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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1400/2003
of 6 August 2003
establishing the standard import values for determining the entry price of certain fruit and
vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1947/2002 ⁽²⁾, 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 7 August 2003.

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

Done at Brussels, 6 August 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 6 August 2003 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	060	34,6
	999	34,6
0709 90 70	052	83,4
	999	83,4
0805 50 10	382	56,8
	388	63,2
	524	51,0
	528	52,1
	999	55,8
0806 10 10	052	133,6
	204	147,8
	220	126,8
	400	243,9
	600	115,8
	624	151,9
	999	153,3
0808 10 20, 0808 10 50, 0808 10 90	388	61,5
	400	88,5
	508	72,8
	512	63,8
	528	43,7
	720	55,5
	800	61,6
	804	84,3
	999	66,5
0808 20 50	052	117,2
	388	98,5
	512	52,8
	528	85,5
	999	88,5
0809 20 95	052	316,9
	400	261,2
	404	258,0
	999	278,7
0809 30 10, 0809 30 90	052	129,8
	999	129,8
0809 40 05	064	67,2
	068	72,5
	094	72,0
	624	183,8
	999	98,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1401/2003**of 6 August 2003****amending Regulation (EC) No 245/2001 laying down detailed rules for the application of Council Regulation (EC) No 1673/2000 on the common organisation of the markets in flax and hemp grown for fibre**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1673/2000 of 27 July 2000 on the common organisation of the markets in flax and hemp grown for fibre⁽¹⁾, as amended by Commission Regulation (EC) No 651/2002⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) Under the second indent of Article 7(1) of Commission Regulation (EC) No 245/2001⁽³⁾, as last amended by Regulation (EC) No 651/2002, aid for processing flax and hemp straw shall be payable on flax and hemp fibre only where it is obtained before 1 May following the end of the marketing year in question. Under Article 12(2) of that Regulation, processing aid and, where appropriate, additional aid shall be paid by the Member State on whose territory the flax or hemp straw has been harvested before 1 August following the time limit above.
- (2) Given the time required to complete the administrative formalities and checks prior to the granting and final payment of the aid, the time limit for payment of the aid by the Member States should be extended. In order to ensure continuity, it is necessary to provide for retro-active application of the measure as from 1 August 2003.

(3) The deadline by which the Member States notify information on the marketing year to the Commission should therefore be amended.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Flax and Hemp,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 245/2001 is hereby amended as follows:

1. in Article 12(2), '1 August' is replaced by '15 October';
2. in Article 15(3), '30 September' is replaced by '15 December'.

Article 2

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

It is applicable as from 1 August 2003.

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

Done at Brussels, 6 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 193, 29.7.2000, p. 16.

⁽²⁾ OJ L 101, 17.4.2002, p. 3.

⁽³⁾ OJ L 35, 6.2.2001, p. 18.

COMMISSION REGULATION (EC) No 1402/2003**of 1 August 2003****setting out a schedule of tables and laying down the definitions relating to basic statistical surveys of areas under vines**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EEC) No 357/79 of 5 February 1979 on statistical surveys of areas under vines ⁽¹⁾, as last amended by Regulation (EC) No 2329/98 ⁽²⁾, and in particular Article 4(2) thereof,

The form of the schedule of tables for the basic surveys of the areas under vines shall be as set out in Annex I.

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽³⁾, as last amended by Regulation (EC) No 2585/2001 ⁽⁴⁾, and in particular Article 73 thereof,

Article 2

Whereas:

1. The definitions relating to the basic surveys are given in Annex II.

(1) Commission Regulation (EEC) No 991/79 of 17 May 1979 setting out a schedule of tables and laying down the definitions relating to basic statistical surveys of areas under vines and repealing Regulations No 143 and No 26/64/EEC ⁽⁵⁾ has been substantially amended ⁽⁶⁾. In the interests of clarity and rationality the said Regulation should be codified.

2. Given that the basic statistical surveys cover the situation at the end of the wine-growing year, the area under vines planted, replanted or grafted during the wine-growing year preceding the survey shall be considered to be under one year old.

(2) Pursuant to Regulation (EEC) No 357/79, the Member States are to submit the results of the basic surveys in the form of a schedule of tables to be adopted in accordance with the procedure laid down in Article 8 of the said Regulation.

Article 3

Regulation (EEC) No 991/79 is repealed.

(3) In order to ensure the comparability of data shown in these tables, it is necessary to provide for certain definitions relating to the basic surveys.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex IV.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Agricultural Statistics and the Management Committee for Wine,

Article 4

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

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

Done at Brussels, 1 August 2003.

For the Commission

Pedro SOLBES MIRA

Member of the Commission

⁽¹⁾ OJ L 54, 5.3.1979, p. 124.

⁽²⁾ OJ L 291, 30.10.1998, p. 2.

⁽³⁾ OJ L 179, 14.7.1999, p. 1.

⁽⁴⁾ OJ L 345, 29.12.2001, p. 10.

⁽⁵⁾ OJ L 129, 28.5.1979, p. 1.

⁽⁶⁾ See Annex III.

ANNEX I

TABLE 1

HOLDINGS, CULTIVATED AREA UNDER VINES AND AGRICULTURAL AREA IN USE (AA) BROKEN DOWN BY TYPE OF PRODUCTION AND BY SIZE CLASS

Size class of area under vines (ha)	All			Area under wine-grape varieties					
				Total			For VQPRD production ⁽¹⁾		
	Holdings	AA (ha)	Area under vines (ha)	Holdings	AA (ha)	Area under wine (ha)	Holdings	AA (ha)	Area for quality wines (ha)
	1	2	3	4	5	6	7	8	9
< 0,10									
0,10 to < 0,20									
0,20 to < 0,30									
0,30 to < 0,50									
0,50 to < 1									
1 to < 2									
2 to < 3									
3 to < 5									
5 to < 10 (b)									
10 to < 20 (a) (b)									
20 to < 30 (a) (b)									
to ≥ 30 (a) (b)									

(a) For geographical units, the use of a single class '≥ 10 ha' is optional for France and Italy.

(b) For geographical units, the use of a single class '≥ 5 ha' is optional for the Federal Republic of Germany, Luxembourg and Greece.

⁽¹⁾ VQPRD: quality wines produced in definite regions.

Size class of area under vines (ha)	Area under wine-grape varieties						Area under table-grape varieties		
	For other wine production								
	Total			Of which for spirits (a)					
	Holdings	AA (ha)	Area for other wines (ha)	Holdings	AA (ha)	Area for spirits (ha)	Holdings	AA (ha)	Area under table grapes (ha)
	10	11	12	13	14	15	16	17	18

(a) Only for the area where the distillation from wine of certain spirits with 'appellation d'origine' is obligatory.

Size class of area under vines (ha)	Planted rootstock for grafting			Areas for the production of vegetative propagation material for vines					
				Nurseries			Parent vines		
	Holdings	AA (ha)	Area planted (ha)	Holdings	AA (ha)	Area of nurseries (ha)	Holdings	AA (ha)	Area of parent vines (ha)
	19	20	21	22	23	24	25	26	27

Size class of area under vines (ha)	Area under varieties of grapes for drying ⁽¹⁾		
	Holdings	AA (ha)	Area under grapes for drying (ha)
	28	29	30

⁽¹⁾ Optional for all countries except Greece.

TABLE 2

HOLDINGS, CULTIVATED AREA UNDER VINES ⁽¹⁾ AND AGRICULTURAL AREA IN USE (AA) BROKEN DOWN BY SIZE CLASS AND BY THE PERCENTAGE OF AA UNDER VINES

2.1. All holdings.

2.2. Holdings whose entire area is devoted to the production of quality wines psr.

2.3. Holdings whose entire area is devoted to the production of other wines.

2.4. Holdings whose entire area is devoted to varieties of table grapes.

2.5. Holdings whose entire area is devoted to varieties of grapes for drying ⁽²⁾.

2.6. Other holdings having areas under vines ⁽³⁾.

Size class of areas under vines ⁽¹⁾ (ha)	All			Area under vines as percentage of AA					
				> 0 to < 10			10 to < 25		
	Holdings	AA (ha)	Area under vines (ha)	Holdings	AA (ha)	Area under vines (ha)	Holdings	AA (ha)	Area under vines (ha)
	1	2	3	4	5	6	7	8	9

⁽¹⁾ See table 1.

Size class of areas under vines (ha)	Area under vines as percentage of AA					
	25 to < 50			50 to < 75		
	Holdings	AA (ha)	Area under vines (ha)	Holdings	AA (ha)	Area under vines (ha)
	10	11	12	13	14	15

Size class of areas under vines (ha)	Area under vines as percentage of AA					
	75 to < 90			≥ 90		
	Holdings	AA (ha)	Area under vines (ha)	Holdings	AA (ha)	Area under vines (ha)
	16	17	18	19	20	21

⁽¹⁾ The area for the production of vegetative propagation material is not taken into account in table 2.1 to 2.6.

⁽²⁾ Optional for all Member States except Greece.

⁽³⁾ 'Other' means holdings not included under holdings 2.2, 2.3, 2.4 and 2.5.

TABLE 3

HOLDINGS AND AREA UNDER WINE-GRAPE VINE VARIETIES BROKEN DOWN BY SIZE CLASS AND BY THE PERCENTAGE OF AREA UNDER WINE-GRAPE VINE VARIETIES FOR PRODUCTION OF QUALITY WINES PSR

Size class of area under vines (ha)	All			Area for the production of quality wines psr as percentage of total area under wine-grape vines				
				0		> 0 to < 10		
	Holdings	Area under wine-grape vines		Holdings	Area under wine-grape vines (ha)	Holdings (ha)	Area under wine-grape vines	
		All (ha)	Quality wines (ha)				All (ha)	Quality wines (ha)
	1	2	3	4	5	6	7	8

(1) See table 1.

Size class of area under vines (ha)	Area for the production of quality wines psr as percentage of total area under wine-grape vines						
	10 to < 25				25 to < 50		
	Holdings	Area under wine-grape vines		Holdings	Area under wine-grape vines		
		All (ha)	Quality wines (ha)		All (ha)	Quality wines (ha)	
	9	10	11	12	13	14	

Size class of area under vines (ha)	Area for the production of quality wines psr as percentage of total area under wine-grape vines						
	50 to < 75				75 to < 90		
	Holdings	Area under wine-grape vines		Holdings	Area under wine-grape vines		
		All (ha)	Quality wines (ha)		All (ha)	Quality wines (ha)	
	15	16	17	18	19	20	

Size class of area under vines (ha)	Area for the production of quality wines psr as percentage of total area under wine-grape vines						
	90 to < 100				100		
	Holdings	Area under wine-grape vines		Holdings	Area under wine-grape vines		
		All (ha)	Quality wines (ha)		All (ha)	Quality wines (ha)	
	21	22	23	24	25		

TABLE 4

AREA UNDER WINE-GRAPE VARIETIES BROKEN DOWN BY VARIETY AND BY AGE OF THE VINES, IN HECTARES

Colour of berry Variety	All	Age class ⁽¹⁾							
		1	2	3	4	5	6	7	8
		< 3	3 to 9	10 to 19	20 +	20 to 29	30 +	3 to 5	6 to 9
	1	2	3	4	5	6	7	8	9
Individual varieties									
Black									
.....									
.....									
.....									
.....									
Subtotal									
White and other colours									
.....									
.....									
.....									
.....									
Subtotal									
Total individual varieties									
Other varieties									
Black									
White and other colours									
Total other varieties									
All varieties									
Black									
White and other colours									
Total all varieties									

⁽¹⁾ — Age classes 1, 2 and 3 are obligatory for all Member States concerned.

— Age class 4 is obligatory when classes 5 and 6 are not provided.

— Age classes 5 and 6 are obligatory for France and Italy, but optional for the other Member States concerned.

— Age classes 7 and 8 concern Italy and are optional.

TABLE 5

AREA UNDER WINE-GRAPE VINE VARIETIES BROKEN DOWN BY TYPE OF PRODUCTION AND BY YIELD CLASS, IN HECTARES

Geographical unit	All	For production of quality wines psr					
		Total	Yield class ⁽¹⁾				
			I	II	III	IV	V
	1	2	3	4	5	6	7
Geographical unit	For production of other wines						
	Total	Yield class ⁽¹⁾					
		I	II	III	IV	V	
	8	9	10	11	12	13	

⁽¹⁾ This yield classification (number and limits) will be established subsequently.

ANNEX II

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'holding':
a technico-economic unit under a single management and producing agricultural products;
 - (b) 'agricultural area in use (AA)':
the total area of arable land, permanent pasture and meadows, land under permanent crops and family gardens;
 - (c) 'area under vines cultivated':
the total area of land under vines, in production or not yet in production, intended for the production of grapes and/or vegetative propagation material for vines which was subjected to regular cultivation to obtain from it a marketable product;
 - (d) 'area under wine grape varieties for quality wines psr':
area under wine grape varieties suitable for the production of quality wines produced in specified regions (psr) conforming to the provisions of Regulation (EC) No 1493/1999 and to the provisions laid down to implement this Regulation, as well as to the national provisions adopted pursuant to that Regulation;
 - (e) 'area under wine grape varieties for other wines':
area under wine grape varieties cultivated for the production of wines other than quality wines psr;
 - (f) 'wine-growing year':
the wine-growing year begins on 1 August and ends on 31 July;
 - (g) 'vegetative propagation material for vines; nurseries; parent vines for root-stock':
as defined in Council Directive 68/193/EEC of 9 April 1968 on the marketing of vegetative propagation material for vines ⁽¹⁾;
 - (h) 'wine grape varieties; table grape varieties':
as defined in Regulation (EC) No 1493/1999.
-

⁽¹⁾ OJ L 93, 17.4.1968, p. 15.

ANNEX III

Repealed Regulation with its amendment

Commission Regulation (EEC) No 991/79 (OJ L 129, 28.5.1979, p. 1)

Commission Regulation (EEC) No 2802/85 (OJ L 265, 8.10.1985, p. 15)

ANNEX IV

CORRELATION TABLE

Regulation (EEC) No 991/79	This Regulation
Articles 1 and 2	Articles 1 and 2
Article 3	—
—	Article 3
—	Article 4
Annex I	Annex I
Annex II	Annex II
—	Annex III
—	Annex IV

COMMISSION REGULATION (EC) No 1403/2003
of 6 August 2003
prohibiting fishing for blue ling by vessels flying the flag of France

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required ⁽³⁾, as last amended by Regulation (EC) No 1091/2003 ⁽⁴⁾, lays down quotas for blue ling for 2003.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information received by the Commission, catches of blue ling in the waters of ICES divisions II, IV and V (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries),

by vessels flying the flag of France or registered in France have exhausted the quota allocated for 2003. France has prohibited fishing for this stock from 20 July 2003. This date should consequently be adopted in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of blue ling in the waters of ICES divisions II, IV and V (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries), by vessels flying the flag of France or registered in France are hereby deemed to have exhausted the quota allocated to France for 2003.

Fishing for blue ling in the waters of ICES divisions II, IV and V (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries), by vessels flying the flag of France or registered in France is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 20 July 2003.

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

Done at Brussels, 6 August 2003.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 356, 31.12.2002, p. 12.

⁽⁴⁾ OJ L 157, 26.6.2003, p. 1.

COMMISSION REGULATION (EC) No 1404/2003
of 6 August 2003
prohibiting fishing for anglerfish by vessels flying the flag of France

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required ⁽³⁾, as last amended by Regulation (EC) No 1091/2003 ⁽⁴⁾, lays down quotas for anglerfish for 2003.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information received by the Commission, catches of anglerfish in the waters of ICES divisions VIIIc, IX, X, CECAF 34.1.1 (EC waters) by vessels flying

the flag of France or registered in France have exhausted the quota allocated for 2003. France has prohibited fishing for this stock from 20 July 2003. This date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of anglerfish in the waters of ICES divisions VIIIc, IX, X, CECAF 34.1.1 (EC waters) by vessels flying the flag of France or registered in France are hereby deemed to have exhausted the quota allocated to France for 2003.

Fishing for anglerfish in the waters of ICES divisions VIIIc, IX, X, CECAF 34.1.1 (EC waters) by vessels flying the flag of France or registered in France is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 20 July 2003.

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

Done at Brussels, 6 August 2003.

For the Commission

Jörgen HOLMQUIST

Director-General of Fisheries

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 356, 31.12.2002, p. 12.

⁽⁴⁾ OJ L 157, 26.6.2003, p. 1.

COMMISSION REGULATION (EC) No 1405/2003
of 6 August 2003
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1298/2002 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.
- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.

- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 ⁽⁵⁾ as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 7 August 2003.

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

Done at Brussels, 6 August 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 189, 18.7.2002, p. 8.

⁽⁵⁾ OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽⁵⁾				
	Third countries (except ACP and Bangla- desh) ⁽⁷⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁶⁾	Egypt ⁽⁸⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 345, 10.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 9.4.2003, p. 3).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	256,65	204,91	240,46	298,82	—
(b) fob price (EUR/tonne)	—	—	—	213,99	272,35	—
(c) Sea freight (EUR/tonne)	—	—	—	26,47	26,47	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 21 July 2003

on the fulfilment of the conditions laid down in Article 3 of Decision No 3/2002 of the EU-Poland Association Council of 23 October 2002 extending the period set in Article 8(4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement

(2003/588/EC)

THE COUNCIL OF THE EUROPEAN UNION,

- (3) The initial period of five years expired on 31 December 1996.

Having regard to the Treaty establishing the European Community, and in particular Article 87(3)(e) thereof,

- (4) Poland requested an extension of the abovementioned period in April 1997.

Having regard to EU-Poland Association Council Decision No 3/2002 extending the period set in Article 8(4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement, and in particular Article 3 thereof,

- (5) It is appropriate to grant an extension of this period for an additional period of eight years starting on 1 January 1997 or until the date of Poland's accession to the European Union, whichever comes first.

Having regard to the proposal from the Commission,

Whereas:

- (1) A Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part ⁽¹⁾, was signed on 16 December 1991.

- (6) To this effect, on 23 October 2002, the EU-Poland Association Council adopted Decision No 3/2002 and it is provisionally applied from that date.

- (2) Article 8(4) of Protocol 2 to the above Europe Agreement lays down that during the first five years after entry into force of the Agreement, and by derogation from paragraph 1(iii) of the same Article, Poland may exceptionally, as regards steel products, grant public aid for restructuring purposes, provided that this leads to the viability of the benefiting firms under normal market conditions at the end of the restructuring period, that the amount and intensity of such aid are strictly limited to what is absolutely necessary in order to restore viability and that the aid is progressively reduced, and that the restructuring programme is linked to a global rationalisation and reduction of overall production capacity in Poland.

- (7) Article 1 of EU-Poland Association Council Decision No 3/2002 granted an extension of the abovementioned period, subject to the fulfilment of conditions laid out in Articles 2 and 3.

- (8) Under Article 2 of EU-Poland Association Council Decision No 3/2002 the extension of the abovementioned period is made conditional on the submission by Poland to the Commission of a restructuring programme and business plans for all companies included in the restructuring process which meet the requirements of Article 8(4) of Protocol 2 to the Europe Agreement and have been assessed and agreed by its national State aid monitoring authority (the Office for Competition and Consumer Protection).

⁽¹⁾ OJ L 348, 31.12.1993, p. 2.

- (9) Protocol 8 on the restructuring of the Polish steel industry, annexed to the Treaty of 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 provides that State aid granted by Poland for restructuring purposes to specified parts of the Polish steel industry shall, under certain conditions, be deemed to be compatible with the common market; the first of those conditions is that the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement has been extended until the date of accession. Paragraph 5 of the said Protocol 8 provides that any subsequent privatisation of any of the benefiting companies is to take place under the same conditions. Paragraph 6 of the said Protocol 8 provides that the restructuring aid granted to the benefiting companies is to be determined by the justifications set out in the approved Polish steel restructuring plan and individual plans as approved by the Council and is not to exceed PLN 3 387 070 000. Paragraph 7 of the said Protocol sets out the minimum net capacity reductions to be achieved. Paragraphs 8 and 9 of the said Protocol provide for the implementation of business plans by the benefiting companies.
- (10) In April 2003, Poland submitted to the Commission a restructuring programme and business plans which have been assessed and agreed by the Office for Competition and Consumer Protection. Under Article 3 of EU–Poland Association Council Decision No 3/2002, the extension of the abovementioned period is made conditional on a final assessment of the restructuring programme and business plans by the Commission.
- (11) The Commission has made a final assessment of the restructuring programme and business plans submitted by Poland.
- (12) The assessment indicates that restructuring aid is necessary to return certain companies in the Polish steel industry to viability.
- (13) The assessment confirms that implementation of the restructuring programme and business plans will lead to the viability of the companies under normal market conditions by the end of the restructuring period, that the amount and intensity of aid should be strictly limited to what is absolutely necessary in order to reach this objective, that restructuring aid to the Polish steel industry should cease by the end of 2003, that the restructuring programme should be linked to a global rationalisation and reduction of overall production capacity in Poland and that the programme respects all the commitments agreed to in the Accession negotiations.
- (14) The assessment therefore concludes that the restructuring programme and business plans submitted by Poland meet the requirements of Article 8(4) of Protocol 2 to the Europe Agreement and, at this stage, the conditions laid down in Protocol 8 to the Treaty of Accession.
- (15) The conditions laid down in Articles 2 and 3 of EU–Poland Association Council Decision No 3/2002 are accordingly met,

HAS DECIDED AS FOLLOWS:

Sole Article

The restructuring programme and business plans submitted to the Commission by Poland on 4 April 2003 pursuant to Article 2 of EU–Poland Association Council Decision No 3/2002, with regard to an extension of the period laid down in Article 8(4) of Protocol 2 to the Europe Agreement are in compliance with the requirements of Article 8(4) of the said Protocol 2.

Done at Brussels, 21 July 2003.

For the Council
The President
F. FRATTINI

COUNCIL DECISION
of 21 July 2003
concerning the conclusion of the Agreement for scientific and technological cooperation between
the European Community and the Republic of Chile

(2003/589/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 170(2) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) and Article 300(3) thereof,

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

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The Commission has negotiated with the Republic of Chile, on behalf of the Community, an Agreement for scientific and technological cooperation.
- (2) This Agreement was signed, on behalf of the Community, on 23 September 2002 in Brussels, subject to a possible conclusion at a later date.
- (3) The Agreement should be approved,

Article 1

The Agreement for scientific and technological cooperation between the European Community and the Republic of Chile is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 11 of the Agreement.

Done at Brussels, 21 July 2003.

For the Council
The President
F. FRATTINI

⁽¹⁾ Proposal of 24 February 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 3 June 2003 (not yet published in the Official Journal).

AGREEMENT**for scientific and technological cooperation between the European Community and the Republic of Chile**

THE EUROPEAN COMMUNITY (hereinafter referred to as the Community),

of the one part, and

THE REPUBLIC OF CHILE (hereinafter referred to as Chile),

of the other part,

hereinafter referred to as the Parties;

CONSIDERING the Framework Agreement for Cooperation between the European Economic Community and the Republic of Chile, concluded on 20 December 1990;

CONSIDERING the importance of science and technology for their economic and social development and Article 16 of the Framework Cooperation Agreement leading ultimately to the establishment of a political and economic association, signed in Florence on 21 June 1996;

CONSIDERING the present scientific and technological cooperation between the Community and Chile;

CONSIDERING that the Community and Chile are carrying out research and technological development activities, including demonstration projects referred to in letter (d) of Article 2, in a number of areas of common interest, and that mutual benefits may be derived from the participation of one Party in the research and development of the other, based on reciprocity;

DESIRING to create a formal cooperation basis in scientific and technological research with a view to extend and intensify the conduct of cooperative activities in areas of common interest and to encourage the application of the results of such cooperation to the economic and social benefit of both Parties;

CONSIDERING that this Agreement is part of the general cooperation between Chile and the Community,

HAVE AGREED AS FOLLOWS:

Article 1**Purpose**

The Parties shall encourage, develop and facilitate cooperative research and development activities in science and technology fields of common interest between the Community and Chile.

(d) 'joint research' means research, technological development or demonstration project that is implemented with financial support from one or both Parties and that involves collaboration between participants from both the Community and Chile;

Article 2**Definitions**

For the purpose of this Agreement:

(a) 'cooperative activity' means any activity which the Parties undertake or support, pursuant to this Agreement, and includes joint research;

(b) 'information' means scientific or technical data, results or methods of research and development stemming from joint research carried out under this Agreement and any other data deemed necessary by the participants to cooperative activities, including, as necessary, by the Parties themselves;

(c) 'intellectual property' shall have the meaning defined in Article 2 of the Convention establishing the World Intellectual Property Organisation, done at Stockholm, 14 July 1967 and the TRIPS Agreement;

(e) 'demonstration project' means the project aimed at demonstrating the viability of new technologies, processes, services or products that offer a potential economic advantage, but that cannot be directly commercialised;

(f) 'research and development' (R+D) means creative work carried out in a systematic way so as to increase the human, cultural, social and technological knowledge volume and the use of this knowledge to stem new applications;

(g) 'participant' or 'research entities' means any physical or legal person, research institute, firms, or any other legal entity or undertaking established in the Community or in Chile involved in cooperative activities, including the Parties themselves.

*Article 3***Principles**

Cooperative activities shall be conducted on the basis of the following principles:

- (a) mutual benefit based on an overall balance of advantages;
- (b) reciprocal access to the activities of research and technological development undertaken by each Party;
- (c) timely exchange of information which may affect cooperative activities;
- (d) appropriate protection of intellectual property rights.

*Article 4***Scope of cooperation**

1. Cooperation under this Agreement may cover all the activities of research, technological development and demonstration, hereinafter referred to as 'RTD', included in the first activity of the framework programme under Article 164 of the Treaty establishing the European Community and all similar RTD activities in Chile in the corresponding scientific and technological fields.

2. This Agreement does not affect the participation of Chile, as a developing country, in Community activities in the field of research for development.

*Article 5***Modalities of cooperation**

The Parties will foster the participation of the research and technological development bodies in the cooperation activities under this Agreement in compliance with their internal dispositions and politics, so as to offer similar opportunities in their own research and scientific development and technological activities.

Cooperative activities may take the following forms:

- 1. participation of Chilean research and technological development entities to RTD projects of the framework programme and reciprocal participation of research and technological development entities established in the Community to Chilean projects in similar sectors of RTD. Such a participation is subject to the rules and procedures applicable in each Party;
- 2. pooling of RTD projects already implemented according to the procedures applicable in the RTD programmes of each Party;
- 3. joint RTD projects under the framework of their scientific and technological policies, especially those relating to scientific and technological prospective activities;

- 4. visits and exchanges of scientists and technical experts, as well as public, university and private specialists in the field of design and application of scientific and technological policies;
- 5. joint organisation of seminars, conferences, symposia and workshops, as well as participation of experts to those activities;
- 6. scientific networks and researchers training;
- 7. concerted actions for dissemination of results, exchange of experience on joint RTD projects that have been funded or for their coordination;
- 8. exchanges and sharing of equipment and materials including shared use of advanced research facilities;
- 9. exchanges of information on practices, laws, regulations and programmes relevant to cooperation under this Agreement;
- 10. any other modality that would be recommended by the Steering Committee and deemed in conformity with the policies and procedures applicable in both Parties.

*Article 6***Coordination and facilitation of cooperative activities**

- (a) The coordination and facilitation of cooperative activities under this Agreement shall be accomplished on behalf of Chile, by the National Scientific and Technological Research Commission (CONICYT), decentralised body of the Ministry of Education, with its own juridical personality, or other organisms which Chile could notify at any moment with previous written notice and, on behalf of the Community, by the services of the Commission of the European Communities, in charge of Community RTD policies and activities, acting as executives agents.
- (b) The executive agents shall establish a Steering Committee on S&T Cooperation, hereinafter referred to as the 'Steering Committee' for the management of this Agreement; this Committee shall consist of a similar number of official representatives of each Party and shall have co-chairpersons from Parties; it shall establish its own rules of procedure.
- (c) The functions of the Steering Committee shall include:
 - 1. promoting and overseeing the different cooperative activities as mentioned in Articles 2 and 4 of this Agreement, as well as those that will be implemented in the framework of RTD for development;
 - 2. indicating, for the following year, pursuant to Article 5, points 1 and 2, among the potential sectors for RTD cooperation, those priority sectors or sub-sectors of mutual interest in which cooperation is sought;

3. proposing, pursuant to Article 5, point 2, to the scientists of both Parties the pooling of their projects which would be of mutual benefit and complementary;
 4. making recommendations pursuant to Article 5, point 10;
 5. advising the Parties on ways to enhance and improve cooperation consistent with the principles set out in this Agreement;
 6. reviewing the efficient functioning and implementation of this Agreement including evaluation of ongoing cooperative projects involving Chile as a developing country under Community's activities in the field of research for development;
 7. providing an annual report to the Parties on the status, the level reached and the effectiveness of cooperation undertaken under this Agreement. This report will be transmitted to the Joint Commission established within the Framework Cooperation Agreement of June 1996.
- (d) The Steering Committee shall, as a general rule, meet annually, preferably before the meeting of the Joint Committee established within the Framework Cooperation Agreement of 1996, according to a jointly agreed schedule, and will refer to it. The meetings shall be held alternatively in the Community and in Chile. Extraordinary meetings may be organised at the request of either Party.
- (e) Decisions of the Steering Committee shall be reached by consensus. Minutes, comprising of a record of decisions and principal points discussed, shall be taken at each meeting. These minutes shall be agreed upon by the co-chairpersons of the Steering Committee.
- (f) Each Party will support the cost of its participation to the Steering Committee meetings. For those meetings, the expenses, travel and accommodation, of the participants, will be borne by the Parties to whom they relate. Any other cost associated with the meetings will be borne by the host Party.

Article 7

Funding

- (a) Cooperative activities shall be subject to the availability of appropriated funds and to the laws, regulations, policies and programmes applicable in territories of each Party. Costs incurred on selected cooperative activities will be shared by the participants without any transfer of funds from one Party to the other.
- (b) When a specific cooperative mechanism of one Party confers economic support to the participants of the other, such subventions, financial or other contributions of one

Party to the participants of the other, in support to those activities, will be granted free of charges and customs duties, pursuant to the laws and regulations applicable in the territories of each Party.

- (c) RTD projects, involving Chile as developing country, sponsored under Community's activities in the field of research for development, will be excluded from the provisions specified under (a).

Article 8

Entry of personnel and equipment

Each Party shall take all appropriate steps and use its best efforts, pursuant to the laws and regulations applicable in the territories of each Party, to facilitate entry to, sojourn and exit from its territory of persons, material, data and equipment related to or used in cooperative activities developed by the Parties under this Agreement.

Article 9

Dissemination and utilisation of information

1. The dissemination and utilisation of information, and the management, allocation and exercise of intellectual property rights resulting from joint research under this Agreement shall be subject to the requirements of the Annex hereto.
2. This Annex shall form an integral part of this Agreement.

Article 10

Territorial application

This Agreement shall apply, on the one hand to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty, and on the other hand to the territory of the Republic of Chile. This shall not exclude cooperative activities on the high seas, outer space, or the territory of third countries, in accordance with international law.

Article 11

Entry into force, termination and dispute settlement

- (a) This Agreement shall enter into force on the date on which both Parties have notified each other in writing that their respective necessary internal procedures have been completed.

- (b) This Agreement shall be concluded for an initial period of five years and may be tacitly renewed after evaluation during the next to last year of each successive period.
- (c) This Agreement may be amended by decision of the Parties. Amendments shall enter into force under the same conditions as those mentioned in letter (a).
- (d) This Agreement may be terminated at any time by either Party upon six months' written notice to the other Party through diplomatic channels. The expiration of this Agreement shall not affect the validity or duration of any arrangements made under it, or any specific rights and obligations that have accrued in compliance with the Annex.

- (e) All questions or disputes related to the interpretation or implementation of this Agreement shall be settled by mutual agreement between the Parties.

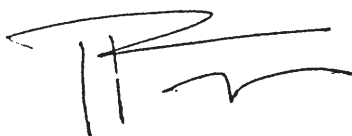
Article 12

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

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly empowered to this effect, have signed this Agreement.

Hecho en Bruselas, el veintitrés de septiembre de dos mil dos.
Udfærdiget i Bruxelles, den treogtyvende september to tusind og to.
Geschehen zu Brüssel am dreiundzwanzigsten September zweitausendundzwei.
Έγινε στις Βρυξέλλες, στις είκοσι τρεις Σεπτεμβρίου δύο χιλιάδες δύο.
Done at Brussels on the twenty-third day of September in the year two thousand and two.
Fait à Bruxelles, le vingt-trois septembre deux mille deux.
Fatto a Bruxelles, addì ventitre settembre duemiladue.
Gedaan te Brussel, de drieëntwintigste september tweeduizendtwee.
Feito em Bruxelas, em vinte e três de Setembro de dois mil e dois.
Tehty Brysselissä kahdentenakymmenentenäkolmantena päivänä syyskuuta vuonna kaksituhattakaksi.
Som skedde i Bryssel den tjugotredje september tjugohundratvå.

Por la Comunidad Europea
For Det Europæiske Fællesskab
Für die Europäische Gemeinschaft
Για την Ευρωπαϊκή Κοινότητα
For the European Community
Pour la Communauté européenne
Per la Comunità europea
Voor de Europese Gemeenschap
Pela Comunidade Europeia
Euroopan yhteisön puolesta
På Europeiska gemenskapens vägnar



Por la República de Chile
På Republikken Chiles vegne
Für die Republik Chile
Για τη Δημοκρατία της Χιλής
For the Republic of Chile
Pour la République du Chili
Per la Repubblica del Cile
Voor de Republiek Chili
Pela República do Chile
Chilen tasavallan puolesta
För Republiken Chile



ANNEX

INTELLECTUAL PROPERTY RIGHTS

This Annex is part of the 'Agreement for Scientific and Technological Cooperation between the European Community and the Republic of Chile', hereinafter referred to as 'the Agreement'.

Rights to intellectual property created or furnished under the Agreement shall be allocated as provided in this Annex.

I. APPLICATION

This Annex is applicable to joint research undertaken pursuant to the Agreement, except as otherwise agreed by the Parties.

II. OWNERSHIP, ALLOCATION AND EXERCISE OF RIGHTS

1. For the purpose of this Annex 'intellectual property' (IP) is defined in Article 2(c) of the Agreement.
2. This Annex addresses the allocation of rights and interests of the Parties and their participants. Each Party and its participants shall ensure that the other Party and its participants may obtain the rights to IP allocated to it in accordance with this Annex. This Annex does not otherwise alter or prejudice the allocation of rights, interests and IP between a Party and its nationals or participants, and the rules of diffusion and utilisation of information, which will be determined by the laws and practices of each Party.
3. The Parties shall also be guided by, and contractual arrangements should provide for, the following principles:
 - (a) effective protection of IP. The Parties and their participants shall ensure that they notify one another within a reasonable time of the creation of any IP arising under the Agreement or implementation arrangements and seek protection for such IP in a timely fashion;
 - (b) effective exploitation of results, taking into account the contributions of the Parties and their participants;
 - (c) non-discriminatory treatment of participants from the other Party as compared to the treatment given to its own participants;
 - (d) protection of business-confidential information.
4. The participants shall jointly develop a Technology Management Plan (TMP). TMP is a specific agreement to be concluded between the participants in joint research defining their respective rights and obligations, including those in respect of the ownership and use, including publication, of information and IP to be created in the course of joint research.

The TMP will be approved by the responsible funding agency of the Party involved in financing the research, before the conclusion of the corresponding specific research and development cooperation contracts. The TMP shall be developed within the rules and regulations in force in each Party taking into account the aims of the joint research, the relative financial or other contributions of the Parties and participants, the advantages and disadvantages of licensing by territory or for fields of use, transfers of data, goods or services submitted to export controls, requirements imposed by applicable laws, and other factors deemed appropriate by the participants. The rights and obligations concerning the research and information generated by invited researchers (i.e. researchers not coming from a Party or a participant) with respect to IP shall also be addressed in the joint technology management plans.

With respect to IP, the TMP will normally address, among other things, ownership, protection, user rights for research and development purposes, exploitation and dissemination, including arrangements for joint publication, the rights and obligations of visiting researchers and dispute settlement procedures. The TMP shall also address foreground and background information, licensing and deliverables.

5. Information or IP created in the course of joint research and not regulated in the TMP will be allocated, with the agreement of the Parties, according to the principles set out in the TMP. In case of disagreement, such information or IP shall be owned jointly by all the participants involved in the joint research from which the information or IP results. Each participant to whom this provision applies shall have the right to use such information or IP for his own commercial exploitation with no geographical limitation.

6. Each Party will ensure that the other Party and its participants may have the rights to IP allocated to them in accordance with the present principles.
7. While maintaining the conditions of competition in areas affected by the Agreement, each Party shall endeavour to ensure that rights acquired pursuant to the Agreement, are exercised in such a way as to encourage, in particular:
 - (i) the dissemination and use of information created, disclosed or otherwise made available under the Agreement, and
 - (ii) the adoption and implementation of international standards.
8. Termination or expiry of the Agreement will not affect rights or obligations of participants in accordance with this Annex.

III. COPYRIGHT WORKS AND SCIENTIFIC LITERARY WORKS

Copyright belonging to the Parties or to their participants shall be accorded treatment consistent with the Berne Convention (Paris Act 1971) and the TRIPS Agreement. The IP rights will protect the expression but not the ideas, procedures, methods or mathematical concepts as such. Only limitations or exceptions may be introduced to exclusive rights in specific special cases that do not obstruct the normal exploitation of results nor unduly endanger the legitimate interests of the right holder.

Without prejudice to Sections IV and V, and unless otherwise agreed in the TMP, publication of results of research shall be made jointly by the Parties or participants. Subject to the foregoing general rule, the following procedures shall apply:

1. In the case of publication by a Party or public bodies of that Party of journals, articles, reports, books, including video and software arising from joint research pursuant to the Agreement, the other Party will be entitled to a worldwide, non-exclusive, irrevocable, royalty-free license to translate, reproduce, adapt, transmit and publicly distribute such works.
2. The Parties shall endeavour to disseminate as widely as possible literary works of a scientific character arising from joint research pursuant to the Agreement and published by independent publishers.
3. All copies of a copyright work to be publicly distributed and prepared under this provision shall indicate the names of the author(s) of the work unless an author explicitly declines to be named. Copies shall also bear a clearly visible acknowledgement of the cooperative support of the Parties.

IV. INVENTIONS AND OTHER SCIENTIFIC AND TECHNOLOGICAL RESULTS

The inventions and other scientific and technological results arising from cooperative activities between Parties will be owned by them, unless otherwise agreed by them.

V. UNDISCLOSED INFORMATION

A. Documentary undisclosed information

1. Each Party, its agencies or its participants, as appropriate, shall identify at the earliest possible moment and preferably in the TMP the information that they wish to remain undisclosed in relation to the Agreement, taking into account *inter alia* the following criteria:
 - (a) secrecy of the information in the sense that it is not, as a body or in the precise configuration or assembly of its components, generally known among or readily accessible by lawful means to experts in the fields;
 - (b) the actual or potential commercial value of the information by virtue of its secrecy;
 - (c) previous protection of the information in the sense that it has been subject to steps that were reasonable under the circumstances by the person lawfully in control, to maintain its secrecy.

The Parties and their participants may in certain cases agree that, unless otherwise indicated, parts or all of the information provided, exchanged or created in the course of joint research pursuant to the Agreement may not be disclosed.

2. Each Party shall ensure that it and its participants clearly identify undisclosed information, for example by means of an appropriate marking or restrictive legend. This also applies to any reproduction of the said information, in whole or in part.

A Party receiving undisclosed information pursuant to the Agreement will respect the privileged nature thereof. These limitations shall automatically terminate when this information is disclosed by the owner into the public domain.

3. Undisclosed information communicated under this Agreement may be disseminated by the receiving Party to persons within or employed by the receiving Party and other governmental departments or concerned agencies of the receiving Party authorised for the specific purposes of the joint research under way, provided that any undisclosed information so disseminated shall be pursuant to a written agreement of confidentiality and shall be readily recognisable as such, as set out above.
4. With the prior written consent of the Party providing undisclosed information, the receiving Party may disseminate such undisclosed information more widely than otherwise permitted in paragraph 3. The Parties shall cooperate in developing procedures for requesting and obtaining prior written consent for such wider dissemination, and each Party will grant such approval to the extent permitted by its domestic policies, laws and regulations.

B. Non-documentary undisclosed information

Non-documentary undisclosed or other confidential or privileged information provided in seminars and other meetings arranged under this Agreement, or information arising from the attachment of staff, use of facilities, or joint projects, shall be treated by the Parties or their participants according to the principles specified for documentary information in the Agreement; provided, however, that the recipient of such undisclosed or other confidential or privileged information has been made aware in advance and in written form of the confidential character of the information at the moment of its communication.

C. Control

Each Party shall endeavour to ensure that undisclosed information received by it under this Agreement shall be controlled as provided herein. If one of the Parties becomes aware that it will be, or may be reasonably expected to become, unable to meet the non-dissemination provisions of sections A and B, it shall immediately inform the other Party. The Parties will thereafter consult to define the most appropriate course of action.

COMMISSION

COMMISSION DECISION

of 5 March 2003

on the State aid which the United Kingdom is planning to grant to CDC Group plc

(notified under document number C(2003) 651)

(Only the English text is authentic)

(Text with EEA relevance)

(2003/590/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 those provisions ⁽¹⁾,

Whereas:

1. PROCEDURE

- (1) By letter dated 17 January 2001, the United Kingdom notified the Commission of the aid to CDC Group plc. It provided the Commission with further information by a letter dated 5 June 2001, registered on 8 June 2001, a letter dated 18 September 2001, registered on 21 September 2001, and a letter dated 29 May 2002, registered on 7 June 2002.
- (2) By letter dated 2 July 2002, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (4) The Commission received no comments from interested parties.

2. DETAILED DESCRIPTION OF THE AID

- (5) The overall purpose of the scheme is to support the United Kingdom Government's international development policy. According to the United Kingdom, most

foreign investment in developing countries is focused on only a few of the richer developing countries. It is believed that financial sectors in poorer countries are underdeveloped and that official and market information about investment opportunities and potential returns is inadequate.

- (6) The legal basis of this measure is the CDC Act 1999.
- (7) The CDC Group plc (CDC) is the United Kingdom Government's main instrument for investing in the poorer countries. The purpose of CDC is to maximise the creation and long-term growth of viable businesses in developing countries, especially poorer countries. CDC is not a tax planning instrument, nor an instrument to repatriate passive income. By transforming CDC into a public private partnership, the United Kingdom authorities seek to encourage private investment flows to the poorer countries. CDC is expected to remedy the market failure by demonstrating that commercial returns are available from such investments. The Government has therefore imposed an operating framework on CDC, according to which it is required to make 70 % of new investments (by aggregate value) in poorer developing countries ⁽³⁾ over a rolling five-year period and to seek to make at least half of new investments in sub-Saharan Africa and South Asia.
- (8) The United Kingdom authorities originally intended to sell the majority of shares in CDC rather soon. However, by letter dated 12 August 2002, they informed the Commission that it would not be possible in the current market conditions to obtain value for money from such a sale. The sale still remains an objective for the future and there will then be open competition and full publicising of the CDC investment opportunity.

⁽¹⁾ OJ C 223, 19.9.2002, p. 6.

⁽²⁾ See footnote 1.

⁽³⁾ 'Poorer developing countries' are those classified as 'low income' by the World Bank in 1998, and those which were classified as 'lower middle income' by the World Bank in 1998 and whose GNP per capita is below the weighted mean for lower middle income countries. The definition also includes 11 countries for which the World Bank does not currently collect GNP data.

(9) The aid consists in granting CDC investment company status, although the company does not meet all the technical requirements of an investment company as set out in United Kingdom legislation. The main implication is that CDC will enjoy an exemption from tax on income and chargeable gains derived from its investment activities in the same way that investment companies do. Investors in CDC will pay tax according to their own circumstances. The United Kingdom authorities argue that if CDC is not tax efficient, private investors will not support the partnership.

(10) The United Kingdom authorities also submitted that nobody could know how long it would take to obtain the demonstration effect, but that it was expected to take more than 10 years. Therefore, they claimed that they would not be able to attract private investors if the Commission's initial approval were limited to 10 years. The measure was therefore notified for an unspecified period.

(11) The United Kingdom authorities expect the effect of the aid to be limited, since the value of the tax exemption of probably less than GBP 50 million (about EUR 80 million) is small in relation to the total foreign direct investment in developing countries, which was around GBP 100 000 million (about EUR 160 000 million) in 1997. Most of these funds are invested by multilateral and European development finance institutions, such as the International Finance Institution and the European Investment Bank. These are supranational bodies outside the tax system. The United Kingdom authorities submit that sub-Saharan Africa and South Asia received less than 4 % of all private flows to developing countries in 1997. The direct public and private competitors of CDC at the investor level are likely to be emerging market investor funds, emerging market private equity funds and ethical funds. Less directly, competition could be represented by large multinational companies who might raise funds to finance acquisitions in the countries where CDC operates. At the level of investments, alternative players may include trade players (e.g. companies already involved in the industry into which CDC is buying), other venture capital funds, including development finance institutions, or entrepreneurs who have spotted a good opportunity.

2.1. The decision to open the procedure under Article 88(2) of the Treaty

(12) On 2 July 2002, the Commission decided that the aid as such was compatible with the common market, due to its development objective and because it contained several of the positive elements set out in the Communication on State aid and risk capital⁽⁴⁾. However, the

Commission had doubts as regards the compatibility with the common market of an aid scheme with an unspecified duration, and therefore decided to open the procedure under Article 88(2) of the Treaty. The following doubts were expressed in the decision to open the procedure:

(a) the Commission does not, in principle, approve fiscal non-quantifiable State aids for an unlimited period of time;

(b) the granting of State aid should not be seen as a permanent solution, but as a temporary measure, which aims to address specific problems. The ultimate goal should be to obtain a fully functioning market without State intervention. The Commission finds that it is appropriate to review State aid schemes regularly in order to ascertain whether the aid is still necessary in view of market developments;

(c) it is stated in point IX of the Communication on State aid and risk capital that risk capital investment is an area of rapid development in the Community economy. This is one of the reasons why the period of application of the Communication is limited to five years and why the Commission reserves the right to adjust its approach during that period. CDC does not carry out the kinds of risk capital investments foreseen in the Communication, but the Commission cannot exclude that the market for ethical investment funds will develop so that the aid to CDC will distort competition and affect trade between Member States to a significantly greater extent than it does now;

(d) the Commission does not find the arguments put forward by the United Kingdom authorities to be convincing enough to deviate from its practice to require all State aid cases to be limited in time with a possibility of renotification and prolongation. In particular, the Commission is not convinced that an approval initially limited to 10 years in itself would reduce, significantly, the willingness of private investors to invest in CDC;

(e) if schemes were open-ended neither the Commission nor other Member States would know which aid schemes were still in operation in a particular Member State. Therefore, regular renotifications of aid schemes leading to Commission decisions, which are published, provide transparency;

(f) the European Council meeting in Barcelona on 15 and 16 March 2002 renewed its call to the Member States to reduce the overall level of State aid. The request for a time limit is in line with this policy;

⁽⁴⁾ OJ C 253, 21.8.2001, p. 3.

- (g) an indefinite tax exemption would appear to be difficult to reconcile with the principles of the European Community and OECD initiatives to curb harmful tax competition, as set out in the Code of Conduct (adopted 1 December 1997 as part of the Tax Package) in the European Union and in the 1998 Report on Harmful Tax Competition — an Emerging Global Issue, in the OECD;
- (h) several countries in which CDC may invest are currently candidate countries negotiating accession to the European Union. The Commission doubts that CDC will be able to continue investing in these countries once they have become members of the European Union.

3. COMMENTS FROM THE UNITED KINGDOM

- (13) Already in their letter of 29 May 2002, the United Kingdom authorities referred to the fact that the Commission can choose unilaterally to initiate an appropriate measures exercise under Article 88(1) of the Treaty at any time, if it believes that the objective of the scheme has been attained, or if other changes have occurred that affect CDC's special tax treatment.
- (14) In their letter of 12 August 2002, registered on 19 August 2002, the United Kingdom authorities recall the Joint Commission — Council declaration on EC development policy in November 2000⁽⁵⁾, which stressed the importance of private sector development for developing countries. The CDC is central to the United Kingdom authorities approach to this issue. The United Kingdom authorities also recall that Article 178 of the Treaty states that the Community is to take account of the objectives referred to in Article 177 on development cooperation in the policies that it implements which are likely to affect developing countries. They believe that it is not possible to achieve the objectives of CDC within 10 years, which is the time limit usually requested by the Commission.
- (15) The United Kingdom authorities made the following comments on the Commission's doubts as set out in recital 12:
 - (a) the United Kingdom authorities state that they have quantified the proposed aid and have emphasised to the Commission that they intend to bring the proposed tax exemption for CDC to an end when the market failure has been corrected and the aid is no longer required;
 - (b) the United Kingdom authorities agree that the aid should be a temporary measure whose ultimate goal should be to achieve a fully functioning market for the provision of capital to poorer developing countries without the need for State intervention. They will not provide State aid to CDC which is unnecessary in view of market developments;
- (c) the United Kingdom authorities agree that risk capital investment is an area of rapid development in the Community economy. They hope that this rapid development will also include or lead to increased ethical investment in the poorer developing countries. They also agree with the Commission that CDC does not carry out the kinds of risk capital investments foreseen in the Communication;
- (d) the United Kingdom authorities reply that an approval initially limited to 10 years would not be workable. CDC is increasingly focusing its activities in a series of Funds, following standard industry practice. Each such Fund will normally have a lifetime of 10 years, after which profits are returned to investors. A Fund launched one year after Commission approval had been received would therefore not return profits to investors within the period of the operation of the aid. The United Kingdom authorities would therefore have to renotify before the launch of each Fund. More generally, the United Kingdom authorities have estimated that a period of 40 to 50 years will be required to correct the market failure for the provision of capital to emerging markets. Developments in capital markets since 11 September 2001 may cause this timetable to become further extended. In the light of this assessment, the United Kingdom authorities find that a 10-year approval would not appear to be appropriate. The Commission states that it is not convinced that an approval initially limited to 10 years would reduce, significantly, the willingness of private investors to invest in CDC. To this, the United Kingdom authorities respond that this is the advice that has been given by the investment bank which is retained as the United Kingdom Government's financial advisers on CDC. It will not be possible to give private investors certainty that the approval will be renewed by the Commission during the initial 10-year period. If the approval were not renewed, this would significantly affect the value of any investment;
- (e) the concern about knowing which State aid schemes are still in operation can be addressed separately;
- (f) the United Kingdom authorities recall the meeting in Barcelona in March 2002 and would like to make clear that United Kingdom levels of State aid are falling in line with the Barcelona conclusions. The United Kingdom authorities also emphasise that the Barcelona Conclusions do not call for an *a priori* time-limitation on State aid measures (though the United Kingdom recognises that there are good reasons, where appropriate, for time-limiting aid measures), but urge Member States to target State aid at market failures, such as the market failure addressed by CDC;

⁽⁵⁾ 'Bulletin EU' 11-2000 Development cooperation (1/10) 1.6.43. Statement by the Council and the Commission on the Community's development policy.

- (g) the United Kingdom authorities do not believe that the proposed measure constitutes 'harmful tax competition' in the meaning of European Community and OECD initiatives. The Harmful Tax Competition Initiative uses the term 'harmful tax competition' to describe an unfair measure that significantly influences the location of business activity in the Community. Such a description could not be applied to the proposed measure, the objective of which is not to concentrate business activity in a single Member State, but to increase investment in poorer developing countries;
- (h) the United Kingdom authorities agree that CDC should not invest in countries that have become members of the European Union. They will address this issue at the appropriate time.

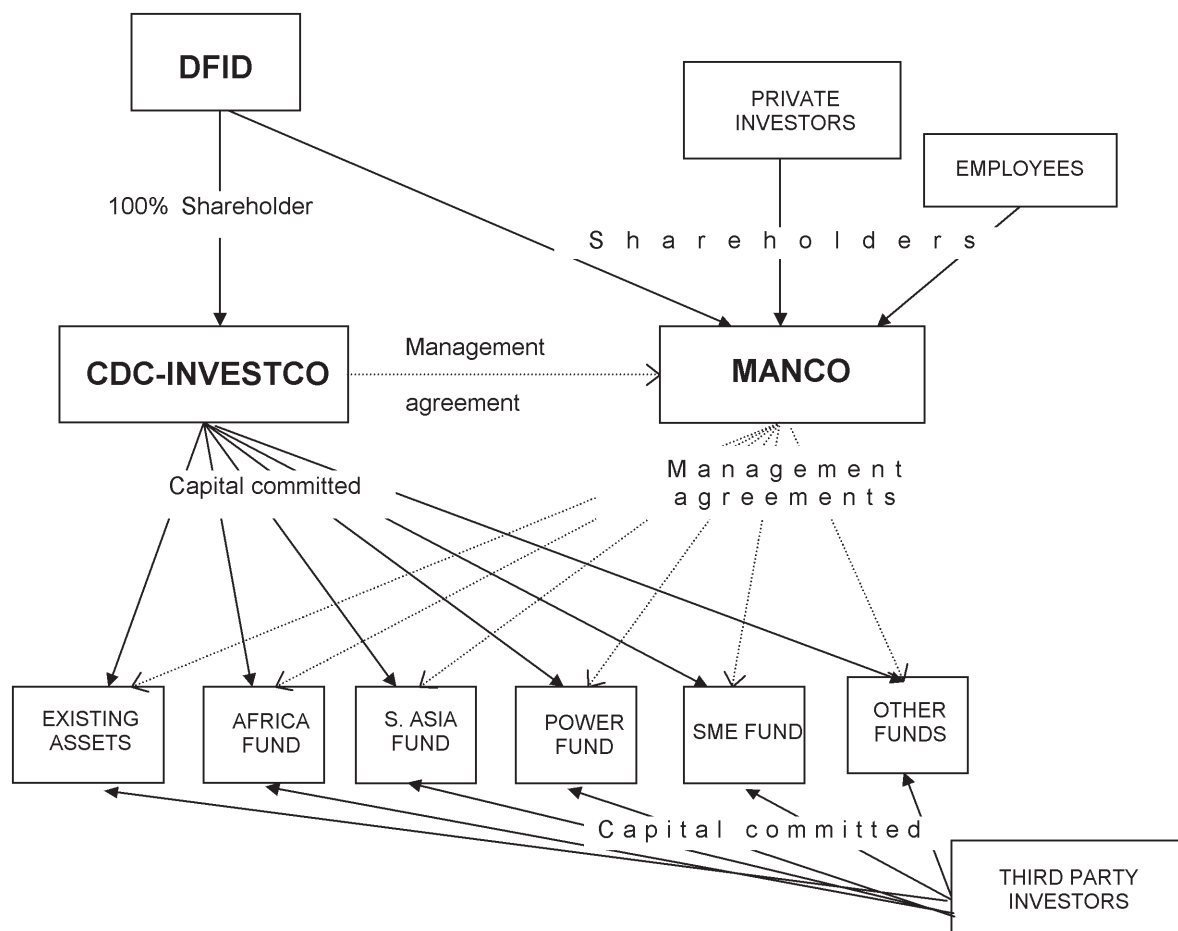
3.1. New information — Reorganisation of CDC Group plc

- (16) By letter dated 27 September 2002, registered on 7 October 2002, and letter dated 18 November 2002, registered on 22 November 2002, the United Kingdom authorities submitted new information and requested that it be taken into account in the Commission's decision closing the procedure.
- (17) The new information concerned a planned reorganisation of CDC, which is considered necessary, since under current management arrangements there is no competition for the management of CDC's capital. In the medium term, the proposed reorganisation will lead to a more competitive market for the management of investments in poorer developing countries.
- (18) The effect of the reorganisation will be to separate CDC into two corporate entities:
- 'CDC-Investco' ⁽⁶⁾ (the existing CDC, with some amendments to its Articles), which would continue to own the cash and investment assets of CDC and its subsidiaries on the same basis as at present. CDC-Investco would be the beneficiary of the proposed tax exemption, which is subject to the current procedure;
 - a new investment management company (Manco ⁽⁷⁾). Manco will establish investment Funds with a geographical or sectoral focus, initially for Africa, South Asia, Power and SMEs. Each Fund will be either a corporate or quasi-corporate or partnership entity owned by its investors in proportion to their holdings and having a constitution appropriate to its purpose. Each Fund will be managed by fund managers (Fundcos) with appropriate skills and experience provided by Manco.
- (19) Manco would initially be wholly owned by government (the Department for International Development, DFID). But it is envisaged that, at as early a stage as possible, a proportion of the equity in Manco would be offered for sale to private investors, in an open and competitive way. The United Kingdom authorities have been advised that the sale of equity in Manco, as a smaller and more straightforward transaction than a sale of equity in CDC as a whole, is achievable in current market conditions. CDC-Investco will remain wholly owned by government during the restructuring, but the government intends that private investors should be brought in to CDC-Investco when the conditions are right. The structure of the operation is set out in the following diagram ⁽⁸⁾:

⁽⁶⁾ The company names 'CDC-Investco' and 'Manco' are only preliminary names.

⁽⁷⁾ See footnote 5.

⁽⁸⁾ Source: United Kingdom authorities.



(20) The structure of a management company and a family of Funds is an accepted norm in the international fund management industry. The advantages of this structure for CDC are foreseen as follows. Firstly, since each Fund would have its own expected rate of return, risk profile and other characteristics, potential private investors would be able to identify Funds which fitted into their investment strategy. Secondly, the exaggerated perception of risk which prejudices private equity investors against poorer country investment would be more effectively mitigated by demonstrating the success of specialised Funds in specific markets. Thirdly, the Fund structure would provide the Government with more transparency and better monitoring of management costs and performance — and ability to take corrective action in the event of underperformance.

3.1.1. The proposed contract between CDC-Investco and Manco

(21) It is proposed that CDC-Investco should contract for a five-year period to commit capital to Funds created and managed by Manco. This is necessary to ensure that Manco's initial business plan will be feasible, and that the new company will be financially viable. The contract will also contain terms for the management of the current CDC portfolio, which ensure the continued development focus of the existing projects.

(22) After five years under the main contract, CDC-Investco would be free to invest its uncommitted capital in Funds launched by other companies as well as Manco, and to procure investment management services on a competitive basis. Sometimes the investment manager chosen by CDC-Investco might be Manco, sometimes an alternative would be selected — such that in say 10 years time, CDC-Investco would be using a range of managers including Manco. Similarly, the United Kingdom authorities would expect Manco to be managing capital for a range of investors including CDC-Investco. CDC-Investco's and Manco's development focus on poorer countries would remain unchanged after the end of the contract between them.

(23) There are broadly standard, or typical, terms for contracts for the management of investment funds and for the most part it is expected that CDC-Investco's contract with Manco will be on such terms. The atypical terms that may exist will be only in the following areas:

- (a) there will be terms binding Manco to adherence to the 'CDC Universe' of countries, the socially responsible business principles and other policy values currently applied to CDC;

- (b) there will be a qualified commitment by CDC-Investco to invest in agreed Manco-managed funds launched during the first five years of operation;
- (c) there may be different management fees associated with different Funds, depending on whether CDC-Investco is a sole investor in a Fund or one of a number of investors. CDC-Investco will remain the only investor in the most unattractive funds. For these funds, the fees might be somewhat higher, but not higher than they are in the present structure. Where CDC-Investco is investing in a Fund together with private investors, they will all pay the same management fees.

3.1.2. *Comments from the United Kingdom authorities*

- (24) Without the reorganisation, CDC management would have an indefinite right to manage all CDC's capital, whereas the proposed contract will have a finite duration. As such, the United Kingdom authorities consider their proposed course of action to be pro-competitive.
- (25) The statements made in the United Kingdom's notification concerning the tax exemption for CDC will remain valid. In particular, the reorganisation will retain consistency with the Commission's Communication on State aid and Risk Capital, because Manco will be a new and innovative enterprise focused on risk capital market failure in poorer developing countries, making investment decisions on a commercial basis, and without receiving operating aid or distorting the common market. It is hoped that the reorganisation will accelerate the process by which CDC is able to remedy the market failure in the provision of risk capital in poorer countries.

4. ASSESSMENT

4.1. **Presence of State aid under Article 87(1) of the Treaty**

4.1.1. *The tax exemption*

- (26) No new information was received during the procedure, which affects the Commission's initial assessment that the tax exemption constitutes State aid to CDC Group plc. The tax exemption will lead to a loss of revenue for the State and thus involves State resources⁽⁹⁾. The measure is only available to CDC, and is therefore specific. It is an advantage for CDC to be granted investment company status, and thus the tax benefit. Without it, CDC would not be able to attract private capital for any kind of investment. As regards the effect on trade between Member States, it is the Commission's constant

practice to consider that when the State intervenes to create a new player on the international financial markets, this has an effect on the investment flows between Member States. In this case, however, the effect on trade and competition was found to be limited, in view of the specific investment focus of CDC Group plc.

In the following, the beneficiary of this aid is referred to as 'CDC-Investco'.

4.1.2. *The reorganisation*

- (27) As stated by the United Kingdom authorities, the contract between CDC-Investco and Manco contains atypical terms in three areas.
 - (a) Manco will continue to be bound to the 'CDC-Universe' of countries, the socially responsible business principles and other policy values currently applied to CDC Group plc. This measure does not involve State resources and therefore does not constitute State aid.
 - (b) CDC-Investco will commit to invest in agreed Manco-managed Funds launched during first five years of operation. For the sums invested to constitute State resources within the meaning of Article 87(1) of the Treaty, three conditions have to be fulfilled, according to the case law of the Court of Justice: (i) there have to be public funds involved, (ii) the measure must be imputable to the State, and (iii) the money must be invested in a way in which a prudent investor in a market economy would not have invested them⁽¹⁰⁾.

In this case, the Commission assesses the fulfilment of the three conditions as follows:

- (i) CDC-Investco will initially continue to be wholly owned by the State, and the privatisation has been postponed for an undefined period of time. At the time the decision to commit funds is taken, the public authorities clearly exercise dominant influence over CDC-Investco, and the funds of the company therefore constitute public funds;
- (ii) the measure is planned and notified by the State;
- (iii) the United Kingdom authorities state that contracts dealing with the outsourcing by the parent company of a core function are unusual and that the proposed contract therefore lies outside some market norms.

The measure therefore involves State resources within the meaning of Article 87(1) of the Treaty.

⁽⁹⁾ The amount of tax revenue foregone depends on the extent to which investors in CDC are liable to tax in the United Kingdom. See also the Commission's decision in case N 56/2001 (O) C 223, 19.9.2002, p. 6).

⁽¹⁰⁾ See e.g. judgement in Case C-482/99 *French Republic v Commission*. [2002] ECR I-4397.

CDC-Investco will only make a commitment towards Manco, and thus the measure is specific. A proportion of the equity in Manco is to be privatised as soon as possible, and a five-year commitment of funds is an advantage to any private management company, since it ensures a certain income and profit from management fees. Fund management at the level at which Manco will operate is an international activity. The measure is intended to ensure the viability of the company on this market. The measure thereby distorts or threatens to distort competition and affects trade between Member States. The Commission therefore finds that CDC-Investco's commitment to Manco constitutes State aid to Manco covered by Article 87(1) of the Treaty. Such an aid cannot be quantified.

Manco will be privatised in an open and competitive way. Therefore, the Commission finds that there is no selectivity at this level, and that the aid is not passed on to the private investors in Manco.

- (c) The management fees, although varying between Funds, will be cost-reflective. When CDC-Investco invests in the same Funds as private investors, the management fees will be the same for all investors. The Commission therefore does not see any advantage to Manco nor to the private investors, and the differentiation of management fees between Funds does not constitute State aid under Article 87(1) of the Treaty.

4.2. Compatibility of the aid under Article 87(3)(c) of the Treaty

- (28) Article 87(3)(c) of the Treaty allows the Commission to grant an exemption for 'aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In this case, the aid serves to facilitate the development of risk capital investments by private EU investors in businesses in the poorer developing countries. The two aid measures are assessed separately below.

4.2.1. The tax exemption

- (29) In its decision to open proceedings under Article 88(2) of the Treaty, the Commission did not doubt the compatibility of the aid as such. The aid to CDC-Investco is granted in line with the Community development policy as set out in Article 177 of the Treaty. The scheme also contains a number of positive elements as described in the Commission Communication on State

aid and risk capital. A number of these criteria serve to ensure that the funds are invested and managed on market conditions. The creation and privatisation of a separate management company will therefore only improve the aid's fulfilment of the relevant criteria.

- (30) The doubts expressed mainly concerned the duration of the aid, which was notified for an unspecified period of time. In principle, the Commission does not approve fiscal non-quantifiable State aids for an unlimited period of time. In brief, the Commission considers that such State aid measures should be temporary, because the ultimate goal is to obtain a fully functioning market, without State intervention. In general, the risk capital market develops rapidly so that it cannot be excluded that the notified aid will distort competition and affect trade between Member States to a significantly greater extent than it does today.

- (31) If, however, the rapid development of risk capital markets also leads to increased ethical investment in the poorer developing countries, the period during which the aid is granted will be shortened. This is because once the United Kingdom authorities consider that the relevant markets have developed, the State will give up its special share in CDC to which the tax exemption is linked. If, on the other hand, the relevant market does not develop, the distortion of competition remains limited, and its duration will therefore also be of less importance.

- (32) The Commission also referred to the European Council meeting in Barcelona 15 and 16 March 2002, which called for reduced overall levels of aid, and to the European Community and OECD initiatives to curb harmful tax competition. It is true that the European Council in Barcelona also urged Member States to target State aid to identified market failures. Moreover, the notified measure is not intended to concentrate business activity in one single Member State, nor can it be expected to have such an effect. Since investors in CDC are taxed according to their own circumstances, they have no reason to relocate because of the tax exemption of CDC-Investco.

- (33) In its decision to open proceedings, the Commission also doubted whether the 'CDC Universe' could include countries expected to accede to the European Union in 2004. The United Kingdom authorities will ensure that CDC-Investco does not invest in countries that have become members of the European Union. This doubt has therefore been allayed. In addition, no EEA countries are included in the 'CDC Universe'.

(34) In conclusion, the Commission maintains its position that fiscal aid, in particular, must not be authorised for an undefined period of time. However, the Commission finds that exceptionally the aid can be authorised for an initial period of 20 years, given the specificity and aim of the aid, the wish of the United Kingdom authorities to end the measure as soon as it is no longer necessary, the limited distortion of competition and the absence of comments from third parties. Whether or not the aid can be authorised for a longer period, as requested by the United Kingdom authorities, is better assessed at a later stage when any market developments can be properly taken into account. Therefore, if the United Kingdom authorities so wish, they may notify the Commission of a prolongation of the aid as from the end of the first 10 years of its application.

4.2.2. *The five-year commitment of funds to Manco*

- (35) The Commission notes that the reorganisation of CDC Group plc is appropriate in the current market conditions and will facilitate the achievement of the objective of the scheme, namely to attract private capital for investment in businesses in the poorer developing countries. The structure of a management company and a family of Funds is an accepted norm in the international fund management industry.
- (36) The Commission also notes that the United Kingdom authorities find it necessary for CDC-Investco to commit to invest in agreed Manco-managed funds for the five first years of operation of the new structure. In this way, Manco will be guaranteed income through management fees. The Commission accepts that it is important to safeguard the initial viability of Manco, since the company remains an instrument of United Kingdom development policy.
- (37) The Commission finds that the commitment of funds for a five-year period can be considered proportionate to the development objective pursued. The aid to Manco is therefore considered compatible with the common market under Article 87(3)(c) of the Treaty. This decision is also in line with Article 178 of the Treaty, which states that the Community shall take account of the objectives referred to in Article 177 on development co-operation in the policies that it implements which are likely to affect developing countries.

5. CONCLUSION

- (38) The Commission concludes that the aid granted in the form of a tax exemption to CDC-Investco is compatible with the common market under Article 87(3)(c) of the Treaty. However, it can at this stage only be authorised for an initial period of 20 years from its entry into force. As from the end of the first 10 years of application of the aid, the United Kingdom authorities may notify a prolongation of it beyond the initial 20 years.

(39) The aid granted to Manco in the form of a commitment by CDC-Investco to invest in agreed Funds launched by Manco is also compatible with the common market under Article 87(3)(c) of the Treaty and can be approved for the five-year period for which it was notified.

(40) The Commission attaches great importance to the ongoing work against harmful tax practices on both European Community level (the Code of Conduct Group) and OECD level (the OECD Forum on harmful tax practices). However, since CDC only will make real, active investments in third countries, the regime would appear to be in line with the Community approach in this respect. The Commission will closely monitor this in the annual reports to be submitted by the United Kingdom authorities,

HAS ADOPTED THIS DECISION:

Article 1

The State aid, notified on 17 January 2001, in the form of a tax exemption, which the United Kingdom is planning to implement on the basis of the CDC Act 1999 for the investment company to be created through the reorganisation of CDC Group plc, provisionally known as 'CDC-Investco', is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

The tax exemption is authorised for an initial period of 20 years from its entry into force.

The State aid in the form of a commitment by the investment company provisionally known as 'CDC-Investco' to invest in certain agreed Funds, which the United Kingdom is planning to implement in favour of the management company to be created through the reorganisation of CDC Group plc, provisionally known as 'Manco', is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty. The aid is authorised for a period of five years from the entry into force of the relevant contract between the two companies.

Implementation of the aid is accordingly authorised for the specified periods.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 5 March 2003.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 30 April 2003
on the State aid implemented by Germany for Heckert Werkzeugmaschinen GmbH

(notified under document number C(2003) 1326)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/591/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

(a) *Privatisation*

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:

(4) In 1991 the 'Kombinat Fritz Heckert' was taken over by the German Treuhandanstalt ('THA') and was renamed Heckert-Chemnitzer Werkzeugmaschinen GmbH ('HCW').

(5) After an open and unconditional tender, the essential parts of the machine tool production were sold on 24 September 1993 under the name of Heckert Chemnitzer Werkzeugmaschinen GmbH ('HCW') to Traub AG, Reichenbach. The purchase price was DEM 7 million (EUR 3,57 million). At that time HCW employed 420 people.

I. PROCEDURE

(1) By letter dated 28 December 1999, Germany notified the Commission of aid to Heckert Werkzeugmaschinen GmbH. The aid case was registered under number NN 7/2000. By letters dated 21 January 2000, 26 January 2001 and 1 August 2001, the Commission asked for further information. Germany replied by letters dated 24 February 2000, 29 May 2001 and 6 September 2001.

(2) By letter dated 28 December 2001, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid and invited interested parties to submit their comments ⁽²⁾. The case was then registered as C 93/2001. Comments from Germany were received on 28 January and 1 March 2002.

(6) In the context of the privatisation, the company received aid totalling some EUR 81,6 million under approved aid schemes. These measures included residual securities for liquidity guarantees and credit line liabilities amounting to DEM 11 million (EUR 5,6 million) originally granted by the Bundesanstalt für vereinigungsbedingte Sonderaufgaben ('BvS') before the privatisation. These guarantees were taken over, up to a liability of 80 %, by the Land of Saxony ('Land') and the Federal Government ⁽³⁾.

(7) In 1995 Traub AG began to encounter financial difficulties. Due to the bad results incurred by Traub AG, the banks froze the whole group's credit lines. By the end of 1996, the subsequent lack of liquidity forced both Traub AG and HCW into bankruptcy. At the time of its bankruptcy HCW employed 640 people.

II. DESCRIPTION

1. Beneficiary

(3) The case concerns rescue and restructuring aid to Heckert Werkzeugmaschinen GmbH. The company produces machine tools and is specialised in the production of milling machines. It is situated in Chemnitz in the Land of Saxony, an assisted area under Article 87(3)(a) of the EC Treaty. HWG is the successor of the former State-owned 'Kombinat Fritz Heckert'.

(b) *Continuation of activity during receivership*

(8) The bankruptcy receiver decided to continue the activity of HCW in order to prepare it for subsequent sale. On 24 January 1997, he established Heckert Werkzeugmaschinen GmbH ('HWG') as a hive-off of HCW. This was done in order to be able to act on the market with a company that was not in receivership. HWG's purpose was to acquire and process new orders whereas HCW, which was in receivership, continued to produce the goods that were to be sold via HWG.

⁽¹⁾ OJ C 51, 26.2.2002, p. 13.

⁽²⁾ See footnote 1.

⁽³⁾ Bundesbürgschaftsprogramm (Ost) (SG (91) D/13344, 15.7.1991 (N 297/91)).

- (9) On 29 November 1996, the Deutsche Bank granted a credit totalling DEM 16 million (EUR 8.16 million) to the company in receivership. Later, on 13 June 1997, the credit was increased by DEM 12 million (EUR 6.12 million) in order to secure the processing of one of the main orders. The credit was granted at an interest rate of 7,5 % p.a. and was to be reimbursed on 15 February 1998. The credit was publicly guaranteed up to 80 % by the Federal Government and the *Land*. The provision for the guarantee amounted to 0,5 % and the guarantee expired the same day that the loan was to be reimbursed.
- (10) On 7 August 1997, the company also received a loan of DEM 9,5 million (EUR 4,9 million) from BvS at an interest rate of 6 %.
- (11) Both measures were granted to cover the operating costs during the receivership.
- (c) *Sale of the company to a new investor*
- (12) On 16 June 1998, the receiver sold HWG as well as the necessary production assets of HCW to the Swiss machine-tool producer Starrag AG ('Starrag'). The purchase price for HWG was DEM 50 000 (EUR 25 510). The price paid for the assets was DEM 47,4 million (EUR 24,2 million).
- (13) In the context of the sale to Starrag, BvS waived the reimbursement of the abovementioned loan of DEM 9,5 million (EUR 4,9 million). However, Germany informed the Commission on 10 May 2001 that the receiver had fully reimbursed the loan including interest.
- (14) On 19 September 1998, the Deutsche Bank granted a loan of DEM 10 million (EUR 5,1 million) to HWG that was publicly refinanced by the Kreditanstalt für Wiederaufbau ('KfW') under an aid scheme approved by the Commission⁽¹⁾. The loan was granted for a period of 10 years at an interest rate of 3,75 % and is to be reimbursed in 16 instalments starting at the end of February 2001.
- (15) Lastly, HWG also received investment grants of DEM 13,28 million (EUR 6,78 million) as well as an investment premium of DEM 499 800 (EUR 255 000) under aid schemes approved by the Commission⁽²⁾.

2. Decision to initiate proceedings under Article 88(2) of the EC Treaty

- (16) In the decision to initiate the formal investigation procedure, the aid was assessed according to the guidelines on State aid for rescuing and restructuring firms in

⁽¹⁾ KfW-Mittelstandsprogramm (SG (96) D/3473, 29.3.1996 (NN 37/95)).

⁽²⁾ 27. Rahmenplan der Gemeinschaftsaufgabe 'Verbesserung der regionalen Wirtschaftsstruktur' (investment grants) (SG (1999) 03472, 17.5.1999 (C 84/98)).
Investitionszulagengesetz 1996 (investment premium) (SG (96) 3794, 11 April 1996 (N 494/A/95)).

difficulty⁽³⁾ ('the guidelines'). Since the aid was granted before the entry into force of the new guidelines in 1999⁽⁴⁾, it was assessed under the old 1994 guidelines.

- (17) When it initiated the Article 88(2) procedure, the Commission expressed the following doubts:
- (a) whether the guarantees of DEM 11 million (EUR 5,6 million) for liquidity credits and credit line liabilities granted in the context of the privatisation complied with the conditions of the scheme referred to. In particular it was doubtful whether the guarantees could be granted jointly by the Federal Government and the *Land* and whether the measures consisted of partial and temporary guarantees as required by the scheme;
- (b) whether the public 80 % guarantee granted in connection with the increase of the Deutsche Bank loan of DEM 16 million (EUR 8,16 million) to DEM 28 million (EUR 14,3 million) and deemed to be rescue aid in the initiation of proceedings complied with the criteria set out in the guidelines;
- (c) whether the KfW refinancing of the Deutsche Bank loan of DEM 10 million (EUR 5,1 million), in particular its interest rate of 3,75 % and its repayment schedule of initially two and a half repayment-free years, was in line with the abovementioned scheme;
- (d) whether the BvS loan of DEM 9,5 million (EUR 4,9 million), which in the initiation of proceedings was deemed to be rescue aid, could be considered to be part of a one-off rescue operation and whether it complied with the time limits for repayment provided for in the guidelines.

- (18) As regards Germany's claim that the measures were compatible as restructuring aid, the Commission expressed doubts whether the beneficiary was eligible for restructuring aid under the terms of the guidelines.

III. COMMENTS FROM GERMANY

- (19) During the formal investigation procedure Germany supplied the following additional or revised information:

1. Guarantees granted in the context of the privatisation

- (20) Germany informed the Commission that the guarantees on the loans of DEM 11 million (EUR 5,6 million) made available in the context of the privatisation were granted on 21 February 1995 as 65 %, and not 80 %, deficiency guarantees and were limited in time to 31 December 2002. As of 31 December 1999 the guarantees gradually decreased by 25 % each year.

⁽³⁾ OJ C 368, 23.12.1994, p. 12.

⁽⁴⁾ OJ C 288, 9.10.1999, p. 2.

- (21) The repartition of the guarantee liability between the Federal Government and the *Land* of 60:40 was stated to be an internal measure which had no influence on the scheme's total aid ceiling, of which the Commission had been informed by letter dated 26 June 1995.

2. The 80 % guarantee during the receivership

- (22) With respect to this measure, Germany pointed out that it had been granted under the same aid scheme as the previous measures⁽¹⁾ and therefore should not be assessed as an ad hoc rescue aid.

3. The KfW refinanced Deutsche Bank loan during the receivership

- (23) Concerning the refinancing of the Deutsche Bank loan by KfW, Germany informed the Commission that, although the loan had to be repaid up to 100 % of its nominal sum, only 96 % of it was effectively paid out to the beneficiary. Therefore the loan was granted with an actual interest rate of 4,58 %.
- (24) Germany also emphasised that the loan was refinanced under the East German component of the scheme⁽²⁾, which until the end of 1998 provided for an interest rate reduced by 0,25 % in comparison to the West German component. The deviation of the rates used by KfW from the Commission's reference rate was, according to Germany, due to the fact that the market rates at that point were in decline and the reference rate is only adjusted at long-term intervals.
- (25) Germany also pointed out that the East German component of the scheme provided for a repayment schedule commencing after two-and-a-half years.

4. BvS loan during the receivership

- (26) Concerning the compatibility of the BvS loan of DEM 9,5 million (EUR 4,9 million) granted during the receivership, Germany argued that it could be considered compatible with the conditions of the guidelines for rescue aid. Germany was of the opinion that in cases where the recipient of the aid was in receivership, it was inappropriate to focus on the time of the reimbursement since in such cases the repayment was made from the proceeds of the bankruptcy proceedings. This regularly resulted in delays. Furthermore, Germany underlined that the grant was used solely to continue the operative business of HCW during the receivership.

IV. ASSESSMENT

1. Guarantees granted in the context of the privatisation

- (27) Concerning the liquidity guarantee of DEM 5,5 million and the credit line guarantee of DEM 5,5 million that were provided by the Federal Government and the *Land*

of Saxony in the context of the privatisation, it is noted that the scheme referred to allows for guarantees of up to 80 % for investment credits and temporary working capital loans.

- (28) The Commission takes account of Germany's comments according to which the guarantees covered only 65 % of the credits and were limited in time to 31 December 2002. It is also noted that the internal appointment between the Federal Government and the *Land*, of which the Commission was informed by letter of 26 June 1995, did not increase the overall aid ceiling or any other condition of the scheme. These measures therefore appear to comply with the conditions of the scheme referred to and do not need to be assessed in this decision.

2. The 80 % guarantee during the receivership

- (29) In the initiation of proceedings, the public 80 % guarantee granted in connection with the increase of the Deutsche Bank loan of DEM 16 million (EUR 8,16 million) to DEM 28 million (EUR 14,3 million) was deemed to be rescue aid and the Commission had doubts whether the conditions for rescue aid were met.
- (30) After the initiation of proceedings, Germany pointed out that this measure had been granted under the same guarantee scheme as the measures above. The Commission notes that as the measure is a temporary 80 % guarantee on a temporary working capital loan, it appears to be covered by the scheme and does not need to be further assessed in this decision.

3. KfW-refinanced Deutsche Bank loan during the receivership

- (31) Concerning the KfW refinanced Deutsche Bank loan, the Commission takes account of Germany's comments submitted after the initiation of proceedings. According to these, the loan was granted at an effective rate of 4,58 %. Furthermore, the measure was in fact granted under the East German component of the scheme which allowed for a repayment schedule of two-and-a-half repayment-free years and an interest rate reduced by 0,25 % in comparison to the West German component of the scheme. In this context it is also noted that the loan was granted in a period where the market rates were in decline and that the Commission's reference rate, which in September 1998 still amounted to 5,94 %, was readjusted in November 1998 to 4,87 %.

- (32) In the light of this information, the measure appears to comply with the conditions of the East German component of the scheme and does not need to be further assessed in this decision.

⁽¹⁾ Bundesbürgschaftsprogramm (Ost) (SG (91) D/13344, 15.7.1991 (N 297/91)).

⁽²⁾ KfW Mittelstandsprogramm Ost (SG (96) D/3475, 29.3.1996 (NN24/96)).

(33) In view of the above, all the measures granted in accordance with approved schemes do not need to be further assessed in this decision.

(34) Consequently, only the BvS loan of DEM 9,5 million (EUR 4,9 million) that was granted in 1997 is to be regarded as ad hoc aid.

4. BvS loan granted during the receivership

(35) The Commission notes that the remaining ad hoc aid, i.e. the BvS loan of DEM 9,5 million (EUR 4,9 million), has in the meantime been paid back with an interest rate of 6 %. It is also noted that, at the time when this loan was granted, the Commission's reference rate, which is used to establish the interest to be paid in cases of recovery of incompatible aid, amounted to 5,54 %.

(36) In view of the above, the Commission concludes that the potentially incompatible State aid, i.e. the BvS loan of DEM 9,5 million (EUR 4,9 million), has been repaid and all potential distortions of competition deriving from the aid have therefore been removed.

V. CONCLUSION

(37) Consequently, the formal investigation procedure under Article 88(2) of the EC Treaty in respect of the relevant measure no longer needs to be pursued,

HAS ADOPTED THIS DECISION:

Article 1

The formal investigation procedure under Article 88(2) of the EC Treaty initiated on 20 December 2001 in respect of aid implemented by Germany for Heckert Werkzeugmaschinen GmbH, Chemnitz, is hereby terminated.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 April 2003.

For the Commission

Mario MONTI

Member of the Commission