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Contents

(Continued overleaf)

EN

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

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

Contents (continued)

EN

(1) Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 971/2005

of 24 June 2005

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], and in particular Article 4(1) thereof,

Whereas:

(1) 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.

(2) 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 25 June 2005.

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

Done at Brussels, 24 June 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to Commission Regulation of 24 June 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	62,6
	204	35,2
	999	48,9
0707 00 05	052	85,7
	999	85,7
0709 90 70	052	89,1
	999	89,1
0805 50 10	388	66,5
	528	56,5
	624	71,1
	999	64,7
0808 10 80	388	93,3
	400	102,8
	508	107,1
	512	67,0
	524	46,4
	528	63,7
	720	47,6
	804	93,7
	999	77,7
0809 10 00	052	187,8
	624	188,8
	999	188,3
0809 20 95	052	266,1
	068	148,4
	400	325,6
	999	246,7
0809 30 10, 0809 30 90	052	157,0
	999	157,0
0809 40 05	624	166,0
	999	166,0

(1) Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 972/2005

of 24 June 2005

determining the extent to which applications for import rights lodged in respect of the quota for frozen meat of bovine animals, provided for in Regulation (EC) No 715/2005, can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 715/2005 of 12 May 2005 opening and providing for the administration of a tariff quota for frozen meat of bovine animals covered by CN code 0202 and products covered by CN code 0206 29 91 (1 July 2005 to 30 June 2006) [2], and in particular Article 5 thereof,

Whereas:

Article 1 of Regulation (EC) No 715/2005 fixes at 53 000 tonnes the quantity of the quota in respect of which Community importers can lodge an application for import rights based on the quantities of beef falling under CN code 0201, 0202, 0206 10 95 or 0206 29 91 imported by him/her or on his/her account under the relevant customs provisions, between 1 May 2004 and 30 April 2005. As the import rights applied for exceed the available quantity referred to in Article 1, a reduction coefficient should be fixed in accordance with Article 5 of Regulation (EC) No 715/2005,

HAS ADOPTED THIS REGULATION:

Article 1

Each application for import rights lodged in accordance with Article 4(1) of Regulation (EC) No 715/2005 shall be accepted at a rate of 18,363334 % of the import rights applied for.

Article 2

This Regulation shall enter into force on 25 June 2005.

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

Done at Brussels, 24 June 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

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[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1899/2004 (OJ L 328, 31.10.2004, p. 67).

[2] OJ L 121, 13.5.2005, p. 48.

COMMISSION REGULATION (EC) No 973/2005

of 24 June 2005

determining the extent to which applications lodged in June 2005 for import rights in respect of frozen beef intended for processing may be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 716/2005 of 12 May 2005 opening and providing for the administration of an import tariff quota for frozen beef intended for processing (1 July 2005 to 30 June 2006) [2], and in particular Article 5(4) thereof,

Whereas:

(1) Article 3(1) of Regulation (EC) No 716/2005 fixes the quantities of frozen beef intended for processing which may be imported under special terms in the period from 1 July 2005 to 30 June 2006.

(2) Article 5(4) of Regulation (EC) No 716/2005 lays down that the quantities applied for may be reduced. The applications lodged relate to total quantities which exceed the quantities available. Under these circumstances and taking care to ensure an equitable distribution of the available quantities, it is appropriate to reduce proportionally the quantities applied for,

HAS ADOPTED THIS REGULATION:

Article 1

Every application for import rights lodged in accordance with Regulation (EC) No 716/2005 for the period 1 July 2005 to 30 June 2006 shall be granted to the following extent, expressed as bone-in beef:

(a) 5,166817 % of the quantity requested for beef imports intended for the manufacture of 'preserves' as defined by Article 3(1)(a) of Regulation (EC) No 716/2005,

(b) 32,725815 % of the quantity requested for beef imports intended for the manufacture of products as defined by Article 3(1)(b) of Regulation (EC) No 716/2005.

Article 2

This Regulation shall enter into force on 25 June 2005.

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

Done at Brussels, 24 June 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1899/2004 (OJ L 328, 30.10.2004, p. 67).

[2] OJ L 121, 13.5.2005, p. 53.

COMMISSION REGULATION (EC) No 974/2005

of 24 June 2005

determining the extent to which applications lodged in June 2005 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products [1], and in particular Article 4(4) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2005 are for quantities less than the quantities available and can therefore be met in full.

(2) The quantity available for the following period should be determined.

(3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2005 submitted pursuant to Regulation (EC) No 1432/94 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2005, applications may be lodged pursuant to Regulation (EC) No 1432/94 for import licences for a total quantity as referred to in Annex II.

3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 July 2005.

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

Done at Brussels, 24 June 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 156, 23.6.1994, p. 14. Regulation as last amended by Regulation (EC) No 341/2005 (OJ L 53, 26.2.2005, p. 28).

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2005
1	100,00

ANNEX II

(t)

Group	Total quantity available for the period 1 October to 31 December 2005
1	7 000,0

COMMISSION REGULATION (EC) No 975/2005

of 24 June 2005

determining the extent to which applications lodged in June 2005 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 July to 30 September 2005 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1458/2003 of 18 August 2003 opening and providing for the administration of tariff quotas for certain products in the pigmeat sector [1], and in particular Article 5(6) thereof,

Whereas:

(1) The applications for import licences lodged for the third quarter of 2005 are for quantities less than the quantities available and can therefore be met in full.

(2) The surplus to be added to the quantity available for the following period should be determined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 July to 30 September 2005 submitted pursuant to Regulation (EC) No 1458/2003 shall be met as referred to in Annex I.

2. For the period 1 October to 31 December 2005, applications may be lodged pursuant to Regulation (EC) No 1458/2003 for import licences for a total quantity as referred to in Annex II.

Article 2

This Regulation shall enter into force on 1 July 2005.

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

Done at Brussels, 24 June 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

[1] OJ L 208, 19.8.2003, p. 3. Regulation as amended by Regulation (EC) No 341/2005 (OJ L 53, 26.2.2005, p. 28).

ANNEX I

Group	Percentage of acceptance of import licences submitted for the period 1 July to 30 September 2005
G2	100
G3	100
G4	100
G5	100
G6	100
G7	100

ANNEX II

(t)

Group No	Total quantity available for the period 1 October to 31 December 2005
G2	15 875,0
G3	2 500,0
G4	1 500,0
G5	3 050,0
G6	7 500,0
G7	2 750,0

COMMISSION REGULATION (EC) No 976/2005

of 24 June 2005

fixing the maximum export refund on wholly milled and parboiled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2032/2004

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1785/2003 of 29 September 2003 on the common organisation of the market in rice [1], and in particular Article 14(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2032/2004 [2].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [3] allows the Commission to fix, in accordance with the procedure laid down in Article 26(2) of Regulation (EC) No 1785/2003 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 14(4) of Regulation (EC) No 1785/2003 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

(4) 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 maximum export refund on wholly milled and parboiled long grain B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2032/2004 is hereby fixed on the basis of the tenders submitted from 20 to 23 June 2005 at 57,00 EUR/t.

Article 2

This Regulation shall enter into force on 25 June 2005.

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

Done at Brussels, 24 June 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

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[1] OJ L 270, 21.10.2003, p. 96.
[2] OJ L 353, 27.11.2004, p. 6.
[3] OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 1/2004 OF THE EU-MOROCCO ASSOCIATION COUNCIL

of 19 April 2004

adopting the necessary rules for the implementation of the competition rules

(2005/466/EC)

THE EU-MOROCCO ASSOCIATION COUNCIL,

Having regard to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part [1] (the Agreement),

Whereas:

(1) A free trade area is to be established between the EU and Morocco by 28 February 2012 at the latest.

(2) Article 36(3) of the Agreement provides for the existence of administrative cooperation arrangements between the Parties to facilitate the implementation of paragraphs 1 and 2 of the said Article, and for the possibility of adopting technical cooperation measures.

(3) Article 36(3) of the Agreement provides that the Association Council may adopt the necessary rules for the implementation of the competition rules within five years of the entry into force of the Agreement,

HAS DECIDED AS FOLLOWS:

Sole Article

1. A mechanism of cooperation between the Parties' authorities responsible for the implementation of competition rules is established in the Annex.

2. The Parties' competition authorities shall inform the Association Committee's Internal Market Subcommittee on the implementation of the cooperation established under the mechanism referred to above.

3. This Decision shall enter into force on the day of its adoption.

Done at Brussels, 19 April 2004.

For the Association Council

B. COWEN

[1] OJ L 70, 18.3.2000, p. 2. Agreement as last amended by Exchange of Letters of 30 December 2003 (OJ L 345, 31.12.2003, p. 119).

ANNEX

EU-MOROCCO ASSOCIATION AGREEMENT

Mechanism of cooperation between the Parties' competition authorities responsible for the implementation of competition rules

CHAPTER I

GENERAL PROVISIONS

1. **Objectives**

1.1. Cases relating to practices contrary to Article 36(1)(a) or (b) of the Agreement shall be dealt with by applying the appropriate legislation, in order to avoid adverse effects on trade and economic development and the possible negative impact that such practices may have on the other Party's important interests.

1.2. The competences of the Parties' competition authorities to deal with these cases shall flow from the existing rules of their respective competition laws, including where these rules are applied to undertakings located outside their respective territories.

1.3. The purpose of these rules is to promote cooperation and coordination between the Parties in the application of their competition laws in order to ensure that restrictions on competition do not block or cancel out the benefits which should be ensured following the progressive liberalisation of trade between the European Community and Morocco.

2. **Definitions**

For the purposes of these rules:

(a) 'competition law' shall mean:

(i) for the European Community (the Community), Articles 81 and 82 of the EC Treaty, Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings [1] and related secondary legislation adopted by the Community;

(ii) for Morocco, the Price Liberalisation and Free Competition Act (No 6/99) of 2 rabii I 1421 (5 June 2000), and related secondary legislation;

(b) 'competition authority' shall mean:

(i) for the Community, the Commission of the European Community as to its responsibilities pursuant to the competition law of the Community;

(ii) for Morocco, the Deputy Ministry for Economic and General Affairs and the Upgrading of the Economy;

(c) 'enforcement activity' shall mean any application of competition law by way of investigation or proceeding conducted by the competition authority of a Party, which may result in penalties or remedies.

(d) 'anti-competitive activity' and 'conduct and practices which restrict competition' shall mean any conduct or transaction that is impermissible under the competition laws of a Party and may be subject to penalties or remedies.

CHAPTER II

COOPERATION AND COORDINATION

3. **Notification**

3.1. Each Party's competition authority shall notify the other of its enforcement activities where:

(a) the notifying Party considers them relevant to enforcement activities of the other Party;

[1] OJ L 395, 30.12.1989, p. 1. Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

(b) they may significantly affect important interests of the other Party;

(c) they relate to restrictions on competition which may directly and substantially affect the territory of the other Party;

(d) they involve anti-competitive activities carried out mainly in the territory of the other Party;

(e) they condition or prohibit action in the territory of the other Party.

3.2. As far as possible, and provided that this is not contrary to the Parties' competition laws and does not adversely affect any investigation being carried out, notification shall take place during the initial phase of the procedure, to enable the notified competition authority to express its opinion. The notified authority shall give due consideration to the opinions received when taking decisions.

3.3. The notifications provided for in Article 3.1. shall be detailed enough to permit an evaluation in the light of the interests of the other Party.

3.4. The Parties undertake to give the above notification wherever possible, depending on available administrative resources.

4. **Exchange of information and confidentiality**

4.1. The Parties shall exchange information which will facilitate the effective application of their respective competition laws and promote a better understanding of their respective legal frameworks.

4.2. The exchange of information shall be subject to the standards of confidentiality applicable under the law of each Party. Confidential information whose dissemination is expressly prohibited or which, if disseminated, could adversely affect the Parties, shall not be provided without the express consent of the source of the information. Each competition authority shall maintain, to the fullest extent possible, the confidentiality of any information provided to it in confidence by the other competition authority under the rules and shall oppose, to the same extent, any application for disclosure of such information by a third party that is not authorised by the competition authority that supplied the information.

5. **Coordination of enforcement activities**

5.1. Each competition authority may notify the other of its willingness to coordinate enforcement activities with respect to a specific case. This coordination shall not prevent the Parties from taking autonomous decisions.

5.2. In determining the extent of coordination, the competition authorities shall consider:

(a) the effective results which coordination could produce;

(b) the additional information to be obtained;

(c) the reduction in costs for the competition authorities and the economic agents involved; and

(d) the applicable deadlines under their respective legislation.

6. **Consultation when important interests of one Party are adversely affected in the territory of the other Party**

6.1. Each Party shall, wherever possible and in accordance with its own legislation, take into consideration the important interests of the other Party in the course of its enforcement activities. A competition authority which considers that an enforcement activity being conducted by the competition authority of the other Party under its competition law may affect the important interests of the Party it represents should transmit its views on the matter to, or request consultations with, the other competition authority. Without prejudice to the continuation of its action under its competition laws or to its full freedom of ultimate decision, the competition authority so addressed should give full and sympathetic consideration to the views expressed by the requesting competition authority, and in particular to any suggestions as to alternative means of fulfilling the needs and objectives of the enforcement activity.

6.2. A competition authority which considers that one or more undertakings situated in one Party's territory are or have been engaged in anti-competitive activities of whatever origin that are substantially and adversely affecting the interests of the Party it represents may request consultations with the other competition authority, recognising that entering into such consultations is without prejudice to any action under its competition laws and to the full freedom of ultimate decision of the competition authority concerned. The requested competition authority may take the appropriate remedial action, in the light of the legislation in force.

7. **Technical cooperation**

7.1. The Parties shall be open to technical cooperation in order to enable them to take advantage of their respective experience and to strengthen the implementation of their competition law and policies, according to the resources available to them.

7.2. The following cooperation activities may be included in the programme to back up the implementation of the Agreement:

(a) training for officials, to enable them to gain practical experience;

(b) seminars, in particular for civil servants;

(c) studies of competition law and policies, with a view to supporting their development.

8. **Management of implementing rules**

Cooperation will be monitored and evaluated by the Internal Market Subcommittee established in the Agreement by the Association Council Decision of 24 February 2003.

9. **Amendment and update of the rules**

The Association Council may amend these rules after consultation of the competition authorities.

Notice concerning the entry into force of the Additional Protocol to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Bulgaria, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union

The Additional Protocol to the Europe Agreement with Bulgaria, to take account of the accession of 10 new Member States to the European Union, which the Council and the Commission decided to conclude on 18 April 2005 ([1]), enters into force on 1 July 2005, the last notification of the completion of procedures under Article 10 of that Protocol having been received on 13 June 2005.

([1]) OJ L 155, 17.6.2005, p. 1.

COMMISSION

COMMISSION DECISION

of 19 May 2004

on State aid which Belgium is planning to implement for Sioen Fibres SA

(notified under document number C(2004) 1622)

(Only the French and Dutch versions are authentic)

(Text with EEA relevance)

(2005/467/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. PROCEDURE

(1) By letter dated 20 December 2002, Belgium notified a proposal to grant aid to the company SIOEN Fibres SA (hereinafter 'Sioen') in connection with an investment in polyester industrial filament yarn production facilities. The Commission requested additional information by letter dated 12 February 2002, to which Belgium replied by letter dated 11 March 2003.

(2) By letter dated 2 May 2003, the Commission informed Belgium that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from Belgium on 8 July 2003. The International Rayon and Synthetic Fibres Committee (CIRFS) submitted comments on 10 July 2003 and the Spanish Association of Chemical Fibres Producers (Profibra) submitted comments on 15 July 2003. These comments from interested parties were sent to Belgium, which provided its observations on 8 October 2003. A meeting with the Belgian authorities and Sioen took place on 7 November 2003. On 27 November 2003 CIRFS agreed that certain information in its submission of 10 July 2003, which was initially classified strictly confidential, could be made available to the Belgian authorities. This information was sent to Belgium on 1 December 2003. Belgium gave its comments on 19 January 2004.

II. DESCRIPTION

(5) SIOEN is a large company active in the synthetic fibres sector. It is 99,99 %–owned by Sioen Industries SA, which in 2001 had a turnover of EUR 226,02 million and a workforce of some 3 900 employees.

(6) Sioen has declared eligible investment amounting to EUR 19,46 million during the period from May 2001 to June 2003 and designed to expand its production capacity for high–tenacity polyester industrial filament yarn [3]. The yarn is intended for the production of coated fabric for use in the production of final products such as canvas for lorries, tent fabric or airbags. According to Belgium, it is not intended for use in the textile sector (production of clothing or carpets). The investment is expected to create 39 jobs.

[1] OJ C 141, 17.6.2003, p. 4.
[2] See footnote 1.
[3] The CN number of the relevant product is 5402 20 00.

(7) The investment increases the production capacity from 8 500 tonnes in 2002 to 14 850 tonnes per year from 2003 onwards ([4]). Belgium states that the machinery could not be adapted easily and at low cost to produce other types of fibre. Actual production in 2002 amounted to 7 650 tonnes and increased to 13 543 tonnes per year from 2003 onwards. Given the vertically integrated structure of Sioen Industries, the entire production volume is intended exclusively for internal use within the group.

(8) The proposed aid of EUR 2,86 million is to be granted under an approved aid scheme ([5]) which does not, however, cover aid to the synthetic fibres sector. The aid application had been submitted by the Walloon authorities on 18 May 2001 and approved by them on 29 August 2002, subject to authorisation by the Commission. The applicable aid ceiling allowed under Community rules for the Hainaut region (Article 87(3)(c)) is 17,5 % net grant equivalent for large firms.

(9) In the decision to open the investigation procedure, the Commission, in view of the market situation and the effect of the aided investment on production capacity, expressed doubts as to the conformity of the aid with the criteria set out in the Code on aid to the synthetic fibres industry ([6]) (the 'Code') for compatibility with the common market.

III. COMMENTS FROM INTERESTED PARTIES

(10) The comments submitted by CIRFS can be summarised as follows:

(11) CIRFS points out that the synthetic fibres industry is acutely sensitive to distortions of competition from state aid. In this sector, which includes high–tenacity polyester industrial filament yarn, State aid, unless very strictly controlled, would have an inherent tendency to affect trading conditions to an extent contrary to the common interest.

(12) With respect to the question whether there is a structural supply shortage, CIRFS notes that, taking annual averages for the two years preceding that in which notification was given, the Belgian authorities' calculations do not show a structural supply shortage. This assumption would correspond to confidential CIRFS data based on returns from its members and estimates for non members which show that capacity utilisation in the Community amounted to 91,45 % in 2000, 88,06 % in 2001 and 88,23 % in 2002.

(13) As regards the effect on the market, CIRFS points out that the Sioen investments for which aid is proposed represent a significant increase in capacity, both for Sioen itself and for the sector as a whole. In this respect, it also notes that no producer among its members is currently making a satisfactory return on capital or sales, with the result that the impact of State aid on their competitive position would be particularly negative. CIRFS also explains that one competing producer has only recently re-emerged from receivership and its recovery plan could be seriously affected by the granting of State aid to a competitor. Other Community producers have invested an estimated EUR 59 million over the last five years in this activity without any access to State aid for investment, even investment in assisted regions. Lastly, CIRFS expects the market to remain highly competitive and low-margin for several years, not only because of competition between Community producers but also because of the pressure from dumped imports.

(14) The comments from Profibra can be summarised as follows:

(15) Profibra expressed its concerns regarding the aid to Sioen by letter dated 15 July 2003. There would be no circumstances in which Sioen's aid application would be justified. Profibra points out that the capacity increase sought by Sioen is equivalent to 74,4 % of its current capacity, which accounts for 3,5 % of total European capacity. In the current employment circumstances, in a globalised environment and with no barriers to access to the European market, the aid application would lack any entrepreneurial or economic logic. Profibra also contests the view that there would be a supply shortage, given that the capacity utilisation rate was 86,7 % in 2000 and 89,5 % in 2001. It also refers to a major increase in imports and points out that a company in the sector is most likely to make losses if it is not using at least 85 % to 90 % of its capacity.

([4]) The average decitex on which the calculation of texturisation capacity is based is 1 100 dtex.

([5]) Aid N 226/2000, Belgium, Regional aid scheme under the Law of 30 December 1970 on economic expansion in the Walloon Region, as amended by the Decree of 25 June 1992 (OJ C 37, 3.2.2001, p. 48).

([6]) OJ C 94, 30.3.1996, p. 11; period of validity extended in OJ C 24, 29.1.1999, p. 18, and OJ C 368, 22.12.2001, p. 10.

IV. COMMENTS FROM BELGIUM

(16) The comments from Belgium on the doubts raised by the Commission when it opened the investigation procedure and on the third-party comments can be summarised as follows:

(17) Belgium points out that CIRFS and Profibra are trade associations which represent the main producers of high-tenacity polyester industrial filament yarn and of which Sioen is not a member. It questions the impartiality of these comments, which are considered unfounded, imprecise and ambiguous. The Commission is asked to evaluate the comments carefully, particularly as there are no official statistics available for the relevant market.

(18) As regards the question whether there is a structural supply shortage, Belgium notes that there are no official statistics available for high-tenacity polyester industrial filament yarn. Sioen gathered information on production capacity and consumption from the main producers present on the market in order to obtain the best possible estimate of the capacity utilisation rate. On the basis of this information, which was provided *in tempore non suspecto*, Belgium explains that the capacity utilisation rate for high-tenacity polyester industrial filament yarn exceeds 90 %. It concluded that the sector was characterised by a structural supply shortage during the period 2000 to 2002, and it is claimed that this has been confirmed by several experts.

(19) In this connection, Sioen also explains that the yarn which it produces has a high value added and that the market has been characterised by a relatively high degree of price stability since 1999. It also rejects the allegations made by CIRFS regarding the strong pressure on profit margins in the sector, arguing that its members are active in less profitable markets than the one for high-tenacity polyester filament yarn, while Sioen's good results are due to extensive R & D activities aimed at continuous quality improvements and to the fact that it is present on very profitable niche markets.

(20) Belgium considers Sioen's capacity increase to be in accordance with the Code. In determining whether or not a change in capacity is significant, the Commission should, in line with the Code, consider a number of different elements.

(21) Firstly, Belgium points out that the additional production resulting from Sioen's capacity increase is used entirely within the group. Sioen's production would not have any impact on the prices or profit margins of the other producers of high-tenacity polyester filament yarn.

(22) Secondly, the aid concerns a high-technology investment project which will allow Sioen to supply its group with a product that has very specific characteristics. This internally developed and constantly improved polyester industrial filament yarn is not available on the market. Consequently, Sioen's capacity increase is motivated by its vertical integration and the production will be used entirely within the group.

(23) Thirdly, Belgium underlines the fact that the capacity increase of 3,5 % is not significant in relation to the European market and is below the rate of 5 %, which was not considered as a significant increase by the Commission in its decision with regard to Sioen in 1999 ([7]). If the Commission were to decide in the present case to assess the capacity increase at company level and not in relation to the European market, this would be in contradiction with its 1999 decision.

(24) Lastly, Belgium stresses that an assessment of the capacity increase at company level would discriminate against small producers as a given capacity increase would lead to a relatively lower increase in the case of a large company with an already high production capacity.

V. ASSESSMENT OF THE AID

1. Existence of aid

(25) Article 87(1) of the Treaty lays down the principle that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

([7]) Aid N 118/99 (OJ C 340, 27.11.1999, p. 5).

(26) The proposed aid to Sioen consists of a grant to be financed through State resources. It will allow the company to carry out the investment in question without having to bear the full cost. Sioen operates in a sector of activity where trade between Member States is substantial and where the conditions of competitions are difficult, as evidenced by the existence until 31 December 2002 of a specific Code ([8]). The proposed grant to Sioen therefore constitutes aid within the meaning of Article 87(1) of the EC Treaty.

2. **Compatibility of the aid**

(27) Article 87(2) of the Treaty lists the types of aid that are compatible with the Treaty. In view of the nature and purpose of the aid and the geographical location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) specifies other forms of aid which can be regarded as being compatible with the common market. The Commission notes that the project is located in the area of Blanc Ballot in Mouscron (Hainaut region), which qualifies for assistance under Article 87(3)(c). The maximum aid intensity is 17,5 % net grant equivalent for large firms. Belgium intends to grant an aid intensity equivalent to 50 % of the regional aid ceiling.

(28) Since 1977 the conditions under which aid may be granted to synthetic fibres producers by way of support for such activities are set out in a Code whose terms and scope have been amended from time to time, most recently in 1996 ([9]). On 1 January 2003 the Code ceased to apply and no more regional aid is admissible for the synthetic fibres industry ([10]). However, in accordance with the last sentence of point 39 of the Commission communication on the multisectoral framework on regional aid for large investment projects ([11]), '(…) notifications registered by the Commission before 1 January 2003 for (…) the synthetic fibres sector will be examined in the light of the criteria in force at the time of notification'. As the aid in the present case was notified on 20 December 2002, it has therefore to be assessed under the Code.

(29) The Code requires the notification of any proposal to grant aid, in whatever form and irrespective of whether or not the Commission has authorised the scheme concerned, where the aid would not satisfy the *de minimis* criterion, to synthetic fibres producers by way of direct support for:

— extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or

— polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or

— any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.

(30) In the case in question, the proposed aid would be granted in support of the production of synthetic fibres which fall within the scope of the Code, namely the installation of new capacity for the extrusion of polyester industrial filament yarn. It was, therefore, correctly notified to the Commission.

(31) The Code sets out the criteria to be applied when the Commission scrutinises proposals coming within the scope of control. It states among other things that, in assessing the compatibility of the proposed aid, the fundamental consideration is the effect of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. According to the Code, investment aid for larger firms, i.e. firms that are not small or medium-sized enterprises, will be authorised only at up to 50 % of the applicable aid ceiling if the aid would result in a significant reduction in the relevant capacity or if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity. Sioen ranks as a large firm since the group to which it belongs has more than 250 employees and an annual turnover exceeding EUR 40 million ([12]).

([8]) See footnote 6.
([9]) See footnote 6.
([10]) See Commission communication, Multisectoral framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8), and in particular points 30 and 39 for the year 2003, and Commission communication on the modification of the multi-sectoral framework on regional aid for large investment projects (2002) with regard to the establishment of a list of sectors facing structural problems and on a proposal of appropriate measures pursuant to Article 88(1) of the EC Treaty concerning the motor vehicle sector and the synthetic fibres sector (OJ C 263, 1.11.2003, p. 3), and in particular the second paragraph.
([11]) See footnote 10.
([12]) See Commission recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

(32) The Commission considers that the capacity increase must be assessed at company level. Consequently, in assessing the capacity changes associated with the aided project, the beneficiary's capacity before the aid is granted has to be compared with its capacity after the aid is granted (adding the increase in capacity arising from the aid and deducting the capacity that will be scrapped).

(33) In its comments, Belgium referred to the Commission decision of 28 July 1999 ([13]), in which no objections were raised to aid for Sioen. It points out that, in that case, Sioen's capacity increase was assessed *in relation to the total market capacity* and the resulting 5 % capacity increase was not considered significant. However, the Commission considers that the situation then was quite exceptional and differed from the present case in that, at the time, the company did not have any extrusion capacity at all before the investment. The assessment of the new capacity in relation to total market capacity was justified in that particular case because Sioen was a new market entrant without any production capacity for the relevant product. If the Commission had assessed the capacity at company level, any new capacity of the new market entrant would, by definition, have resulted in a 'significant' increase. Such an approach would have discriminated against new market entrants. Sioen is now an established producer with pre-existing production capacity and there is, therefore, no longer any justification for deviating from the Commission's standard practice of assessing capacity at company level.

(34) As regards Belgium's argument that, in case of a structural supply shortage, the capacity increase should be assessed in relation to total market capacity, the Commission notes that the Code does not provide for different capacity measurements depending on whether or not there is a structural supply shortage. The Code already sets less strict conditions if there is a structural supply shortage in that, in the case of large firms, it does not require that the aid result in a 'significant capacity reduction' but only that it does 'not result in a significant capacity increase'. It does not provide, as an additional advantage, that the capacity increase is measured, in the case of a structural supply shortage, not at company level but in relation to total market capacity. Accordingly, irrespective of whether the market is characterised by a structural supply shortage, the aid may not, in any event, result in a significant capacity increase.

(35) Following the opening of the procedure, Belgium confirmed and explained to the Commission on the basis of documents provided by the machine manufacturer that tailor-made machines could not easily be adapted to produce different types of fibre. On this basis, the Commission accepts the method used to measure capacity. According to Belgium, the investment raises the production capacity for polyester industrial filament yarn from 8 500 tonnes per year in 2002 to 14 850 tonnes per year from 2003 onwards (based on an average decitex of 1 100 dtex), which represents a significant increase of around 75 % at company level.

(36) In the Commission's view, the fact that Sioen increases its capacity significantly dispenses with the need to decide whether or not the market is characterised by a structural supply shortage in this particular case.

(37) The Commission does not accept Sioen's argument that the production resulting from its capacity increase is used entirely within the Sioen group and would not have any impact on the prices or profit margins of the other producers of polyester industrial filament yarn. Even if the new production is used entirely within the Sioen group on account of its vertical integration, it cannot be ruled out that the yarn could, under other circumstances, be supplied by other producers, a fact underlined in the reactions from the two interested parties.

(38) In view of the effect on production capacity of the investment for which aid is planned, the Commission considers that the aid does not fulfil the main criteria of the Code determining compatibility with the common market in so far as it would lead to a significant increase in the relevant capacity. There is therefore no need to assess the two other criteria set out in the Code (state of the market for the relevant product, and innovative character of the relevant product). In any case, the Commission notes that it is not clear that the market for the relevant product is characterised by a structural supply shortage, given the information from the third parties (CIRFS and Profibra) on the capacity situation in the Community and given the figures provided by Belgium in the initial notification for the two years prior to the notification (capacity utilisation rate of less than 90 %).

(39) None of the other derogations provided for in Article 87(3) of the Treaty is applicable in the present case. The investment is not located in an Article 87(3)(a) region. The aid is clearly not designed to promote the

([13]) See footnote 7.

execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, as provided for in Article 87(3)(b). Lastly, the Belgian authorities did not claim and the Commission did not find that the aid could be designed to meet another horizontal or sectoral objective within the meaning of Article 87(3)(c) or (d),

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Belgium is planning to implement for Sioen Fibres SA, amounting to EUR 2,86 million, is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

Belgium shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to Belgium.

Done at Brussels, 19 May 2004.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 30 June 2004

on the aid scheme implemented by Sweden for an exemption from the tax on energy from 1 January 2002 to 30 June 2004

(notified under document number C(2004) 2210)

(Only the Swedish text is authentic)

(Text with EEA relevance)

(2005/468/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provision of the first subparagraph of Article 88(2) cited above [1], and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 11 June 2003, the Commission informed Sweden of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty with respect to the exemption from the energy tax on electricity in favour of the manufacturing industry.

(2) By letter of 9 July 2003, registered by the Commission on the same day (A/34842), Sweden commented on the opening of the procedure.

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* on 9 August 2003 [2]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received comments from the Confederation of Swedish Enterprises (*Svenskt näringsliv*) on 29 September 2003.

(5) The comments from the Confederation of Swedish Enterprises were received in due time [3] and were forwarded by the Commission to the Swedish Government, which was given the opportunity to react. Sweden made no comments on the submission.

II. DETAILED DESCRIPTION OF THE AID MEASURE

(6) The Act on Tax on Energy (*Lagen om skatt på energi*) was introduced in Sweden in 1957. Under the act, energy tax is levied on fossil fuels and electricity. The tax has positive environmental steering effects in terms of energy saving and energy efficiency.

(7) The tax on electricity is due in full by households, companies in the service sector and also by manufacturing companies as regards electricity used for heating other than in production processes.

(8) According to Chapter 11, Article 3, of the Act on Tax on Energy, electricity used in industrial activities in the manufacturing process (NACE Rev. 1, sections C and D) is fully exempted from the energy tax [4]. The exemption was introduced in its present form on 1 January 1993, i.e. before Sweden's accession to the EEA and the EU. It has remained unchanged since then.

(9) The tax rate on electric power has, for the period under examination, been set to between SEK 0,198 and SEK 0,241 per kWh.

[1] OJ C 189, 9.8.2003, p. 6.
[2] See footnote 1.
[3] In line with Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (OJ L 124, 8.6.1971, p. 1), and in particular its Article 3, the deadline for comments ended on 10 September 2003. By letter of 15 August 2003, the Confederation of Swedish Enterprises asked for an extension of the deadline until 30 September 2003, which was accepted by the Commission by letter dated 9 September 2003.
[4] The exemption is also applicable for electricity used in greenhouses. That part of the exemption will be subject to a separate Commission decision.

(10) According to the Swedish authorities, the full reduction results in a loss of State revenue amounting to about SEK 11 000 million (about EUR 1 190 million) per year.

(11) The Commission initiated the procedure because of its doubts with regard to the nature of the measure as State aid and to the compatibility of the alleged aid. The Commission considered that the tax exemption system constituted State aid within the meaning of Article 87(1) of the EC Treaty. The Commission had doubts on the compatibility of the alleged aid with the Community guidelines on state aid for environmental protection ([5]) (hereinafter referred to as the Guidelines).

III. COMMENTS FROM INTERESTED PARTIES

Comments made by the Confederation of Swedish Enterprises

(12) The Confederation of Swedish Enterprises argues that the taxes on electricity and on CO_2 emissions should be regarded as two components of the same energy tax system. The reason for that is that there is a close link between the two taxes: in order not to create an over-demand for electricity, an increase in the CO_2 tax has to be balanced by a corresponding increase in the electricity tax.

(13) In total, the energy taxation increased from 1993 to 2004 by SEK 27 000 million (about EUR 3 000 million). That raise would not have been possible without the full exemption for the manufacturing sector from the energy tax. Thus, the full tax exemption from the electricity tax does not result in a loss of State revenue, i.e. the measure is not financed through State resources.

(14) The Confederation of Swedish Enterprises considers that it is in the logic of the system to exempt the Swedish manufacturing industry, as the industry has sufficient reasons for electricity savings because electricity is a large cost component for these companies. In order to maintain the competitiveness of Swedish industry while raising the energy taxation as a whole, the industry has to be exempted from the electricity tax.

(15) For the same reasons as those set out in recital 21 by the Swedish Government, the Confederation of Swedish Enterprises considers the measure does not distort or threaten to distort competition, nor favour certain production.

([5]) OJ C 37, 3.2.2001, p. 3.

(16) For the following reasons, the Confederation of the Swedish Enterprises contests, in any case, that a recovery can be made:

(17) Firstly, according to Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([6]) (hereafter referred to as the procedural Regulation), a recovery can only be made of unlawful aid, which in Article 1(f) of the same regulation is defined as 'new aid put into effect in contravention of Article 93(3) of the Treaty'. As the Commission in paragraph 2.2 of its decision to open the investigation procedure concludes that the measure constitutes existing aid, no recovery can be made *ex tunc*.

(18) Secondly, due to legitimate expectations of the beneficiaries, no recovery can be made. The act in question has been proposed by the Swedish Government and adopted by the Swedish Parliament. Companies should not have to question decisions from their Parliament. Moreover, there are previous Commission decisions ([7]), in which measures to the manufacturing sector have been approved as general measures. Moreover, Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([8]) (hereafter referred to as the Energy Tax Directive) makes it possible to maintain the zero tax rate on electricity for the large electricity consumers as from 1 January 2004. The prudent trader should have the right to legitimately expect that to be the case also for the two years before that date.

(19) Thirdly, a recovery would go against the principle of proportionality. The aim of a recovery is to restore alleged distorted competition. As the Confederation of Swedish Enterprises does not consider the measure to distort or threaten to distort competition, there is no legitimate and public interest for a recovery. Moreover, many of the companies concerned would have difficulties repaying the aid and a risk of bankruptcy cannot be excluded for certain companies.

(20) Finally, the Confederation of Swedish Enterprises agrees with the opinion of the Swedish Government (see recital 28) that the Commission has not fulfilled its obligation laid down in Article 17(2) of the procedural Regulation.

([6]) OJ L 83, 27.3.1999, p. 1. Regulation amended by the 2003 Act of accession.

([7]) For example, N 255/96 — Sweden — Act on excise duties on energy (OJ C 71, 7.3.1997, p. 10) and NN 72a/2000 — Sweden — Prolongation of CO_2 scheme (OJ C 117, 21.4.2001, p. 19).

([8]) OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

IV. **COMMENTS BY THE SWEDISH GOVERNMENT**

The tax exemption does not constitute an advantage for the Swedish manufacturing industry

(21) The Swedish manufacturing industry uses a high proportion of electricity compared to competitors in other countries, who instead use coal or natural gas. As these energy sources in many Member States have been tax-free, Sweden considers it reasonable to exempt the Swedish manufacturing industry from the tax on electricity. In addition, the Swedish tax levels in the energy area are generally high compared to the corresponding level in most other Member States. It would not have been possible to achieve these levels without an exemption from the electricity tax for certain sectors.

(22) The Swedish Government thus, does not agree that the tax exemption grants an advantage for the Swedish industry compared to other Member States.

A reasonable period is required for adjustment of the energy tax system

(23) By letter of 16 March 2001, the Swedish Government accepted the appropriate measures proposed in points 75 to 77 of the Guidelines.

(24) On 8 November 2001, the fact that the exemption of a certain industry from the energy tax constituted State aid was clarified by the Court ruling on the Austrian energy tax rebate (Case C-143/99, Adria-Wien-Pipeline) ([9]).

(25) The Swedish Government states that at the time when Sweden accepted the appropriate measures under the Guidelines, it was not clear whether the measure constituted State aid. Following the Adria-Wien ruling, it became clear for the Swedish Government that the measure contains components which cause problems in the State aid area. However, Sweden argues that, as the energy tax is technically complicated, a reasonable time was required from the government decision until the entering into force of amended rules. It is envisaged to have an energy tax on electricity for the manufacturing industry, which is in line with the minimum levels of the new Energy Directive in place from 1 July 2004.

([9]) Judgment of the Court of Justice of 8 November 2001 in Case C-143/99 *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke* v *Finanzlandesdirektion für Kärnten* [2001] ECR I-8365.

The electricity tax and the energy tax should be seen as one tax system

(26) In Sweden an energy tax is levied on fossil fuels and on electricity and a CO_2 tax is levied on fossil fuels. The taxes are viewed by the Swedish Government as parts of the same tax system, which aims at increasing energy efficiency and CO_2 emissions. Thus, the Swedish Government argues that the Commission in its assessment of compatibility should take into account the tax burden resulting from all components of the tax system together rather than assessing the exemption from the electricity tax in isolation.

The Commission did not respect the procedural steps regarding appropriate measures, which are set out in the procedural Regulation. The aid is not illegal and can thus not be recovered

(27) The Swedish Government has, on several occasions, submitted to the Commission information from which the scheme in question is evident ([10]). Thus, Sweden considers its obligation according to Article 17(1) of the procedural Regulation to submit all necessary information to the Commission's review of existing aid schemes to be fulfilled.

(28) The Swedish Government argues that the Commission has violated Article 17(2) of the procedural Regulation, which requires the Commission to inform the Member State if it considers that a measure has become incompatible with the common market before it proposes appropriate measures. The Commission proposed, without such information, appropriate measures not for individual schemes but for all schemes in force at the time when the new environmental guidelines came into force.

(29) Due to procedural irregularity the aid is not illegal and cannot be recovered.

A recovery would constitute retroactive taxation, which is not allowed according to Swedish constitutional law

(30) According to chapter 2, Article 10, second paragraph, of the Instrument of Government (Regeringsformen), tax can not be levied unless it is based on a provision which was in force at the time when the fact that gave rise to the tax took place.

([10]) For example, in the reply to the Commission's letter of 7 May 1996 (D/50485, the Swedish authorities submitted the full Act on Tax on Energy from which the full energy tax exemption on electricity for the manufacturing sector was clear. In addition, brief descriptions of the measure were included in letters dated 15 April 1998 and 31 May 1999, which were sent by the Swedish authorities to the Commission.

(31) As the Swedish Act on Tax on Energy does not contain rules according to which companies in the manufacturing industry are obliged to pay tax on electricity, an amendment of the act would constitute such retroactive taxation, which is illegal according to Swedish constitutional law.

V. ASSESSMENT OF THE AID

Period to be assessed

(32) In its decision to open the Article 88(2) procedure, the Commission found that the measure constituted existing aid as defined in Article 1(b)(i) of Regulation (EC) No 659/1999 at the time of Sweden's accession to the European Union and until 1 January 2002. Sweden has expressly accepted the appropriate measures proposed by the Commission according to which all existing environmental aid schemes should have been brought into line with the Guidelines (point 77). The Commission found that that had not been done in this case. Sweden was therefore asked to submit all comments which could be relevant for the investigation for the period 1 January 2002 to 31 December 2005.

(33) The comments received from the Swedish Government by letter dated 9 July 2003 cover explicitly the period requested by the Commission. The Swedish Government has exercised its rights of defence with regard to the full period.

(34) Third parties were able to comment on the application of the scheme for the same period. The Confederation of Swedish Enterprises presented its comments on the energy tax exemption by letter dated 29 September 2003. Their right to submit observations has therefore been respected.

(35) By Act on amendment of the Act (1994:1776) on Tax on Energy ([11]), a new electricity tax system will be introduced. That act should enter into force on 1 July 2004 and was notified to the Commission by letter dated 1 April 2004 ([12]). Thus, a separate Commission decision will be taken for that measure.

(36) Consequently, this compatibility assessment concerns the period from 1 January 2002 until such time as the current system is applied.

([11]) See Svensk författningssamling SFS 2003:810.

([12]) See N 156/2004 —Sweden —'Energy tax on electricity used by the manufacturing sector', not yet published in the Official Journal.

Existence of aid

(37) In order for a measure to be considered as State aid within the meaning of Article 87(1) of the EC Treaty, four criteria have to be simultaneously fulfilled. The measure must favour certain undertakings, it must be selective, it must be funded through State resources and it must affect trade between Member States.

(38) In its assessment of whether the measure provides the beneficiaries with an advantage, the Commission has to compare companies in a comparable legal and factual situation ([13]). Thus, the Commission cannot assess the position of the Swedish manufacturing industry vis-à-vis any other European manufacturing industry, but has to assess the advantage of the Swedish manufacturing industry compared to the situation of other companies in Sweden. In this respect, the fact that the measure discharges companies, in the manufacturing sector, of a cost that they would otherwise have to bear, provides the undertakings with an advantage compared to other sectors in the Swedish industry. By granting a tax exemption only to certain undertakings, the measure favours them in comparison to other undertakings, which has the potential to distort competition.

(39) The exemption is restricted to undertakings in the manufacturing sector (NACE Rev. 1 Sections C and D). It has been established by the European Court of Justice ([14]), that 'neither the large number of eligible undertakings nor the diversity and size of the sectors to which those undertakings belong provide any grounds for concluding that a State initiative constitutes a general measure'. The Confederation of Swedish Enterprises refers to the fact the Commission has, in decisions concerning aid N 255/1996 and NN 72/A/2000, approved the Swedish CO_2 tax scheme as being a general measure. This is not correct, in the first-mentioned decision the CO_2 tax scheme is found to constitute compatible State aid. The second decision concerns a prolongation of the same scheme and is approved under the same provisions. On the contrary, it is constant practice of the Commission ([15]), confirmed by the European Courts' case-law ([16]), to regard exemptions for the energy intensive industry or for a given sector of the economy as being selective measures. Thus, the Commission concludes that the tax exemption is selective.

([13]) See for example Judgment in Case C-143/99 (see footnote 9).

([14]) See Adria-Wien Pipeline, in particular paragraph 48.

([15]) Decision 2002/676/EC, ECSC of 3 April 2002 on the dual-use exemption which the United Kingdom is planning to implement under the Climate Change Levy and the extended exemption for certain competing processes (OJ L 229, 27.8.2002, p. 15); N 449/01 — Germany — 'Ecological tax reform' after 31 March 2002, (OJ C 137, 8.6.2002, p. 24), N 74/A/02 — Finland — 'Aid to energy intensive companies', (OJ C 104, 30.4.2003, p. 9), and C 33/03 (ex NN 34/03) — Austria — 'Energy tax refund 2002 and 2003', not yet published in the Official Journal.

([16]) See case C-143/99, Adria-Wien Pipeline, quoted above.

(40) The Commission finds that the selectivity of the measure is not justified by the logic of the system as it is not consistent with the internal logic of the tax. On the contrary, the exemption is a clear deviation from the overall structure and functioning of the tax. The objective of the tax is to steer undertakings to take energy saving measures. Even if the undertakings concerned already take energy reduction measures to a large extent in order to reduce their energy costs, it cannot be said that the energy taxation has no additional steering effect. Energy consumption is in general technology-dependent and, thus, only fixed in the short term. In the long term, *inter alia*, through technological progress and innovation, it is normally possible to achieve further efficiency gains. In this respect, as energy consumption by all sectors is equally damaging to the environment, any exemption from an energy tax for undertakings in the manufacturing industry, which by definition are also polluters, cannot be in the logic of the system.

(41) The measure is imputable to the State and financed by State resources as the State accepts a loss of tax revenue. The Commission does not agree with the Confederation of Swedish Enterprise, in that there is no loss of tax revenue due to the fact that the electricity and CO_2 taxes actually paid have increased. On the contrary, an increase in the tax rate leads to a higher loss of tax revenue caused by the exemption.

(42) At least some beneficiaries are engaged in sectors where trade between Member States takes place. Therefore the measure is liable to affect trade and distort competition.

(43) By way of conclusion, the Commission finds that the measure constitutes State aid under Article 87(1) of the EC Treaty.

Compatibility of the aid

(44) The Commission maintains its position that the tax on electricity cannot be assessed together with the CO_2 tax. As stated in the decision to open the Article 88(2) procedure, there are two reasons for this. Firstly, the CO_2 tax is not levied on the electricity consumption. Secondly, as 90 % of the electricity in Sweden is produced from nuclear and hydropower plants, the electricity tax does not have the same steering effect on CO_2 emissions as the CO_2 tax. Thus, the electricity tax has to be assessed separately.

(45) Until 31 December 2001, the scheme constituted existing State aid within the meaning of Article 1(b)(i) of the procedural Regulation. However, according to point 77 of the Guidelines and because of Sweden's acceptance of the appropriate measures, all existing State aid for environmental protection should have been brought into line with the Guidelines before 1 January 2002.

(46) The Swedish Government argues that a reasonable time was needed to implement a new energy tax system which is compatible with the Guidelines. Firstly, two and a half years have passed between the deadline for bringing the scheme into line with the Guidelines and the entering into force of a revised energy tax system. Although the Commission recognises that energy taxation is of a complex nature, it considers that the period of two and a half years to be unreasonably long. Secondly, the Swedish Government did not make use of the possibility to extend the deadline for implementation of the Guidelines for certain measures, which was made and approved for France and Germany ([17]). On the contrary, by letter of 16 March 2001, the Swedish Government accepted the appropriate measures proposed by the Commission. If the Swedish Government had problems to amend the scheme within the given deadline, it could have accepted the appropriate measures with the exception of their application to the scheme in question.

(47) Consequently, the Commission has assessed the compatibility of the aid under the Guidelines. In the opening decision the Commission expressed the view that no other derogations as provided for by Article 87(2) or (3) of the EC Treaty seem applicable. This conclusion must be confirmed after the Article 88(2) procedure. During this procedure, no new elements were put forward which would alleviate the doubts that the Commission expressed in its decision to open the formal investigation procedure. The Commission therefore concludes the following:

(48) Point 51.2 of the Guidelines allows the application of the provisions in point 51.1 in case a tax has an appreciable positive impact in terms of environmental protection and where the derogation has become necessary as a result of a significant change in economic conditions that placed the firms in a particularly difficult competitive situation. The energy tax aims to steer towards energy savings and energy efficiency. The present Swedish energy tax system has remained unchanged since 1993. In this respect, the measure establishes the derogation from an existing tax which has been decided on when the tax was adopted. It falls therefore under point 51.2 of the Guidelines which refer to the compatibility criteria of point 51.1.

([17]) OJ C 34, 7.2.2002, p. 13.

(49) For the period 1 January 2002 to 31 December 2003, point 51.1(b), second indent, of the Guidelines is applicable, as the exemption concerns a domestic tax imposed in the absence of a Community tax. That provision requires benefiting companies to pay a significant proportion of the national tax. The reason for that is to leave them with an incentive to improve their environmental performance. This follows from the wording in point 51.1.b first subparagraph, which allows for tax reductions from a harmonised tax if the beneficiaries pay more than the Community minimum rates 'in order to provide firms with an incentive to improve environmental protection'. The exemption results in a zero-tax on electricity used in the manufacturing process by the manufacturing sector. The Commission can, thus, conclude that the undertakings did not pay a significant proportion of the national tax. Therefore, the measure as it stands cannot, for the period 1 January 2002 until 31 December 2003, be declared compatible in accordance with the Guidelines. Since no other ground for compatibility applies, this aid must be declared incompatible with the common market.

(50) As mentioned in recital 18, Directive 2003/96/EC entered into force on 1 January 2004. That directive takes the objective of environmental protection explicitly into account (see in particular recitals 3, 6, 7 and 12). The Commission, therefore, considers that the respect of the minimum rates of Directive 2003/96/EC will provide undertakings with an incentive to improve environmental protection. For this reason, the Commission can, in the present case, accept the respect of the minimum rates also as equal to a significant proportion of the national tax as requested under point 51.1(b), second indent, of the Guidelines. Therefore, for the period 1 January 2002 until 31 December 2003 the Swedish measure can be declared compatible to the extent that beneficiaries are required to pay the minimum rates set by Directive 2003/96/EC. Incompatible aid corresponds to the amount resulting from the application of the minimum levels set out in the Energy Tax Directive.

(51) For the period 1 January 2004 until such time as the current system is applied, the tax is harmonised by the Directive 2003/96/EC. Therefore, point 51.1(b), first indent, of the Guidelines is applicable. According to that provision, a reduction can be approved if the amount effectively paid by the beneficiaries after the reduction remains higher than the Community minimum. According to Article 10 of the Directive 2003/96/EC, the minimum tax rate for electricity is fixed to EUR 0,5 per MWh for business use. Thus, the fixed minimum rate was not respected in the present case. According to Article 17(2) and (4) of the same Directive, a tax rate down to zero is allowed for energy-intensive businesses which have concluded agreements, or equivalent, to undertake measures to achieve environmental objectives or increased energy efficiency equivalent to what would have been achieved if the Community minimum levels had been observed. In the present case, the conditions for applying a zero tax rate are not fulfilled. Therefore, similarly for the period since 1 January 2004, the Swedish measure may only be declared compatible to the extent that beneficiaries are required to pay the minimum rates set by Directive 2003/96/EC. Incompatible aid corresponds to the amount resulting from the application of the minimum levels set out in the energy tax Directive.

(52) Consequently, the Commission concludes that the measure is, during the period 1 January 2002 until such time as the current system is applied, not in line with the Guidelines and the energy tax Directive. The incompatible aid corresponds to the amount resulting from the application of the minimum levels set out in the energy tax Directive.

Recovery of incompatible aid

(53) Where unlawfully granted State aid is found to be incompatible with the common market, it must according to Article 14(1) of the procedural Regulation be recovered from the beneficiary. Through recovery of the aid, the competitive position that existed before it was granted is restored as far as is possible. The fact that the aid is provided in accordance with national law — which is generally the case — does not affect a recovery, as Community law overrides national law.

(54) However, Article 14(1) of the procedural Regulation states that 'the Commission shall not require the recovery of the aid if this would be contrary to a general principle of Community law'. The case-law of the Court of Justice ([18]) and the Commission's own decision-making practice have established that, where, as a result of the Commission's actions, legitimate expectations exist on the part of the beneficiary of a measure that the aid has been granted in accordance with Community law, then an order to recover the aid would infringe a general principle of Community law.

([18]) Judgment of the Court of Justice of 24 November 1987 in Case 223/85 *RSV* v *Commission*, [1987] ECR 4617.

(55) It is the responsibility of a Member State to make national measures compatible with Community State aid rules in order to prevent distortion of competition, to notify any State aid measure to the Commission in accordance with Article 88(3) of the EC Treaty and to refrain from implementing it pending its examination. In principle, undertakings cannot claim legitimate expectations in respect of illegal State aid. If undertakings could successfully base themselves on a national law, even adopted in good faith, but which does not comply with State aid rules and therefore has the effect to distort competition, the aim of Community state aid control could not be fulfilled.

(56) In the judgment in Case 265/85 Van den Bergh en Jurgens ([19]), the Court ruled that '[…] any trader in regard to whom an institution has given rise to justified hopes may rely on the principle of protection of legitimate expectation. On the other hand, if a prudent and discriminating trader could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted.'

(57) The Swedish authorities argue that the aid should not be recovered as the Commission did not fulfil its obligations set out in Article 17(2) of the procedural Regulation. In this case, in order to adapt existing aid to the new guidelines, the Commission proposed to the Member States to bring all their existing environmental aid schemes in line with the Guidelines by 1 January 2002. It has been confirmed by case-law that such a proposal made in guidelines constitutes one way of carrying out the regular and periodic cooperation under which the Commission, in conjunction with the Member States, must keep under constant review existing systems of aid and propose to them any appropriate measures ([20]). An agreement on a complete list of all existing aid schemes between the Commission and each Member State would be impractical and it is reasonable to leave the responsibility of the adaptation of the schemes to the Member States. This even more so since they are involved in the drafting of new guidelines and are well aware of the implications of these for existing aid schemes before they enter into force. In this case, the Swedish authorities claim that Sweden has informed the Commission about the scheme by, for example, submitting the complete Swedish taxation act to the Commission. The Commission takes the view that that information was sent and used in other contexts and that these submissions cannot in any case replace a formal notification required by Article 88(3) of the EC Treaty.

(58) The Confederation of Swedish Enterprises claims that the aid constitutes existing aid and that, therefore, no recovery can be required. The Commission finds that the measure constituted existing aid only until 31 December 2001. From 1 January 2002, the aid became new aid as it should have been brought into line with the Guidelines. Therefore, the Commission does not agree with the argument brought forward by the Confederation of Swedish Enterprises.

(59) Thus, the Commission does not find that the arguments made by Sweden provide a ground for a decision without a recovery. However, it transpires from the Court's case-law that the Commission is required to take into consideration, on its own initiative, the exceptional circumstances that provide justification, pursuant to Article 14(1) of the procedural Regulation, for it to refrain from ordering the recovery of unlawfully granted aid where such recovery is contrary to a general principle of Community law, such as respect for the legitimate expectation of beneficiaries.

(60) According to Article 19 of the procedural Regulation, the appropriate measures only become binding for the Member State concerned by the acceptance by the Member State to implement those measures. This has been confirmed in case-law ([21]). Thus, the change in the status of the measure from existing aid to new aid was a consequence of the acceptance of the Swedish Government of the appropriate measures proposed in the Guidelines.

(61) On the basis of Article 26(1) of the procedural Regulation, it is conceivable that the fact that the Commission did not publish the acceptance by the Swedish Government of the Guidelines, may have led some beneficiaries to believe in good faith that the national measure at issue was still to be regarded as existing aid. In Article 26, it is set out that the Commission shall publish 'a

([19]) Judgment of the Court of Justice of 11 March 1987 in Case C-265/85 *Van den Bergh en Jurgens BV* v *Commission* [1987] ECR 1155, in particular paragraph 44.

([20]) Judgment of the Court of Justice of 18 June 2002 in Case C-242/00 *Federal Republic of Germany* v *Commission of the European Communities* [2002] ECR I-5603, in particular paragraph 28.

([21]) Case C-242/00 Federal Republic of *Germany* v *Commission of the European Communities* (see footnote 18), Judgment of 15 October 1996 in Case C-311/94 *IJssel-VlietCombinatie BV* v *Minister van Economische Zaken* [1996] ECR I-5023, in particular paragraphs 36 and 37, and Judgment of 5 October 2000 in Case C-288/96 *Federal Republic of Germany* v *Commission of the European Communities* [2000] ECR I-8237, particularly paragraphs 62 to 65.

summary notice of the decisions taken pursuant to Article 18 in conjunction with Article 19(1)'. Article 18 of the same Regulation states that 'where the Commission […] concludes that the existing aid scheme is not, or is no longer, compatible with the common market, it shall issue a recommendation proposing appropriate measures to the Member State concerned.' Article 19(1) of that Regulation sets out that where the Member State accepts the proposed appropriate measures, the Commission shall 'record that finding' and inform the Member State thereof.

(62) The Commission did not publish the acceptance by each Member State of the appropriate measures proposed by the Commission for the implementation of the Guidelines. It is, therefore, difficult for the Commission to show that the beneficiaries were properly informed of the acceptance given by the Swedish Government and of the consequent change in the status of the aid. However, at the date of the publication of the Commission's decision to open the Article 88(2) procedure, it must have been clear for the beneficiaries that the measure is no longer existing aid and that it may be incompatible with the Guidelines. In this case, such publication took place on 9 August 2003.

(63) Taking all these considerations into account, the Commission concludes that, in the pre-sent case, recovery of aid granted before the date of the publication of the decision to open the investigation procedure would be contrary to the principle of protection of legitimate expectations. Therefore, in accordance with Article 14 of the procedural Regulation, the Commission decides that recovery shall not be required for the period 1 January 2002 to 8 August 2003.

(64) Thus, aid provided under this scheme since 9 August 2003 should be recovered.

VI. **CONCLUSION**

(65) The Commission finds that Sweden has unlawfully kept in force Act (1994:1776) on Tax on Energy and without modification since 1 January 2002 in breach of the obligation arising from its own acceptance of the appropriate measures proposed by the Commission and of Article 88(3) of the EC Treaty.

(66) The scheme constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

(67) The aid is, since 1 January 2002, incompatible with the Guidelines and in particular point 51.1(b) second subparagraph thereof and any other derogation as provided for by Article 87(2) and (3) of the EC Treaty. Since no other reasons of compatibility can be envisaged for the scheme as such, the latter is incompatible with the common market.

(68) In accordance with Article 14(1) of the procedural Regulation, the unlawfully paid aid should be recovered. In this case, the recovery period should start on the date of the publication of the decision by the Commission to open the Article 88(2) procedure regarding the case and end on the date when the new energy tax system enters into force, i.e. aid provided during the period 9 August 2003 to 30 June 2004 should be recovered.

(69) This Decision concerns the aid scheme in question and must be implemented immediately, in particular as regards the recovery of all individual aid granted under the scheme. The Commission also notes that a decision on an aid scheme is without prejudice to the possibility that individual aid may be deemed, wholly or partially, compatible with the common market on its own merits (for instance, because the individual grant of aid is covered by the *de minimis* rules or in the context of a future Commission decision or by virtue of an exemption regulation),

HAS ADOPTED THIS DECISION:

Article 1

The tax exemption granted by Sweden since 1 January 2002 under the Act on Tax on Energy (1994:1776) is a State aid scheme, unlawfully put into effect by Sweden in breach of Article 88(3) of the Treaty. Such aid is incompatible with the common market to the extent that beneficiaries are not required to pay the minimum rates set by Council Directive 2003/96/EC. Since no other ground for compatibility applies, this aid must be declared incompatible with the common market.

Article 2

Sweden shall abolish the aid scheme referred to in Article 1 in so far as it is continuing to produce effects.

Article 3

1. Sweden shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1.

2. Sweden shall cancel all payment of outstanding aid with effect of the date of the present decision.

3. Recovery shall be effected without delay and in accordance with the procedures under national law, provided these allow the immediate and effective implementation of this Decision.

4. The sums to be recovered shall bear interest throughout the period running from the date on which they were put at the disposal of the beneficiaries until their actual recovery.

5. The interest shall be calculated in conformity with the provisions laid down in Commission Regulation (EC) No 794/2004 ([22]).

Article 4

Sweden shall inform the Commission, within two months following notification of this Decision, of the measures planned and already taken to comply with it. It shall provide this information using the questionnaire attached in Annex 1 of this Decision.

Article 5

This decision is addressed to the Kingdom of Sweden.

Done at Brussels, 30 June 2004.

For the Commission

Mario MONTI

Member of the Commission

([22]) OJ L 140, 30.4.2004, p. 1.

ANNEX

Information regarding the implementation of Commission Decision 2005/468/EC

1. **Total number of beneficiaries and total amount of aid to be recovered**

1.1. Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated?

— the principal,

— the interest.

1.2. What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalent, prices of …)?

1.3. What is the total number of beneficiaries from which unlawful aid granted under this scheme is to be recovered?

2. **Measures planned and already taken to recover the aid**

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. **Information by individual beneficiary**

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table overleaf.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency:	Amounts reimbursed (**) Currency:

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents; in prices of …).
(**) Gross amounts reimbursed (including interest).

COMMISSION DECISION

of 24 June 2005

amending for the third time Decision 2004/614/EC as regards the period of application of protection measures relating to avian influenza in South Africa

(notified under document number C(2005) 1863)

(Text with EEA relevance)

(2005/469/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC [1], and in particular Article 18(7) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries [2], and in particular Article 22(6) thereof,

Whereas:

(1) By Commission Decision 2004/614/EC of 24 August 2004 concerning protection measures in relation to highly pathogenic avian influenza in the Republic of South Africa [3] the Commission adopted protection measures in relation to avian influenza in ratite flocks in South Africa.

(2) In December 2004, the Commission received information from South Africa indicating that the disease situation in ratite flocks had improved. However, that information did not allow the Commission to conclude that the disease had been effectively controlled. No further information has been received from South Africa and the current disease situation appears unclear.

(3) Under the circumstances it is appropriate to prolong the application of Decision 2004/614/EC for another six months. That Decision may, however, be reviewed before the end of the six-month period depending on any further information supplied by South Africa.

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

HAS ADOPTED THIS DECISION:

Article 1

In Article 7 of Decision 2004/614/EC, the date '30 June 2005' is replaced by the date '31 December 2005'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 June 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

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[1] OJ L 268, 24.9.1991, p. 56. Directive as last amended by the 2003 Act of Accession.
[2] OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1); corrected version OJ L 191, 28.5.2004, p. 1.
[3] OJ L 275, 25.8.2004, p. 20. Decision as last amended by Decision 2005/210/EC (OJ L 68, 15.3.2005, p. 43).

COMMISSION DECISION

of 24 June 2005

terminating the examination procedure concerning piracy of Community sound recordings in Thailand and its effects on Community trade in sound recordings

(2005/470/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation [1], and in particular Article 11(1) thereof,

Whereas:

(1) On 5 June 1991 the Commission received a complaint, pursuant to Council Regulation (EEC) No 2641/84 of 17 September 1984 on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices [2] from the European Office of the International Federation of the Phonographic Industry (IFPI), representing virtually all producers of sound recordings in the Community.

(2) The complaint alleged that piracy of Community sound recordings was taking place on a large scale in Thailand and that such piracy was causing injury to the Community industry, notably by affecting exports of Community sound recordings to Thailand as well as to other third markets.

(3) The Commission decided that the complaint contained sufficient evidence to justify the initiation of an examination procedure. A corresponding notice was published in the *Official Journal of the European Communities* [3].

(4) Following the initiation of the procedure, the Commission conducted a factual and legal examination and presented on 20 February 1992 its examination report to the Advisory Committee. From this it appeared that, during the reference period, and essentially as a result of the Thai authorities' failure to properly enforce the then Thai legislation on copyright, the level of piracy of sound recordings (international repertoire) was likely to have reached 90 %, and that this situation resulted in material injury to the Community industry, notably in the form of lost sales on the Thai market (as well as certain other third markets).

(5) The Commission then held consultations with the Thai authorities which brought about the commitment of the Thai Government, in September 1992, to bring down piracy of EC sound recordings to negligible levels within the shortest possible time span and, in a first stage, to achieve a substantial reduction within one year. The new Thai Copyright Act entered into force on 21 March 1995. It introduced numerous provisions aimed at simplifying action against the pirates and including the necessary deterrent effects against potential as well as actual infringers, notably through much increased penalties. Under these circumstances, it was decided by Commission decision 96/40/EC [4] to suspend the examination procedure, and to continue a close monitoring of the situation.

(6) The Commission conducted a further factual and legal examination and presented on 29 May 2002, 13 October 2003 and 29 June 2004 three examination reports to the Advisory Committee. From these it appeared that Thailand has taken measures aimed at effectively reducing the level of piracy of sound recordings including the adoption by the Thai Parliament of an Optical Media Legislation, intensified enforcement activities targeted at persons engaged in music piracy, closer coordination between the different Thai authorities involved in the fight against music piracy and between the Thai authorities and music industry associations, and the organisation of public campaigns aimed at making consumers aware of the adverse effects of piracy.

(7) Despite these initiatives, piracy of sound recordings (international repertoire) remains a serious problem in Thailand, and substantial numbers of pirated sound recordings continue to be exported to the European Union. These continuing problems can, however, better be addressed in other contexts than an investigation under Regulation 3286/94.

[1] OJ L 349, 31.12.1994, p. 71. Regulation as amended by Regulation (EC) No 356/95 (OJ L 41, 23.2.1995, p. 3).
[2] OJ L 252, 20.9.1984, p. 1. Regulation as amended by Regulation (EC) No 522/94 (OJ L 66, 10.3.1994, p. 10).
[3] OJ C 189, 20.7.1991, p. 26.
[4] OJ L 11, 16.1.1996, p. 7.

(8) Further progress in the reduction of piracy of Community sound recordings in Thailand should be sought in the context of permanent bilateral and regional cooperation arrangements between Thailand and the Community.

(9) Measures to address piracy may also be developed in the context of a bilateral partnership and cooperation agreement between Thailand and the Community.

(10) The Community may also continue to support efforts to enhance the technical capacity of Thai authorities to combat piracy of sound recordings in the context of financial support programmes.

(11) The efforts made by Thailand to address problems of piracy of Community sound recordings can be monitored in the framework of the mechanisms envisaged by the Communication on the Strategy for the Enforcement of Intellectual Property Rights in Third Countries ([1]).

(12) Accordingly, it is appropriate to terminate the examination procedure.

(13) The measures provided for in this Decision are in accordance with the opinion of the Advisory Committee,

HAS ADOPTED THIS DECISION:

Sole Article

The examination procedure concerning piracy of Community sound recordings in Thailand and its effects on Community trade in sound recordings, is hereby terminated.

Done at Brussels, 24 June 2005.

For the Commission

Peter MANDELSON

Member of the Commission

([1]) OJ C 129, 26.5.2005, p. 3.

CORRIGENDA

Corrigendum to Commission Decision 2005/465/EC of 22 June 2005 concerning the placing on the market, in accordance with Directive 2001/18/EC of the European Parliament and of the Council, of an oilseed rape product (*Brassica napus* L., GT73 line) genetically modified for tolerance to the herbicide glyphosate

(Official Journal of the European Union L 164 of 24 June 2005)

The publication of Decision 2005/465/EC is hereby declared null and void.