and liabilities.

11 The accounting policies that an entity uses in its opening IFRS statement of financial position may differ from those that it used for the same date using its previous GAAP. The resulting adjustments arise from events and transactions before the date of transition to IFRSs. Therefore, an entity shall recognise those adjustments directly in retained earnings (or, if appropriate, another category of equity) at the date of transition to IFRSs.

12 This IFRS establishes two categories of exceptions to the principle that an entity's opening IFRS statement of financial position shall comply with each IFRS:

(a) Appendix B prohibits retrospective application of some aspects of other IFRSs.

(b) Appendices C–E grant exemptions from some requirements of other IFRSs.

Exceptions to the retrospective application of other IFRSs

13 This IFRS prohibits retrospective application of some aspects of other IFRSs. These exceptions are set out in paragraphs 14–17 and Appendix B.

Estimates

14 An entity's estimates in accordance with IFRSs at the date of transition to IFRSs shall be consistent with estimates made for the same date in accordance with previous GAAP (after adjustments to reflect any difference in accounting policies), unless there is objective evidence that those estimates were in error.

15 An entity may receive information after the date of transition to IFRSs about estimates that it had made under previous GAAP. In accordance with paragraph 14, an entity shall treat the receipt of that information in the same way as non-adjusting events after the reporting period in accordance with IAS 10 *Events after the Reporting Period*. For example, assume that an entity's date of transition to IFRSs is 1 January 20X4 and new information on 15 July 20X4 requires the revision of an estimate made in accordance with previous GAAP at 31 December 20X3. The entity shall not reflect that new information in its opening IFRS statement of position (unless the estimates need adjustment for any differences in accounting policies or there is objective evidence that the estimates were in error). Instead, the entity shall reflect that new information in profit or loss (or, if appropriate, other comprehensive income) for the year ended 31 December 20X4.

16 An entity may need to make estimates in accordance with IFRSs at the date of transition to IFRSs that were not required at that date under previous GAAP. To achieve consistency with IAS 10, those estimates in accordance with IFRSs shall reflect conditions that existed at the date of transition to IFRSs. In particular, estimates at the date of transition to IFRSs of market prices, interest rates or foreign exchange rates shall reflect market conditions at that date.

17 Paragraphs 14–16 apply to the opening IFRS statement of financial position. They also apply to a comparative period presented in an entity's first IFRS financial statements, in which case the references to the date of transition to IFRSs are replaced by references to the end of that comparative period.

Exemptions from other IFRSs

18 An entity may elect to use one or more of the exemptions contained in Appendices C–E. An entity shall not apply these exemptions by analogy to other items.

19 Some exemptions in Appendices C–E refer to *fair value*. In determining fair values in accordance with this IFRS, an entity shall apply the definition of fair value in Appendix A and any more specific guidance in other IFRSs on the determination of fair values for the asset or liability in question. Those fair values shall reflect conditions that existed at the date for which they were determined.

PRESENTATION AND DISCLOSURE

20 This IFRS does not provide exemptions from the presentation and disclosure requirements in other IFRSs.

Comparative information

21 To comply with IAS 1, an entity's first IFRS financial statements shall include at least three statements of financial position, two statements of comprehensive income, two separate income statements (if presented), two statements of cash flows and two statements of changes in equity and related notes, including comparative information.

Non-IFRS comparative information and historical summaries

22 Some entities present historical summaries of selected data for periods before the first period for which they present full comparative information in accordance with IFRSs. This IFRS does not require such summaries to comply with the recognition and measurement requirements of IFRSs. Furthermore, some entities present comparative information in accordance with previous GAAP as well as the comparative information required by IAS 1. In any financial statements containing historical summaries or comparative information in accordance with previous GAAP, an entity shall:

(a) label the previous GAAP information prominently as not being prepared in accordance with IFRSs; and

(b) disclose the nature of the main adjustments that would make it comply with IFRSs. An entity need not quantify those adjustments.

Explanation of transition to IFRSs

23 An entity shall explain how the transition from previous GAAP to IFRSs affected its reported financial position, financial performance and cash flows.

Reconciliations

24 To comply with paragraph 23, an entity's first IFRS financial statements shall include:

(a) reconciliations of its equity reported in accordance with previous GAAP to its equity in accordance with IFRSs for both of the following dates:

(i) the date of transition to IFRSs; and

(ii) the end of the latest period presented in the entity's most recent annual financial statements in accordance with previous GAAP.

(b) a reconciliation to its total comprehensive income in accordance with IFRSs for the latest period in the entity's most recent annual financial statements. The starting point for that reconciliation shall be total comprehensive income in accordance with previous GAAP for the same period or, if an entity did not report such a total, profit or loss under previous GAAP.

(c) if the entity recognised or reversed any impairment losses for the first-time in preparing its opening IFRS statement of financial position, the disclosures that IAS 36 *Impairment of Assets* would have required if the entity had recognised those impairment losses or reversals in the period beginning with the date of transition to IFRSs.

25 The reconciliations required by paragraph 24(a) and (b) shall give sufficient detail to enable users to understand the material adjustments to the statement of financial position and statement of comprehensive income. If an entity presented a statement of cash flows under its previous GAAP, it shall also explain the material adjustments to the statement of cash flows.

26 If an entity becomes aware of errors made under previous GAAP, the reconciliations required by paragraph 24(a) and (b) shall distinguish the correction of those errors from changes in accounting policies.

27 IAS 8 does not deal with changes in accounting policies that occur when an entity first adopts IFRSs. Therefore, IAS 8's requirements for disclosures about changes in accounting policies do not apply in an entity's first IFRS financial statements.

28 If an entity did not present financial statements for previous periods, its first IFRS financial statements shall disclose that fact.

Designation of financial assets or financial liabilities

29 An entity is permitted to designate a previously recognised financial asset or financial liability as a financial asset or financial liability at fair value through profit or loss or a financial asset as available for sale in accordance with paragraph D19. The entity shall disclose the fair value of financial assets or financial liabilities designated into each category at the date of designation and their classification and carrying amount in the previous financial statements.

Use of fair value as deemed cost

30 If an entity uses fair value in its opening IFRS statement of financial position as *deemed cost* for an item of property, plant and equipment, an investment property or an intangible asset (see paragraphs D5 and D7), the entity's first IFRS financial statements shall disclose, for each line item in the opening IFRS statement of financial position:

(a) the aggregate of those fair values; and

(b) the aggregate adjustment to the carrying amounts reported under previous GAAP.

Use of deemed cost for investments in subsidiaries, jointly controlled entities and associates

31 Similarly, if an entity uses a deemed cost in its opening IFRS statement of financial position for an investment in a subsidiary, jointly controlled entity or associate in its separate financial statements (see paragraph D15), the entity's first IFRS separate financial statements shall disclose:

(a) the aggregate deemed cost of those investments for which deemed cost is their previous GAAP carrying amount;

(b) the aggregate deemed cost of those investments for which deemed cost is fair value; and

(c) the aggregate adjustment to the carrying amounts reported under previous GAAP.

Interim financial reports

32 To comply with paragraph 23, if an entity presents an interim financial report in accordance with IAS 34 for part of the period covered by its first IFRS financial statements, the entity shall satisfy the following requirements in addition to the requirements of IAS 34:

(a) Each such interim financial report shall, if the entity presented an interim financial report for the comparable interim period of the immediately preceding financial year, include:

(i) a reconciliation of its equity in accordance with previous GAAP at the end of that comparable interim period to its equity under IFRSs at that date; and

(ii) a reconciliation to its total comprehensive income in accordance with IFRSs for that comparable interim period (current and year to date). The starting point for that reconciliation shall be total comprehensive income in accordance with previous GAAP for that period or, if an entity did not report such a total, profit or loss in accordance with previous GAAP.

(b) In addition to the reconciliations required by (a), an entity's first interim financial report in accordance with IAS 34 for part of the period covered by its first IFRS financial statements shall include the reconciliations described in paragraph 24(a) and (b) (supplemented by the details required by paragraphs 25 and 26) or a cross reference to another published document that includes these reconciliations.

33 IAS 34 requires minimum disclosures, which are based on the assumption that users of the interim financial report also have access to the most recent annual financial statements. However, IAS 34 also requires an entity to disclose 'any events or transactions that are material to an understanding of the current interim period'. Therefore, if a first-time adopter did not, in its most recent annual financial statements in accordance with previous GAAP, disclose information material to an understanding of the current interim period, its interim financial report shall disclose that information or include a cross-reference to another published document that includes it.

EFFECTIVE DATE

34 An entity shall apply this IFRS if its first IFRS financial statements are for a period beginning on or after 1 July 2009. Earlier application is permitted.

35 An entity shall apply the amendments in paragraphs D1(n) and D23 for annual periods beginning on or after 1 July 2009. If an entity applies IAS 23 *Borrowing Costs* (as revised in 2007) for an earlier period, those amendments shall be applied for that earlier period.

36 IFRS 3 *Business Combinations* (as revised in 2008) amended paragraphs 19, C1 and C4(f) and (g). If an entity applies IFRS 3 (revised 2008) for an earlier period, the amendments shall also be applied for that earlier period.

37 IAS 27 *Consolidated and Separate Financial Statements* (as amended in 2008) amended paragraphs 13 and B7. If an entity applies IAS 27 (amended 2008) for an earlier period, the amendments shall be applied for that earlier period.

38 *Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate* (Amendments to IFRS 1 and IAS 27), issued in May 2008, added paragraphs 31, D1(g), D14 and D15. An entity shall apply those paragraphs for annual periods beginning on or after 1 July 2009. Earlier application is permitted. If an entity applies the paragraphs for an earlier period, it shall disclose that fact.

39 Paragraph B7 was amended by *Improvements to IFRSs* issued in May 2008. An entity shall apply those amendments for annual periods beginning on or after 1 July 2009. If an entity applies IAS 27 (amended 2008) for an earlier period, the amendments shall be applied for that earlier period.

WITHDRAWAL OF IFRS 1 (ISSUED 2003)

40 This IFRS supersedes IFRS 1 (issued in 2003 and amended at May 2008).

Appendix A

Defined terms

This appendix is an integral part of the IFRS.

date of transition to IFRSs	The beginning of the earliest period for which an entity presents full comparative information under IFRSs in its **first IFRS financial statements**.
deemed cost	An amount used as a surrogate for cost or depreciated cost at a given date. Subsequent depreciation or amortisation assumes that the entity had initially recognised the asset or liability at the given date and that its cost was equal to the deemed cost.
fair value	The amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.
first IFRS financial statements	The first annual financial statements in which an entity adopts **International Financial Reporting Standards (IFRSs)**, by an explicit and unreserved statement of compliance with IFRSs.
first IFRS reporting period	The latest reporting period covered by an entity's **first IFRS financial statements**.
first-time adopter	An entity that presents its **first IFRS financial statements**.
International Financial Reporting Standards (IFRSs)	Standards and Interpretations adopted by the International Accounting Standards Board (IASB). They comprise: (a) International Financial Reporting Standards; (b) International Accounting Standards; and (c) Interpretations developed by the International Financial Reporting Interpretations Committee (IFRIC) or the former Standing Interpretations Committee (SIC).
opening IFRS statement of financial position	An entity's statement of financial position at the **date of transition to IFRSs**.
previous GAAP	The basis of accounting that a **first-time adopter** used immediately before adopting IFRSs.

Appendix B

Exceptions to the retrospective application of other IFRSs

This appendix is an integral part of the IFRS.

B1 An entity shall apply the following exceptions:

(a) derecognition of financial assets and financial liabilities (paragraphs B2 and B3);

(b) hedge accounting (paragraphs B4–B6), and

(c) non-controlling interests (paragraph B7).

Derecognition of financial assets and financial liabilities

B2 Except as permitted by paragraph B3, a first-time adopter shall apply the derecognition requirements in IAS 39 *Financial Instruments: Recognition and Measurement* prospectively for transactions occurring on or after 1 January 2004. In other words, if a first-time adopter derecognised non-derivative financial assets or non-derivative financial liabilities in accordance with its previous GAAP as a result of a transaction that occurred before 1 January 2004, it shall not recognise those assets and liabilities in accordance with IFRSs (unless they qualify for recognition as a result of a later transaction or event).

B3 Notwithstanding paragraph B2, an entity may apply the derecognition requirements in IAS 39 retrospectively from a date of the entity's choosing, provided that the information needed to apply IAS 39 to financial assets and financial liabilities derecognised as a result of past transactions was obtained at the time of initially accounting for those transactions.

Hedge accounting

B4 As required by IAS 39, at the date of transition to IFRSs, an entity shall:

(a) measure all derivatives at fair value; and

(b) eliminate all deferred losses and gains arising on derivatives that were reported in accordance with previous GAAP as if they were assets or liabilities.

B5 An entity shall not reflect in its opening IFRS statement of financial position a hedging relationship of a type that does not qualify for hedge accounting in accordance with IAS 39 (for example, many hedging relationships where the hedging instrument is a cash instrument or written option; where the hedged item is a net position; or where the hedge covers interest risk in a held-to-maturity investment). However, if an entity designated a net position as a hedged item in accordance with previous GAAP, it may designate an individual item within that net position as a hedged item in accordance with IFRSs, provided that it does so no later than the date of transition to IFRSs.

B6 If, before the date of transition to IFRSs, an entity had designated a transaction as a hedge but the hedge does not meet the conditions for hedge accounting in IAS 39 the entity shall apply paragraphs 91 and 101 of IAS 39 to discontinue hedge accounting. Transactions entered into before the date of transition to IFRSs shall not be retrospectively designated as hedges.

Non-controlling interests

B7 A first-time adopter shall apply the following requirements of IAS 27 (as amended in 2008) prospectively from the date of transition to IFRSs:

(a) the requirement in paragraph 28 that total comprehensive income is attributed to the owners of the parent and to the non-controlling interests even if this results in the non-controlling interests having a deficit balance;

(b) the requirements in paragraphs 30 and 31 for accounting for changes in the parent's ownership interest in a subsidiary that do not result in a loss of control; and

(c) the requirements in paragraphs 34–37 for accounting for a loss of control over a subsidiary, and the related requirements of paragraph 8A of IFRS 5 *Non-current Assets Held for Sale and Discontinued Operations*.

However, if a first-time adopter elects to apply IFRS 3 (as revised in 2008) retrospectively to past business combinations, it also shall apply IAS 27 (as amended in 2008) in accordance with paragraph C1 of this IFRS.

Appendix C

Exemptions for business combinations

This appendix is an integral part of the IFRS. An entity shall apply the following requirements to business combinations that the entity recognised before the date of transition to IFRSs.

C1 A first-time adopter may elect not to apply IFRS 3 (as revised in 2008) retrospectively to past business combinations (business combinations that occurred before the date of transition to IFRSs). However, if a first-time adopter restates any business combination to comply with IFRS 3 (as revised in 2008), it shall restate all later business combinations and shall also apply IAS 27 (as amended in 2008) from that same date. For example, if a first-time adopter elects to restate a business combination that occurred on 30 June 20X6, it shall restate all business combinations that occurred between 30 June 20X6 and the date of transition to IFRSs, and it shall also apply IAS 27 (amended 2008) from 30 June 20X6.

C2 An entity need not apply IAS 21 *The Effects of Changes in Foreign Exchange Rates* retrospectively to fair value adjustments and goodwill arising in business combinations that occurred before the date of transition to IFRSs. If the entity does not apply IAS 21 retrospectively to those fair value adjustments and goodwill, it shall treat them as assets and liabilities of the entity rather than as assets and liabilities of the acquiree. Therefore, those goodwill and fair value adjustments either are already expressed in the entity's functional currency or are non-monetary foreign currency items, which are reported using the exchange rate applied in accordance with previous GAAP.

C3 An entity may apply IAS 21 retrospectively to fair value adjustments and goodwill arising in either:

(a) all business combinations that occurred before the date of transition to IFRSs; or

(b) all business combinations that the entity elects to restate to comply with IFRS 3, as permitted by paragraph C1 above.

C4 If a first-time adopter does not apply IFRS 3 retrospectively to a past business combination, this has the following consequences for that business combination:

(a) The first-time adopter shall keep the same classification (as an acquisition by the legal acquirer, a reverse acquisition by the legal acquiree, or a uniting of interests) as in its previous GAAP financial statements.

(b) The first-time adopter shall recognise all its assets and liabilities at the date of transition to IFRSs that were acquired or assumed in a past business combination, other than:

(i) some financial assets and financial liabilities derecognised in accordance with previous GAAP (see paragraph B2); and

(ii) assets, including goodwill, and liabilities that were not recognised in the acquirer's consolidated statement of financial position in accordance with previous GAAP and also would not qualify for recognition in accordance with IFRSs in the separate statement of financial position of the acquiree (see (f)–(i) below).

The first-time adopter shall recognise any resulting change by adjusting retained earnings (or, if appropriate, another category of equity), unless the change results from the recognition of an intangible asset that was previously subsumed within goodwill (see (g)(i) below).

(c) The first-time adopter shall exclude from its opening IFRS statement of financial position any item recognised in accordance with previous GAAP that does not qualify for recognition as an asset or liability under IFRSs. The first-time adopter shall account for the resulting change as follows:

(i) the first-time adopter may have classified a past business combination as an acquisition and recognised as an intangible asset an item that does not qualify for recognition as an asset in accordance with IAS 38 *Intangible Assets*. It shall reclassify that item (and, if any, the related deferred tax and non-controlling interests) as part of goodwill (unless it deducted goodwill directly from equity in accordance with previous GAAP, see (g)(i) and (i) below).

(ii) the first-time adopter shall recognise all other resulting changes in retained earnings [1].

(d) IFRSs require subsequent measurement of some assets and liabilities on a basis that is not based on original cost, such as fair value. The first-time adopter shall measure these assets and liabilities on that basis in its opening IFRS statement of financial position, even if they were acquired or assumed in a past business combination. It shall recognise any resulting change in the carrying amount by adjusting retained earnings (or, if appropriate, another category of equity), rather than goodwill.

[1] Such changes include reclassifications from or to intangible assets if goodwill was not recognised in accordance with previous GAAP as an asset. This arises if, in accordance with previous GAAP, the entity (a) deducted goodwill directly from equity or (b) did not treat the business combination as an acquisition.

(e) Immediately after the business combination, the carrying amount in accordance with previous GAAP of assets acquired and liabilities assumed in that business combination shall be their deemed cost in accordance with IFRSs at that date. If IFRSs require a cost-based measurement of those assets and liabilities at a later date, that deemed cost shall be the basis for cost-based depreciation or amortisation from the date of the business combination.

(f) If an asset acquired, or liability assumed, in a past business combination was not recognised in accordance with previous GAAP, it does not have a deemed cost of zero in the opening IFRS statement of financial position. Instead, the acquirer shall recognise and measure it in its consolidated statement of financial position on the basis that IFRSs would require in the statement of financial position of the acquiree. To illustrate: if the acquirer had not, in accordance with its previous GAAP, capitalised finance leases acquired in a past business combination, it shall capitalise those leases in its consolidated financial statements, as IAS 17 *Leases* would require the acquiree to do in its IFRS statement of financial position. Similarly, if the acquirer had not, in accordance with its previous GAAP, recognised a contingent liability that still exists at the date of transition to IFRSs, the acquirer shall recognise that contingent liability at that date unless IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* would prohibit its recognition in the financial statements of the acquiree. Conversely, if an asset or liability was subsumed in goodwill in accordance with previous GAAP but would have been recognised separately under IFRS 3, that asset or liability remains in goodwill unless IFRSs would require its recognition in the financial statements of the acquiree.

(g) The carrying amount of goodwill in the opening IFRS statement of financial position shall be its carrying amount in accordance with previous GAAP at the date of transition to IFRSs, after the following two adjustments:

(i) If required by (c)(i) above, the first-time adopter shall increase the carrying amount of goodwill when it reclassifies an item that it recognised as an intangible asset in accordance with previous GAAP. Similarly, if (f) above requires the first-time adopter to recognise an intangible asset that was subsumed in recognised goodwill in accordance with previous GAAP, the first-time adopter shall decrease the carrying amount of goodwill accordingly (and, if applicable, adjust deferred tax and non-controlling interests).

(ii) Regardless of whether there is any indication that the goodwill may be impaired, the first-time adopter shall apply IAS 36 in testing the goodwill for impairment at the date of transition to IFRSs and in recognising any resulting impairment loss in retained earnings (or, if so required by IAS 36, in revaluation surplus). The impairment test shall be based on conditions at the date of transition to IFRSs.

(h) No other adjustments shall be made to the carrying amount of goodwill at the date of transition to IFRSs. For example, the first-time adopter shall not restate the carrying amount of goodwill:

(i) to exclude in process research and development acquired in that business combination (unless the related intangible asset would qualify for recognition in accordance with IAS 38 in the statement of financial position of the acquiree);

(ii) to adjust previous amortisation of goodwill;

(iii) to reverse adjustments to goodwill that IFRS 3 would not permit, but were made in accordance with previous GAAP because of adjustments to assets and liabilities between the date of the business combination and the date of transition to IFRSs.

(i) If the first-time adopter recognised goodwill in accordance with previous GAAP as a deduction from equity:

(i) it shall not recognise that goodwill in its opening IFRS statement of financial position. Furthermore, it shall not reclassify that goodwill to profit or loss if it disposes of the subsidiary or if the investment in the subsidiary becomes impaired.

(ii) adjustments resulting from the subsequent resolution of a contingency affecting the purchase consideration shall be recognised in retained earnings.

(j) In accordance with its previous GAAP, the first-time adopter may not have consolidated a subsidiary acquired in a past business combination (for example, because the parent did not regard it as a subsidiary in accordance with previous GAAP or did not prepare consolidated financial statements). The first-time adopter shall adjust the carrying amounts of the subsidiary's assets and liabilities to the amounts that IFRSs would require in the subsidiary's statement of financial position. The deemed cost of goodwill equals the difference at the date of transition to IFRSs between:

(i) the parent's interest in those adjusted carrying amounts; and

(ii) the cost in the parent's separate financial statements of its investment in the subsidiary.

(k) The measurement of non-controlling interests and deferred tax follows from the measurement of other assets and liabilities. Therefore, the above adjustments to recognised assets and liabilities affect non-controlling interests and deferred tax.

C5 The exemption for past business combinations also applies to past acquisitions of investments in associates and of interests in joint ventures. Furthermore, the date selected for paragraph C1 applies equally for all such acquisitions.

Appendix D

Exemptions from other IFRSs

This appendix is an integral part of the IFRS.

D1 An entity may elect to use one or more of the following exemptions:

(a) share-based payment transactions (paragraphs D2 and D3);

(b) insurance contracts (paragraph D4);

(c) fair value or revaluation as deemed cost (paragraphs D5–D8);

(d) leases (paragraph D9);

(e) employee benefits (paragraphs D10 and D11);

(f) cumulative translation differences (paragraphs D12 and D13);

(g) investments in subsidiaries, jointly controlled entities and associates (paragraphs D14 and D15);

(h) assets and liabilities of subsidiaries, associates and joint ventures (paragraphs D16 and D17);

(i) compound financial instruments (paragraph D18);

(j) designation of previously recognised financial instruments (paragraph D19);

(k) fair value measurement of financial assets or financial liabilities at initial recognition (paragraph D20);

(l) decommissioning liabilities included in the cost of property, plant and equipment (paragraph D21);

(m) financial assets or intangible assets accounted for in accordance with IFRIC 12 *Service Concession Arrangements* (paragraph D22); and

(n) borrowing costs (paragraph D23).

An entity shall not apply these exemptions by analogy to other items.

Share-based payment transactions

D2 A first-time adopter is encouraged, but not required, to apply IFRS 2 *Share-based Payment* to equity instruments that were granted on or before 7 November 2002. A first-time adopter is also encouraged, but not required, to apply IFRS 2 to equity instruments that were granted after 7 November 2002 and vested before the later of (a) the date of transition to IFRSs and (b) 1 January 2005. However, if a first-time adopter elects to apply IFRS 2 to such equity instruments, it may do so only if the entity has disclosed publicly the fair value of those equity instruments, determined at the measurement date, as defined in IFRS 2. For all grants of equity instruments to which IFRS 2 has not been applied (eg equity instruments granted on or before 7 November 2002), a first-time adopter shall nevertheless disclose the information required by paragraphs 44 and 45 of IFRS 2. If a first-time adopter modifies the terms or conditions of a grant of equity instruments to which IFRS 2 has not been applied, the entity is not required to apply paragraphs 26–29 of IFRS 2 if the modification occurred before the date of transition to IFRSs.

D3 A first-time adopter is encouraged, but not required, to apply IFRS 2 to liabilities arising from share-based payment transactions that were settled before the date of transition to IFRSs. A first-time adopter is also encouraged, but not required, to apply IFRS 2 to liabilities that were settled before 1 January 2005. For liabilities to which IFRS 2 is applied, a first-time adopter is not required to restate comparative information to the extent that the information relates to a period or date that is earlier than 7 November 2002.

Insurance contracts

D4 A first-time adopter may apply the transitional provisions in IFRS 4 *Insurance Contracts*. IFRS 4 restricts changes in accounting policies for insurance contracts, including changes made by a first-time adopter.

Fair value or revaluation as deemed cost

D5 An entity may elect to measure an item of property, plant and equipment at the date of transition to IFRSs at its fair value and use that fair value as its deemed cost at that date.

D6 A first-time adopter may elect to use a previous GAAP revaluation of an item of property, plant and equipment at, or before, the date of transition to IFRSs as deemed cost at the date of the revaluation, if the revaluation was, at the date of the revaluation, broadly comparable to:

(a) fair value; or

(b) cost or depreciated cost in accordance with IFRSs, adjusted to reflect, for example, changes in a general or specific price index.

D7 The elections in paragraphs D5 and D6 are also available for:

(a) investment property, if an entity elects to use the cost model in IAS 40 *Investment Property* and

(b) intangible assets that meet:

(i) the recognition criteria in IAS 38 (including reliable measurement of original cost); and

(ii) the criteria in IAS 38 for revaluation (including the existence of an active market).

An entity shall not use these elections for other assets or for liabilities.

D8 A first-time adopter may have established a deemed cost in accordance with previous GAAP for some or all of its assets and liabilities by measuring them at their fair value at one particular date because of an event such as a privatisation or initial public offering. It may use such event-driven fair value measurements as deemed cost for IFRSs at the date of that measurement.

Leases

D9 A first-time adopter may apply the transitional provisions in IFRIC 4 *Determining whether an Arrangement contains a Lease*. Therefore, a first-time adopter may determine whether an arrangement existing at the date of transition to IFRSs contains a lease on the basis of facts and circumstances existing at that date.

Employee benefits

D10 In accordance with IAS 19 *Employee Benefits*, an entity may elect to use a 'corridor' approach that leaves some actuarial gains and losses unrecognised. Retrospective application of this approach requires an entity to split the cumulative actuarial gains and losses from the inception of the plan until the date of transition to IFRSs into a recognised portion and an unrecognised portion. However, a first-time adopter may elect to recognise all cumulative actuarial gains and losses at the date of transition to IFRSs, even if it uses the corridor approach for later actuarial gains and losses. If a first-time adopter uses this election, it shall apply it to all plans.

D11 An entity may disclose the amounts required by paragraph 120A(p) of IAS 19 as the amounts are determined for each accounting period prospectively from the date of transition to IFRSs.

Cumulative translation differences

D12 IAS 21 requires an entity:

(a) to recognise some translation differences in other comprehensive income and accumulate these in a separate component of equity; and

(b) on disposal of a foreign operation, to reclassify the cumulative translation difference for that foreign operation (including, if applicable, gains and losses on related hedges) from equity to profit or loss as part of the gain or loss on disposal.

D13 However, a first-time adopter need not comply with these requirements for cumulative translation differences that existed at the date of transition to IFRSs. If a first-time adopter uses this exemption:

(a) the cumulative translation differences for all foreign operations are deemed to be zero at the date of transition to IFRSs; and

(b) the gain or loss on a subsequent disposal of any foreign operation shall exclude translation differences that arose before the date of transition to IFRSs and shall include later translation differences.

Investments in subsidiaries, jointly controlled entities and associates

D14 When an entity prepares separate financial statements, IAS 27 (as amended in 2008) requires it to account for its investments in subsidiaries, jointly controlled entities and associates either:

(a) at cost or

(b) in accordance with IAS 39.

D15 If a first-time adopter measures such an investment at cost in accordance with paragraph D14, it shall measure that investment at one of the following amounts in its separate opening IFRS statement of financial position:

(a) cost determined in accordance with IAS 27 or

(b) deemed cost. The deemed cost of such an investment shall be its:

(i) fair value (determined in accordance with IAS 39) at the entity's date of transition to IFRSs in its separate financial statements; or

(ii) previous GAAP carrying amount at that date.

A first-time adopter may choose either (i) or (ii) above to measure its investment in each subsidiary, jointly controlled entity or associate that it elects to measure using a deemed cost.

Assets and liabilities of subsidiaries, associates and joint ventures

D16 If a subsidiary becomes a first-time adopter later than its parent, the subsidiary shall, in its financial statements, measure its assets and liabilities at either:

(a) the carrying amounts that would be included in the parent's consolidated financial statements, based on the parent's date of transition to IFRSs, if no adjustments were made for consolidation procedures and for the effects of the business combination in which the parent acquired the subsidiary; or

(b) the carrying amounts required by the rest of this IFRS, based on the subsidiary's date of transition to IFRSs. These carrying amounts could differ from those described in (a):

(i) when the exemptions in this IFRS result in measurements that depend on the date of transition to IFRSs.

(ii) when the accounting policies used in the subsidiary's financial statements differ from those in the consolidated financial statements. For example, the subsidiary may use as its accounting policy the cost model in IAS 16 *Property, Plant and Equipment*, whereas the group may use the revaluation model.

A similar election is available to an associate or joint venture that becomes a first-time adopter later than an entity that has significant influence or joint control over it.

D17 However, if an entity becomes a first-time adopter later than its subsidiary (or associate or joint venture) the entity shall, in its consolidated financial statements, measure the assets and liabilities of the subsidiary (or associate or joint venture) at the same carrying amounts as in the financial statements of the subsidiary (or associate or joint venture), after adjusting for consolidation and equity accounting adjustments and for the effects of the business combination in which the entity acquired the subsidiary. Similarly, if a parent becomes a first-time adopter for its separate financial statements earlier or later than for its consolidated financial statements, it shall measure its assets and liabilities at the same amounts in both financial statements, except for consolidation adjustments.

Compound financial instruments

D18 IAS 32 *Financial Instruments: Presentation* requires an entity to split a compound financial instrument at inception into separate liability and equity components. If the liability component is no longer outstanding, retrospective application of IAS 32 involves separating two portions of equity. The first portion is in retained earnings and represents the cumulative interest accreted on the liability component. The other portion represents the original equity component. However, in accordance with this IFRS, a first-time adopter need not separate these two portions if the liability component is no longer outstanding at the date of transition to IFRSs.

Designation of previously recognised financial instruments

D19 IAS 39 permits a financial asset to be designated on initial recognition as available for sale or a financial instrument (provided it meets certain criteria) to be designated as a financial asset or financial liability at fair value through profit or loss. Despite this requirement exceptions apply in the following circumstances:

(a) an entity is permitted to make an available-for-sale designation at the date of transition to IFRSs.

(b) an entity is permitted to designate, at the date of transition to IFRSs, any financial asset or financial liability as at fair value through profit or loss provided the asset or liability meets the criteria in paragraph 9(b)(i), 9(b)(ii) or 11A of IAS 39 at that date.

Fair value measurement of financial assets or financial liabilities at initial recognition

D20 Notwithstanding the requirements of paragraphs 7 and 9, an entity may apply the requirements in the last sentence of IAS 39 paragraph AG76 and in paragraph AG76A, in either of the following ways:

(a) prospectively to transactions entered into after 25 October 2002; or

(b) prospectively to transactions entered into after 1 January 2004.

Decommissioning liabilities included in the cost of property, plant and equipment

D21 IFRIC 1 *Changes in Existing Decommissioning, Restoration and Similar Liabilities* requires specified changes in a decommissioning, restoration or similar liability to be added to or deducted from the cost of the asset to which it relates; the adjusted depreciable amount of the asset is then depreciated prospectively over its remaining useful life. A first-time adopter need not comply with these requirements for changes in such liabilities that occurred before the date of transition to IFRSs. If a first-time adopter uses this exemption, it shall:

(a) measure the liability as at the date of transition to IFRSs in accordance with IAS 37;

(b) to the extent that the liability is within the scope of IFRIC 1, estimate the amount that would have been included in the cost of the related asset when the liability first arose, by discounting the liability to that date using its best estimate of the historical risk-adjusted discount rate(s) that would have applied for that liability over the intervening period; and

(c) calculate the accumulated depreciation on that amount, as at the date of transition to IFRSs, on the basis of the current estimate of the useful life of the asset, using the depreciation policy adopted by the entity in accordance with IFRSs.

Financial assets or intangible assets accounted for in accordance with IFRIC 12

D22 A first-time adopter may apply the transitional provisions in IFRIC 12.

Borrowing costs

D23 A first-time adopter may apply the transitional provisions set out in paragraphs 27 and 28 of IAS 23, as revised in 2007. In those paragraphs references to the effective date shall be interpreted as 1 July 2009 or the date of transition to IFRSs, whichever is later.

Appendix E

Short-term exemptions from IFRSs

This appendix is an integral part of the IFRS.

[Appendix reserved for future possible short-term exemptions].

COMMISSION REGULATION (EC) No 1137/2009

of 25 November 2009

entering a name in the register of protected designations of origin and protected geographical indications (Insalata di Lusia (PGI))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (1), and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 6(2) and in accordance with Article 17(2) of Regulation (EC) No 510/2006, Italy's application to register the name 'Insalata di Lusia' was published in the *Official Journal of the European Union* (2).

(2) As no statement of objection under Article 7 of Regulation (EC) No 510/2006 has been received by the Commission, that name should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name contained in the Annex to this Regulation is hereby entered in the register.

Article 2

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

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

Done at Brussels, 25 November 2009.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

(1) OJ L 93, 31.3.2006, p. 12.
(2) OJ C 89, 18.4.2009, p. 13.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.6. Fruit, vegetables and cereals, fresh or processed

ITALY

Insalata di Lusia (PGI)

COMMISSION REGULATION (EC) No 1138/2009

of 25 November 2009

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Bitto (PDO))

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], and in particular the first subparagraph of Article 7(4) thereof,

Whereas:

(1) By virtue of the first subparagraph of Article 9(1) of Regulation (EC) No 510/2006, the Commission has examined Italy's application for the approval of amendments to the specification of the protected designation of origin 'Bitto' registered under Commission Regulation (EC) No 1107/96 [2], as amended by Regulation (EC) No 1263/96 [3].

(2) Since the amendments in question are not minor within the meaning of Article 9 of Regulation (EC) No 510/2006, the Commission published the amendment application in the *Official Journal of the European Union* [4], as required by the first subparagraph of Article 6(2) of that Regulation. As no statement of objection within the meaning of Article 7 of Regulation (EC) No 510/2006 has been sent to the Commission, the amendments should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name in the Annex to this Regulation are hereby approved.

Article 2

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

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

Done at Brussels, 25 November 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

(1) OJ L 93, 31.3.2006, p. 12.
(2) OJ L 148, 21.6.1996, p. 1.
(3) OJ L 163, 2.7.1996, p. 19.
(4) OJ C 87, 16.4.2009, p. 20.

ANNEX

Agricultural products intended for human consumption listed in Annex I to the Treaty:

Class 1.3. Cheeses

ITALY

Bitto (PDO)

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 May 2009

on measures C 20/07 (ex NN 31/07) implemented by Spain in favour of Pickman

(notified under document C(2009) 3541)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2009/849/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

1. **PROCEDURE**

(1) Following allegations made by a complainant by letter registered on 5 April 2006 that the Spanish authorities had granted State aid to *Pickman — La Cartuja de Sevilla SA* (hereinafter 'Pickman' or 'the company'), the European Commission (hereinafter 'the Commission') requested information from the Spanish authorities by letters dated 12 April 2006 and 12 February 2007, to which the Spanish authorities replied by letters registered on 7 June 2006, 30 August 2006 and 18 April 2007.

(2) On 27 June 2007, the Commission informed the Spanish authorities that it had decided to initiate proceedings and received their comments by letters of 15 September 2007 and 26 November 2007.

(3) Following the publication in the *Official Journal of the European Union* on 10 October 2007 of the Decision to initiate proceedings pursuant to Article 88(2) of the EC Treaty (hereinafter 'the opening Decision'), in which it invited the interested parties to submit their comments, the Commission received comments from the aid beneficiary, by letters registered on 26 November 2007 and 7 April 2008. On 12 February 2008 and 11 April 2008, these comments were forwarded to the Spanish authorities, who replied on 2 April 2008. No observations from third parties were received.

2. **THE BENEFICIARY**

(4) Pickman is a producer of dishes and chinaware established in Seville since 1841. The company has traditionally focused on the production of high-range artisanal products, and their direct marketing to hotels, restaurants and catering companies or through collaborating retail outlets. Recently, it has diversified its activities into the market of corporate gifts and hostelry. Pickman currently employs some 140 workers, and in 2005 its turnover was EUR 4,28 million. It must therefore be regarded as a medium-sized enterprise [2].

[1] OJ C 239, 11.10.2007, p. 12.

[2] Within the meaning of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

(5) Pickman operates in the ceramics market, which as a whole records total sales of approximately EUR 26 billion, estimated to constitute one third of total global production, and employs 222 000 people. More specifically, the segment of that market defined as 'table and ornamental ware' has certain specific characteristics, namely being very labour-intensive, closely linked to the end-consumer and manifesting a great need to compete on design and quality. This market is open to intra-Community trade, where the United Kingdom and Germany are the main producing and consuming countries, while Spain's share is less than 5 %, and there is competition between manufacturers. At national level, there are 11 companies active in Spain, with some 3 000 workers and a total annual sales volume of 60 million items with a total annual value of EUR 84 million [1].

3. MEASURES

(6) The measures forming the subject matter of the opening Decision are the following [2]:

— Measure 2: a waiver of Pickman's Social Security debt of EUR 3,29 million by means of a special agreement concluded on 11 April 2000 which differed from the general agreement for creditors,

— Measures 3 to 6: a series of participation loans totalling EUR 1,87 million and subsidies intended for tangible and intangible investments totalling EUR 2,59 million provided for in a restructuring plan submitted by Pickman to the *Junta de Andalucía* [Regional Government of Andalusia], which approved it on 2 March 2004 as detailed in paragraphs 50, 51 and 52 of the opening Decision,

— Measure 7: a guarantee granted by the *Agencia de Innovación y Desarrollo de Andalucía* [Andalusian Innovation and Development Agency] (hereinafter 'IDEA'), covering EUR 1,3 million, i.e. 80 % of a EUR 1,65 million loan negotiated by Pickman with a bank and concluded by the parties on 28 December 2005. The guarantee has not been enforced.

4. REASONS FOR INITIATING THE PROCEDURE

(7) In the opening Decision, the Commission's interim conclusion was that measures 2 to 7 might constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(8) As the primary objective of the measures appeared to be to assist a company in difficulty, the Commission took the view that the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [3] (hereinafter 'the 2004 Guidelines') applied, since measure 7, in the event that it were to constitute State aid, was adopted after those guidelines entered into force.

(9) In particular, the Commission's preliminary assessment was that:

— the measures cannot be regarded as rescue aid, taking into account both their form and their duration,

— Pickman could have benefited from restructuring aid but, in the absence of a restructuring plan, it would not be possible to assess whether the measure would restore the company's long-term viability.

(10) On the basis of the information available, the Commission decided to initiate the formal investigation procedure in order to allay its doubts both as to the nature of the measures at issue as State aid and their compatibility with the common market.

5. OBSERVATIONS FROM SPAIN

(11) After being informed of the opening Decision, the Spanish authorities sent the following observations on the individual measures at issue.

Measure 2: Waiver of debt to the Tesorería de la Seguridad Social [Social Security Treasury]

(12) As regards measure 2, the Spanish authorities point out that the Social Security Treasury, as a preferential creditor, took priority over ordinary creditors, being ranked immediately after creditors with guarantees and debts owed to the company's staff. Therefore, the advantage of this preferential status is not an absolute priority, but that it enables the creditor to refrain from signing the general creditors' agreement and to opt for a special agreement in order to obtain conditions which, on the basis of the applicable national law, must be more favourable than those provided for in the general creditors' agreement. The Spanish authorities also describe in detail the only two possible alternatives, namely the seizure of specific tangible and intangible assets. This, however, does not take priority over other previously registered mortgages or over workforce payments and would therefore very probably result in a lower reimbursement of Pickman's debts.

[1] Data from the website of the European Ceramics Industry www.cerameunie.eu and Eurostat http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1073,46587259&_dad=portal&_schema=PORTAL&p_product_code=KS-BW-07-001

[2] For the sake of clarity, the numbering used in the opening Decision will also be used in the present Decision.

[3] OJ C 244, 1.10.2004, p. 2.

(13) The Spanish authorities correct the statement made in paragraph 16 of the opening Decision, specifying that, under the general creditors' agreement, there were two alternatives rather than just two cumulative possibilities: to recover either 5 % of claims within 75 days or 20 % within 17 years without interest.

(14) However, taking advantage of its preferential position, the Social Security Treasury refrained from signing the general creditors' agreements and opted for a special agreement which, in its view, gave a better prospect of recovery than the general creditors' agreement. Accordingly, Pickman, which owed EUR 4 million to the Social Security Treasury, agreed to pay 18 % of that amount over eight years, plus interest at an annual rate of 3,25 %. In addition, the special agreement included a guarantee that it would be terminated automatically if any other creditor received more favourable treatment. In fact, after the payment of EUR 595 676,89 for workers' contributions, the amount of 2 012 786,39 was paid by Pickman on 27 May 2004.

(15) Finally, the Spanish authorities maintain that 'the general interest', referred to in paragraph 18 of the opening Decision, forms part of a generic formula used in all agreements concluded in debt recovery proceedings. In fact, the Social Security Treasury sought to recover the maximum possible sum from the debtor, thus acting in line with the market economy investor principle, and denies that it had any other intention than to seek the maximum recovery possible.

Measure 7: Public guarantee for a loan

(16) The Spanish authorities claim that, in the light of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees [1] (hereinafter 'the Guarantee Notice'), the measure does not constitute State aid. Firstly, Pickman cannot be regarded as a firm in difficulty and that was the status required to obtain a loan without the intervention of the State, since its situation improved significantly in 2005, to the point that it achieved positive results in 2006, and it enjoyed the confidence of banks, which in fact gave it a loan on normal market terms, i.e. at the Euribor rate, which at that time was 2,783 points, plus 1,25 points.

(17) Furthermore, the Spanish authorities maintain that no State aid was involved, since the guarantee related solely to one specific financial transaction, namely coverage of 80 % (EUR 1,3 million) of the total sum of a loan with a limited term of 10 years. Moreover, the Spanish authorities point out that Pickman paid the market price for the guarantee, as it paid an annual premium of 1,5 % and also registered a mortgage in favour of IDEA which in itself represented 13 % of the real estate's value of 10 950 000.

Measures 3 to 6: Participation loans and subsidies

(18) The Spanish authorities do not deny that measures 3 to 6 constituted aid, but claim that they did not notify them as they took the view that the measures formed part of an aid scheme to support investment, job creation and SMEs in Andalusia which also provided for the possibility of granting rescue and restructuring aid to SMEs in difficulty, and that had already been approved by the Commission [2] (hereinafter 'the approved scheme').

(19) In this regard, the Spanish authorities maintain that all the conditions laid down under the approved scheme were satisfied. They concede that the provision which fixed the maximum total amount authorised and per beneficiary at EUR 4 million was not respected precisely, since measures 3 to 6 amounted to a total of EUR 4,46 million. However, they take the view that failure to notify the Commission of the small excess of EUR 0,46 million, or even the total amount of the aid, constitutes an administrative irregularity which does not affect the substantive conformity of the measure with the approved scheme, a fact which the Commission should also reasonably acknowledge.

(20) On the other hand, the Spanish authorities submit that measures 3 to 6 should be assessed in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [3] adopted in 1999 (hereinafter 'the 1999 Guidelines'), since these were the only guidelines in force at the time the aid was granted, as being a one-off transaction under a restructuring plan sent to the Spanish authorities in the context of the approved scheme. In fact, contrary to the preliminary assessment conducted by the Commission in the opening Decision, the Spanish authorities take the view that measure 7 should not be regarded as State aid (see recitals 15 and 16 above) since no restructuring aid was granted after the publication of the 2004 Guidelines.

[1] OJ C 71, 11.3.2000, p. 14.

[2] N 507/2000 Regional aid scheme to promote investment and employment linked and SMEs.

[3] OJ C 288, 9.10.1999, p. 2.

(21) Moreover, the Spanish authorities point to the fact that, under both the 1999 and 2004 Guidelines, the aid would be regarded as compatible restructuring aid. In fact, in 2003 Pickman employed 128 people and had a turnover of EUR 2,35 million, thus qualifying as an SME, a type of company for which the Commission does not need to approve a plan. In any event, the restructuring plan satisfies the Commission's requirements, given that it is for 6 years, is limited to the minimum required to restore Pickman's viability, as set out in the enclosed market study, and provides that Pickman is to make a significant contribution to ensuring its viability. In this regard, the Spanish authorities refer to a Decision in which the Commission approved non-notified restructuring aid in favour of another Spanish SME operating in the same sector as Pickman, *Porcelanas del Principado* [1], on the basis of the substantive compliance with the conditions under the 1999 Guidelines and of the limited distortion of competition resulting from the aid.

(22) Finally, the Spanish authorities point to Pickman's importance to the local industry in Andalusia and Spain, balancing its long historical and cultural tradition against the limited distortion of competition resulting from aid granted to an SME with a very limited market share.

6. OBSERVATIONS FROM THIRD PARTIES

(23) Following publication of the opening Decision in the *Official Journal of the European Union*, the Commission received observations only from the beneficiary, Pickman, on the various measures at issue. These observations are contained in paragraphs 24 to 32.

Measure 2: Waiver of debt to the Social Security Treasury

(24) Pickman contests the Commission's preliminary analysis that measure 2 constitutes State aid and endorses the arguments put forward by the Spanish authorities that the special agreement signed with the Social Security Treasury was preferential and guaranteed the highest and quickest recovery rate possible, which is consistent with the rationale of a private creditor in a market economy. The beneficiary also points out that, since then, all Pickman's outstanding debts to the Social Security Treasury have been recovered and subsequent contributions have been paid on a regular basis.

Measure 7: Public guarantee for a loan

(25) Pickman contends that measure 7 cannot be regarded as State aid since it satisfies all four of the conditions laid down in the Guarantee Notice.

(26) In fact, in December 2005, Pickman was emerging from the crisis, its losses having fallen from more than EUR 2 million in 2004 to approximately EUR 0,15 million in 2005. In addition, it was able to obtain a loan on normal market terms and did in fact receive a loan of EUR 3,3 million from Monte de Piedad y Caja de Ahorros de Huelva y Sevilla when it was still in difficulty, securing the totality of that loan with a mortgage. The public guarantee for the EUR 1,6 million loan did not cover more than 80 % of that loan and lasted for only ten years. Finally, it paid the market price for the loan: Pickman paid an annual premium of 1,5 % and secured the guarantee in full with a mortgage in favour of IDEA on part of its real estate.

(27) In response to a request from the Commission for an estimate of the value of Pickman's real estate in recent years, Pickman sent two independent estimates dated 31 May 2005 (EUR 10 962 598,56) and 4 October 2007 (EUR 12 512 066,27). On 20 May 2004, the real estate was not mortgaged, whereas on 8 May 2007 it was charged with two mortgages, the first in favour of Monte de Piedad y Caja de Ahorros de Huelva y Sevilla and the second in favour of IDEA, in the amounts of EUR 3 300 000 plus interest and costs and of EUR 1 300 000 plus EUR 104 000 in costs respectively. Pickman maintains that the total amount of these two mortgages was still significantly lower than the estimated value of the real estate, and the, very limited, risk borne by IDEA was therefore amply covered, on the basis of the overall market price payable normally. Consequently, Pickman is of the opinion that the four conditions are satisfied and that no State aid is involved.

Measures 3 to 6: Participation loans and subsidies

(28) Pickman makes no reference to the Commission's initial assessment that the measures constitute State aid, but does claim that they are compatible with Article 87(3)(c) of the EC Treaty and covered by the approved scheme, which provides for the possibility of granting rescue and restructuring aid to SMEs in difficulty.

(29) Pickman points out that the measures comply with the requirement laid down under the approved scheme and that they exceed the EUR 4 million ceiling by only EUR 0,46 million, significantly below the EUR 10 million threshold established in point 68 of the 1999 Guidelines for schemes to assist SMEs.

(30) The approved scheme, like the 1999 Guidelines, requires that the aid must be limited to the minimum necessary and that the beneficiary must contribute significantly to the plan to restore its long-term viability, but makes no provision for compensatory measures. The only obligation incumbent on the aid beneficiary is to not increase its production capacity.

[1] Commission Decision 2004/32/EC (OJ L 11, 16.1.2004, p. 1).

(31) Pickman maintains that the restructuring plan approving measures 3 to 6, which was drawn up by an independent assessor, Auditoria y Consulta SA, in October 2003 and approved by the Spanish authorities in March 2004, is fully compliant with those requirements in relation to the 'one-time, last-time' principle, necessity, own contribution, the prohibition on increasing capacity and the prospects of long-term viability in various scenarios.

(32) Finally, Pickman points out that the measures have not caused any undue market distortion and have benefited a medium-sized company, located in an Article 87(3)(a) region, with a very limited market share in terms of the overall volume of trade, which has complied fully with the schedule of the approved restructuring plan and has duly improved its financial situation since 2006, with the result that there has been no need to implement compensatory measures.

(33) As far as the observations made by Pickman are concerned, the Spanish authorities fully endorse the arguments put forward as well as the conclusion that measures 2 and 7 are not to be regarded as State aid, whereas measures 3 to 6 do constitute existing aid which in any event is compatible with the common market.

7. ASSESSMENT

Existence of aid

(34) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, be incompatible with the common market.

(35) As a preliminary point, the Commission will evaluate measure 7 after assessing measure 2, following the order of the observations submitted by the Spanish authorities and the beneficiary. In fact, the classification of measure 7 has implications on the set of rules to be applied to the remaining measures 3 to 6, as anticipated in the opening Decision and established in this Decision.

Measure 2: Waiver of debt to the Social Security Treasury

(36) As far as measure 2 is concerned, the doubts raised by the Commission in the opening Decision concerned whether the Social Security Treasury had acted as a private creditor in its negotiations concerning Pickman's debt.

(37) Firstly, under Spanish law, credits in respect of Social Security contributions enjoy preferential treatment, inasmuch as the creditor has the option of concluding a special agreement rather than participating in the proceedings available for non-preferential creditors [1].

(38) In this regard, the information submitted by the Spanish authorities and confirmed by the copies of the two agreements shows that the special agreement reached by the Social Security Treasury with Pickman was more favourable than the agreement entered into by the company with general creditors. In fact, the latter gave general creditors only the choice between recovering 5 % of their claims within 75 days or 20 % of them within 17 years without interest, whereas the special agreement enabled the State to recover 18 % of its credit within 8 years at an annual interest rate of 3,25 %, and that debt was duly recovered in full in line with the agreed schedule.

(39) The Commission also acknowledges that, in the event of Pickman's (hypothetical) winding-up, the only alternative which would have been open to the Social Security Treasury would have been to attempt to recover its credit by seizing certain specific tangible and intangible assets. However, the Spanish authorities have demonstrated adequately that this would not have been a viable alternative: the seizure of tangible assets was of no real value, given the preferential status of a mortgage previously registered in favour of the public entity RUMASA, and it is reasonable to agree with the Spanish authorities' view that any seizure of the intangible assets would have been precarious, given the necessary dependence under Spanish law on potential buyers for whom those assets, once separated from the name of the company, would be of very limited if any value. As a result, it appears that winding-up would have been less favourable than the scenario actually considered by the Spanish authorities, whose privileged position was explicitly provided for in the special agreement, clause 10 of which specifically stated that the agreement would be null and void if more favourable conditions were subsequently agreed with any other creditors.

[1] See Royal Legislative Decree 1/1994 of 20 June 1994 approving the Amended Text of the *Ley General de la Seguridad Social* [General Social Security Act], which refers to Article 1924(1) of the *Código Civil* [Civil Code] and Article 913(1)(D) of the *Código de Comercio* [Commercial Code].

(40) In the light of the foregoing, the Commission is satisfied that it has been adequately demonstrated that the Social Security Treasury acted in accordance with the principle of a creditor in a market economy, in accordance with the judgment in *Tubacex* [1], who seeks the alternative which will in fact guarantee the recovery of the highest possible amount on the most effective terms. Therefore, the Commission concludes that the measure consisting in the waiver of Pickman's Social Security debts does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Measure 7: Public guarantee for a loan

(41) As far as measure 7 is concerned, the Commission expressed its doubts in the opening Decision that Pickman could have obtained a loan of EUR 1,6 million from the Caja Provincial San Fernando de Sevilla y Jerez bank without a guarantee from IDEA covering EUR 1,3 million.

(42) The Commission has assessed the measure in the context of the Guarantee Notice. In fact, as specified in Section 4, an individual guarantee does not constitute State aid under Article 87(1) of the EC Treaty if (i) the borrower is not in financial difficulty, (ii) the borrower is in principle able to obtain a loan on market terms without State intervention, (iii) the guarantee is linked to a specific financial transaction, is for a fixed amount, does not cover more than 80 % of the loan and is for a limited duration, and (iv) a market price has been paid for the guarantee which reflects various factors, such as the guarantee's duration and the securities given.

(43) On the basis of the Guarantee Notice and the Commission's related practice, condition (iii) has been fulfilled, since the guarantee, which has not been enforced, is linked to a specific loan, limited to a term of 10 years, and covers only 80 % of that loan, i.e. a fixed amount of EUR 1,3 million.

(44) As to condition (i), the Commission takes the view that, at the time when the loan and the guarantee were entered into on 28 December 2005, the restructuring period had not come to an end. However, it is true that, in December 2005 Pickman's financial situation had improved considerably and that the restructuring plan had reached the consolidation stage, profits of EUR 0,7 million having been recorded in 2006. For those reasons, it cannot be ruled out that Pickman was no longer a firm in difficulty when the guarantee was granted. However, as the period of restructuring had not come to an end, it cannot be ruled out that Pickman was not in difficulty. Accordingly, the Commission cannot rule out that the guarantee was not valued on market terms.

(45) As far as condition (ii) is concerned, it must be stated that, in 2004, when the company certainly qualified as a firm in difficulty, Pickman obtained a EUR 3,3 million loan from Monte de Piedad y Caja de Ahorros de Huelva y Sevilla because it was able to secure it in full by mortgaging part of the company's assets.

(46) *A fortiori* it cannot be stated that Pickman would not have been able to obtain a loan without State intervention at the end of 2005. For, unlike in the case of its failure to obtain a loan without State intervention in 2004, the first part of the restructuring process had been completed and the plan had been consolidated on the basis of a healthier financial situation. In addition, Pickman guaranteed its loan in 2004 directly with the bank instead of with IDEA. Furthermore, the fact that Caja Provincial San Fernando de Sevilla y Jerez agreed to give Pickman a loan on market terms and assumed the risk corresponding to 20 % of that loan without any additional guarantee or security over that part of it confirms that finding.

(47) In the light of the foregoing, while the Commission cannot rule out that, on 28 December 2005, Pickman still qualified as a firm in difficulty, it nonetheless takes the view that Pickman could, in principle, have obtained a loan on market terms without State intervention. Accordingly, the amount of the aid does not correspond to the total amount of the loan, but rather to the potential economic advantage derived from that State guarantee.

(48) Finally, as far as condition (iv) is concerned, the Commission acknowledges that the loan had been granted for 10 years at market price, i.e. at the Euribor interest rate, which at that time was 2,783 points plus 1,25 % and was comparable to that found on the Spanish market for loans to healthy firms. With regard to the price paid for the guarantee, as pointed out above, since it cannot be ruled out that Pickman was in difficulty, it should be established whether the premium corresponded to market premiums. In this case, it cannot be ruled out, taking into account the company's situation, that that premium contained an element of aid. However, it should also be pointed out that, in the light of the Commission's practice at that time, the aid element appears to be relatively limited. Firstly, the Commission accepts a guarantee premium of 1,5 % as being free from State aid in accordance with its practice of accepting a premium of 0,5 % in the case of guarantee schemes for healthy companies without a guarantee deposit [2]. In this case, the premium is three times

(1) Judgment of the Court of Justice of the European Communities in Case C-342/96 *Spain* v *Commission (Tubacex)* [1996] ECR I-2459.

(2) See, for example, case N 512/07 (OJ C 12, 17.1.2009, p. 1).

higher. Secondly, the guarantee in this case was secured by a mortgage in favour of the State valued at EUR 10 962 598,56 on 31 May 2005 and at EUR 12 512 066,27 on 4 October 2007.

(49) In the light of the above, the Commission concludes that Pickman could have obtained a loan without State intervention on the strength of the high-quality security and its improved financial situation. Therefore, the aid is not to be calculated on the basis of the total amount of the loan. The aid consists in the difference between the premium paid and the premium a company in a similar situation would have had to pay, taking into account the full financial guarantee obtained. In view of the small value of the EUR 1,6 million loan, the high quality of the guarantee and the fact that a premium of 1,5 % was charged, the Commission takes the view that the aid element will not exceed EUR 100 000, the *de minimis* threshold then applicable ([1]).

Measures 3 to 6: Participation loans and subsidies

(50) As far as measures 3 to 6 are concerned, the Commission expressed doubts in the opening Decision that they could be regarded as not constituting aid on the basis of the market economy investor principle.

(51) Those doubts are confirmed in this Decision: the subsidies were non-reimbursable and the participation loans had to be paid back annually by means of a transfer of 10 % of the non-interesting-bearing profits. It is therefore clear that the Regional Government of Andalusia did not act as a market economy investor would have done, since it did not expect a return on the investment. In addition, these measures, which were granted in the context of a restructuring plan for the period 2004-2009, were approved by the Regional Government of Andalusia and, therefore, attributable to the State or a public authority. The measures gave a single beneficiary, Pickman, a selective advantage in the form of preferential loans and direct subsidies which are not generally available to other companies. Pickman operates in the market segment of dishes, ceramics and chinaware. As these products are traded within the Community, the measures in question threaten to distort competition between Member States. Spain does not question the classification of these measures as State aid.

(52) Consequently, measures 3 to 6 constitute State aid within the meaning of Article 87(1) of the EC Treaty and their possible compatibility must be assessed accordingly. The fact that the aid has already been granted, in breach of the Member States' duty of prior notification, laid down in Article 88(3) of the EC Treaty, means that it constitutes illegal aid.

Compatibility of aid

(53) Article 87(2) and (3) of the EC Treaty provide for exceptions to the general incompatibility described in paragraph 1 of that Article. In particular, under Article 87(3)(c) of the EC Treaty, aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market.

(54) Since measure 7 does not constitute State aid (see recitals 41 to 50 above), contrary to the preliminary assessment in the opening Decision, the Commission is of the opinion that the compatibility of measures 3 to 6 must not be assessed on the basis of the 2004 Guidelines.

(55) In fact, paragraph 104 of the 2004 Guidelines makes clear that 'the Commission will examine the compatibility with the common market of any rescue or restructuring aid granted without its authorisation and therefore in breach of Article 88(3) of the EC Treaty on the basis of these Guidelines if some or all of the aid is granted after their publication in the *Official Journal of the European Union*'.

(56) In this regard, the Commission acknowledges that measures 3 to 6, a one-off operation under a restructuring plan, were granted on the date the plan was approved by the Spanish authorities, 2 March 2004, no part of the aid having been granted after the publication of the 2004 Guidelines. The 1999 Guidelines therefore apply.

(57) Section 3.2.2 of the 1999 Guidelines lays down the conditions for the authorisation of restructuring aid, subject to the special provisions of paragraph 55, which, in the case of SMEs, states that the conditions in question are applied less strictly and, in particular, compensatory measures are usually not required. The Commission has carried out this specific assessment, *inter alia*, in a case which likewise concerned an SME operating in the sector of ceramic dishes and chinaware manufacture, namely the company Porcelanas del Principado ([2]).

([1]) Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30).

([2]) See Commission Decision 2004/32/EC (OJ L 11, 16.1.2004, p. 1).

(58) Firstly, the company must be regarded as a firm in difficulty within the meaning of the Guidelines. As the Spanish authorities acknowledged, until 2004 Pickman was in such a situation, as shown by the fact that it had negative own funds and increasing losses, whilst a mortgage over some of its assets taken out in favour of the company RUMASA had been foreclosed, with the result that it was almost certainly going to go out of business in the short term.

(59) Secondly, the grant of aid is conditional on the implementation of a restructuring plan, the duration of which must be as short as possible and which must restore the company's long-term viability within a reasonable period of time on the basis of realistic assumptions as to future operating conditions. As far as SMEs are concerned, in accordance with the Commission's practice, the provisions contained in paragraph 55 were interpreted as meaning that the Commission itself need not approve such a plan in the case of SME schemes.

(60) As the Spanish authorities noted, Pickman sent to the national authorities a restructuring plan, drawn up by independent experts from the company Auditoría y Consulta SA, which:

— describes the circumstances which led to the company's difficulties: unstable and inadequate ownership and management, demotivation caused by over-dimensioning and an imbalance in the deployment of staff, a high failure rate and high unitary costs compared to competitors, excess stocks, poor utilisation rate, absence of any medium or long-term strategy or sales policy,

— analyses Pickman's economic and financial situation on the basis of the data for the years 2000-2003: negative own funds, seizure of certain assets, high debt ratios and serious liquidity problems, decreasing profitability and sales value, together with the consequent relative increase in the impact of staff costs,

— identifies the competitive position of Pickman in the relevant market, with very low market shares as compared to its competitors, underscoring its weaknesses, as well as its strengths, primarily its outstanding reputation for high quality and the historical and cultural value placed on Spanish traditions.

(61) Furthermore, the restructuring plan was divided into two different stages: the first scheduled the vast majority of intervention measures for 2004, whilst the second stage consisted in the gradual consolidation of Pickman's overall situation in the years 2005-2009 (see Table 2 below). The intervention measures, which were aimed at rectifying the company's structural weaknesses and guaranteeing its long-term viability, related to the establishment of a new management structure, the planning of an organisational chart appropriate to the manufacturing process, the downsizing and redeployment of the workforce, the negotiation of a new collective agreement, the reorganisation of the plants' activities with the objective of optimisation, significant technical and IT modernisation, investment in a commercial department in terms of staff and marketing campaigns, the establishment of new distribution channels, the rebalancing between own funds and registered capital, adjustment of the debt ratio and the acquisition of a minimum level of liquidity.

(62) In the plan, the abovementioned intervention measures envisage different scenarios, reflecting the best-case, worst-case and intermediate scenarios, and the adoption of the intermediate assumptions of 75 % productivity and sales levels reflecting those registered by the company in 2002 appear to form realistic financial forecasts, the key figures of which are set out in Table 1 below and have to date actually been achieved.

Table 1

(EUR million)

	2004	2005	2006	2007	2008	2009
Turnover	2,7	4,4	6,5	7,5	9,3	10,6
Own funds	− 7,1	− 7,9	− 7,2	− 5,8	− 2,9	0,9
Operating costs	− 5,5	− 5,4	− 5,5	− 5,2	− 5,3	− 5,6
Staff costs	− 3,2	− 3,2	− 3,2	− 3,1	− 3,2	− 3,3
Financial assets	0,4	0,01	0,1	0,07	0,1	0,2
Operating result	− 1,9	− 0,2	1,4	2,0	3,5	4,6

(63) Thirdly, any undue distortion of competition must be avoided. Since 'aid to firms in the small to medium-sized category tends to affect trading conditions less than that granted to large firms', '[t]he grant of restructuring aid to SMEs will not usually be linked to compensatory measures' (paragraph 55 of the 1999 Guidelines). In this regard, it should be noted that Pickman is a medium-sized enterprise with 137 employees, sales of EUR 2 million in 2003 and a limited market share at Community level. It should also be pointed out that, in the case of Porcelanas del Principado, a medium-sized enterprise operating in the same sector, the Commission did not impose any compensatory measures. Following the same practice, the limited distortion of competition which might result from the aid to Pickman does not require the adoption of any compensatory measures.

(64) Moreover, in the case of Pickman, it appears that (i) the restructuring plan is not expected to lead to an increase in capacity; (ii) the company's workforce will be reorganised, with downsizing taking place at certain plants and investment being made in the commercial and IT areas; (iii) Pickman is small, meaning that it can avail itself of aid; (iv) the company's potential presence in the market is very limited and was even more limited in 2003, as compared to its competitors (see the market study referred to above); and (v) according to the Spanish regional aid map for the period 2000-2006 ([1]), Andalusia was a NUTS II area and, on the basis of its per capita GDP/PPS of below 60 % by comparison with the Community average, qualified under Article 87(3)(a) of the EC Treaty.

(65) In the light of all of the foregoing, particularly Pickman's commitment not to increase its capacity, the fact that the beneficiary falls within the definition of an SME, has a limited competitive position and is located in an assisted area, the Commission, in line with its standard practice, takes the view that the third condition is satisfied, since the distortion of competition caused by the measures is limited and certainly not to an extent which is contrary to the common interest.

(66) Fourthly, the amount and the intensity of the aid must be limited to the strict minimum necessary to enable restructuring to be undertaken in a manner commensurate with the company's existing financial resources. The aid beneficiary is expected to make a significant contribution to the restructuring plan from its own resources, since this is considered to be a sign that the markets believe that the return to viability can be achieved.

(67) Furthermore, the amount of aid granted by the Spanish authorities to Pickman totalled EUR 4,46 million. A significant part of the aid had to be used to pay short-term creditors ('Inversiones Jara S.A' and 'Faïencerie de Bouskoura'), while the subsidies went to support labour costs and, above all, investments to be made over the years as detailed in Table 2.

Table 2

(EUR million)

	2004	2005	2006	2007	2008	2009
Tangible and intangible investments (*)	1,3	0,06	0,06	0,06	0,06	0,06

(*) Investments take the form of the costs of IT facilities and software (45 %), construction (1,5 %), technical facilities (12 %) and other installations (3 %).

(68) In addition, Pickman made its own contribution to its viability in the sum of EUR 6,24 million, made up of private loans obtained by the new owner on market terms without any form of public support. That sum represents 58,3 % of the total financing, which means that therefore Pickman made a 'significant contribution' fully in line with the provisions of the 1999 Guidelines. In addition, the company's financial assets, as set out in Table 1, clearly show that the plan is not expected to lead to excessive liquidity. Accordingly, the Commission takes the view that the aid is limited to the minimum necessary to restore the company's viability.

([1]) See the Commission Decision in Case N 773/1999, Regional aid map for the period 2000-2006 (OJ C 184, 1.7.2000, p. 22).

(69) In conclusion, the Commission is of the opinion that, in the light of the foregoing, measures 3 to 6 as envisaged in Pickman's restructuring plan satisfy the conditions laid down for SMEs in the 1999 Guidelines and are to be regarded as compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

8. **CONCLUSION**

(70) In the light of the foregoing, the Commission concludes that:

(a) measure 2 does not constitute State aid, since the Social Security Treasury acted in accordance with the diligence expected of a hypothetical market economy creditor;

(b) measures 3 to 6 constitute State aid which is compatible with the common market, in accordance with the 1999 Guidelines;

(c) measure 7 does contain an element of State aid, but this was below the *de minimis* threshold applicable at the time it was granted,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by Spain by means of measure 2, which involves a waiver of Social Security debts under a special agreement separate from the general creditors' agreement, does not constitute State aid within the meaning of Article 87(1) of the EC Treaty, since it is consistent with the principle of a market economy private creditor.

The aid granted by Spain by means of measures 3, 4, 5 and 6, relating to participation loans and subsidies granted by the Regional Government of Andalusia in the context of a restructuring plan submitted at national level only, constitutes illegal State aid which, on the basis of Article 87(3)(c) of the EC Treaty, is compatible with the common market.

The aid granted by Spain by means of measure 7, consisting in a guarantee from the Regional Government of Andalusia of EUR 1,3 million on a EUR 1,6 million loan constitutes *de minimis* aid which falls outside the scope of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 May 2009.

For the Commission

Neelie KROES

Member of the Commission

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