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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2410/97

of 4 December 1997

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 2375/96 [2], and in particular Article 4 (1) thereof,

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission
Franz FISCHLER
Member of the Commission

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[1] OJ L 337, 24. 12. 1994, p. 66.
[2] OJ L 325, 14. 12. 1996, p. 5.
[3] OJ L 387, 31. 12. 1992, p. 1.
[4] OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 4 December 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 45	204	56,6
	624	194,0
	999	125,3
0707 00 40	052	93,0
	999	93,0
0709 10 40	220	242,5
	999	242,5
0709 90 79	052	128,3
	999	128,3
0805 10 61, 0805 10 65, 0805 10 69	204	34,3
	388	40,0
	448	27,9
	528	44,3
	999	36,6
0805 20 31	052	64,5
	204	55,2
	999	59,9
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	68,1
	464	139,1
	999	103,6
0805 30 40	052	89,8
	528	47,1
	600	91,5
	999	76,1
0808 10 92, 0808 10 94, 0808 10 98	052	50,9
	060	46,4
	064	43,7
	400	85,6
	404	87,2
	800	107,0
	999	70,1
0808 20 67	052	114,7
	064	83,5
	400	100,3
	999	99,5

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

COMMISSION REGULATION (EC) No 2411/97

of 4 December 1997

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2052/97 [4];

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 287, 21. 10. 1997, p. 14.

ANNEX

to the Commission Regulation of 4 December 1997 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU / tonne)

Product code	Destination (1)	Amount of refund
1001 10 00 9200	—	—
1001 10 00 9400	—	—
1001 90 91 9000	—	—
1001 90 99 9000	03	2,00
	02	0
1002 00 00 9000	03	17,00
	02	0
1003 00 10 9000	—	—
1003 00 90 9000	03	4,00
	02	0
1004 00 00 9200	—	—
1004 00 00 9400	—	—
1005 10 90 9000	—	—
1005 90 00 9000	—	—
1007 00 90 9000	—	—
1008 20 00 9000	—	—
1101 00 11 9000	—	—
1101 00 15 9100	01	15,50
1101 00 15 9130	01	14,50
1101 00 15 9150	01	13,50
1101 00 15 9170	01	12,50
1101 00 15 9180	01	11,75
1101 00 15 9190	—	—
1101 00 90 9000	—	—
1102 10 00 9500	01	36,50
1102 10 00 9700	—	—
1102 10 00 9900	—	—
1103 11 10 9200	—	— (2)
1103 11 10 9400	—	— (2)
1103 11 10 9900	—	—
1103 11 90 9200	01	0 (2)
1103 11 90 9800	—	—

(1) The destinations are identified as follows:
01 All third countries,
02 Other third countries,
03 Switzerland, Liechtenstein.

(2) No refund is granted when this product contains compressed meal.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 2412/97

of 4 December 1997

fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular the third subparagraph of Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2052/97 [4];

Whereas the refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question; whereas the said quantities are laid down in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [5], as last amended by Regulation (EC) No 150/95 [6], 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 [7], as last amended by Regulation (EC) No 1482/96 [8];

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas in follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1 (c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 287, 21. 10. 1997, p. 14.
[5] OJ L 387, 31. 12. 1992, p. 1.
[6] OJ L 22, 31. 1. 1995, p. 1.
[7] OJ L 108, 1. 5. 1993, p. 106.
[8] OJ L 188, 27. 7. 1996, p. 22.

ANNEX

to the Commission Regulation of 4 December 1997 fixing the export refunds on malt

(ECU / tonne)

Product code	Refund
1107 10 19 9000	15,50
1107 10 99 9000	16,30
1107 20 00 9000	18,50

COMMISSION REGULATION (EC) No 2413/97

of 4 December 1997

fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1339/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2052/97 [4], and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and/or the tax for the export of common wheat to all third countries except Ceuta, Melilla and certain ACP States was opened pursuant to Commission Regulation (EC) No 1339/97 [5], as amended by Regulation (EC) No 1884/97 [6];

Whereas Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95; whereas in that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund, as well as to any tenderer whose bid relates to an export tax;

Whereas the application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 28 November to 4 December 1997, pursuant to the invitation to tender issued in amended Regulation (EC) No 1339/97, the maximum refund on exportation of common wheat shall be ECU 11,55 per tonne.

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 287, 21. 10. 1997, p. 14.
[5] OJ L 184, 12. 7. 1997, p. 7.
[6] OJ L 265, 27. 9. 1997, p. 73.

COMMISSION REGULATION (EC) No 2414/97

of 4 December 1997

concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1337/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2052/97 [4], and in particular Article 7 thereof,

Whereas an invitation to tender for the refund and or the tax for the export of barley to all third countries was opened pursuant to Commission Regulation (EC) No 1337/97 [5];

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund or a minimum tax should not be fixed;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 28 November to 4 December 1997 in response to the invitation to tender for the refund or the tax for the export of barley issued in Regulation (EC) No 1337/97.

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 287, 21. 10. 1997, p. 14.
[5] OJ L 184, 12. 7. 1997, p. 1.

COMMISSION REGULATION (EC) No 2415/97

of 4 December 1997

concerning tenders notified in response to the invitation to tender for the export of oats issued in Regulation (EC) No 1773/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 2052/97 [4], and in particular Article 7 thereof,

Whereas an invitation to tender for the refund for the export of oats was opened pursuant to Commission Regulation (EC) No 1773/97 [5], as amended by Regulation (EC) No 2133/97 [6];

Whereas Article 7 of Regulation (EC) No 1501/95, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award;

Whereas on the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed;

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 28 November to 4 December 1997 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1773/97.

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 181, 1. 7. 1992, p. 21.
[2] OJ L 126, 24. 5. 1996, p. 37.
[3] OJ L 147, 30. 6. 1995, p. 7.
[4] OJ L 287, 21. 10. 1997, p. 14.
[5] OJ L 250, 13. 9. 1997, p. 1.
[6] OJ L 296, 30. 10. 1997, p. 29.

COMMISSION REGULATION (EC) No 2416/97

of 4 December 1997

fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], and in particular the second subparagraph of Article 13 (3) thereof,

Whereas Article 13 of Regulation (EC) No 3072/95 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 (4) of Regulation (EC) No 3072/95, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market with limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas Commission Regulation (EEC) No 1361/76 [2] lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas export possibilities exist for a quantity of 1 000 tonnes of rice to certain destinations; whereas the procedure laid down in Article 7 (4) of Commission Regulation (EC) No 1162/95 [3], as last amended by Regulation (EC) No 932/97 [4] should be used; whereas account should be taken of this when the refunds are fixed;

Whereas Article 13 (5) of Regulation (EC) No 3072/95 defines the specific criteria to be taken into account when the export refund on rice and broken rice is being calculated;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

Whereas the refund must be fixed at least once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed as set out in the Annex hereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 of Regulation (EC) No 3072/95 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 December 1997.

[1] OJ L 329, 30. 12. 1995, p. 18.
[2] OJ L 154, 15. 6. 1976, p. 11.
[3] OJ L 117, 24. 5. 1995, p. 2.
[4] OJ L 135, 27. 5. 1997, p. 2.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 4 December 1997 fixing the export refunds on rice and broken rice

(ECU / tonne)

Product code	Destination (1)	Amount of refunds
1006 20 11 9000	01	133,00
1006 20 13 9000	01	133,00
1006 20 15 9000	01	133,00
1006 20 17 9000	—	—
1006 20 92 9000	01	133,00
1006 20 94 9000	01	133,00
1006 20 96 9000	01	133,00
1006 20 98 9000	—	—
1006 30 21 9000	01	133,00
1006 30 23 9000	01	133,00
1006 30 25 9000	01	133,00
1006 30 27 9000	—	—
1006 30 42 9000	01	133,00
1006 30 44 9000	01	133,00
1006 30 46 9000	01	133,00
1006 30 48 9000	—	—
1006 30 61 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 61 9900	01	166,00
	05	166,00
1006 30 63 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 63 9900	01	166,00
	05	166,00
1006 30 65 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 65 9900	01	166,00
	05	166,00
1006 30 67 9100	04	172,00
1006 30 67 9900	—	—
1006 30 92 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 92 9900	01	166,00
	05	166,00
	—	—
1006 30 94 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 94 9900	01	166,00
	05	166,00
	—	—
1006 30 96 9100	01	166,00
	02	172,00
	03	177,00
	05	166,00
1006 30 96 9900	01	166,00
	05	166,00
	—	—
1006 30 98 9100	04	172,00
1006 30 98 9900	—	—
1006 40 00 9000	—	—

(1) The destinations are identified as follows:

01 Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,

02 Zones I, II, III, VI, Ceuta and Melilla,

03 Zones IV, V, VII (c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,

04 Ceuta and Melilla: refund fixed under the procedure laid down in Article 7 (4) of amended Regulation (EC) No 1162/95 in respect of a quantity of 1 000 tonnes,

05 Destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87.

NB: The zones are those defined in the Annex to amended Commission Regulation (EEC) No 2145/92.

COMMISSION REGULATION (EC) No 2417/97

of 4 December 1997

on the issue of system B export licences in the fruit and vegetables sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EEC) No 1035/72 as regards export refunds on fruit and vegetables [1], as last amended by Regulation (EC) No 610/97 [2], and in particular Article 5 (5) thereof,

Whereas Commission Regulation (EC) No 2186/97 [3] fixes the indicative quantities for system B export licences other than those sought in the context of food aid;

Whereas, in the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for tomatoes, walnuts in shell, table grapes and apples for destination groups Z and D have already been or will shortly be exceeded; whereas this overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector;

Whereas, to avoid this situation, applications for system B licences for tomatoes, walnuts in shell, table grapes and apples for destination groups Z and D exported after 4 December 1997 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B licences for tomatoes, walnuts in shell, table grapes and apples for destination groups Z and D submitted pursuant to Article 1 of Regulation (EC) No 2186/97, export declarations for which are accepted after 4 December 1997 and before 20 January 1998, are hereby rejected.

Article 2

This Regulation shall enter into force on 5 December 1997.

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

Done at Brussels, 4 December 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 292, 15. 11. 1996, p. 12.
[2] OJ L 93, 8. 4. 1997, p. 16.
[3] OJ L 299, 4. 11. 1997, p. 10.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 November 1997

concerning the conclusion of the Cooperation Agreement between the European Community and the Lao People's Democratic Republic

(97/810/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 113 and 130y in conjunction with the first sentence of Article 228 (2) and the first subparagraph of Article 228 (3) thereof,

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

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

Whereas, under Article 130u of the Treaty, Community policy in the sphere of development cooperation should foster the sustainable economic and social development of the developing countries, their smooth and gradual integration into the world economy and the alleviation of poverty in these countries;

Whereas the Community should approve, in pursuit of its objectives in the sphere of external relations, the Cooperation Agreement between the European Community and the Lao People's Democratic Republic,

HAS DECIDED AS FOLLOWS:

Article 1

The Cooperation Agreement between the European Community and the Lao People's Democratic Republic is hereby approved on behalf of the Community.

The text of this Agreement is attached to this Decision.

Article 2

The President of the Council shall give the notification provided for in Article 21 of the Agreement [3].

Article 3

The Commission, assisted by representatives of the Member States, shall represent the Community in the Joint Committee provided for in Article 14 of the Agreement.

Article 4

This Decision shall be published in the *Official Journal of the European Communities.*

Done at Brussels, 10 November 1997.

For the Council

The President

J. POOS

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[1] OJ C 109, 8. 4. 1997, p. 8.
[2] OJ C 325, 27. 10. 1997.

[3] See page 15 of this Official Journal.

COOPERATION AGREEMENT

between the European Community and the Lao People's Democratic Republic

THE COUNCIL OF THE EUROPEAN UNION,

of the one part, and

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC,

of the other part,

hereinafter referred to as 'the Parties',

WELCOMING the increase in trade and cooperation which has taken place between the European Community, hereinafter referred to as 'the Community', and the Lao People's Democratic Republic, hereinafter referred to as 'Lao PDR';

RECOGNIZING the excellent relations and ties of friendship and cooperation between the Community and the Lao PDR;

REAFFIRMING the importance of further strengthening ties between the Community and the Lao PDR;

RECOGNIZING the importance the Parties attach to the principles of the United Nations Charter, to the Universal Declaration of Human Rights, to the 1993 Vienna Declaration and the Plan of Action of the World Conference on Human Rights, to the 1995 Copenhagen Declaration on Social Development and the associated plan of action, and to the 1995 Beijing Declaration and the plan of action of the Fourth World Conference on Women;

REAFFIRMING the Parties' common will to consolidate, deepen and diversify their relations in areas of mutual interest on a footing of equality, non-discrimination, mutual benefit and reciprocity;

DESIROUS OF creating favourable conditions for the development of trade and investment between the Community and the Lao PDR, and the need to adhere to the principles of international trade, the purpose of which is to promote trade liberalization in a stable, transparent and non-discriminatory manner which takes account of the Parties' economic differences;

RECOGNIZING the need to support the current process of economic reform in order to guarantee the Lao PDR's transition to a market economy, with due regard for the importance of the social development which should go hand in hand with economic development and the common commitment to respecting social rights;

RECOGNIZING the need to support the Laotian government's efforts to improve the living conditions of the poorest and most disadvantaged sections of the population, with a special emphasis on the status of women;

CONSIDERING the importance accorded by the Parties to the protection of the environment at all levels and to the sustainable management of natural resources, taking account of the links between the environment and development;

HAVE DECIDED TO CONCLUDE this Agreement and to this end have designated as their Plenipotentiaries:

THE COUNCIL OF THE EUROPEAN UNION:

Hans VAN MIERLO
Deputy Prime Minister and Minister for Foreign Affairs of the Netherlands,
President-in-Office of the Council of the European Union

Manuel MARÍN
Vice-President of the Commission of the European Communities,

THE GOVERNMENT OF THE LAO PEOPLE'S DEMOCRATIC REPUBLIC:

Somsavath LENGSAVAD
Minister of Foreign Affairs,

WHO, having exchanged their Full Powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

Article 1

Basis

Respect for the democratic principles and fundamental human rights established by the Universal Declaration on Human Rights inspires the internal and international policies of the Community and of the Lao PDR and constitutes an essential element of this Agreement.

Article 2

Objectives

The main objective of this Agreement is to provide a framework for enhancing cooperation between the Parties, within their respective areas of jurisdiction, with the following aims:

(a) to accord each other most-favoured-nation treatment on trade in goods in all areas specifically covered by the Agreement, save as regards advantages accorded by either Party within the context of customs unions or free trade areas, trade arrangements with neighbouring countries or specific obligations under international commodity agreements;

(b) to promote and intensify trade between the Parties, and to encourage the steady expansion of sustainable economic cooperation, in accordance with the principles of equality and mutual advantage;

(c) to strengthen cooperation in fields closely related to economic progress and benefiting both Parties;

(d) to develop lasting trade relations and diversify trade between the Community and the Lao PDR, to achieve a lasting opening-up of markets to a degree which is compatible with the Parties' economic situations and the assistance which the Lao PDR will need in the light of its application to join the World Trade Organization;

(e) to contribute to the Lao PDR's efforts to improve the quality of life and standards of living of the poorest sections of its population, together with measures using rural development to combat poverty in the countryside and assistance with achieving the transition to a market economy and developing human resources in a number of sectors of the economy;

(f) to encourage job creation in both the Community and the Lao PDR, with priority being accorded to programmes and operations which could have a favourable effect in this respect. The Parties shall also exchange views and information on their respective initiatives in this field, step up and diversify their economic links and establish conditions conducive to job creation;

(g) to take the requisite measures to protect and conserve the world, regional, national and local environments and manage natural resources sustainably, taking account of the link between the environment and development.

Article 3

Development cooperation

The Community recognizes the Lao PDR's need for development assistance and is prepared to step up its cooperation in order to contribute to that country's own efforts to achieve sustainable economic development and the social progress of its people through concrete projects and programmes in accordance with the priorities set out in Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America.

In accordance with the abovementioned Regulation, assistance will be targeted mainly at the poorest sections of the population. In cooperation, priority will be given to schemes aimed at alleviating poverty, and in particular those likely to create jobs, foster development at grassroots level and promote the role of women in development. The Parties will also encourage the adoption of appropriate measures to prevent and combat AIDS and take steps to increase grassroots development and education on AIDS and the operational capacity of the health services.

Cooperation between the Parties will also address the problem of drugs to encourage and enhance training, education, health care and the rehabilitation of addicts.

The Parties acknowledge the importance of human resources development, social development, the improvement of living and working conditions, the development of skills and the protection of the most vulnerable sections of the population. Human resources and social

development must be an integral part of economic and development cooperation. Appropriate consideration shall therefore be given to training objectives addressing institutional needs and specific vocational training activities aimed at enhancing the skills of the local workforce.

In the light of the danger to human life and the obstacles to development presented by unexploded objects (UXO), the Community will examine initiatives suited to addressing this problem.

Community cooperation will be concentrated on mutually agreed priorities to ensure that assistance is effective and lasting. In the interests of greater effectiveness, development cooperation activities shall take account of the need for coordination and cooperation with the Lao PDR's other partners, including the institutions of the Bretton Woods Agreement.

Article 4

Trade cooperation

1. The Parties confirm their determination:

(a) to take all appropriate measures to create favourable conditions for trade between them;

(b) to do their utmost to improve the structure of their trade in order to diversify it further;

(c) to work towards the elimination of barriers to trade, and towards measures to improve transparency, in particular through the removal at an appropriate time of non-tariff barriers, in accordance with work undertaken in this connection by other international bodies while ensuring that personal data are suitably protected.

2. In their trade relations, the Parties shall accord each other most-favoured-nation treatment in all matters regarding:

(a) customs duties and charges of all kinds, including the procedures for their collection;

(b) the regulations, procedures and formalities governing customs clearance, transit, warehousing and transhipment;

(c) taxes and other internal charges levied directly or indirectly on imports or exports;

(d) administrative formalities for the issue of import or export licences.

3. Paragraph 2 shall not apply to:

(a) advantages accorded by either Party to states which are fellow members of a customs union or free trade area;

(b) advantages accorded by either Party to neighbouring countries with a view to facilitating border trade;

(c) measures which either Party may take in order to meet its obligations under international commodity agreements.

4. Within their respective spheres of competence; the Parties shall undertake:

(a) to improve cooperation between their authorities in customs matters, in fields including vocational training, the simplification and harmonization of customs procedures and administrative assistance to combat customs fraud;

(b) to exchange information on markets likely to provide mutual advantages, including public procurement, tourism and statistical cooperation.

5. The Lao PDR shall improve conditions for the adequate and effective protection and enforcement of intellectual, industrial and commercial property rights in conformity with the highest international standards. To this end, the Lao PDR shall accede to the relevant international conventions on intellectual, industrial and commercial property (1) to which it is not yet a party. In order to enable the Lao PDR to fulfil the abovementioned obligations, technical assistance could be envisaged.

6. Within their respective areas of jurisdiction and insofar as their rules and regulations permit, the Parties shall agree to consult each other on all questions, problems or disputes which may arise in connection with trade.

Article 5

Environmental cooperation

The Parties recognise that the way to improve environmental protection is to introduce appropriate environmental legislation, implement it effectively and integrate it into other policy areas.

The main objective of environmental cooperation is to enhance the prospects of sustainable economic growth and social development by placing a high priority on respect for the natural environment including:

(a) the drafting of an effective environment protection policy involving appropriate legislative measures and the resources needed to implement it. It shall cover areas including training, capacity building and the transfer of appropriate environmental technology;

(1) See Annex II.

(b) cooperation in the development of sustainable and non-polluting energy sources, as well as solutions to urban and industrial pollution problems;

(c) protection of the environment, especially in regions with fragile ecosystems, while developing tourism as a sustainable source of revenue;

(d) environmental impact assessment as part of the preparation and implementation of any reconstruction or development project;

(e) close cooperation to achieve the objectives of environmental agreements to which both Parties are signatories;

(f) protection and conservation of existing primary forests, with the particular aim of putting an end to illegal logging, and sustainable development of new forest resources by raising the profile of forestry bodies and involving local inhabitants.

Article 6

Economic cooperation

Within the limits of their respective areas of jurisdiction and the financial resources available, the Parties undertake to foster economic cooperation to their mutual advantage.

This cooperation will be aimed at:

(a) developing the economic environment in the Lao PDR by facilitating access to Community know-how and technology;

(b) facilitating contacts between economic operators and taking other measures to promote trade;

(c) encouraging, in accordance with their legislation, rules and policies, public- and private-sector investment programmes in order to strengthen economic cooperation, including cooperation between enterprises, technology transfers, licences and subcontracting;

(d) facilitating the exchange of information and the adoption of initiatives, fostering cooperation on enterprise policy, particularly with regard to improving the business environment and encouraging closer contacts;

(e) reinforcing mutual understanding of the Parties' respective economic environments as a basis for effective cooperation;

(f) undertaking activities in the fields of standardization, quality assessment, metrology and quality-assurance in order to promote international standards and quality assessment procedures and to facilitate trade.

In the above fields the principal objectives shall be:

— to assist the Lao PDR in its efforts to restructure its economy by creating the conditions for a suitable economic environment and business climate,

— to encourage synergies between the Parties' respective economic sectors, and in particular their private sectors,

— within the Parties' respective areas of jurisdiction, and in accordance with their legislation, rules and policies, to establish a climate conducive to private investment by improving conditions for the transfer of capital and, where appropriate, by supporting the conclusion of agreements between the Member States of the Community and the Lao PDR on the promotion and protection of investment.

The Parties will together determine, to their mutual advantage, the areas and priorities for economic cooperation programmes and activities.

Article 7

Agriculture

The Parties undertake, in a spirit of understanding, to cooperate in the agricultural sector and examine:

(a) the scope for developing trade in agricultural products;

(b) sanitary, phytosanitary and environmental measures, and the results thereof, along with assistance to avoid obstacles to trade, taking into account the Parties' legislation;

(c) the possibility of assisting the government of the Lao PDR in its efforts to diversify agricultural exports.

Article 8

Energy

The Parties recognise the vital importance of the energy sector for economic and social development and are prepared to step up cooperation by means of dialogue in the field of energy policy. This dialogue will take due account of the main objective, namely to ensure the sustainable development of the Lao PDR's energy resources.

Article 9

Regional cooperation

Cooperation between the Parties may extend to activities under cooperation or integration agreements with other countries of the same region, provided the said activities are compatible with those agreements.

Without excluding any area, special consideration may be given to the following activities:

(a) technical assistance (services of outside consultants, training of technical staff in certain practical aspects of integration);

(b) promotion of intraregional trade;

(c) support for regional institutions, projects and initiatives for which regional organizations bear responsibility;

(d) studies concerning regional links, transport and communications.

Article 10

Science and technology

The Parties, according to their respective policies, their mutual interest and within their respective areas of jurisdiction, may promote scientific and technological cooperation.

Cooperation will involve:

— the exchange of information and experience at regional (Europe-South-East Asia) level, especially on the implementation of policies and programmes,

— the promotion of lasting ties between the Parties' scientific communities,

— the stepping-up of activities aimed at promoting innovation in industry, including technology transfers.

Cooperation may involve:

— the joint implementation of regional (Europe-South-East Asia) research projects in areas of mutual interest, facilitating, where appropriate, the active involvement of enterprises,

— the exchange of scientists to promote the preparation of research projects and high-level training,

— joint scientific meetings to foster exchanges of information and interaction and to identify areas for joint research,

— the dissemination of results and the development of links between the public and private sectors,

— evaluation of the activities concerned.

The Parties' higher education institutions, research centres and industries will play an appropriate part in this cooperation.

Article 11

Chemical drug precursors and money laundering

Within their respective areas of jurisdiction and the legislation applicable, and taking into account work done by the relevant international bodies, the Parties will agree to cooperate in order to prevent the diversion of chemical drug precursors and will agree on the need to do all in their power to prevent money laundering.

The Parties will also consider special measures against the cultivation, production and trafficking of drugs, narcotics and psychotropic substances, and measures to prevent and reduce drug abuse.

This cooperation may include:

— measures to promote other forms of economic development,

— the exchange of relevant information, subject to personal data being duly protected.

Article 12

Physical infrastructure

The Parties recognize that the present shortcomings of the Lao PDR's physical infrastructure constitute a serious constraint to private investment and to economic development in general. The Parties therefore agree to encourage specific programmes for the rehabilitation, reconstruction and development of the Lao PDR's infrastructure, including transport and communications.

Article 13

Information, communication and culture

The Parties, within their respective areas of jurisdiction, and in the light of their policies and mutual interests, will cooperate in the fields of information, communication and culture to improve mutual understanding and strengthen existing ties between them. Appropriate support may also be provided for the promotion of new initiatives in the following areas:

(a) preparatory studies and technical assistance for the conservation of the cultural heritage,

(b) cooperation in the field of the media and audio-visual documentation,

(c) the organisation of events and exchanges to improve cultural understanding.

The Parties recognize the importance of cooperation in the fields of telecommunications, the information society and multimedia. Such cooperation may include the exchange of information on the Parties' respective regula-

tions and policies for telecommunication, mobile communications, including the promotion of Global Navigation Satellite Systems (GNSS), the information society, multimedia telecommunications technologies, networks and telematic applications (e.g. transport, health, education and environment).

Article 14

Institutional aspects

1. The Parties agree to establish a Joint Committee, whose tasks are:

(a) to ensure the smooth working and proper application of this Agreement and of the dialogue between the Parties;

(b) to make suitable recommendations for promoting the objectives of this Agreement;

(c) to establish priorities for potential operations in pursuit of this Agreement's objectives.

2. The Joint Committee shall be composed of representatives of sufficient seniority of both Parties. It shall normally meet every other year, alternately in Vientiane and in Brussels, on a date fixed by mutual agreement. Extraordinary meetings may also be convened by agreement between the Parties.

3. The Joint Committee may set up specialized subgroups to assist it in the performance of its tasks and to coordinate the formulation and implementation of projects and programmes under this Agreement.

4. The agenda for meetings of the Joint Committee shall be determined by agreement between the Parties.

5. The Parties agree that it shall also be the task of the Joint Committee to ensure the proper functioning of any sectoral agreements concluded, or which may be concluded, between the Community and the Lao PDR.

6. The organizational structures and the rules of procedure of the Joint Committee shall be determined by the Parties.

Article 15

Future developments

1. The Parties may, by mutual consent and within their respective areas of jurisdiction, extend this Agreement to expand cooperation and add to it by means of agreements on specific sectors or activities.

2. Within the framework of this Agreement, either Party may put forward suggestions for expanding the scope of the cooperation, taking into account the experience gained in its application.

Article 16

Other Agreements

Without prejudice to the relevant provisions of the Treaties establishing the European Communities, neither this Agreement nor any action taken thereunder shall in any way affect the powers of the Member States of the European Union to undertake bilateral activities with the Lao PDR in the framework of economic cooperation or to conclude, where appropriate, new economic cooperation agreements with the Lao PDR.

Article 17

Facilities

To facilitate cooperation under this Agreement, the Lao PDR authorities will grant to Community officials and experts the guarantees and facilities necessary for the performance of their duties. The detailed provisions will be set out in a separate exchange of letters.

Article 18

Territorial application

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of the Lao PDR.

Article 19

Non-execution of the Agreement

If either Party considers that the other Party has failed to fulfil an obligation under this Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.

In the selection of measures, priority must be given to those which least disturb the functioning of this Agreement. These measures shall be notified immediately to the Joint Committee and shall be the subject of consultations within the Joint Committee if the other Party so requests.

Article 20

Annexes

Annexes I and II to this Agreement shall form an integral part thereof.

Article 21

Entry into force and renewal

1. This Agreement shall enter into force on the first day of the month following the date on which the Parties notify each other of the completion of the procedures necessary for this purpose.

2. This Agreement is concluded for a period of five years. It shall be renewed automatically from year to year unless one of the Parties denounces it six months before its expiry date.

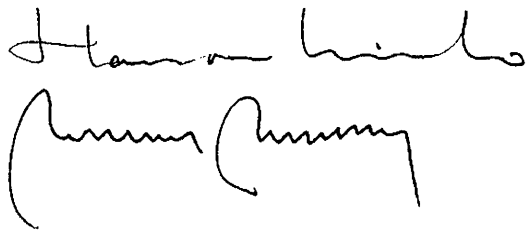
Article 22

Authentic texts

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Lao languages, each text being equally authentic.

Done at Luxembourg, 29 April 1997.

For the
European Community



For the
Lao People's Democratic Republic

ANNEX I

Joint Declaration on Article 19 — Non-Execution of the Agreement

(a) The Parties agree, for the purposes of the interpretation and practical application of this Agreement, that the term 'cases of special urgency' in Article 19 of the Agreement means cases of the material breach of the Agreement by one of the Parties. A material breach of the Agreement consists in:

— repudiation of the Agreement not sanctioned by the general rules of international law;

— violation of essential elements of the Agreement set out in Article 1.

(b) The Parties agree that the 'appropriate measures' referred to in Article 19 are measures taken in accordance with international law. If a Party takes a measure in a case of special urgency as provided for under Article 19, the other Party may avail itself of the procedure relating to settlement of disputes.

ANNEX II

Joint Declaration on Intellectual, Industrial and Commercial Property

The Parties agree for the purposes of the Agreement that 'intellectual, industrial and commercial property' includes in particular protection of copyright and related rights, patents, industrial designs, software, brands and trademarks, topographies of integrated circuits, geographical indications, as well as protection against unfair competition and the protection of undisclosed information.

JOINT DECLARATION ON THE READMISSION OF CITIZENS

The European Community recalls the importance that its Member States attach to the establishment of effective cooperation with third countries in order to facilitate the readmission by the latter of its nationals unlawfully residing on the territory of a Member State.

The Lao People's Democratic Republic undertakes to conclude agreements for the readmission of Laotian citizens in such a situation with those Member States of the European Union which request it.

Information regarding the entry into force of the Cooperation Agreement between the European Community and the Democratic Republic of Laos (1)

The parties having concluded the procedures for the entry into force in conformity with Article 21 of the Cooperation Agreement between the European Community and the Democratic Republic of Laos, this Agreement will enter into force on 1 December 1997.

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(1) See page 14 of this Official Journal.

COMMISSION

COMMISSION DECISION

of 9 April 1997

concerning aid granted by France to the textile, clothing, leather and footwear industries

(Only the French text is authentic)

(Text with EEA relevance)

(97/811/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,

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments,

Whereas:

I

By letter dated 26 March 1996 from its Permanent Representation to the European Union, France notified the Commission of 'experimental measures to reduce social security contributions for the textile, clothing and leather/footwear industries'.

France decided that, in addition to the measures applying general relief on social security contributions taken in June 1995, the abovementioned industrial sectors should qualify for total exemption from employers' social security contributions for the guaranteed minimum wage (SMIC), the level of which is set by the State, and degressive relief on wages up to one and a half times the SMIC.

By letter dated 31 May 1996 [1], the Commission informed France that it had decided to initiate Article 93 (2) proceedings in respect of the measures.

At the time of the notification, the objective pursued by the reductions in social security contributions was job creation and, in particular, the recruitment of young people in the four industries. This objective was also to be pursued through undertakings entered into by the two sides of industry regarding reductions in working time and the encouragement of part-time working. No details were given as to the content of these undertakings.

For the four industries as a whole, the reductions in social security contributions are intended to encourage the recruitment of 7 000 unemployed young people and the safeguarding of 35 000 jobs.

The 7 000 jobs for young people represent net job creation, while the 35 000 others are jobs which will not be shed in the two years following the entry into force of the arrangements. Without the new measures, the four industries anticipate a loss of 60 000 jobs over the relevant two-year period. The effect is thus clearly a slowdown in the number of redundancies.

The grounds on which it was decided to initiate proceedings are as follows:

— since the reductions in social security contributions were not granted to all French firms, they amount to sectoral aid. The Commission consistently queries this type of aid, because of its impact on the economy and competition, particularly in industries in which there is substantial Community trade,

— even in the case of aid for the creation of jobs, the Commission has to adopt a strict stance on sectoral aid in order to pre-empt any escalation of aid and, over and above that, to ensure that the very concept of

[1] OJ C 206, 17. 7. 1996, p. 8.

the internal market is not called into question. The guidelines on aid to employment [2] allow sectoral aid for the safeguarding or net creation of jobs only in a limited number of circumstances, which did not seem to apply to the measures proposed,

— because France did not provide all the necessary details on the measures, the Commission did not have clear evidence of the need for preferential treatment of the relevant industries as compared with other sectors of the French economy, or as compared with competing industries in the other Member States.

France's reply to the Commission's letter was received on 16 July 1996. It was apparent from the reply that the reductions in social security contributions, while being intended for the creation of jobs, were in fact designed to offset in whole or in part, depending on the individual case, the extra costs involved in reorganizing and reducing working time under the abovementioned sectoral agreements. According to France, the arrangements, viewed in this light, were financially neutral in that they did not entail any benefit to the firms.

This prompted the Commission to extend the scope of the proceedings, by decision of 2 October 1996 [3], so as to take account of the new and fuller information provided by France. The Commission informed France of this new decision by letter dated 15 October 1996.

The reasons which prompted the Commission to adopt this second decision may be summarized as follows:

— the costs incurred by firms as a result of agreements concluded by both sides of industry in a given sector, whether concerning the reorganization of working time or other areas, which result in wage increases or extra paid leave not required by law, constitute costs which should should normally be covered by firms' budgets. Consequently, any direct or indirect reduction in such costs which is authorized by the public authorities could constitute State aid that is prohibited in principle by Article 92 (1),

— furthermore, the Court of Justice has consistently held that Article 92 (1) does not distinguish between State aid measures on the basis of their causes or objectives, but defines such measures in terms of their effects. In this instance, the reduction in social security contributions enjoyed by firms in these sectors is likely to place them at an advantage compared with competitors that have reorganized working time or taken similar measures without State support. In principle, the fact that the advantages granted to the firms are intended to offset costs resulting from the agreements concluded by them does not *a priori* rule out the possiiblity that such advantages constitute aid,

— there is no clear evidence to support France's argument that the measure is neutral in its effect. In the first place, a number of factors on which calculation of the aid and additional costs is based give rise to questions that may affect the final result. Secondly, the assessment made of the measure's impact fail to take into account its other induced effects, such as firms' improved efficiency as a result of tailoring working time more closely to the specific needs of the sector, notably the seasonal and cyclical nature of its production.

France's comments regarding the initiation of proceedings were received by the Commission on 16 July 1996 and its comments on the 2 October 1996 decision were received by the Commission on 5 December 1996. Further information was received by the Commission on 17 Febraury 1997. This was in reply to the Commission's letter of 30 January 1997 concerning the method of assessing the net impact of the measure.

In addition, meetings were held between Commission officials and officials from the French ministries concerned on 1 August 1996 in Brussels and 21 January 1997 in Paris.

Commission notices giving the other Member States and interested parties notice to submit their comments on the two abovementioned decisions were published in the *Official Journal of the European Communities*, on 17 July 1996 [4] and 26 November 1996 [5].

Seven textile and clothing associations submitted comments to the Commission in response to the first notice. The German, Netherlands and United Kingdom Governments and the authorities of the Flemish region in Belgium also responded to the notice.

Two industrial associations submitted comments in response to the second notice. The Austrian and Netherlands Governments also responded to it.

In accordance with the procedure, the comments of the third parties (all opposed to the measures) were communicated to France on 16 October 1996 and 24 January 1997 respectively. France's replies were received by the Commission on 21 November 1996 and 17 February 1994.

[2] OJ C 334, 12. 12. 1995, p. 4.
[3] OJ C 357, 26. 11. 1996, p. 5.
[4] See footnote 1.
[5] See footnote 3.

II

France's comments on the initiation of proceedings are set out in the abovementioned decision of 2 October 1996. France's position on that decision may be summarized as follows:

— First, France disagrees with the Commission's view that the nature of the measures changed between the date of notification, 27 March 1996, and the date when France responded to the Commission's initiation of proceedings. The objective pursued by the experimental measures in question had always been and remained the safeguarding of employment through the reorganization of working time.

At no time had the final objective of the measures changed; only the implementing arrangements had been adjusted to take account of the result of the negotiations between the two sides of industry and, thus, of the undertakings entered into by the firms regarding there organization of working time,

— France also disputes that any reduction in social security contributions can be termed State aid. The collective agreements concluded between the employers and the trade unions had obliged the firms to go beyond the statutory requirements regarding the remuneration of overtime. The conclusion of such agreements did not amount to evidence that a large number of firms had no qualms about accepting the new requirements.

France considers that support provided for the efforts made by firms to combat unemployment cannot automatically be termed State aid that distorts competition, since such efforts may, despite the support provided, impose additional costs on the firms over and above what they would incur if they complied strictly with their statutory requirements.

In response to any objection made by the Commission along these lines, France states that it does not know of any cases in which other Member States had pursued a similar policy of reorganizing working time without State support,

— France provided a number of technical details on the methods of calculating the net impact of the measures (reductions of social security contributions compared with additional costs imposed by the reorganization of working time). France continues to maintain, in the light of this information, that the measures are neutral in their financial impact: large firms do not ultimately benefit in reductions in social security contributions, since the costs of reorganizing working time are greater for them. Other firms with between 50 and 500 employees benefit from a 'net' reduction with remains below the *'de minimis'* threshold, namely ECU 100 00 over three years (some FF 650 000).

Applying its method of calculation, France estimates the net impact of the measures as follows:

1. Textile and clothing [6]:

Category of firm by number of workers	Industry average: 71	100 to 199	200 to 499	500 or more
Gain from the reduction as % of wage bill	3,64	3,31	2,53	2
Theoretical cost of the reduction as % of wage bill	2,71	2,71	2,71	2,71
Estimated cost of the reduction as % of wage bill	2,15	2,15	2,15	2,15
Net gain or loss as % of wage bill	1,49	1,16	0,38	– 0,15
Annual gain or loss in FF	156 301	256 580	209 270	– 221 373
Gain or loss during life of measure	234 451	384 870	313 905	– 332 059

[6] It is surprising to note that the average firm for each of the categories of firms concerned employs an identical number of workers in both textiles and clothing and in leather and footwear. The Commission also notes that the data on the workforce allocated to production are different in textiles and clothing, which should normally give a different estimate of the cost of reorganizing working time.

2. Leather and footwear (7):

Category of firm by number of workers	Industry average: 71	100 to 199	200 to 499	500 or more
Gain from the reduction as % of wage bill	3,62	3,29	2,51	1,99
Theoretical cost of the reduction as % of wage bill	2,71	2,71	2,71	2,71
Estimated cost of the reduction as % of wage bill	2,19	2,19	2,19	2,19
Net gain or loss as % of wage bill	1,43	1,1	0,32	– 0,2
Annual gain or loss in FF	150 134	243 943	179 982	– 295 319
Gain or loss during life of measure	225 201	365 914	269 973	– 442 978

As the two tables show, France has adjusted the theoretical cost of reorganizing working time by reference to the workforce allocated to production: 77,9 % in the case of the textile industry and 80,8 % in the case of the leather and clothing industries. However for the purpose of looking at labour costs, the Commission stated that reference should be made not to the number of persons affected by the measure, but to the wage bill relating to them. France therefore presented new figures based on the criterion of the wage bill relating to the staff affected by the reorganization and concluded that the figure should not differ significantly from that of the workforce allocated to production, while at the same time asserting that no precise assessment of such wage bill could be carried out,

— Last, France stressed that the proposed arrangements did not necessarily entail any gains in competitiveness for the firms. It emphasized that such gains were potential and difficult to measure and that they could become apparent only in the medium or long term, whereas the measure covered only 18 months.

The figures put forward by the Commission (12 to 13 % in gains in competitiveness as a result of the measures) were in the nature of a summary assessment, prior to any final working out of the measure and corresponding to a long-term hypothesis for very small firms, all of whose employees would be paid at under 1,5 times the SMIC.

(7) Since the data on the workforce allocated to production are not available for the footwear industry, the Commission does not see how the estimated cost of reorganizing working time could have been calculated for that industry.

III

As part of the proceeding, the Commission received 15 sets of comments, all negative, from both Member States and business associations in the sector. 11 sets of comments reached the Commission following publication of the letter informing France of the initiation of proceedings.

In addition to stating their general support for the Commission's position in the case, the comments stress the fact that, in all Member States, the four industries concerned are facing the same type of difficulties and that some have had to accept much larger staff cutbacks than in France. In virtually all the Member States, the industries have had to undergo painful restructuring in order to restore some competitiveness, without the benefit of any specific sectoral aid from government.

A large number of comments point out that the majority of the firms concerned (those with fewer than 50 workers) receive aid below the *'de minimis'* threshold and that, in industries in which the vast majority of firms are very small, even aid below that threshold can have devastating effects for competitors. Firms in other Member States do not have the financial resources to react to the French aid.

Four separate sets of comments were received by the Commission following publication in the *Official Journal of the European Communities* of France's letter regarding the decision of 2 October 1996.

The Dutch Government confines itself to reiterating the opposition which it had already stated when proceedings were initiated. The Austrian Government informed the Commission that a similar measure, negotiated between employers' organizations and trade unions in the textile industry, for adjusting working time had been implemented in Austria. The measure had been introduced without any aid from the public authorities, since the productivity gains resulting from the adjustment of working time had been sufficiently great to offset the costs associated with the introduction of more flexible working hours.

A Greek association in the clothing industry took the view that the average gain from the aid as a percentage of the wage bill was much higher than stated by France. As evidence, the association sent the Commission a newspaper article (*Journal du textile* No 1472 of 28 October 1996) in which a firm with more than 100 employees stated that, thanks to the reduction in social security contributions introduced in France, it had been able to save 8 % of its total wage bill, enabling it to reduce its production costs.

Lastly, an Italian association in the textile and clothing industry stated that the costs of reorganizing working time were incurred as a result of free and independent negotiations embarked upon and concluded by firms in the industry and that they should not be offset.

As stated above, France was asked for its views on all the comments received. As regards the first eleven sets of comments, France explained, in its letter of 19 November 1996, that 'the details which it provided during the summer regarding the measures which are the subject of the Article 93 (2) proceedings alter to a large extent the basis on which such comments are founded. Consequently, the new Article 93 (2) proceedings that take account of these details and are soon to be published in the Official Journal prompt the French authorities to conclude that it does not need to express any views on such comments.'

As regards its views on the second four sets of comments from third parties, France reiterates that the measures proposed are original and neutral and do not therefore affect competition. It argues that the reductions in social security contributions have made it possible 'to restore momentum to collective negotiations (hitherto stalled) in which the State has a role of guidance and encouragement'.

As regards any underestimation on its part of the average gain from the aid of a percentage of the wage bill, France points out that, in order to assess the impact of the measures reducing social security contributions, it is essential that account be taken simultaneously of the gain derived form the measures and their cost. While the real long-term gains are difficult to quantify, the direct gains from the measures are easily calculated and anticipated by firms. The costs, however even though they are immediate, are less clear,

Lastly, France replied that a comparison cannot be made between the French measures and those introduced in Austria without State aid, since the resulting gains in competitiveness largely offset the costs of the adjustment. The French measures apply across the board and are of short duration, whereas the Austrian measures are spread over time and are applied on a voluntary basis. In addition, the French plan includes very advantageous treatment for employees.

IV

The relevant industries, textiles, clothing, leather and footwear, although different in size textiles and clothing account for 86 % of the total production of the four industries, footwear accounts for 9 % and the leather industry for 5 %), have similar characteristics and have seen their situations develop in similar ways in recent years. Furthermore, both characteristics and development are fairly similar from one Member State to another.

All the industries consist for the most part of small and medium-sized enterprises, and all face stiff competition both within the Community and from low-wage countries, mainly in South-East Asia. Such competition mainly involves lower and middle-range products as far as the Asia countries are concerned and top-of-the-range products as far as the Member States are concerned.

The four industries are concentrated in a number of Member States, in most cases the same ones. Output by Member State in 1993 breaks down as follows:

Textiles (1)	Italy (24,5 %)	Germany (22,6 %)	France (17 %)	United Kingdom (14,5 %)
Clothing	Italy (22 %)	Germany (21 %)	France (18 %)	United Kingdom (16,5 %)
Footwear	Italy (32 %)	France (19 %)	Germany (15 %)	United Kingdom (13 %)
Leather	Italy (60 %)	Spain (14 %)	Germany (7,5 %)	United Kingdom (7 %)

(1) In the case of textiles, clothing and footwear, value added; in the case of leather, turnover. *Source: Panorama of EC Industry 1995*, European Commission.

In the leather industry, France is in fifth place, applying the turnover criterion, with a share of 5,24 %.

All four industries (taking all the Member States) have in the past ten years seen a sharp or very sharp fall in employment, particularly the textile and leather industries. This is due to the efforts made to improve productivity during the period, but also to the poor economic situation and to competition from non-Community countries.

At Community level, production (in current prices) has risen sharply in the textile and footwear industries, while in the other two industries it rose until the mid-1980s, but subsequently declined. By contrast, production in constant prices has fallen in all four industries.

With the exception of the leather and textile industries (in the latter case, only if the figures are expressed in value terms), the industries, in the Member States as a whole, have for some years experienced a growing trade deficit with the rest of the world.

France's share in total Community trade (in value terms) may be put as follows (8):

(%)

	Exports		Imports	
	1993	1994	1993	1994
Textiles	15,36	15,62	16,39	15,60
Clothing	11,33	10,73	17,75	17,78
Leather	15,20	15,49	16,93	16,61
Footwear	7,78	6,75	20,34	20,01

During the proceedings, the Commission obtained other statistics. According to a French textile-industry association, the five largest customers of the French textile industry in 1995 were other Member States. Those five Member States accounted for a total of 51 % of French exports of textile products (9).

In the first half of 1996, the Community received 62 % of French exports of textile and clothing products and provided 52 % of French imports (10).

V

The Commission regards measures to promote employment as a fundamental Community priority and believes that success in this area is conditional upon closer integration of the macroeconomic and industrial policies of the Member States, which, together with the Commission, need to show greater imagination and boldness in seeking new solutions to overcome the scourge of unemployment.

The adoption of the White Paper on growth, competitiveness and employment in 1993 is a step in this direction and confirms the absolute priority which the Commission attaches to these objectives.

The Commission has on numerous occasions taken specific steps to promote employment. It has in particular adopted guidelines on aid for deprived urban areas (11),

(8) *Source:* Eurostat.
(9) Statistics provided by the Association Textiles de France, 22 July 1996.
(10) Source, *L'industrie textile*, No 1208, October 1996.
(11) OJ C 146, 14. 5. 1997, p. 6.

guidelines on aid to employment and a notice on monitoring of State aid and reduction of labour costs ([12]) which explains clearly what types of public assistance are acceptable for creating or safeguarding jobs without distorting competition between Member States. The Commission considers that its constant efforts to ensure that Member States do not solve their own unemployment problems by aggravating those of their partners bear witness to the overriding importance it attaches to net job creation and to the safeguarding of stable employment within the Community.

The Commission's remarks on the measures in question do not relate to the objectives pursued by France in the area of job creation (for young people in particular), but rather to the arrangements which they plan to introduce in order to attain those objectives and their consequences Moreover, it should be noted that, while recent European Councils have recommended both the reduction of social security contributions for low salaries and work sharing in order to create jobs, this must not be done in a way that is incompatible with the Treaty.

VI

When it initiated the proceedings, the Commission reminded France of the suspensory effect of Article 93 (3) of the Treaty and drew its attention to the Commission communication published on 24 November 1983 and to the letters sent to all Member States on 4 March 1991, 22 February 1995 and 30 May 1995 in which it reminded Member States that, where they grant aid unlawfully, the Commission may require them to recover it.

The Commission also requested France to inform the recipient firms forthwith of the initiation of proceedings and of the fact that they might have to repay any aid improperly received.

The Commission notes, however, that, in spite of the abovementioned suspensory effect, France has nevertheless implemented the measures reducing social security contributions. The measures entered into effect on 1 June 1996 in the case of the textile and clothing industries and on 1 July in the case of the leather and footwear industries. France has accordingly rendered the aid illegal and has exposed the recipient firms to the possibility of having to repay it if it is found to be incompatible.

When the measure was notified, it was presented as a temporary, experimental and horizontal measure for the textile, clothing, leather and footwear industries. It was also stated that the measure was designed to create employment and reduce working time.

In order to qualify for the reductions, the two sides of industry had to sign collective undertakings on the creation of jobs, either directly (recruitment of young people), or indirectly (negotiations on a reduction in working time) and on a slowdown in the rate of redundances. Firms employing more than 50 persons also had to enter into specific undertakings with the State.

On examining France's reply to the Commission's letter initiating proceedings, it became apparent that the reduction in social security contributions in the four industries was designed mainly to offset, in whole or in part — depending on the individual case — the extra costs involved in reorganizing and reducing working time under the abovementioned sectoral agreements. This prompted the Commission to extend the scope of the proceedings on 2 October 1996.

In its reply to this second decision, though it acknowledged the need to inform third parties of the new information which it had supplied to the Commission, France disagreed that the nature of the measure notified had been altered. France argued that the final objective of the measure had not at any time been altered and that, despite the new information provided, the objective pursued by the experimental measures remained the safeguarding of employment through the reorganization of working time.

In the light of the information provided to it by France, and in particular the framework agreements signed between the State and the industries concerned, the Commission can accept that the main objective of the measure is the safeguarding of employment. However, it cannot accept the means chosen to achieve that objective.

VII

Article 92 (1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

The measures reducing social security contributions are intended to relieve firms in four specific industries of some of the financial costs arising from the normal application of the general social security system.

The Commission considers that the costs resulting for the firms from agreements concluded between the two sides of industry in a given sector, whether for the purpose of reorganizing working time or for other purposes and involving wage increases or paid holidays not required by the common rules and regulations are costs which should normally have been borne from their budgets. The fact

([12]) OJ C 1, 3. 1. 1997, p. 10.

that such costs result from the fact that the agreements concluded between the two sides of industry impose on the firms requirements going beyond what is laid down by law does nothing to alter this approach. The Commission therefore takes the view that it is the very assistance provided by the State in this context which constitutes by its very nature and in its totality State aid.

In accordance with the Commission's consistent practice, which the Court drew on in a recent case ([13]), State assistance for certain undertakings or the production of certain goods is deemed to be aid even if the assistance serves to finance costs voluntarily assumed by the undertaking concerned ([14]).

During the proceedings, in reply to remarks from third parties that were similar to those set out above, France stated that it was necessary to relaunch the stalled process of dialogue and collective negotiations, since the stakes involved in the policy of reorganizing working time and its repercussions on employment were sufficiently important to justify state intervention. France argued that, by offsetting the costs borne by firms in reorganizing working time, the reductions in social security contributions had made it possible to restore momentum to collective negotiations in which the State played a role of guidance and encouragement.

The Commission does not find fault with the objective pursued, i.e. the creation of jobs and the recruitment of young people, but with the nature of the measures (provision of public funds) designed to unblock the collective negotiations, since similar adjustments are being carried out or will have to be carried out in Member States by means of sectoral agreements without government support.

Since the concept of aid embraces benefits granted by the public authorities which, in various forms, mitigate the charges which are normally included in the budget of an undertaking ([15]), the measure in question constitutes State aid within the meaning of Article 92 (1) of the Treaty, even if the reduction is intended to offset an additional cost accepted by the undertakings on the basis of the support provided by the State.

Furthermore, as held by the Court of Justice ([16]), neither the fiscal nature of a measure reducing social security contributions, nor its possible social aim, nor the fact that the national industry would be placed at a disadvantage as compared with its main competitors if the social security contributions were not reduced can suffice to shield the measure from the application of Article 92 (1) of the Treaty.

On several occasions, France argued that the reductions in social security contributions were a general measure which it decided to introduce on an experimental basis in all industries in which the percentage of employees receiving a salary of less than 1,5 times the SMIC amounted to more than 70 % of the workforce. In practice, however, the measure relates only to the four abovementioned industries, and only for a period of 18 months, which leads the Commission to think that what is involved is a specific assistance measure designed to resolve economic problems.

France has not shown that the reduction in social security contributions in the four industries is justified by the nature and structure of the general social security system.

As regards France's argument that it needs to proceed by stages in this area, firstly on an experimental basis and subsequently on a more general basis, both in order to ascertain the validity of the approach and because of the limited financial resources available, the Commission has already expressed its position on this subject in its Decision 80/932/EEC ([17]). This position was restated in Decision 96/542/EC ([18]) which the Commission adopted on the 'experimental measures to support production and employment in the footwear industry in Italy'.

The experimental nature of the measures takes nothing away from their sectoral character. Public assistance intended to finance such costs, voluntarily assumed by the firms, could have escaped being termed aid only if there had been no discrimination, and in particular sectoral discrimination.

It has been consistently held in case-law that Article 92 (1) does not distinguish between measures of State intervention by reference to their causes or aims, but defines them in relation to their effects. It is thus necessary to check whether the measures introduced distort competition and affect trade between Member States.

In this instance, the reduction in social security contributions places firms in these industries in a more favourable situation than their competitors, who are carrying out or will in future have to carry out reorganizations in working

([13]) Judgment of the Court of Justice of the European Communities of 26 September 1996 in Case C-241/94 France v. Commission (Kimberly Clark Sopalin), not yet reported. [1996] ECR I-4551.

([14]) Furthermore, in its Decision 80/932/EEC of 15 September 1980 concerning the partial taking-over by the State of employers' contributions to sickness insurance schemes in Italy (OJ L 264, 8. 10. 1980, p. 28), the Commission established that, although the general conditions under which undertakings are operating may well vary from one Community country to another, this does not entitle a Member State to single out any specific factor and offset by aid the additional costs borne by its undertakings as compared with their competitors in other Member States.

([15]) Judgment of the Court of Justice of the European Communities of 15 March 1994 in Case C-387/92 Banco Exterior de España [1994] ECR I-877.

([16]) Judgment of the Court of Justice of the European Communities of 2 July 1974 in Case C-173/73 Italy v. Commission [1974] ECR 709.

([17]) See footnote 14.

([18]) OJ L 231, 12. 9. 1996, p. 23.

time, or similar measures, without State support. These considerations apply equally and more generally to firms which, in other Member States, take steps, without government aid, to rationalize production in order to be able to compete internationally.

In view of the adjustment difficulties facing the textile, clothing, footwear and leather industries throughout the Community and the keen competition that exists both within and outside the Community, the aid is also liable to affect trade to an extent contrary to the common interest. Furthermore, since Community firms in the relevant industries are virtually all faced with similar problems, there is an obvious risk of the aid helping to shift problems from one Member State to another. The large number of negative comments received in the case confirm this.

It is sufficient to point out in this respect that in the clothing industry, labour costs may account for up to 80 % of production costs. It is easy to imagine that a change in labour costs may have not inconsiderable consequences as a result of the plan introduced in France. It is significant that, according to one of the third parties who submitted comments as part of the proceedings, the annual amount of aid (FF 2,1 billion, of which some 40 % would go to the textile industry) is more than the annual profits of the German textile industry as a whole.

In its judgment of 2 July 1974 in Case 173/73 Italy v. Commission ([19]), the Court of Justice held that, since the reduction in social security contributions had the effect of reducing labour costs and since the industry receiving the aid was in competition with undertakings in the other Member States, the modification of production costs in the Italian textile industry by the reduction of social security contributions necessarily affected trade between the Member States.

This position upheld the Commission's analysis in that case, namely that in a market in which the volume of trade is substantial, any aid, irrespective of its amount or intensity, distorts or threatens to distort normal competition if the recipient companies receive State aid which their competitors do not receive.

Consequently, it must be concluded that the measures reducing social security contributions under the 'textile plan' fall within the scope of Article 92 (1) of the Treaty.

For the reasons set out above, the Commission considers that the provision of public funds to the abovementioned industries constitutes by its very nature and in its totality State aid within the meaning of Article 92 (1) of the Treaty. It is not therefore necessary to examine in detail the calculations submitted.

It is sufficient to note, as an additional consideration, that in concluding that the measures are neutral in their impact, France bases its argument on its own statistics and that for the most part such statistics are averages ([20]), either in terms of the relevant industry or in terms of French industry as a whole. In addition, some of the information relating to the leather and clothing industries was communicated to the Commission in the form of aggregates, while in the case of the footwear industry such information was simply not provided.

It is very difficult to argue in such circumstances that the measures are neutral in their effect. One third party who submitted comments as part of the proceedings cited the case of a French textile firm ([21]) with more than 100 employees which claims to have saved 8 % of its total wage bill through the reduction in social security contributions, enabling it to cut its costs.

Another source ([22]) reports on a meeting held on 23 January 1997 by the body set up in France to monitor the textile plan, at which an initial statistical assessment of the measures was carried out. According to that source, firms covered by the plan benefited from reductions in low-wage social security contributions equivalent to an average decrease of 10 to 12 % in their total wage bill.

While average gains of the order of 10 to 12 % of the total wage bill may seem excessive, the figures reflect considerable fluctuations around the averages indicated in the above tables. This suggests that a large number of firms have a wage structure that differs substantially from the averages and that their gain from the aid is much higher.

In addition, the Commission notes that France did not include in its calculations the direct effects of the reorganization of working time, and in particular the gains in competitiveness, which it should have done.

It may reasonably be supposed that any reorganization of labour that helps a firm adjust its resources better to market conditions and characteristics will allow the firm to increase its efficiency. This is a direct effect of the measures that would not in any way be open to criticism if it were not due to State support falling within the scope of Article 92 (1) of the Treaty.

([19]) See footnote 16.

([20]) This has the effect of mitigating the effects of the measures described and does not give a true picture of the real situation for the French firms concerned.

([21]) *Journal du textile* No 1472, 28. 10. 1996.

([22]) *Le Monde*, 25. 1. 1997.

In a case involving the restructuring of a textile firm employing 248 persons that is currently being examined by the Commission (State aid No 731/96 'la Lainière de Roubaix'), France states that the implementation of the textile plan will allow gains in competitiveness of around 5 % through improved use of productive plant (i.e. a gain in productivity), This also appears to confirm experience in Austria, where competitive gains easily offset the costs of reorganizing working time.

At all events, the Commission considers that, because of the problematic nature of the figures available, which are not always representative of the real situation of the firms, and the failure to take account of all the factors affecting the firms (gains from the reduction in social security contributions, costs of the reorganization of working time and gains in competitiveness as a result of such reorganization), the neutrality of the French measures cannot be demonstrated.

VIII

In view of the above, the Commission considers that the reduction in social security contributions on salaries that do not exceed 1,5 times the SMIC, as implemented, constitutes aid within the meaning of Article 92 (1) of the Treaty. It is therefore necessary to examine whether the aid qualifies for one of the derogations provided for in Article 92 of the Treaty.

The derogations provided for in Article 92 (2) are not applicable, since the aid is not granted to individual consumers, intended to make good the damage caused by natural disasters or intended to compensate for the economic disadvantages caused by the division of Germany.

The derogation provided for in Article 92 (3) (a) is not applicable, since the measure covers the whole of France.

The derogation provided for in Article 92 (3) (b) is not applicable, since France has not shown that the reduction in social security contributions for firms in the relevant industries is necessary in order to remedy a serious disturbance in the French economy.

The derogation provided for in Article 92 (3) (d) is not relevant, since the aid does not have the effect of promoting culture and heritage conservation.

Nor has France at any time invoked the abovementioned derogations, since it has always maintained that the nature of the measure and the objective pursued are the safeguarding of employment through the reorganization of working time.

The aid is sectoral aid intended to safeguard and create employment. It must therefore be examined in the light of the guidelines on aid to employment (hereinafter referred to as 'the guidelines') in order to determine whether the derogation provided for in Article 92 (3) (c) is applicable.

Aid to maintain jobs ([23]), which is similar to operating aid, may be authorized by the Commission only in the event of natural disasters or exceptional occurrences in regions eligible for the derogation under Article 92 (3) (a), as part of a rescue, restructuring or conversion plan for an ailing firm. Aid to maintain jobs may be granted by means of general measures.

At no time has France shown that the proposed aid could fulfil any of these criteria. The aid cannot therefore be authorized on the basis of the guidelines.

As far as aid to create jobs is concerned, point 23 of the guidelines states the following: 'Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.

Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve their market share to the detriment of their Community competitors both within the Member State concerned and for exports inside and outside the Community, with all the attendant implications in terms of a worsening of the employment situation in those sectors in the other Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other Member States generally outweigh the common interest involved in active measures to reduce unemployment; the Commission will usually consider such aid to be incompatible with the common market.'

([23]) Guidelines, point 22.

In accordance with point 23 of the guidelines, the Commission is obliged, even in the case of aid for job creation, to adopt a strict attitude to sectoral aid in order to forestall any escalation of aid in good time and, over and above that, to ensure that the very concept of the internal market is not called into question.

No information indicating that the four industries are not covered by the description in point 23 have been provided by France during the course of the proceedings. The four industries are in a state of crisis and overcapacity throughout the Community.

Furthermore, the industries must be regarded as sensitive sectors under the guidelines. All Community producers are facing very severe pressure from third-country imports, the employment situation is difficult in these industries in all Member States, and intra-Community trade is substantial and plays a prime role as a source for the procurement and marketing of goods for the four French industries.

The aid cannot therefore be accepted as facilitating development, since aid is assessed from a Community point of view and not from the point of view of a specific Member State. The sectoral measure may alter the balance between the Member States, all of which are facing similar problems.

Point 23 of the guidelines also states that 'the Commission will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold out the prospect of considerable job creation'. Once again, no information indicating that the four industries comply with this criterion has been provided. In addition, the measure does not apply to some activities but to the four industries as a whole.

The Commission's negative position on employment targeted on certain sectors was moreover reiterated in its notice on monitoring State aid and reduction of labour costs ([24]).

In its notice on the *'de minimis'* rule for State aid ([25]), the Commission stated that the maximum amount of ECU 100 000 over a three-year period represented an aid threshold below which Article 92 (1) of the Treaty could be considered inapplicable and that such aid was no longer subject to the prior notification requirement pursuant to Article 93 (3).

However, the Commission specified conditions for implementing this rule, such as monitoring arrangements to ensure that the combination of different types of aid granted to the same recipient under the *'de minimis'* rule comply with the threshold, and conditions relating to the conversion into cash grant equivalent where assistance is provided otherwise than as a grant. This *'de minimis'* rule concerns mainly small and medium-sized businesses, but is applicable irrespective of the size of the recipient firms.

Consequently, the aid in question does not qualify for the derogations provided for by the guidelines and is thus incompatible with the Treaty, in the case of the part not covered by the *'de minimis'* rule. In addition, by implementing the aid in spite of the suspensory effect of Article 93 (2) of the Treaty, before the Commission had taken a decision on it, France has rendered the aid illegal. The aid is thus incompatible with the proper operation of the EEA Agreement as well.

Lastly, the Commission considers that illegal aid that is incompatible with the common market must be recovered so as to eliminate is economic impact and restore the status quo,

HAS ADOPTED THIS DECISION:

Article 1

The reduction in employers' social security contributions introduced under the 'textile plan' by Article 99 of Law No 93-314 of 12 April 1996 implementing various economic and financial provisions and by Decree No 96-572 of 27 June 1996 on the degressive reduction of employers' social security contributions in firms in the textile, clothing, leather and footwear industries is, as regards the part not covered by the *'de minimis'* rule, illegal aid in that it was implemented before the Commission had taken a decision on it, in accordance with the provisions of Article 93 (3) of the Treaty.

As regards the part not covered by the *'de minimis'* rule, which set a threshold of ECU 100 000 over three years, the aid is also incompatible with the common market in accordance with the provisions of Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement and does not qualify for any of the derogations provided for in Article 92 (2) and (3) of the Treaty and Article 61 (2) and (3) of the EEA Agreement.

([24]) OJ C 1, 3. 1. 1997, p. 10.
([25]) OJ C 68, 6. 3. 1996, p. 9.

Article 2

France shall take the appropriate measures to terminate forthwith the granting of the reduction referred to in Article 1 in so far as the total amount of the reduction is not covered by the *'de minimus'* rule referred to in that section.

France shall take the appropriate measures to ensure the recovery of the aid illegally granted within the meaning of Article 1. Recovery shall be carried out in accordance with the procedures and provisions of French law, with interest until the date of actual repayment, calculated at a rate equal to the percentage value on such date of the reference rate used to calculate the net grant equivalent of regional aid in France.

Article 3

France shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 9 April 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 26 November 1997

lifting the suspension of the payment of the anti-dumping duty extended to certain bicycle parts originating in the People's Republic of China granted to certain parties pursuant to Commission Regulation (EC) No 88/97

(97/812/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1], as amended by Regulation (EC) No 2331/96 [2],

Having regard to Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered pursuant to Regulation (EC) No 703/96 [3],

Having regard to Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorization of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Regulation (EEC) No 2474/93 [4], and in particular Article 4 (4) thereof,

After consulting the Advisory Committee,

Whereas:

(1) After the entry into force of Regulation (EC) No 88/97, a number of bicycle assemblers submitted requests pursuant to Article 3 of that Regulation to be exempted from the application of the anti-dumping duty extended pursuant to Article 2 of Regulation (EC) No 71/97 (hereinafter referred to as 'the extended anti-dumping duty');

(2) Pursuant to Article 5 (1) and Article 11 (2) of Regulation (EC) No 88/97, payment of the customs debt in respect of the extended duty was suspended in respect of any imports of essential bicycle parts declared for free circulation by parties which had requested an exemption;

(3) The Commission published in the *Official Journal of the European Communities* [5] a list of parties for which the suspension of the payment of the extended anti-dumping duty had taken effect, specifying for each party the date of its request;

(4) Following receipt of those requests, the Commission requested additional information required for the determination of their admissibility and prescribed a time limit for the submission of that information;

(5) Some parties which had requested exemption from the extended anti-dumping duty subsequently withdrew their request and informed the Commission accordingly. No decision need be taken, therefore, as to the admissibility or the merits of those requests. However, the suspension of payment has to be lifted to allow collection of the anti-dumping duties due. The parties concerned are listed in Annex I;

(6) Other parties which had requested an exemption from the extended anti-dumping duty did not cooperate with the Commission within the period specified. Those parties are mentioned in Annex II. In accordance with Article 4 of Regulation (EC) No 88/97, the Commission informed those parties that it intended to reject their request for exemption from the extended duty, on the grounds that they had failed to provide the information requested for the determination of the admissibility of their request within the period specified. The parties were given an opportunity to comment;

(7) It is no longer justified for the parties listed in Annex I and Annex II to benefit from a suspension of the payment of the extended anti-dumping duty. The suspension should be lifted and the extended anti-dumping duty should be collected,

HAS ADOPTED THIS DECISION:

Article 1

The requests for exemption from the extended anti-dumping duty made in accordance with Article 3 of Regulation (EC) No 88/97 by the parties listed in Annex II to this Decision are hereby rejected as inadmissible.

[1] OJ L 56, 6. 3. 1996, p. 1.
[2] OJ L 317, 6. 12. 1996, p. 1.
[3] OJ L 16, 18. 1. 1997, p. 55.
[4] OJ L 17, 21. 1. 1997, p. 17.
[5] OJ C 45, 13. 2. 1997, p. 3 and OJ C 112, 10. 4. 1997, p. 9.

Article 2

The suspension of payment of the extended anti-dumping duty pursuant to Article 5 of Regulation (EC) No 88/97 is hereby lifted for the parties listed in Annexes I and II to this Decision.

Article 3

This Decision is addressed to the Member States and to the parties listed in Annexes I and II.

Done at Brussels, 26 November 1997.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

Name	City	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect of suspension	Taric additional codes
Falter Fahrzeug-Werke Gmbh & Co KG	D-33609 Bielefeld	Germany	Article 11	19. 1. 1997	8962
Kastle Bikes	I-31040 Trevignano (TV)	Italy	Article 5	22. 1. 1997	8971
Tecno Bike	I-61033 Fermignano (PS)	Italy	Article 5	7. 2. 1997	8981
Motor Veneta srl	I-San Bonifacio (VR)	Italy	Article 5	13. 2. 1997	8984
Superba srl	I-35030 Sarmeola di Rubano (PD)	Italy	Article 5	13. 2. 1997	8984
Eusebi	I-61032 Fano (PS)	Italy	Article 5	3. 3. 1997	8002
Aurelia Dino	I-12011 Borgo San Dalmazzo (CN)	Italy	Article 5	10. 3. 1997	8986
Aurora srl	I-Vittorio Veneto (TV)	Italy	Article 5	17. 3. 1997	8033
RMS	F-67120 Ernolsheim-sur-Bruche	France	Article 5	5. 5. 1997	8057
Adnico	NL-3125 Schiedam	The Netherlands	Article 5	10. 7. 1997	8329

ANNEX II

Name	City	Country	Suspension pursuant to Regulation (EC) No 88/97	Date of effect of suspension	Taric additional codes
Ciclo Meccanica	I-20050 Sulbiate (MI)	Italy	Article 5	5. 2. 1997	8979
Olmo Giuseppe SpA	I-17015 Celle Ligure (SV)	Italy	Article 5	7. 2. 1997	8981
Molinari Zeno	I-41039 S. Possidonio (MO)	Italy	Article 5	13. 2. 1997	8984
FARAM srl	I-02010 S. Rufina di Cittaducale (RI)	Italy	Article 5	24. 2. 1997	8003
Cicli Regina di Romagna	I-47023 Cesena (FO)	Italy	Article 5	25. 2. 1997	8005
Cicli Taylor	I-41058 Vignola (MO)	Italy	Article 5	3. 3. 1997	8002
Ciclotecnica Ghiaroni Efrem	I-41058 Vignola (MO)	Italy	Article 5	4. 3. 1997	8989
Cicli Douglas	I-35028 Piove di Sacco (PD)	Italy	Article 5	13. 3. 1997	8001

COMMISSION DECISION

of 26 November 1997

amending Decision 96/4/EC authorizing a method for grading pig carcases in Austria

(Only the German text is authentic)

(97/813/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3220/84 of 13 November 1984 determining the Community scale for grading pig carcases [1], as last amended by Regulation (EC) No 3513/93 [2], and in particular Article 5 (2) thereof,

Whereas Commission Decision 96/4/EC [3] has introduced a grading method for use until 31 December 1997, in Austria;

Whereas the Government of Austria has requested the Commission to authorize as from 1 January 1998 the application of a new formula for the calculation of the lean meat content of carcases in the framework of the existing grading method and has submitted the details required in Article 3 of Commission Regulation (EEC) No 2967/85 of 24 October 1985 laying down detailed rules for the application of the Community scale for grading pig carcases [4], as amended by Regulation (EC) No 3127/94 [5]; whereas an examination of this request has revealed that the conditions for authorizing the new formula are fulfilled;

Whereas at the same time the derogation regarding the standard presentation of pig carcases provided for in Article 3 could be removed;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS DECISION:

Article 1

Decision 96/4/EC is amended as follows:

1. Article 3 is deleted.

2. The second phrase of Article 4 is deleted.

3. Article 4 becomes Article 3.

4. The Annex is replaced by the Annex to this Decision.

Article 2

This Decision is addressed to the Federal Republic of Austria.

It shall apply as from 1 January 1998.

Done at Brussels, 26 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 301, 20. 11. 1984, p. 1.
[2] OJ L 320, 22. 12. 1993, p. 5.
[3] OJ L 1, 3. 1. 1996, p. 9.
[4] OJ L 285, 25. 10. 1985, p. 39.
[5] OJ L 330, 21. 12. 1994, p. 34.

ANNEX

ZWEI-PUNKTE-MESSVERFAHREN (ZP)

1. Grading pig carcases by use of the method termed 'Zwei-Punkte-Meßverfahren (ZP)'.

2. The lean meat content of the carcase shall be calculated according to the following formula:

$$\hat{y} = 49{,}123 - 0{,}55983 \times a + 0{,}22096 \times b$$

where:

$\hat{y}$ = the estimated lean meat in the carcase,

a = the minimum thickness in millimetres of visible fat (including rind) on the midline of the split carcase, covering the *Musculus glutaeus medius,*

b = the visible thickness in millimetres of the lumbar muscle on the midline of the split carcase, measured at the shortest distance between the front (cranial) end of the *Musculus glutaeus medius* and the upper (dorsal) edge of the vertebral canal.

The formula shall be valid for carcases weighing between 70 and 130 kg.