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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 212/96

of 29 January 1996

extending the provisional anti-dumping duty on imports of coumarin orignating in the People's Republic of China

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3283/94 of 22 December 1994 on protection against dumped imports from countries not members of the European Community [1], and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2423/88 of 11 July 1988 on protection against dumped or subsidized imports from countries not members of the European Economic Community [2], and in particular Article 11 thereof,

Having regard to the proposal from the Commission,

Whereas Commission Regulation (EC) No 2352/95 [3] imposed a provisional anti-dumping duty on imports of coumarin orignating in the People's Republic of China;

Whereas examination of the facts has not yet been completed and the Commission has informed the exporters known to be concerned of its intention to propose an extension of the validity of the provisional duty for an additional period of two months;

Whereas the exporters have raised no objections,

HAS ADOPTED THIS REGULATION:

Article 1

The validity of the provisional anti-dumping duty on imports of coumarin originating in the People's Republic of China imposed by Regulation (EC) No 2352/95 is hereby extended for a period of two months and shall expire on 9 April 1996. The duty shall cease to apply if, before this date, the Council adopts definitive measures or the proceeding is terminated pursuant to Article 9 of Regulation (EEC) No 2423/88.

Article 2

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

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

Done at Brussels, 29 January 1996.

For the Council

The President

S. AGNELLI

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[1] OJ No L 349, 31. 12. 1994, p. 1. Regulation as last amended by Regulation (EC) No 1251/95 (OJ No L 122, 2. 6. 1995, p. 1).

[2] OJ No L 209, 2. 8. 1988, p. 1. Regulation as last amended by Regulation (EC) No 522/94 (OJ No L 66, 10. 3. 1994, p. 10).

[3] OJ No L 239, 7. 10. 1995, p. 4.

COUNCIL REGULATION (EC) No 213/96

of 29 January 1996

on the implementation of the European Communities investment partners financial instrument for the countries of Latin America, Asia, the Mediterranean region and South Africa

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

Having regard to the proposal from the Commission (1),

Acting in accordance with the procedure of Article 189c of the Treaty (2),

Whereas the Community is implementing financial, technical and economic cooperation with the developing countries of Latin America, Asia and the Mediterranean region, and with South Africa;

Whereas in order to strengthen such cooperation, it is necessary, *inter alia,* to encourage mutually beneficial investment, particularly by small and medium-sized enterprises (SMEs);

Whereas the Council has reached a consensus on the importance of the role of the private sector in the development process;

Whereas joint ventures and investment by Community undertakings in developing countries can bring certain benefits for these countries, including the transfer of capital, know-how, employment, the transfer of training and expertise, increased export possibilities and the meeting of local needs;

Whereas a three-year pilot scheme was launched in 1988 to promote, via a European Communities Investment Partners (ECIP) financial instrument, the creation of joint ventures between the Community and countries of Latin America, Asia and the Mediterranean region and was continued and extended for a further three year trial period from 1 January 1992 by Regulation (EEC) No 319/92 (3);

Whereas the Court of Auditors delivered an opinion in December 1993 pursuant to Article 9 (3) of Regulation (EEC) No 319/92 on the implementation of ECIP, which concluded that it meets a real need of which the market takes no or only inadequate account, and made specific recommendations for improvements in its management;

Whereas the European Parliament and the Council have considered the results of the independent appraisal forwarded to them in March 1994 in conformity with Article 9 (2) of Regulation (EEC) No 319/92 which concluded that ECIP has met its principal objective of promoting mutually beneficial investment by Community and local operators in EC/local joint ventures in the countries of Asia, Latin America and the Mediterranean, and that the ECIP instrument should be further continued and reinforced;

Whereas the Council adopted on 25 February 1992 Regulation (EEC) No 443/92 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (4) and on 29 June 1992 Regulation (EEC) No 1763/92 concerning financial cooperation in respect of all Mediterranean non-member countries (5);

Whereas the continuation and extension of the instrument is therefore necessary in order that full use may be made of the possibilities of mutually beneficial action in the countries of Latin America, Asia and the Mediterranean region;

Whereas the Council on 19 April 1994 concluded that to encourage Community investments in SMEs in South Africa, advantages equivalent to the ECIP or its follow-up instrument could be granted to South Africa, and that specific financing of this instrument would be provided to that end;

Whereas it is necessary to take account of democracy and human rights issues, and to promote investments which improve working conditions, in particular for women, do not exploit employees and exclude unacceptable practices such as forced labour and slavery;

Whereas the broadest possible participation by undertakings in all Member States should be encouraged;

Whereas all the Member States should be encouraged to participate in the promotion of their investments in the countries of Latin America, Asia, the Mediterranean region and South Africa through financial institutions specializing in development;

(1) OJ No C 287, 15. 10. 1994, p. 7.
(2) Opinion of the European Parliament of 28 October 1994 (OJ No C 323, 21. 11. 1994, p. 497), Council Common Position of 22 May 1995 (OJ No C 160, 26. 6. 1995, p. 8) and Decision of the European Parliament of 28 November 1995 (OJ No C 339, 18. 12. 1995).
(3) OJ No L 35, 12. 2. 1992, p. 1.
(4) OJ No L 52, 27. 2. 1992, p. 1.
(5) OJ No L 181, 1. 7. 1992, p. 5. Regulation as amended by Regulation (EC) No 1735/94 (OJ No L 182, 16. 7. 1994, p. 6).

Whereas a financial reference amount, within the meaning of point 2 of the Statement of 6 March 1995 by the European Parliament, Council and Commission has been inserted in this Regulation for the entire duration of the programme, without the budget authority's powers as defined in the Treaty being thereby affected,

HAS ADOPTED THIS REGULATION:

Article 1

1. As part of its economic cooperation with the countries of Latin America, Asia, the Mediterranean region, and South Africa, the Community shall operate for the period 1995-1999 special cooperation schemes aimed at promoting mutually beneficial investment by Community operators, particularly in the form of joint ventures with local operators in the countries eligible including tripartite operations with other developing countries to promote regional integration.

2. Account being taken of their respective possibilities and needs, SMEs will receive priority in application of the scheme, while large multinational undertakings will be ineligible.

Article 2

The European Communities Investment Partners (ECIP) financial instrument, hereinafter referred to as the 'instrument', shall offer four kinds of financing facility covering:

1. grants for the identification of projects and partners, not exceeding 50 % of the cost of the operation up to a ceiling of ECU 100 000; however, where the operation relates to the preparation of a privatization, or a Build Operate and Transfer (BOT) or a Build Operate and Own (BOO) scheme in infrastructure, utilities or environmental services where an eligible country government or public agency is the beneficiary this facility may be increased to 100 % of the cost of the operation up to a ceiling of ECU 200 000 (Facility No 1);

2. interest-free advances for feasibility studies and other action by operators intending to set up joint ventures or to invest, not exceeding 50 % of the cost up to a ceiling of ECU 250 000, within which pre-feasibility travel costs of ECU 10 000 maximum may be financed by grant (Facility No 2);

3. capital requirements of a joint venture or a local company with licensing agreements, in order to meet investment risks peculiar to developing countries, through participation in the provision of equity or by equity loans not exceeding 20 % of the joint venture's capital up to a ceiling of ECU 1 million (Facility No 3);

4. interest-free advances and grants not exceeding 50 % of the cost up to a ceiling of ECU 250 000, for training, technical assistance or management expertise of an existing joint venture, or joint venture about to be set up, or of a local company with a licensing agreement (Facility No 4).

The aggregate amount made available under Facilities Nos 2, 3 and 4 may not exceed ECU 1 million per project.

Article 3

1. The financial institutions shall be selected by the Commission, further to the opinion of the Committee, defined in Article 9, from among development banks, commercial banks, merchant banks and investment promotion bodies.

2. Financial institutions which have submitted proposals in accordance with the criteria defined in Article 6 will receive fees in accordance with arrangements to be determined by the Commission.

Article 4

1. With regard to Facility No 1 set out in Article 2, financing applications may be submitted either directly to the Commission by the institution, association or body carrying out the identification of partners and projects, or through a financial institution.

2. In the case of Facilities Nos 2, 3 and 4 set out in Article 2, applications may be submitted by the undertakings concerned solely through the financial institutions defined in Article 3. Community funds for the participating undertakings shall be applied for and provided exclusively through the financial institution.

3. With regard to Facility No 2 set out in Article 2, the financial institutions and undertakings shall be required to share the project risk; where the action is successful, however, the Community contribution may be more than 50 % and up to 100 % of the cost for SMEs.

4. In the case of Facility No 3 set out in Article 2, the financial institutions shall provide financing at least equal to that provided by the Community. This facility shall be reserved, where the Community is concerned, for SMEs; exceptions will be possible in cases for which specific justification is provided having particular significance for development policy, for instance technology transfer.

5. In the case of Facility No 4 set out in Article 2 interest-free advance finance will be provided as regards the costs of training, technical assistance and management expertise, and, for SMEs only, the costs of training, technical assistance and management expertise provided by external sources or by the European partner to the joint venture shall be eligible for grant finance under this facility.

6. Framework agreements signed by the Commission with the financial institutions shall explicitly stipulate that the Court of Auditors has the power, in accordance with Article 188c of the Treaty, to audit the operations of these institutions with respect to financial projects funded by the general budget of the European Communities.

Article 5

1. Contributions awarded under the instrument shall, depending upon the circumstances and pursuant to Article 2, be either grants or interest-free advances, or participations in the provision of equity or equity loans.

Participation in the equity or equity loans shall in principle be acquired or provided by the financial institutions on their own behalf. However, in exceptional cases,

— where the financial institution cannot intervene in its own name for regulatory or legal reasons or because of its statutes; or

— where the Community's direct financial participation is necessary to reinforce in a decisive manner the capacity of the promoters to raise other financial resources which could not normally be moblilized due to the particular political situation or to specific legal obstacles in the host country of the joint venture;

the Commission may authorize a financial institution to hold a direct participation on the Community's behalf.

Only projects with a particular development or environmental impact or significance for technology transfer shall qualify for such direct participation.

The commercial, industrial, investment and financial decisions of the joint undertakings set up under the instrument shall be taken exclusively by those undertakings.

2. For Facility No 2 set out in Article 2, interest-free advances shall be reimbursed according to the arrangements to be determined by the Commission, on the understanding that the final repayment periods are to be as short as possible and shall in no instance exceed five years. Such advances shall not be refundable where the actions have produced negative results.

3. For Facility No 3 set out in Article 2, participations by virtue of this instrument shall be disposed of at the earliest opportunity once the project becomes viable, having to the Community's rules of sound financial management.

4. Equity loan and advance repayments, the realization of participations, and interest and dividend payments will be accounted for by recovery orders and paid back to the general budget of the European Communities. This will be done on an annual basis after the annual audit provided for in Article 10 (3), in reconciliation with the budget accounts as at 31 December of that year and the amounts involved will be reported in the progress report for that year provided for at Article 10 (1). All assets held by the financial institution are to be paid back to the Community if the institution ceases to be associated with the instrument or if the instrument ceases to operate.

Article 6

1. Projects shall be selected by the financial institution or, in the case of Facility No 1 set out in Article 2, by the Commission and the financial institution, in the light of the appropriations adopted by the budget authority and on the basis of the following criteria:

(a) the anticipated soundness of the investment and the quality and good repute of the promoters;

(b) the contribution to development, in particular in terms of:

— impact on the local economy;

— creation of added value;

— promotion of local entrepreneurs;

— transfer of technology and know-how and development of the techniques used;

— acquisition of training and expertise by managers and local staff;

— implications for women and improvement of their working conditions;

— creation of local jobs with conditions of work which do not involve exploiting employees;

— impact on the balance of trade and balance of payments;

— impact on the environment;

— manufacture and supply to the local market of products hitherto difficult to obtain or substandard;

— use of local raw materials and resources.

2. The final financing decision shall be taken by the Commission, which shall verify compliance with the criteria set out in paragraph 1 and compatibility with Community policies, in particular development cooperation policy, and the mutual benefit to the Community and the developing country concerned.

Article 7

Countries eligible shall be the developing countries of Latin America, Asia and the Mediterranean regions which benefit from Community development cooperation measures or which have concluded regional or bilateral cooperation or association agreements with the Community, and South Africa.

Article 8

The financial reference amount for the implementation of this programme, for the period 1995-1999, is ECU 250 million.

Annual appropriations shall be authorized by the budgetary authority within the limit of the financial perspective.

Article 9

1. The Commission shall implement the instrument in accordance with this Regulation.

2. In carrying out this task, the Commission shall be assisted, as appropriate, by the Committee set up under Article 15 of Regulation (EEC) No 443/92 or by the Committee referred to in Article 7 (1) of Regulation (EEC) No 1763/92, and these Committees shall also deal, for the purposes of ECIP, with matters related to South Africa, in the absence of a specific Committee.

3. The following shall be adopted under the procedure laid down in paragraph 4:

— the choice of financial institutions in the light of their experience and aptitude for making a preliminary selection of the projects in accordance with the criteria set out in Article 6;

— revision of the amounts and/or financing conditions under each facility and the aggregate amount available under Facilities 2, 3 and 4 as laid down in Article 2 in a way consistent with other provisions of this Regulation.

4. With regard to the matters mentioned in paragraph 3, the representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions, which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States, within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the Committee.

It the measures envisaged are not in accordance with the opinion of the Committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of one month from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

5. Furthermore, the Committee may examine, at the Commission's initiative or at the request of one of its members, any question connected with the implementation of this Regulation; in particular:

— information on the projects funded over the previous year;

— the terms of reference of the independent appraisal provided for in Article 10;

— any other information which the Commission wants to submit to it.

6. In order to ensure consistency of cooperation and to improve complementarity between operations, the Commission and the European Investment Bank shall exchange any relevant information on financing that they envisage granting.

7. The Commission will ensure that due account is taken of relevant information concerning the implementation of ECIP as well as comparable instruments of the Community such as JOPP, Alinvest, Medinvest, and others as appropriate, in order to establish a coordinated approach to promote private investment in developing countries.

Article 10

1. The Commission shall send to the European Parliament and to the Council, by 30 April each year at the latest, a progress report showing the projects selected and their economic impact, notably total investment, the number of joint ventures and jobs created as well as the appropriations granted and the repayments to the general budget of the European Communities and including annual statistics for the previous year.

2. The Commission shall forward the results of an independent appraisal of the instrument to the European Parliament and the Council before the end of 1998.

This report must permit an assessment of the implementation of the principles of good financial management, economy and a cost/benefit analysis of the instrument.

3. Without prejudice to the responsibilities of the Commission and the Court of Auditors as laid down in the Financial Regulation applicable to the General Budget of the European Communities, the Commission shall obtain each year an independent financial audit of the financial institutions and of the Facility 1 beneficiary organizations, as regards the ECIP funds that they have received. The Commission shall make specific provision in the framework and specific financing agreements for anti-fraud measures, in particular a mechanism for the recovery of advances which are not fully justified after such audit.

4. Use of external technical assistance may be made, as appropriate, on condition that the technical assistance financed is directly linked to the special nature of the ECIP instrument and is of direct benefit to the Alamed countries and South Africa. The costs of such technical assistance shall be limited to 5 % of the budgetary credits available, not including the fees paid to the financial institutions which shall be imputed to the credits allocated to each individual action financed.

Article 11

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities* and shall expire on 31 December 1999.

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

Done at Brussels, 29 January 1996.

For the Council

The President

S. AGNELLI

COMMISSION REGULATION (EC) No 214/96

of 2 February 1996

concerning the classification of certain goods in the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], as last amended by Commission Regulation (EC) No 3009/95 [2], and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [3], as amended by Commission Regulation (EEC) No 2454/93 [4], for a period of three months by the holder;

Whereas the tariff and statistical nomenclature section of the Customs Code Committee has not delivered an opinion with the time limit set by its chairman as regards product No 1 in the annexed table;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the tariff and statistical nomenclature section of the Customs Code Committee as regards product No 2 in the annexed table,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 2 February 1996.

For the Commission

Mario MONTI

Member of the Commission

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[1] OJ No L 256, 7. 9. 1987, p. 1.
[2] OJ No L 319, 31. 12. 1995, p. 1.
[3] OJ No L 302, 19. 10. 1992, p. 1.
[4] OJ No L 253, 11. 10. 1993, p. 1.

ANNEX

Description	Classification CN code	Grounds
(1)	(2)	(3)
1. Vanilla pods, smelling slightly of vanilla and alcohol, cut into pieces, with a mean vanillin content of 0,14 %, a sugar content of 0,6 % by weight and an alcoholic strength by mass of 8,6 % mas. The product, from which vanillin has been extracted by means of alcohol, is used in the food-processing industry, e.g. in the manufacture of ice cream.	0905 00 00	Classification is determined by General Rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN code 0905 00 00.
2. Preparation in the form of effervescent tablets put up for retail sale with information on dosage and composition, intended for use as a tonic. Each 2 gr tablet contains: — arginine aspartate: 1 gr — excipients (citric acid, sodium bicarbonate, sodium carbonate, sodium dihydrogen citrate, saccharin sodium, orange yellow (E 110), colloidal silica, flavouring): 1 gr	2106 90 92	Classification is determined by General Rules 1 and 6 for the interpretation of the combined nomenclature, Note 1 (a) to Chapter 30 and the wording of CN codes 2106, 2106 90 and 2106 90 92. The product is a food supplement (see also Harmonized System Explanatory Notes, heading 21 06).

COMMISSION REGULATION (EC) No 215/96

of 2 February 1996

concerning the classification of certain goods in the combined nomenclature

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff [1], as last amended by Commission Regulation (EC) No 3009/95 [2], and in particular Article 9 thereof,

Whereas in order to ensure uniform application of the combined nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;

Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the combined nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;

Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified under the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;

Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the combined nomenclature and which do not conform to the rights established by this Regulation, can continue to be invoked, under the provisions in Article 12 (6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [3], as amended by Commission Regulation (EEC) No 2454/93 [4], for a period of three months by the holder;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Tariff and Statistical Nomenclature Section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 2 February 1996.

For the Commission

Mario MONTI

Member of the Commission

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[1] OJ No L 256, 7. 9. 1987, p. 1.
[2] OJ No L 319, 30. 12. 1995, p. 1.
[3] OJ No L 302, 19. 10. 1992, p. 1.
[4] OJ No L 253, 11. 10. 1993, p. 1.

ANNEX

Description of goods	Classification (CN code)	Reason
(1)	(2)	(3)
1. Set of articles for a ball game based on basketball, comprising : — a metal ring less than 45 cm in diameter, to which is attached a bottomless net, — a wooden board designed to be suspended from a door or a wall, to which the metal ring is to be attached.	9503 90 55	Classification is determined by the provisions of General Rules 1, 3 b) and 6 for the interpretation of the combined nomenclature and by the wording to CN codes 9503, 9503 90 and 9503 90 55. These articles do not constitute sports equipment within the meaning of heading No 9506, notably because of their dimensions and design.
2. Set of articles for a ball game based on basketball, comprising : — a plastic case containing the items described below and serving as a base for the apparatus, which can be weighted down with water or sand, — a metal ring less than 45 cm in diameter, to which is attached a bottomless net, — a wooden board with a multicoloured painted motif, to be attached to the stand, and to which the metal ring is to be attached, — a stand formed by plastic tubes, the height of which may be adjusted from 1 m to 1,65 m.	9503 90 55	Classification is determined by the provisions of General Rules 1, 3 b) and 6 for the interpretation of the combined nomenclature and by the wording to CN codes 9503, 9503 90 and 9503 90 55. These articles do not constitute sports equipment within the meaning of heading No 9506, notably because of their dimensions and design.
3. Replica of a Mercedes AMG car, year of construction 1994, mass-produced, scale 1:43, attached to a plate. Bodywork in die cast zinc, bearing with various markings. Some of the components (e.g. headlights, tail lights, window frames) are stencilled. All other components are made of plastics (e.g. spoiler, windscreen wipers, door handles, wing mirrors, steering wheel).	9503 90 51	Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the combined nomenclature and by the wording of CN codes 9503, 9503 90 and 9503 90 51. The product is presented as a scale model for recreational purposes.

COMMISSION REGULATION (EC) No 216/96

of 5 February 1996

laying down the rules of procedure of the Boards of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 40/94 of 20 December 1994 on the Community trade mark (1), as amended by Regulation (EC) No 3288/94 (2), and in particular Article 140 (3) thereof,

Whereas Regulation (EC) No 40/94 (hereinafter 'the Regulation') creates a new trade mark system allowing a trade mark having effect throughout the Community to be obtained on the basis of an application to the Office for Harmonizaiton in the Internal Market (Trade Marks and Designs) ('the Office');

Whereas for this purpose the Regulation contains in particular the necessary provisions for a procedure leading to the registration of a Community trade marks, as well as for the administration of Community trade marks, for appeals against decisions of the Office and for proceedings in relation to revocation or invalidity of a Community trade mark;

Whereas under Article 130 of the Regulation, the Boards of Appeal are to be responsible for deciding on appeals from decisions of the examiners, the Opposition Divisions, the Administration of Trade Marks and Legal Division and the Cancellation Divisions;

Whereas Title VII of the Regulation contains basic principles regarding appeals against decisions of examiners, the Opposition Divisions, the Administration of Trade Marks and Legal Division and the Cancellation Divisions;

Whereas Title X of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation No 40/94 on the Community Trade Mark (3) contains implementing rules to Title VII of the Regulation;

Whereas this Regulation supplements those other rules, in particular as regards the organization of the Boards and the oral procedure;

Whereas before the beginning of each working year a scheme should be established for the distribution of business between the Boards of Appeal by an Authority established for that purpose; whereas to this end the said Authority should apply objective criteria such as classes of products and services or initial letters of the names of applicants;

Whereas to facilitate the handling and disposal of appeals, a rapporteur should be designated for each case, who should be responsible *inter alia* for preparing communications with the parties and drafting decisions;

Whereas the parties to proceedings before the Boards of Appeal may not be in a position or may not be willing to bring questions of general relevance to a pending case to the attention of the Boards of Appeal; whereas, therefore, the Boards of Appeal should have the power, of their own motion or pursuant to a request by the President, to invite the President of the Office, to submit comments on questions of general interest in relation to a case pending before the Boards of Appeal;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 141 of the Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Allocation of duties and Authority competent to allocate

1. Before the beginning of each working year, duties shall be allocated to the Boards of Appeal according to objective criteria, and the members of each of the Boards and their alternates shall be designated. Any member of a Board of Appeal may be designated for several Boards of Appeal as a member or an alternate. These measures may, where necessary, be amended during the working year in question.

2. The measures referred to in paragraph 1 shall be taken by an Authority composed of the President of the Office as Chairman, the Vice-President of the Office responsible for the Boards of Appeal, the Chairmen of the Boards of Appeal and three other members of the Boards of Appeal elected by the full membership of those Boards, except the Chairmen, for the working year in question. The Authority may validly deliberate only if at least five of its members are present, including the President or the Vice-President of the Office and two Chairmen of Boards of Appeal. Decisions shall be taken by majority vote. In the event of a tie, the vote of the Chairman shall be decisive. The Authority may lay down its internal rules of procedure.

(1) OJ No L 11, 14. 1. 1994, p. 1.
(2) OJ No L 349, 31. 12. 1994, p. 83.
(3) OJ No L 303, 15. 12. 1995, p. 1.

3. The Authority provided for in paragraph 2 shall decide on conflicts regarding the allocation of duties among different Boards of Appeal.

4. Until more than three Boards of Appeal have been set up, the Authority referred to in paragraph 2 shall consist of the President of the Office, who shall act as Chairman, the Vice-President of the Office responsible for the Boards of Appeal, the Chairman or Chairmen of the Boards of Appeal which have already been set up and one other member of the Boards of Appeal elected by ther full membership of the Board, except the Chairman or Chairmen, for the working year in question. The Authoritiy may validly deliberate only if at least three of its members are present, including the President or the Vice-President of the Office.

Article 2

Replacement of members

1. Reasons for replacement by alternates shall in particular include leave, sickness, inescapable commitments and the grounds of exclusion set out in Article 132 of the Regulation.

2. Any member asking to be replaced by an alternate shall without delay inform the Chairman of the Board concerned of his unavailability.

Article 3

Exclusion and objection

1. If a Board has knowledge of a possible reason for exclusion or objection under Article 132 (3) of the Regulation which does not originate from a member himself or from any party to the proceedings, the procedure of Article 132 (4) of the Regulation shall be applied.

2. The member concerned shall be invited to present his comments as to whether there is a reason for exclusion or objection.

3. Before a decision is taken on the action to be taken pursuant to Article 132 (4) of the Regulation, there shall be no further proceedings in the case.

Article 4

Rapporteurs

1. The Chairman of each Board shall for each appeal designate a member of his Board, or himself, as rapporteur.

2. The rapporteur shall carry out a preliminary study of the appeal. He may prepare communications to the parties subject to the direction of the Chairman of the Board. Communications shall be signed by the rapporteur on behalf of the Board.

3. The rapporteur shall prepare internal meetings of the Board and the oral proceedings.

4. The rapporteur shall draft decisions.

Article 5

Registries

1. Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars may be designated Senior Registrar.

2. The Authority provided for in Article 1 (2) may entrust to the Registrars the performance of functions which involve no legal or technical difficulties, particularly with regard to representation, the submission of translations, inspection of files and notifications.

3. The Registrar shall submit to the Chairman of the Board concerned a report on the admissibility of each newly-filed appeal.

4. Minutes of oral proceedings and of the taking of evidence shall be drawn up by the Registrar or, if the President of the Office has agreed thereto, such other officer of the Office as the Chairman of the Board may designate.

Article 6

Change in the composition of a Board

1. If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board have given their agreement.

2. The new member shall be bound to the same extent as the other members by an interim decision which has already been taken.

3. If, when a Board has already reached a final decision, a member is unable to act, he shall not be replaced by an alternate. If the Chairman is unable to act, then the member of the Board concerned having the longer service on the Board, or where members have the same length of service, the older member, shall sign the decision on behalf of the Chairman.

Article 7

Joinder of appeal proceedings

1. If several appeals are filed against a decision, those appeals shall be considered in the same proceedings.

2. If appeals are filed against separate decisions and all the appeals are designated to be examined by one Board having the same composition, that Board may deal with those appeals in joined proceedings with the consent of the parties.

Article 8

Remission to the department of first instance

Where the proceedings of the department of first instance whose decision is the subject of an appeal are vitiated by fundamental deficiencies, the Board shall set aside the decision and, unless there are reasons for not doing so, remit the case to that instance or decide the matter itself.

Article 9

Oral proceedings

1. If oral proceedings are to take place, the Board shall ensure that the parties have provided all relevant information and documents before the hearing.

2. The Board may, when issuing the summons to attend oral proceedings, add a communication drawing attention to matters which seem to be of special significance, or to the fact that certain questions appear no longer to be contentious, or containing other observations that may help to concentrate on essentials during the oral proceedings.

3. The Board shall ensure that the case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary.

Article 10

Communications to the parties

If a Board deems it expedient to communicate with the parties regarding a possible appraisal of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.

Article 11

Comments on questions of general interest

The Board may, on its own initiative or at the written, reasoned request of the President of the Office, invite him to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.

Article 12

Deliberations preceding decisions

The rapporteur shall submit to the other members of the Board a draft of the decision to be taken and shall set a reasonable time-limit within which to oppose it or to ask for changes. The Board shall meet to deliberate on the decision to be taken if it appears that the members of a Board are not all of the same opinion. Only members of the Board shall participate in the deliberations; the Chairman of the Board concerned may, however, authorize other officers such as registrars or interpreters to attend. Deliberations shall be secret.

Article 13

Order of voting

1. During the deliberations between members of a Board, the opinion of the rapporteur shall be heard first, and, if the rapporteur is not the Chairman, the Chairman last.

2. If voting is necessary, votes shall be taken in the same sequence, save that if the Chairman is also the rapporteur, be shall vote last. Abstentions shall not be permitted.

Article 14

Entry into force

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

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

Done at Brussels, 5 February 1996.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION REGULATION (EC) No 217/96

of 5 February 1996

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 2933/95 [2], and in particular Article 4 (1) thereof,

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 6 February 1996.

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

Done at Brussels, 5 February 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 337, 24. 12. 1994, p. 66.
[2] OJ No L 307, 20. 12. 1995, p. 21.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 5 February 1996 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 15	052	59,6
	060	80,2
	064	59,6
	066	41,7
	068	62,3
	204	60,7
	208	44,0
	212	97,2
	624	93,6
	999	66,5
0707 00 10	052	111,6
	053	216,5
	060	61,0
	066	53,8
	068	118,4
	204	144,3
	624	191,2
	999	128,1
0709 10 10	220	420,8
	999	420,8
0709 90 73	052	139,0
	204	77,5
	412	54,2
	624	241,6
	999	128,1
0805 10 01, 0805 10 05, 0805 10 09	052	48,3
	204	35,4
	208	68,2
	212	43,0
	220	54,3
	388	40,5
	400	43,7
	436	41,6
	448	29,2
	600	55,0
	624	54,1
	999	46,7
0805 20 11	052	49,4
	204	70,9
	624	72,4
	999	64,2
0805 20 13, 0805 20 15, 0805 20 17, 0805 20 19	052	61,6
	204	68,8
	464	215,0
	600	89,8
	624	67,5
	999	100,5
0805 30 20	052	70,7
	204	45,8
	388	67,5
	400	56,6
	512	54,8
	520	66,5
	524	100,8
	528	87,1
	600	78,9
	624	48,6
	999	67,7
0808 10 51, 0808 10 53, 0808 10 59	052	64,0
	064	78,6
	388	39,2
	400	82,6
	404	64,1
	508	68,4
	512	51,2
	524	57,4
	528	48,0
	624	86,5
	728	107,3
	800	78,0
	804	21,0
	999	65,1
0808 20 31	052	86,3
	064	72,5
	388	104,7
	400	94,0
	512	89,7
	528	84,1
	624	79,0
	728	115,4
	800	55,8
	804	112,9
	999	89,4

(1) Country nomenclature as fixed by Commission Regulation (EC) No 3079/94 (OJ No L 325, 17. 12. 1994, p. 17). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 218/96

of 5 February 1996

re-establishing the preferential customs duty on imports of multiflorous (spray) carnations originating in Morocco

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco [1], as amended by Regulation (EEC) No 3551/88 [2], and in particular Article 5 (2) (b) thereof,

Whereas Regulation (EEC) No 4088/87 fixes conditions for the application of a preferential customs duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports of fresh cut flowers into the Community;

Whereas Council Regulation (EC) No 1981/94 [3], as last amended by Regulation (EC) No 3057/95 [4], opens and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Jordan, Morocco and Israel;

Whereas Article 2 (3) of Regulation (EEC) No 4088/87 stipulates that the preferential customs duty shall be reintroduced for a given product of a given origin if the prices of the imported product (full rate customs duty not deducted) are, for at least 70 % of the quantities for which prices are available on representative Community import markets, not less than 85 % of the Community producer price for a period, calculated from the actual date of suspension of the actual preferential customs duty,

— of two successive market days, after suspension under Article 2 (2) (a) of that Regulation,

— of three successive market days, after suspension under Article 2 (2) (b) of that Regulation;

Whereas Commission Regulation (EC) No 2524/95 [5] fixed Community producer prices for carnations and roses for application of the arrangements for importation from the countries in question;

Whereas Commission Regulation (EEC) No 700/88 [6], as last amended by Regulation (EEC) No 2917/93 [7], laid down detailed rules for the application of these arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [8], as amended by Regulation (EC) No 150/95 [9], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [10], as amended by Regulation (EC) No 2853/95 [11];

Whereas the preferential customs duty fixed for multiflorous (spray) carnations originating in Morocco by Regulation (EC) No 1981/94 was suspended by Commission Regulation (EC) No 117/96 [12];

Whereas on the basis of price recordings made as specified in Regulations (EEC) No 4088/87 and (EEC) No 700/88 it must be concluded that the requirement for reintroduction of the preferential customs duty laid down in the last indent of Article 2 (3) of Regulation (EEC) No 4088/87 is met for multiflorous (spray) carnations originating in Morocco; whereas the preferential customs duty should be reintroduced;

Whereas it has been found that the suspension of the preferential customs duty referred to in Regulation (EC) No 117/96 was based on incorrect information furnished by a Member State; whereas, therefore, this Regulation should be made retroactive so as to reestablish the preferential duty with effect from 25 January 1996,

[1] OJ No L 382, 31. 12. 1987, p. 22.
[2] OJ No L 311, 17. 11. 1988, p. 1.
[3] OJ No L 199, 2. 8. 1994, p. 1.
[4] OJ No L 326, 30. 12. 1995, p. 3.
[5] OJ No L 258, 28. 10. 1995, p. 42.
[6] OJ No L 72, 18. 3. 1988, p. 16.
[7] OJ No L 264, 23. 10. 1993, p. 33.
[8] OJ No L 387, 31. 12. 1992, p. 1.
[9] OJ No L 22, 31. 1. 1995, p. 1.
[10] OJ No L 108, 1. 5. 1993, p. 96.
[11] OJ No L 299, 12. 12. 1995, p. 1.
[12] OJ No L 19, 25. 1. 1996, p. 36.

HAS ADOPTED THIS REGULATION :

Article 1

For imports of multiflorous (spray) carnations (CN codes ex 0603 10 13 and ex 0603 10 53) originating in Morocco the preferential customs duty set by Regulation (EC) No 1981/94 is reintroduced.

Article 2

This Regulation shall enter into force on 6 February 1996.

It shall apply from 25 January 1996.

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

Done at Brussels, 5 February 1996.

For the Commission

Franz FISCHLER

Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 21 June 1995

on the aid granted by the Italian State to the company Enichem Agricoltura SpA

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/115/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

After giving notice to the parties concerned, in accordance with the aforementioned Articles, to submit their comments,

Whereas :

I

By a letter dated 16 March 1994 the Commission informed the Italian Government of its decision to open the procedure under Article 93 (2) of the Treaty in respect of aid given to Enichem Agricoltura SpA (hereinafter 'Enichem Agricoltura').

The company is mainly active in the production and distribution of fertilizers, as part of the chemical subgroup of the Italian State holding company ENI. It is 100 % owned by ENI, through its financial subholding company SCI and was recapitalized with Lit 198 billion in 1991, Lit 316 billion in 1992 and Lit 756 billion in 1993. The Commission decided to initiate the Article 93 (2) procedure with regard to those capital injections, amounting to Lit 1 270 billion in total. The Commission's decision was published, inviting other Member States and third interested parties to submit their comments on the matter [1].

After a first meeting held on 15 April 1994 between representatives of the Commission and of the company, the Italian Government answered officially with a letter dated 6 June 1994, in which a detailed restructuring plan for the whole group was presented. In the same letter they informed the Commission of further recapitalization and financing measures in addition of these covered by the abovementioned procedure under Article 93 (2) of the Treaty. Those measures consisted of a capital injection of Lit 648 billion, already carried out, and the planned grant of Lit 900 billion to be injected during 1994 as restructuring costs.

By a letter dated 19 August 1994 the Commission informed the Italian Government of its decision to extend the aforementioned Article 93 (2) procedure to cover those measures, amounting in total to Lit 1 548 billion. That decision was the subject of a Commission communication of 31 August 1994 [2].

Therefore the total amount covered by both the initiation and the extension of the procedure of Article 93 (2) is Lit 2 818 billion.

In both decisions the Commission — in view of the important trade between Member States in the chemical sector for agriculture (fertilzer industry) and the financial

[1] OJ No C 151, 2. 6. 1994, p. 3.
[2] OJ No C 243, 31. 8. 1994, p. 4.

situation of the company, and on the basis of the information in its hands — formed the *prima facie* opinion that the measures in question appeared to be State aid within the meaning of Article 92 (21) of the Treaty and Article 61 (1) of the EEA Agreement The Commission could not, on the basis of the information at its disposal, consider those measures to be compatible with the common market under Article 92 (3) or with the functioning of the EEA Agreement. The Commission concluded that in any case such compatibility could only possibly be established pursuant to Article 92 (3) (c) of the Treaty.

The Italian Government responded officially to the extension of the procedure by a letter dated 28 September 1994, providing some additional information on the restructuring plan and the additional financing measures.

In the course of the procedure, comments were received by the Commission from the German Government and from a Norwegian company. The comments were submitted to the Italian authorities by letters dated 27 October and 8 November 1994. Two further requests for information were sent by the Commission to the Italian Government on 26 October 1994 and 6 February 1995, regarding the future disposal of the restructured company.

The Italian Government replied to the Commission's letters by two letters dated 29 November 1994 and 14 February 1995, in the first of which they announced that Enichem Agricoltura was to be put into liquidation, as eventually happened on 22 December 1994. On that occasion the company was renamed 'Agricoltura SpA in liquidazione'.

Further meetings and informal contacts with the company's representatives have occurred in the course of the procedure, allowing the Commission to clarify the nature, the scale and the probable effects of the restructuring. In addition, some more documents were provided informally by the company.

Enichem Agricoltura belongs to the group of companies which are being monitored, until the end of 1996, in their debt-reduction procedure, in accordance with the agreement between the Italian Government and the Commission of July 1993 (Annex 3 to the Commission communication of 29 December 1993 [1]). However, that agreement provides that, as far as operations which are likely to involve State aid are concerned, the case-by-case consideration of such measures under the Community's State aid rules is not prejudiced.

[1] OJ No C 349, 29. 12. 1993, p. 2.

II

In their official answers to the iniation and extension of the Article 93 (2) procedure, the Italian authorities, while submitting details and information about the restructuring plan of Enichem Agricoltura, have expressed the general view that the financing of the company is just an industrial decision, and that the behaviour of the shareholder ENI in this respect has to be considered similar to that of a private investor.

Having examined the poor situation and prospects of the company, ENI decided to invest the funds in question so as to prevent the company's becoming insolvent and to finance the implementation of a restructuring and nationalization scheme. The final purpose of this operation is to minimize the losses that ENI, as Enichem Agricoltura's ultimate 100 % shareholder, would in any case have to bear — even in the absence of the injections — as it would be unlimitedly liable for the company's debts in the event of its becoming insolvent, pursuant to Article 2362 of the Italian Civil Code. It was argued that, in the latter case, the final cost to ENI would be much higher.

Furthermore, the Italian authorities argued that such behaviour was held to be legitimate by the Court of Justice in its judgment in case 303/88, Italy v. Commission [2]. In this Judgment the Court rule that a holding company might, for a limited period, bear the losses of its subsidiary, in order to allow it to cease operating under the best conditions. The Court added that such decision may be based not only on the likelihood of an indirect material gain, but also on other considerations, such as the safegarding of the group's image or the re-orientation of its activity.

III

1. As regards the substance of the restructuring the Italian authorities have provided information about the restructuirng actions undertaken in the years 1991 to 1993, and a restructuring plan commenced in 1994 for completion before 1997.

In summary, the restructuring and rationalization scheme provides for a radical change in the strategical position of the company in the fertilizer market. The main targets of this plan are as follows:

[2] [1991] ECR I-1443.

— concentration of trade mainly on the domestic market and reduction of unprofitable foreign sales (being penalized by high transport costs), in order to re-balance supply and demand;

— concentration of production in the integrated sites of Ferrara (urea and ammonia) and Ravenna (CAN and multinutrient NPK fertilizers) only; those sites are more competitive, as they are located in the area with major consumption in Italy; also, they are connected to each other by an ammonia pipeline;

— final relinquishment of the sector by ENI, to be achieved through the creation of partnerships with other European operators and/or through the disposal of the company.

2. The restructuring scheme was motivated by the acknowledgment of a market situation and perspectives which have compelled all European operators to reduce drastically their productive capacity.

The consumption of fertilizer over the coming years is expected to continue decreasing in the west European market, notwithstanding the more favourable present trend forecast at world level. Competitive pressure from eastern European and non-European countries will remain strong, despite a forecast increase in their domestic demand and in their production costs. These and other factors, such as the revision of the common agricultural policy, the fall in agricultural prices, the opening-up of the market and new GATT rules, as well as new environmental constraints, have obliged the European fertilizer industry to engage in thorough restructuring, in order to reduce excess and inefficient capacity and to re-balance supply and demand.

Accordingly, Enichem Agricoltura's restructuring has mainly entailed the abandonment of a large part of its activity, regarding both intermediate and final products, involving the closure of a number of productive sites and the disposal or liquidation of some subsidiaries and assets (Isagro, Conserv Inc., Terni Industrie chimiche, Sariaf, etc.). As was observed above, the restructured company is now mainly based on two integrated production units, Ferrara and Ravenna, both located in the area of major consumption in Italy. These two units, together with the Barletta site and the central management, administration and commercial services, constitute the final core of the restructured Enichem Agricoltura, and are to be offered for sale according to the restructuring plan. From now on, reference will be made to this part of Enichem Agricoltura as the 'restructured business area'.

The following table shows the company's changing production capacity for the main fertilizers since 1990.

(1 000 tonnes/year)

Site	Plant	Fertilizer intermediate product	Capacity 31. 12. 1989	Capacity 31. 12. 1994	Notes
MARGHERA	Sulphuric acid	intermediate	100	—	closed
	Ammonia	intermediate	170	—	closed
	Urea	intermediate	170	—	closed
	Nitric acid	intermediate	330	—	closed
	Ammonium nitrate	fertilizer	460	—	closed
	NPK	fertilizer	600	—	closed
	SSP	fertilizer	300	—	transferred to Enichem SpA
RAVENNA	Ammonia	intermediate	240	—	closed
	Nitric Acid	intermediate	400	400	to be sold
	Ammonium nitrate	fertilizer	480	500	to be sold
	NPK	fertilizer	400	400	to be sold
FERRARA	Ammonia	intermediate	500	500	to be sold
	Urea	fertilizer	550	500	to be sold
TERNI (Terni Industrie Chimiche SpA)	Ammonia	intermediate	130	130	
	Urea	fertilizer	110	110	Company to be sold
	Nitric acid	intermediate	80	80	
	Calcium nitrate	fertilizer	100	100	
MANFREDONIA	Ammonia	intermediate	350	—	closed
	Urea	fertilizer	550	—	closed

(1 000 tonnes/year)

Site	Plant	Fertilizer intermediate product	Capacity 31. 12. 1989	Capacity 31. 12. 1994	Notes
PRIOLO	Ammonia	intermediate	350	—	closed
	Nitric acid	intermediate	170	—	closed
	NPK	fertilizer	400	—	closed
SAN GIUSEPPE DI CAIRO	Ammonia	intermediate	170	—	closed
	Urea	fertilizer	190	—	closed
GELA	Ammonia	intermediate	100	—	closed
	Sulphuric acid	intermediate	200	200	transferred to Praoil (ENI)
	Phosphoric acid	intermediate	120	120	mothballed (ISAF)
	Sulphuric acid	intermediate	170	170	mothballed (ISAF)
	NPK	fertilizer	350	350	mothballed (ISAF)
CROTONE	Nitric acid	intermediate	100	—	closed
	NPK/SSP	fertilizer	200	—	closed
PORTO, EMPEDOCLE	SSP	fertilizer	100	—	closed
BARLETTA	SSP/NPK (1)	fertilizer	100	100	to be sold
OTHER UNITS (ex Fertilgest)	SSP/NPK	fertilizer	200	—	closed
		Total fertilizers	5 430	2 060	
		Total intermediates	3 680	1 600	

(1) granulating only.
Source: Enichem Agricoltura.

In total, as regards nitrogen fertilizers only, capacity has been reduced by 910 000 tonnes per year for urea, 460 000 tonnes per year for ammonium nitrate, and 1 200 000 tonnes per year for NPK fertiizers.

Closures and sales of capacity, together with internal rationalizations, have resulted in a large reduction of the company's workforce, which has been reduced by 58 % (3 708 employees out of 6 354) over the period 1990 to 1993. Further rationalization and sales of activities will cause further reductions of personnel. The final company's structure, mainly consisting of the Ferrara and Ravenna sites plus the central administration and commercial services, will employ only around 450 people, entailing a global reduction by 93 % from 1990 — a major part of it trough permanent redundancies.

3. According to the plan, restructuring is to be completed within the liquidation and privatization scheme of Enichem Agricoltura. In particular, the following are to be settled :

— Gela : three plants (phosphoric acid, sulphuric acid and NPK fertilizer), belonging to the subsidiary ISAF, are mothballed, as they are not competitive due to high costs of rock phophate. They will be sold off or closed as part of the liquidation scheme ;

— Terni Industrie Chimiche : this subsidiary is up for sale ; disposal will be completed within the liquidation process ;

— Sariaf : this company (turnover of about Lit 14 billion in 1994) is located in Faenza (Ravenna), and is active in the manufacturing of speciality fertilizers, physical devices for agriculture and formulated pesticides. It is up for sale ; disposal will be completed within the liquidation scheme ;

— Ferrara and Ravenna : further investment are planned for the years 1995 — 1997, mainly in the maintenance and automation of the plants, in the costs of meeting environmental and safety standards, in production rationalization, and the development of new products adapted to the standards imposed by the market [. . .] (*).

Those two units will hold the major part of Enichem Agricoltura's final capacity and expected production, as following :

(*) Confidential.

(1 000 tonnes per year)

Site	Plant	Capacity	Production
Ferrara	Urea	500	480
Ravenna	CAN	500	490
	NPK fertilizers :		
	— chemical reaction	400	
	— blends	100	460

Its share is expected to be 35 % of the Italian market (it was 50 % in 1991/92), excluding trading activities. As the production will be largely absorbed by the domestic market, no significant quantities are provided for export within Europe by the end of the restructuring. A considerable reduction in the market share in Europe is therefore anticipated, where Enichem Agricoltura exported around 1 000 tonnes per year in 1991/92.

As is shown by the cost efficiency analysis prepared by [...], Ferrara and Ravenna production plants are ranked at medium/high competitiveness level amongst European fertilizer plants.

In view of the reduced market-share targets, the commercial structure is being rationalized, reduced and concentrated on a smaller number of clients and therefore of stockage and distribution units. Fixed costs are reduced, to the benefit of profitability.

4. As was mentioned in Part I, on 22 December 1994 the company was put into liquidation, with the prospect of being definitively closed and of minimizing the remaining burden on its shareholder ENI.

The liquidation process will mainly be based on the sale by privatization of the restructured business area of Enichem Agricoltura. In addition, the two subsidiaries Terni Industrie Chimiche and Sariaf will be privatized. The remaining assets will be either sold or liquidated and liabilities will be finally paid off.

Until privatization is completed, Enichem Agricoltura's sites have been leased by the liquidator to Enichem SpA, which can better provide for their management. The rent is at commercial conditions and will automatically expire on the entry into force of the sale contract.

The privatization of the restructured business area and of the subsidiaries Terni Industrie Chimiche and Sariaf has been launched with the assistance of independent financial advisors. A call for tenders has been already published in the press. The Italian authorities have communicated to the Commission the date by which privatization should be complete.

5. Financial forecasts for the forthcoming years have been submitted as part of the restructuring scheme ; they take into account on the one hand the future financial performances of the restructured activities and on the other the costs of the liquidation process and the proceeds of privatization.

These financial forecasts have therefore been split into two main financial areas, namely the operating activity of the restructured business area (mainly Ravenna, Ferrara and central services) and the 'liquidation' area.

Regarding the first area, the forecasts are based on a scenario which takes into account general macroeconomic indicators for Italy and some data from the World Bank and other specialized companies for this sector (British Sulphur and Fertecon), concerning costs of raw materials, commodities and final products. The restructured business area is expected to achieve a good level of profitability already in 1995, and estimates for 1994 show that a positive result has already been realized in that year, taking advantage of the improved market situation. The restructured business unit will produce a turnover of about Lit 630 billion [...].

The 'liquidation' area embraces the rest of Enichem Agricoltura which is to be sold or liquidated, resulting in expected losses of Lit 900 billion to be covered by the aid. This amount is calculated after deduction of the proceeds from the sale of the restructured business unit and of the subsidiaries Terni Industrie Chimiche and Sariaf.

6. The restructuring and liquidation of Enichem Agricoltura will ultimately have been financed by its shareholders to the extent of Lit 2 818 billion (around ECU 1 500 million), partly in the form of capital injections already granted over the years 1991-1994 (Lit 1 918 billion), and partly through the progressive financing of the liquidation (Lit 900 billion).

The injections of 1991-1993 have been used to cover the losses related to restructuring operations and closures. As seen above, those operations have involved a major shedding of staff, causing considerable social costs. Also, the safety and environmental costs associated with the closures have been considerable.

The grant to finance the liquidation scheme, estimated on the basis of a liquidation plan, will cover Enichem Agricoltura's liabilities as at 22 December 1994 that will not be offset by the proceeds of the sale of assets and activities and of other credits, and the administrative and financial charges due to the management of the liquidation. Also, it covers costs and losses due to the running-down of the operating activities that are being closed.

The final amount of the liquidation losses to be covered by the aid is the result of a cautious estimate, based on the financial situation of Agricoltura, and of future income and losses due to disposals, the write-down of assets, and the incidental costs of the liquidation itself.

IV

In addition to the submissions of the Italian Government, observations were received from the German Government and from a Norwegian company.

The German Government expressed the opinion that the case must be assessed in the long term, by reference generally to the ENI group and to its chemical subsector headed by Enichem. Germany observed that, since 1980, aid had been granted several times to ENI and to Enichem, while their overall financial performance has been negative, and it expressed its general apprehension that the aid in question was likely to distort trade in the common market.

The Norwegian company underlined certain conditions that, in its opinion, should be explicitly stated and imposed, should the aid to Enichem Agricoltura be approved. First, restructuring and closure should be permanent; this should be ensured by the Commission. Secondly, sales of fertilizer plants being closed must only be made to buyers in third countries which the Commission does not see as potential suppliers to the Community market. Furthermore, the proceeds of such sales should reduce that amount of restructuring aid which may be approved, and not become an operative aid for Enichem Agricoltura.

The Italian Government replied to the observations of the German Government by pointing out that ENI's financial situation has always been positive apart from 1992, and that all financial measures mentioned had been subject to the Commission's evaluation under Community State aid rules.

As to the comments submitted by the Norwegian company, the Italian Government replied by confirming that all productive sites declared as closed in the restructuring plan had already been emptied and reclaimed, and that relevant safety measures had already been set up. Also, they contested the request that plants being closed be sold outside the Community, as this was not a condition envisaged by the Commission in such situations. They finally confirmed that the sale of Enichem Agricoltura's assets would be effected in accordance with the principles highlighted by the Commission decision on the Portuguese privatization law No 11/1990, which was the subject of the communication of 17 September 1993 [1], and that proceeds from such sales would offset part of the losses attributed to the liquidation process.

V

1. *Confirmation of the existence of aids*

In order to ascertain if any aid is included in the measures described above, the Commission will examine the capital passing between the State, as owner, and its public companies in the light of the market economic investor principle as set out in the Commission's communication on public undertakings of 28 July 1993 [2].

According to this principle, largely confirmed by the Court's case-law and by the practice of the Commission (see the abovementioned communication) aid is involved in a transaction if this would not have been undertaken by a private investor operating under normal market economy conditions.

On the basis of the information provided to the Commission and as stated above, the amount invested by the Italian State in the restructuring of Enichem Agricoltura — through its holding company ENI — finally amounts to Lit 2 818 billion.

The different injections, partly already effected, are summarized in the following table:

(in billion lire)

	1991	1992	1993	1994	1995	Total
Funds granted to Enichem Agricoltura	198	316	756	648	900	2 818

The Commission observes that Enichem Agricoltura's shareholder, ENI, is an industrial holding company which is 100 % owned by the Italian Ministry of Treasury. Therefore, any decision of ENI to invest in its subsidiaries

[1] OJ No C 253, 17. 9. 1993, p. 3.
[2] OJ No C 307, 13. 11. 1993, p. 3.

and any subsequent lack of return on such investment produces a corresponding negative effect on the return that ENI should provide to its shareholder. Even if no injection was made into ENI for the purpose of Enichem Agricoltura's restructuring, the restructuring costs have been financed with proceeds which otherwise would have benefited its State shareholder through dividends or increased capital value. In fact, ENI has not provided a sufficient return to the State, as shareholder, in the last decade ; therefore the funds it has made available to its subsidiaries are to be considered State resources. Also, ENI's choice continually to recapitalize Enichem Agricoltura despite its constantly deteriorating performance and accounts could not reasonably be possible without the tacit or explicit approval of the State shareholder.

The whole investment by the State for the restructuring of Enichem Agricoltura will not receive an appropriate return in the future. The injections made over the years 1991-1994, before the company was put into liquidation, have been clearly made with the purpose of preventing the insolvency of the company and of carrying out restructuring measures. The funds were invested simply to cover Enichem Agricoltura's losses, without any prospect of a positive return. They were granted before a full coherent restructuring plan aiming at restoring viabilty had been set up. Given the poor performance of Enichem Agricoltura over the whole period, they have to be regarded as part of a process which has led to the shareholder's decision to liquidate Enichem Agricoltura and to completely divest itself of the business. No private shareholder would have accepted such poor performances over such a period. Also, the positive results expected after Enichem Agricoltura's restructuring are too low, compared to the global injection, and cannot be considered a sufficient return on the State's investment. Thus the Italian authorities' argument that ENI did act as a private investor in this respect can not be accepted, since such investor would have liquidated or thoroughly restructured long before. Also, with regard to the Court's judgment (see Part II), the period over which Enichem Agricoltura has suffered heavy losses is too long (five years), and the amount of these losses too high to justify ENI's behaviour as being similar to that of a private holding company. The whole amount is therefore to be regarded as aid.

The losses attributed to the liquidation process are, by their very nature, aid. They are liabilities guaranteed and finally paid by the shareholder under Article 2362 of the Italian Civil Code, following the company's entry into voluntary liquidation. Such guarantee has been covering Enichem Agricoltura's liabilities over the recent years, while the company has continued to make heavy losses. Under these conditions a private investor would have tried to limit its engagement with its ailing subsidiary by deciding to put it into liquidation from the moment it could not reasonably expect a restoration of its financial viability and when its assets/liabilities position still showed a surplus. As ENI did not adopt such a rational behaviour and only much later decided voluntarily to liquidate Enichem Agricoltura in order to write off losses and debts and thereby to help the restructuring and reorganization, the cost of such operation must be regarded as aid. The final cost of the liquidation, amounting to Lit 900 billion, is after deduction of ENI's income from the sale of Enichem Agricoltura.

In recent years Enichem Agricoltura has been amongst the seven largest operators in the Community in terms of turnover, exporting a significant part of its production. On the Italian fertilizer market, the company accounted for 50 % of the total demand in 1992 and will have a market share of around 35 % at the end of the restructuring. Therefore, and taking into account the difficult situation of the sector, the Commission concludes that the total of Lit 2 818 billion does distort intra-Community trade, and is therefore State aid within the meaning of Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement.

2. *Compatibility of the aid with the common market*

Article 92 (2) and (3) of the Treaty defines certain types of aid that are compatible with the common market.

Given the nature of the operation, Article 92 (2) and (3) (b) is not applicable to the aid in question.

Given the diversity of the group's operations and locations, and as the measures have no regional objective, only the derogation under Article 92 (3) (c), insofar as it concerns aid to facilitate the development of certain economic activities, could be taken into consideration.

As stated above, the measures concerned appear to be aid specifically aiming to permit Enichem Agricoltura to continue in business despite its financial difficulties and to finance a restructuring project to restore the company's viability.

The Commission's approach to aid for restructuring companies in difficulties is outlined in the 'Community guidelines on State aid for rescuing and restructuring firms in difficulties', which it adopted on 27 July 1994 [1].

[1] OJ No C 368, 23. 12. 1994, p. 12.

In those guidelines, the Commission has pointed out that it takes a strict approach in assessing the compatibility of this kind of aid, since it might otherwise end up by transferring without reason social or industrial problems from one Member State to another — in particular, by shifting an unfair share of structural industrial adjustment and attendant social problems onto other producers.

For this reason, before the Commission will approve *ad hoc* aid to a company in difficulty, its restructuring must satisfy the following basic conditions : first of all, it must restore the long-term viability of the company within a reasonable time ; in addition, it must avoid unduly distorting competition ; finally, it must be in proportion with the restructuring costs and benefits. Only if these basic requirements are fulfilled, may the effects of the aid be considered in keeping with the common interest under the Article 92 (3) (c) exemption.

On this basis the documentation and the restructuring plan presented by the Italian authorities have been examined, particularly with regard to such elements as the restoration of the viability of the company, the reduction in productive capacity and the evolution of its competitive position on the market, the proportionality of the aid to the restructuring and the contribution of the beneficiary of the aid to the financing of the restructuring plan, the plans for the company's privatization.

3. *Restoration of viability and privatization*

As a general rule, the *conditio sine qua non* of all restructuring plans is that they must restore long-term viability and health of the company within a reasonable time and on the basis of realistic assumptions as to its future operating conditions.

As explained in Part I, Enichem Agricoltura was put into liquidation in December 1994, and only certain production sites and businesses, after being restructured, are continuing their operations, subject to ultimate privatization.

The restructuring undertaken, and to be completed over the coming years, along with the liquidation process, can be reasonably expected to lead Agricoltura back to long-term viability. Several secondary businesses have been sold or abandoned, whilst the core business is substantially reduced and limited to those plants and activities which can rely on a good level of competitiveness in the Italian and European market. As seen above, estimates on the 1994 results of the restructured activities are positive and realistic financial forecasts for the years from 1995 to 1998 show that such activities will reach a good level of profitability, acceptable to a private investor.

In addition, the Italian authorities have committed themselves to privatizing the restructured business area of Enichem Agricoltura and they have communicated to the Commission the date at which privatization should be completed. The sale procedure has already been launched, which also involves the subsidiaries Terni Industrie Chimiche and Sariaf.

The commitment to a complete and definitive shedding of Enichem Agricoltura's business is in line with the general privatization programme adopted by the Italian Government. This has also been confirmed in the context of the debt-reduction plan submitted by ENI to the Commission, complying with the provisions of the agreement between the Italian Government and the Commission of July 1993. The implementation of this plan is monitored by the Commission on the basis of regular reports and meetings with ENI's representatives and those of the Italian Government.

The privatization decision has been taken into account by the estimate of the net value of restructuring costs to be covered by the aid. The privatization will eventually result in Agricoltura's not continuing to rely on privileged public assistance, since its present direct links with the State will be definitively cut. In those circumstances, it will be up to the new owner to ensure the company's ultimate viability without further State assistance.

4. *Reduction in capacity*

A further condition set on restructuring aid is that measures are to be taken to limit possible adverse effects on competitors. Otherwise, aid would be 'contrary to the common interest' and ineligible for exemption under Article 92 (3) (c). Particularly in sectors presenting a structural overcapacity this is done by irreversibly reducing the capacity of the company.

EFMA's document on the fertilizer industry in the Community, published in November 1994, says that at present the industry finds itself with a structural overcapacity of more than 20 %. Commission data show that 1993, a relatively poor year in terms of profitability but also one where output is unlikely to be surpassed, saw 8,3 million tonnes of nitrogen equivalent fertilizer produced from a capacity of around 11,5 million tonnes of ammonia, a utilization rate of 74 %, in the Community.

Enichem Agricoltura's restructuring provides a considerable effort to reduce its productive capacity across its product range. With respect to 1990, 69 % of the company's ammonia capacity has been shut down, 60 %

of urea, 48 % of ammonium nitrate, 64 % of NPK. Commission's estimates on Enichem and EFMA's figures show that, in respect of 1991 capacity in the Community, closures account for around 15 % of urea, 5 % of ammonium nitrate and 5 % of NPK. SSP production, too, has been sharply reduced by closures and disposals.

Reduction in personnel is very important. [...] the restructured business area will employ less than 10 % of the company's workforce as at 1990.

In the light of the above considerations, in particular taking into account the significant reduction in Enichem Agricoltura's share in the fertilizers market, which is highly competitive and suffering from overcapacity, the Commission can conclude that the restructuring of the company and its final competitive position on the market will not affect competition to an extent contrary to the common interest.

The Commission stresses that the reduction of capacity resulting from the closures, which the Italian authorities have announced as definitive, must be genuine and irreversible. The relevant plants may not be re-started, not even by new owners, since this would result in aided capacity being reintroduced onto the market, causing a sharp distortion of competition.

The Commission also understands that the site in Gela (phosphoric acid and NPK fertilizer) is mothballed because it is not competitive under present conditions. Any plan to re-start these plants, whether by Enichem Agricoltura or by any purchaser, is therefore likely to involve restructuring measures and further aid which may result in distorting competition. Therefore, before their implementation, such plans will have to be notified to the Commission in order to be assessed under the Community's State aid rules.

5. Proportionality of the aid to the restructuring

As is shown by the information submitted by the Italian Government, the injections made by ENI over the years 1991, 1992 and 1993 have been used to cover the losses arising from closures and liquidation of companies and write-down of assets. Also, the coverage of the liquidation losses of Enichem Agricoltura, as shown in the financial plan associated with the liquidation, are by definition directly linked to closure and restructuring measures.

It is noted that the beneficiary will contribute significantly to the financing of the restructuring and liquidation plan, by reinvesting in it the incomes arising from the sale of assets and subsidiaries and also from the same final privatization of Enichem Agricoltura's restructured business area. This contribution is the maximum possible to be given by the beneficiary, as the whole business will be shed. Estimates of these proceeds, which are included by deduction in the final liquidation cost of Lit 900 billion, appear reasonable and likely to be confirmed, if account is also taken of the improved market situation and the good results of the subsidiaries and units concerned in 1994.

The Commission underlines that the proceeds shall be used solely to repay part of the outstanding debt of Enichem Agricoltura in liquidation, thus avoiding the creation of further aid to other financially troubled companies or activities in the group which have not yet been sold.

Under these conditions, the aid granted is believed not to provide Enichem Agricoltura with surplus cash which could be used for aggressive, market-distorting activities not linked to the restructuring process, nor to finance new investment not required by the restructuring.

The Commission also observes that, on the basis of the financial plan of Enichem Agricoltura, the future level of the company's financial burdens will not be unduly reduced. Moreover, the company will not benefit from any tax credit attaching to losses covered by any debt write-off financed by the aid.

The commitment of the Italian authorities to sell off Enichem Agricoltura and its subsidiaries by the date communicated to the Commission, is regarded as a condition for the approval of the restructuring plan. Without such sale and without the relevant income being used by ENI to reduce its liabilities due to the liquidation, the contribution of the beneficiary to the financing of the plan would be smaller if not non-existent. Also, a sale by privatization makes viability — the attainment of normal profitability levels — more certain.

Finally, it is noted that the estimate of the final cost of the liquidation, amounting to Lit 900 billion, is uncertain and may vary in the course of the liquidation process. However, given the importance of the reduction in capacity of Enichem Agricoltura, it is considered that an increase of this cost of up to 15 % of Lit 900 billion will not affect the Commission's positive appraisal of the case.

6. Monitoring and reporting

The implementation of the restructuring and liquidation plan requires monitoring by the Commission. For this purpose, periodic reports will have to be submitted by the Italian authorities, summarizing the progress of the restructuring, liquidation and privatization programme.

The Commission will also have the opportunity to follow the implementation of the plan in the course of regular meetings with the Italian authorities as part of the monitoring exercise under the agreement between the Italian Government and the Commission of July 1993, until its actual cessation,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid in favour of Enichem Agricoltura covered by this Decision — namely the capital injections effected in the years 1991 to 1994 , totalling Lit 1 918 billion, and the expected final cost of Enichem Agricoltura's liquidation of Lit 900 billion — as well as any increase of the latter amonunt by not more than 15 % which might arise during the actual implementation of the restructuring plan, fulfils the conditions laid down by the Community guidelines of 27 July 1994 on State aid for rescuing and restructuring firms in difficulty.

The aid is therefore exempted from the prohibition under Articles 92 (1) of the Treaty and 61 (1) of the EEA Agreement, pursuant to Articles 92 (3) (c) of the Treaty and 61 (3) (c) of the EEA Agreement, as being aid compatible with the common market, provided always that the conditions and requirements set out in paragraphs 2 to 5 and in Article 2 hereof are met.

2. The beneficiary undertakings shall carry out all the measures laid down in the liquidation, restructuring and privatization programme submitted to the Commission.

3. The capacity reduction resulting from the closure of the plants of Marghera, Manfredonia, Priolo, San Giuseppe Cairo, Gela (ammonia plant), Crotone, Porto Empedocle, and ex Fertilgest units shall be genuine and irreversible. To this end the relevant assets shall be scrapped, rendered incapable of production, or converted to some other use. Any sale of capacity to other competitors shall be for use in countries from which the continued operation of the facilities is unlikely to have significant effects on the competitive situation in the Communty. These conditions shall be adhered to until the moment at which the effects of the aid on the competitive situation in the Community will be insignificant.

4. Any plan to re-start mothballed plants, namely the plants for producing phosphoric acid, sulphuric acid and NPK fertilizers, shall be notified to the Commission for prior examination under the Community's State aid rules.

5. Italy shall comply with its commitment to privatize that part of Enichem Agricoltura consisting of the units at Ferrara, Ravenna, Barletta, the central management and the subsidiaries Terni Industrie Chimiche and Sariaf, in accordance with the timetable submitted to the Commission, and according to the financial plan for ENI's debt reduction presented to the Commission pursuant to the monitoring scheme under the agreement between the Italian Government and the Commission of July 1993.

6. The income obtained through the sale of Enichem Agricoltura's subsidiaries and assets mentioned in paragraph 5, even if higher than forecast in the plan submitted to the Commission, shall be used in full to reduce the indebtedness to be covered by the aid approved. They shall not be invested in such a way as to result in further aid to other financially troubled companies or activities in the group which have not yet been sold.

7. The privatizations shall not be financed by further State aid. They shall be open to all interested parties and unconditional.

Article 2

1. Italy shall cooperate fully with the following arrangement for monitoring this Decision:

(a) it shall provide the Commission with half-yearly reports, including in particular:

— the progress of the liquidation, together with the updated financial situation of Enichem Agricoltura in liquidation, and individual information on its assets and subsidiaries being sold or dismissed;

— the situation of each individual production plant which has been closed or mothballed and the measures being carried out until its definitive and irreversible closure;

— the progress of the restucturing and privatization of Enichem Agricoltura and/or of its subsidiaries;

(b) it shall communicate to the Commission in good time the main steps of the privatization process of Enichem Agricoltura and of its subsidiaries.

2. The first report, presenting the financial situation of Enichem Agricoltura in liquidation at 31 December 1994, shall reach the Commission by 31 August 1995. The following reports shall be submitted every six months starting from 31 December 1995 and shall contain figures updated to six months before.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 June 1995.

For the Commission

Karel VAN MIERT

Member of the Commission

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 182/96 of 31 January 1996 on the supply of wheatflour intended for the people of Kyrgyzstan and Tajikistan

(Official Journal of the European Communities No L 25 of 1 February 1996)

On page 37, in Annex I, Point 3, Lot No 4:

for: '... elsewhere other than in a Community port in the Mediterranean Sea ...',

read: '... in the Mediterranean Sea ...'.