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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 673/2005**of 25 April 2005****establishing additional customs duties on imports of certain products originating in the United States of America**

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) On 27 January 2003, the Dispute Settlement Body (DSB) of the World Trade Organisation (WTO) adopted the Appellate Body report ⁽¹⁾ and the Panel report ⁽²⁾, as upheld by the Appellate Body report, finding that the Continued Dumping and Subsidy Offset Act (CDSOA) was incompatible with the United States' obligations under the WTO agreements.

(2) Since the United States failed to bring its legislation in conformity with the covered agreements, the Community requested to the DSB the authorisation to suspend the application of its tariff concessions and related obligations under the General Agreement on Tariffs and Trade (GATT) 1994 to the United States ⁽³⁾. The United States objected to the level of suspension of tariff concessions and related obligations and the matter was referred to arbitration.

(3) On 31 August 2004, the Arbitrator determined that the level of nullification or impairment caused every year to

the Community was equal to 72 % of the amount of CDSOA disbursements relating to anti-dumping or countervailing duties paid on imports from the Community for the most recent year for which data are available at that time, as published by the United States' authorities. The Arbitrator concluded that the suspension by the Community of concessions or other obligations, in the form of the imposition of an additional import duty above bound custom duties, on a list of products originating in the United States covering, on a yearly basis, a total value of trade not exceeding the amount of nullification or impairment would be consistent with WTO rules. On 26 November 2004, the DSB granted the authorisation to suspend the application to the United States of tariff concessions and related obligations under GATT 1994 in accordance with the decision of the Arbitrator.

(4) The CDSOA disbursements for the most recent year for which data are available relate to the distribution of anti-dumping and countervailing duties collected during the Fiscal Year 2004 (1 October 2003 to 30 September 2004). On the basis of the data published by the United States' Customs and Border Protection, the level of nullification or impairment caused to the Community is calculated at USD 27,81 million. The Community may, therefore, suspend the application of its tariff concessions to the United States at an equivalent amount. The effect of a 15 % *ad valorem* additional import duty on imports of the products in Annex I originating in the United States represents, over one year, a value of trade that does not exceed USD 27,81 million. In respect of these products, the Community should suspend the application of its tariff concessions to the United States from 1 May 2005.

(5) If the non-implementation of the DSB ruling and recommendation persists, the Commission should adjust annually the level of suspension to the level of nullification or impairment caused by the CDSOA to the Community at that time. The Commission should amend the list in Annex I or the rate of the additional import duty so that the effect of the additional duty on imports from the United States of the selected products represents, over one year, a value of trade that does not exceed the amount of nullification or impairment.

⁽¹⁾ United States — Offset Act (Byrd Amendment), Appellate Body report (WT/DS217/AB/R, WT/DS234/AB/R, 16 January 2003).

⁽²⁾ United States — Offset Act (Byrd Amendment), Panel report (WT/DS217/R, WT/DS234/R, 16 September 2002).

⁽³⁾ United States — Offset Act (Byrd Amendment), Recourse by the European Communities to Article 22(2) of the DSU (WT/DS217/22, 16 January 2004).

(6) The Commission should respect the following criteria:

- (a) The Commission should amend the rate of the additional import duty when adding or removing products from the list in Annex I does not allow to adjust the level of suspension to the level of nullification or impairment. Otherwise, the Commission should add products to the list in Annex I if the level of suspension increases or withdraw products from this list if the level of suspension decreases.
- (b) If products are added, the Commission should select the products from the list in Annex II in an automatic fashion by following the order in which the products are listed. As a consequence, the Commission should also amend the list in Annex II by removing from it the products added to the list in Annex I.
- (c) If products are withdrawn, the Commission should, first, remove products that were added to the list in Annex I at a later stage. The Commission should then remove products presently in the list in Annex I by following the order of that list.

(7) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.

(8) To avoid circumvention of the additional duty, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

The tariff concessions and related obligations under GATT 1994 of the Community are hereby suspended in respect of products originating in the United States of America listed in Annex I to this Regulation.

Article 2

An *ad valorem* duty of 15 % additional to the customs duty applicable under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽²⁾ shall be imposed on the products originating in the United States of America listed in Annex I to this Regulation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by the 2003 Act of Accession (OJ L 236, 23.9.2003, p. 33).

Article 3

1. The Commission shall adjust the level of suspension annually to the level of nullification or impairment caused by the United States' Continued Dumping and Subsidy Offset Act (CDSOA) to the Community at that time. The Commission shall amend the rate of the additional duty or the list in Annex I under the following conditions:

(a) The level of nullification or impairment shall be equal to 72 % of the amount of disbursements under the CDSOA relating to anti-dumping and countervailing duties paid on imports from the Community for the most recent year for which data are available at that time, as published by the United States' authorities;

(b) The amendment shall be made so that the effect of the additional import duty on imports of the selected products originating in the United States represents, over one year, a value of trade that does not exceed the level of nullification or impairment;

(c) Except in circumstances set out in point (e), when the level of suspension increases, the Commission shall add products to the list in Annex I. These products shall be selected from the list in Annex II following the order of that list;

(d) Except in circumstances set out in point (e), when the level of suspension decreases, products shall be withdrawn from the list in Annex I. The Commission shall remove, first, products that are presently in the list in Annex II and were added to the list in Annex I at a later stage. The Commission shall then remove products that are presently in the list in Annex I following the order of that list;

(e) The Commission shall amend the rate of the additional duty when the level of suspension cannot be adjusted to the level of nullification or impairment by adding or removing products from the list in Annex I.

2. When products are added to the list in Annex I, the Commission shall, at the same time, amend the list in Annex II by removing those products from the list in Annex II. The order of the products remaining in the list in Annex II shall not be modified.

3. The decisions under this Article shall be adopted in accordance with the procedure laid down in Article 4(2).

Article 4

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 5

The origin of any product to which this Regulation applies shall be determined in accordance with the provisions of Regulation (EEC) No 2913/92.

Article 6

1. Products listed in Annex I for which an import licence with an exemption from, or a reduction of duty, was issued before the date of entry into force of this Regulation shall not be subject to the additional duty.
2. Products listed in Annex I for which it can be demonstrated that they are already en route to the Community on the date of application of this Regulation, and whose destination cannot be changed, shall not be subject to the additional duty.

3. Products listed in Annex I which are admitted free of import duties pursuant to Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty⁽¹⁾ shall not be subject to the additional duty.

4. Products listed in Annex I may be placed under the customs procedure 'Processing under Customs Control' in accordance with the first subparagraph of Article 551(1) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽²⁾ only where the examination of the economic conditions has taken place in the Committee of the Customs Code unless the products and operations are mentioned in Annex 76, Part A of that Regulation.

Article 7

The Council, acting by qualified majority on a proposal from the Commission, shall decide on the repeal of this Regulation once the United States of America has fully implemented the recommendation of the WTO Dispute Settlement Body.

Article 8

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

It shall apply from 1 May 2005.

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

Done at Luxembourg, 25 April 2005.

For the Council
The President
J. ASSELBORN

⁽¹⁾ OJ L 105, 23.4.1983, p. 1. Regulation as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2286/2003 (OJ L 343, 31.12.2003, p. 1).

ANNEX I

The products on which additional duties are to apply are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽¹⁾.

4820 10 90

4820 50 00

4820 90 00

4820 30 00

4820 10 50

6204 63 11

6204 69 18

6204 63 90

6104 63 00

6203 43 11

6103 43 00

6204 63 18

6203 43 19

6204 69 90

6203 43 90

0710 40 00

9003 19 30

8705 10 00

⁽¹⁾ OJ L 256, 7.9.1987, p. 1. Regulation as last amended by Council Regulation (EC) No 493/2005 (OJ L 82, 31.3.2005, p. 1).

ANNEX II

The products in this Annex are identified by their eight-digit CN codes. The description of products classified under these codes can be found in Annex I to Regulation (EEC) No 2658/87.

6301 40 10	6110 12 10	6403 19 00	6102 30 90
6301 30 10	6110 11 10	6105 20 90	6201 92 00
6301 30 90	6110 30 10	6105 20 10	6101 30 90
6301 40 90	6110 12 90	6106 10 00	6202 93 00
4818 50 00	6110 20 10	6206 40 00	6202 11 00
9009 11 00	6110 11 30	6205 30 00	6201 13 90
9009 12 00	6110 11 90	6206 30 00	6201 93 00
8467 21 99	6110 90 90	6105 10 00	6201 12 90
4803 00 31	6110 30 91	6205 20 00	6204 42 00
4818 30 00	6110 30 99	9406 00 11	6104 43 00
4818 20 10	6110 20 99	9406 00 38	6204 49 10
9403 70 90	6110 20 91	6101 30 10	6204 44 00
6110 90 10	9608 10 10	6102 30 10	6204 43 00
6110 19 10	6402 19 00	6201 12 10	6203 42 31
6110 19 90	6404 11 00	6201 13 10	6204 62 31

COMMISSION REGULATION (EC) No 674/2005**of 29 April 2005****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

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

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

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

ANNEX

to Commission Regulation of 29 April 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	129,0
	204	96,7
	212	124,2
	999	116,6
0707 00 05	052	136,1
	204	74,1
	999	105,1
0709 90 70	052	96,0
	204	44,2
	999	70,1
0805 10 20	052	43,9
	204	43,2
	212	61,2
	220	48,4
	388	74,0
	400	49,5
	624	59,1
	999	54,2
0805 50 10	052	46,9
	220	65,0
	388	59,5
	400	54,2
	528	63,0
	624	71,0
	999	59,9
0808 10 80	388	90,7
	400	103,0
	404	95,1
	508	85,5
	512	71,9
	524	52,9
	528	69,5
	720	72,7
	804	90,4
0808 20 50	999	81,3
	388	89,7
	512	71,0
	528	66,3
	720	49,0
	999	69,0

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 675/2005**of 29 April 2005****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1431/2003 (OJ L 203, 12.8.2003, p. 16).

ANNEX

**to the Commission Regulation of 29 April 2005 fixing the export refunds on cereals and on wheat or rye flour,
groats and meal**

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	7,54
1001 10 00 9400	A00	EUR/t	0	1101 00 15 9150	C01	EUR/t	6,95
1001 90 91 9000	—	EUR/t	—	1101 00 15 9170	C01	EUR/t	6,42
1001 90 99 9000	A00	EUR/t	0	1101 00 15 9180	C01	EUR/t	6,01
1002 00 00 9000	A00	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1003 00 10 9000	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	0	1102 10 00 9500	A00	EUR/t	0
1004 00 00 9200	—	EUR/t	—	1102 10 00 9700	A00	EUR/t	0
1004 00 00 9400	A00	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1005 10 90 9000	—	EUR/t	—	1103 11 10 9200	A00	EUR/t	0
1005 90 00 9000	A00	EUR/t	0	1103 11 10 9400	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—	1103 11 10 9900	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—	1103 11 90 9200	A00	EUR/t	0
1101 00 11 9000	—	EUR/t	—	1103 11 90 9800	—	EUR/t	—
1101 00 15 9100	C01	EUR/t	8,07				

NB: The product codes and the 'A' series destination codes are set out in the Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

C01: All third countries with the exception of Albania, Bulgaria, Romania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

COMMISSION REGULATION (EC) No 676/2005**of 29 April 2005****fixing the corrective amount applicable to the refund on cereals**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 15(2) thereof,

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which an application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾, allows for the fixing of a corrective amount for the products listed in Article 1(1)(c) of Regulation (EEC) No 1766/92 ⁽³⁾. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) The world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination.
- (4) The corrective amount must be fixed at the same time as the refund and according to the same procedure; it may be altered in the period between fixings.
- (5) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1(1)(a), (b) and (c) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance except for malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1431/2003 (OJ L 203, 12.8.2003, p. 16).

⁽³⁾ OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

ANNEX

to the Commission Regulation of 29 April 2005 fixing the corrective amount applicable to the refund on cereals

(EUR/t)

Product code	Destination	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9	5th period 10	6th period 11
1001 10 00 9200	—	—	—	—	—	—	—	—
1001 10 00 9400	A00	0	0	0	0	0	—	—
1001 90 91 9000	—	—	—	—	—	—	—	—
1001 90 99 9000	C01	0	- 0,46	- 10,00	- 10,00	- 10,00	—	—
1002 00 00 9000	A00	0	0	0	0	0	—	—
1003 00 10 9000	—	—	—	—	—	—	—	—
1003 00 90 9000	C02	0	- 0,46	- 20,00	- 20,00	- 20,00	—	—
1004 00 00 9200	—	—	—	—	—	—	—	—
1004 00 00 9400	C03	0	- 0,46	- 40,00	- 40,00	- 40,00	—	—
1005 10 90 9000	—	—	—	—	—	—	—	—
1005 90 00 9000	A00	0	0	0	0	0	—	—
1007 00 90 9000	—	—	—	—	—	—	—	—
1008 20 00 9000	—	—	—	—	—	—	—	—
1101 00 11 9000	—	—	—	—	—	—	—	—
1101 00 15 9100	C01	0	- 0,63	- 15,00	- 15,00	- 15,00	—	—
1101 00 15 9130	C01	0	- 0,59	- 15,00	- 15,00	- 15,00	—	—
1101 00 15 9150	C01	0	- 0,54	- 15,00	- 15,00	- 15,00	—	—
1101 00 15 9170	C01	0	- 0,50	- 15,00	- 15,00	- 15,00	—	—
1101 00 15 9180	C01	0	- 0,47	- 15,00	- 15,00	- 15,00	—	—
1101 00 15 9190	—	—	—	—	—	—	—	—
1101 00 90 9000	—	—	—	—	—	—	—	—
1102 10 00 9500	A00	0	0	0	0	0	—	—
1102 10 00 9700	A00	0	0	0	0	0	—	—
1102 10 00 9900	—	—	—	—	—	—	—	—
1103 11 10 9200	A00	0	0	0	0	0	—	—
1103 11 10 9400	A00	0	0	0	0	0	—	—
1103 11 10 9900	—	—	—	—	—	—	—	—
1103 11 90 9200	A00	0	0	0	0	0	—	—
1103 11 90 9800	—	—	—	—	—	—	—	—

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended. The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

C01: All third countries with the exception of Albania, Bulgaria, Romania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

C02: Algeria, Saudi Arabia, Bahrain, Egypt, United Arab Emirates, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Lybia, Morocco, Mauritania, Oman, Qatar, Syria, Tunisia and Yemen.

C03: All third countries with the exception of Bulgaria, Norway, Romania, Switzerland and Lichtenstein.

COMMISSION REGULATION (EC) No 677/2005
of 29 April 2005
fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾.
- (3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1(1)(c) of Regulation (EC) No 1784/2003 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1431/2003 (OJ L 203, 12.8.2003, p. 16).

ANNEX

to the Commission Regulation of 29 April 2005 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	A00	EUR/t	0,00
1107 10 99 9000	A00	EUR/t	0,00
1107 20 00 9000	A00	EUR/t	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 678/2005**of 29 April 2005****fixing the corrective amount applicable to the refund on malt**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organization of the market in cereals ⁽¹⁾, and in particular Article 15(2),

Whereas:

- (1) Article 14(2) of Regulation (EC) No 1784/2003 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence. In this case, a corrective amount may be applied to the refund.
- (2) Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾ allows for the fixing of a corrective amount for the malt referred

to in Article 1(1)(c) of Regulation (EEC) No 1766/92 ⁽³⁾. That corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95.

- (3) It follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 15(3) of Regulation (EC) No 1784/2003 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 1431/2003 (OJ L 203, 12.8.2003, p. 16).

⁽³⁾ OJ L 181, 1.7.1992, p. 21. Regulation as last amended by Regulation (EC) No 1104/2003 (OJ L 158, 27.6.2003, p. 1).

ANNEX

to the Commission Regulation of 29 April 2005 fixing the corrective amount applicable to the refund on malt

(EUR/t)

Product code	Destination	Current 5	1st period 6	2nd period 7	3rd period 8	4th period 9	5th period 10
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

(EUR/t)

Product code	Destination	6th period 11	7th period 12	8th period 1	9th period 2	10th period 3	11th period 4
1107 10 11 9000	A00	0	0	0	0	0	0
1107 10 19 9000	A00	0	0	0	0	0	0
1107 10 91 9000	A00	0	0	0	0	0	0
1107 10 99 9000	A00	0	0	0	0	0	0
1107 20 00 9000	A00	0	0	0	0	0	0

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

COMMISSION REGULATION (EC) No 679/2005**of 29 April 2005****fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾ and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽²⁾ and in particular Article 13(3) thereof,

Whereas:

- (1) Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid ⁽³⁾ lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section.
- (2) In order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined.

(3) The general and implementing rules provided for in Article 13 of Regulation (EC) No 1784/2003 and in Article 13 of Regulation (EC) No 3072/95 on export refunds are applicable *mutatis mutandis* to the abovementioned operations.

(4) The specific criteria to be used for calculating the export refund on rice are set out in Article 13 of Regulation (EC) No 3072/95.

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

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

⁽³⁾ OJ L 288, 25.10.1974, p. 1.

ANNEX

to the Commission Regulation of 29 April 2005 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

(EUR/t)

Product code	Refund
1001 10 00 9400	0,00
1001 90 99 9000	0,00
1002 00 00 9000	0,00
1003 00 90 9000	0,00
1005 90 00 9000	0,00
1006 30 92 9100	0,00
1006 30 92 9900	0,00
1006 30 94 9100	0,00
1006 30 94 9900	0,00
1006 30 96 9100	0,00
1006 30 96 9900	0,00
1006 30 98 9100	0,00
1006 30 98 9900	0,00
1006 30 65 9900	0,00
1007 00 90 9000	0,00
1101 00 15 9100	8,07
1101 00 15 9130	7,54
1102 10 00 9500	0,00
1102 20 10 9200	57,95
1102 20 10 9400	49,67
1103 11 10 9200	0,00
1103 13 10 9100	74,50
1104 12 90 9100	0,00

NB: The product codes are defined in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), amended.

COMMISSION REGULATION (EC) No 680/2005**of 29 April 2005****opening tendering procedure No 54/2005 EC for the sale of wine alcohol for new industrial uses**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Treaty establishing the European Community,

HAS ADOPTED THIS REGULATION:

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, and in particular Article 33 thereof,

Article 1

Tendering procedure No 54/2005 EC is hereby opened for the sale of wine alcohol for new industrial uses. The alcohol concerned has been produced from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999 and is held by the French intervention agency.

Whereas:

(1) Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms ⁽²⁾ lays down, *inter alia*, the detailed rules for disposing of stocks of alcohol arising from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999 held by intervention agencies.

The volume put up for sale is 130 000 hectolitres of alcohol at 100 % vol. The vat numbers, places of storage and the volume of alcohol at 100 % vol contained in each vat are detailed in the Annex hereto.

Article 2

(2) In accordance with Article 80 of Regulation (EC) No 1623/2000, tendering procedures should be organised for the sale of wine alcohol for new industrial uses with a view to reducing the stocks of wine alcohol in the Community and enabling small-scale industrial projects to be carried out and such alcohol to be processed into goods intended for export for industrial uses. The wine alcohol of Community origin in storage in the Member States consists of quantities produced from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999.

The sale shall be conducted in accordance with Articles 79, 81, 82, 83, 84, 85, 95, 96, 97, 100 and 101 of Regulation (EC) No 1623/2000 and Article 2 of Regulation (EC) No 2799/98.

Article 3

(3) Since 1 January 1999 and in accordance with Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽³⁾, the prices offered in tenders and securities must be expressed in euro and payments must be made in euro.

1. Tenders must be submitted to the intervention agency holding the alcohol concerned:

Onivins-Libourne, Délégation nationale
17, avenue de la Ballastière, boîte postale 231
F-33505 Libourne Cedex
Tel. (33-5) 57 55 20 00
Telex: 57 20 25
Fax: (33-5) 57 55 20 59

(4) Minimum prices should be fixed for the submission of tenders, broken down according to the type of end-use.

or sent by registered mail to that address.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Commission Regulation (EC) No 1795/2003 (OJ L 262, 14.10.2003, p. 13).

⁽²⁾ OJ L 194, 31.7.2000, p. 45. Regulation as last amended by Regulation (EC) No 616/2005 (OJ L 103, 22.4.2005, p. 15).

⁽³⁾ OJ L 349, 24.12.1998, p. 1.

2. Tenders shall be submitted in a sealed double envelope, the inside envelope marked: 'Tender under procedure No 54/2005 EC for new industrial uses', the outer envelope bearing the address of the intervention agency concerned.

3. Tenders must reach the intervention agency concerned not later than 12.00 Brussels time on 17 May 2005.

4. All tenders must be accompanied by proof that a tendering security of EUR 4 per hectolitre of alcohol at 100 % vol has been lodged with the intervention agency concerned.

Article 4

The minimum prices which may be offered are EUR 10,30 per hectolitre of alcohol at 100 % vol intended for the manufacture of baker's yeast, EUR 26 per hectolitre of alcohol at 100 % vol intended for the manufacture of amine- and chloral-type chemical products for export, EUR 32 per hectolitre of alcohol at 100 % vol intended for the manufacture of eau de Cologne for export and EUR 7,5 per hectolitre of alcohol at 100 % vol intended for other industrial uses.

Article 5

The formalities for sampling shall be as set out in Article 98 of Regulation (EC) No 1623/2000. The price of samples shall be EUR 10 per litre.

The intervention agency shall provide all the necessary information on the characteristics of the alcohol put up for sale.

Article 6

The performance guarantee shall be EUR 30 per hectolitre of alcohol at 100 % vol.

Article 7

This Regulation shall enter into force on the day 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, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

ANNEX

INVITATION TO TENDER No 54/2005 EC FOR THE SALE OF ALCOHOL FOR NEW INDUSTRIAL USES

Place of storage, volume and characteristics of the alcohol put up for sale

Member State	Location	Vat No	Volume in hectolitres of alcohol at 100 % vol	Regulation (EC) No 1493/1999 Article	Type of alcohol	Alcohol strength (in % vol)
FRANCE	Onivins-Longuefuye F-53200 Longuefuye	5	22 465	27	Raw	+ 92
		6	22 545	27	Raw	+ 92
		13	22 520	27	Raw	+ 92
		19	19 815	27	Raw	+ 92
		14	22 655	27	Raw	+ 92
	Onivins-Port-la-Nouvelle Entrepôt d'alcool Av. Adolphe Turrel BP 62 F-11210 Port-la-Nouvelle	13	685	28	Raw	+ 92
		13	6 840	30	Raw	+ 92
		12	7 795	28	Raw	+ 92
		12	190	30	Raw	+ 92
		12	4 330	30	Raw	+ 92
		12	160	27	Raw	+ 92
	Total		130 000			

COMMISSION REGULATION (EC) No 681/2005**of 29 April 2005****amending Regulation (EC) No 1973/2004, as regards the conditions for receiving area payments for flax 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 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 ⁽¹⁾, and in particular point (iii) of the first indent of the second paragraph of Article 110 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials ⁽²⁾, provides, *inter alia*, for the conditions for the area payments for flax grown for fibre.
- (2) According to Article 56(1)(b)(i) of Regulation (EC) No 1973/2004, the use of seed varieties listed in Annex V to that Regulation is a condition for receiving area payments for flax grown for fibre. However, in the framework for coupled payments established by Regulation (EC) No 1782/2003, this eligibility condition is not justified because the amount per hectare for coupled payments for flax and for other arable crops is the same. In the decoupled system there is no provision

which refers to the variety list for flax. With a view to simplification, it is therefore appropriate to repeal this condition.

- (3) Regulation (EC) No 1973/2004 should therefore be amended accordingly.
- (4) Since Regulation (EC) No 1973/2004 applies to aid applications relating to marketing years starting from 1 January 2005, this Regulation should apply from that date.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Direct Payments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1973/2004 is amended as follows:

1. in Article 56(1)(b), point (i) is deleted;
2. Annex V is deleted.

Article 2

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

It shall apply to aid applications relating to marketing years starting from 1 January 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation last amended by Commission Regulation (EC) No 118/2005 (OJ L 24, 27.1.2005, p. 15).

⁽²⁾ OJ L 345, 20.11.2004, p. 1.

COMMISSION REGULATION (EC) No 682/2005**of 29 April 2005****fixing the minimum selling prices for butter for the 162nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽²⁾, to sell by invitation to tender certain quantities of butter from intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the

intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices of butter from intervention stocks and processing securities applying for the 162nd individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

ANNEX

to the Commission Regulation of 29 April 2005 fixing the minimum selling prices for butter for the 162nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	206	210	—	210
		Concentrated	204,1	—	—	—
Processing security		Unaltered	73	73	—	73
		Concentrated	73	—	—	—

COMMISSION REGULATION (EC) No 683/2005**of 29 April 2005****fixing the maximum aid for cream, butter and concentrated butter for the 162th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice cream and other foodstuffs ⁽²⁾, to sell by invitation to tender certain quantities of butter of intervention stocks that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further

stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 162th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 350, 20.12.1997, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

ANNEX

to the Commission Regulation of 29 April 2005 fixing the maximum aid for cream, butter and concentrated butter for the 162nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter $\geq$ 82 %	51	47	50	41
	Butter < 82 %	44	45,9	—	45,9
	Concentrated butter	61,5	57,5	61,5	57,5
	Cream			24	20
Processing security	Butter	56	—	55	—
	Concentrated butter	68	—	68	—
	Cream	—	—	26	—

COMMISSION REGULATION (EC) No 684/2005**of 29 April 2005****fixing the minimum selling price for skimmed-milk powder for the 81st individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2799/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

(1) Pursuant to Article 26 of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down detailed rules for applying Council Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

(2) According to Article 30 of the said Regulation, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award. The amount of the processing security shall also be fixed taking account of the difference between the market price of skimmed-milk powder and the minimum selling price.

(3) In the light of the tenders received, the minimum selling price should be fixed at the level specified below and the processing security determined accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 81st individual invitation to tender pursuant to Regulation (EC) No 2799/1999, in respect of which the time limit for the submission of tenders expired on 26 April 2005, the minimum selling price and the processing security are fixed as follows:

— minimum selling price:	195,24 EUR/100 kg,
— processing security:	35,00 EUR/100 kg.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 340, 31.12.1999, p. 3. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 685/2005**of 29 April 2005****fixing the maximum aid for concentrated butter for the 334th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽²⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter. Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 334th tender under the standing invitation to tender opened by Regulation (EEC) No 429/90 the maximum aid and the end-use security are fixed as follows:

- | | |
|---------------------|------------------|
| — maximum aid: | 60,6 EUR/100 kg, |
| — end-use security: | 67 EUR/100 kg. |

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 45, 21.2.1990, p. 8. Regulation as last amended by Commission Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 686/2005**of 29 April 2005****fixing the minimum selling price for butter for the 18th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10(c) thereof,

Whereas:

- (1) Pursuant to Article 21 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of butter held by them.
- (2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no

award, in accordance with Article 24a of Regulation (EC) No 2771/1999.

- (3) In the light of the tenders received, a minimum selling price should be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 18th individual invitation to tender pursuant to Regulation (EC) No 2771/1999, in respect of which the time limit for the submission of tenders expired on 26 April 2005, the minimum selling price for butter is fixed at 275 EUR/100 kg.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 687/2005**of 29 April 2005****fixing the minimum selling price for skimmed-milk powder for the 17th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EC) No 214/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10(c) thereof,

Whereas:

(1) Pursuant to Article 21 of Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed milk ⁽²⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them.

(2) In the light of the tenders received in response to each individual invitation to tender a minimum selling price

shall be fixed or a decision shall be taken to make no award, in accordance with Article 24a of Regulation (EC) No 214/2001.

(3) In the light of the tenders received, a minimum selling price should be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 17th individual invitation to tender pursuant to Regulation (EC) No 214/2001, in respect of which the time limit for the submission of tenders expired on 26 April 2005, the minimum selling price for skimmed milk is fixed at 195,50 EUR/100 kg.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 37, 7.2.2001, p. 100. Regulation as last amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 688/2005**of 29 April 2005****fixing the import duties in the cereals sector applicable from 1 May 2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Article 10 of Regulation (EC) No 1784/2003 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 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.
- (2) Pursuant to Article 10(3) of Regulation (EC) No 1784/2003, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

- (3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Regulation (EC) No 1784/2003 as regards import duties in the cereals sector.

- (4) The import duties are applicable until new duties are fixed and enter into force.

- (5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

- (6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EC) No 1784/2003 shall be those 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 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 270, 21.10.2003, p. 78.

⁽²⁾ OJ L 161, 29.6.1996, p. 125. Regulation as last amended by Regulation (EC) No 1110/2003 (OJ L 158, 27.6.2003, p. 12).

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EC) No 1784/2003 applicable from 1 May 2005

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	37,35
1005 10 90	Maize seed other than hybrid	56,67
1005 90 00	Maize other than seed ⁽²⁾	56,67
1007 00 90	Grain sorghum other than hybrids for sowing	37,35

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

- EUR 3/t, where the port of unloading is on the Mediterranean Sea, or
- EUR 2/t, where the port of unloading is in Ireland, the United Kingdom, Denmark, Estonia, Latvia, Lithuania, Poland, Finland, Sweden or the Atlantic coasts of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24/t, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

period from 15.4.2005-28.4.2005

1. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2 (14 %)	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	106,75 (***)	63,41	157,46	147,46	127,46	85,11
Gulf premium (EUR/t)	—	11,51	—			—
Great Lakes premium (EUR/t)	22,90	—	—			—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(***) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the reference period referred to in Article 2(2) of Regulation (EC) No 1249/96:

Freight/cost: Gulf of Mexico–Rotterdam: 30,43 EUR/t; Great Lakes–Rotterdam: 39,57 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
-
- 0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 689/2005**of 29 April 2005****fixing the production refund on white sugar used in the chemical industry for the period from 1 to 31 May 2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the fifth indent of Article 7(5) thereof,

Whereas:

- (1) Pursuant to Article 7(3) of Regulation (EC) No 1260/2001, production refunds may be granted on the products listed in Article 1(1)(a) and (f) of that Regulation, on syrups listed in Article 1(1)(d) thereof and on chemically pure fructose covered by CN code 1702 50 00 as an intermediate product, that are in one of the situations referred to in Article 23(2) of the Treaty and are used in the manufacture of certain products of the chemical industry.
- (2) Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of

Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry ⁽²⁾ provides that these refunds shall be determined according to the refund fixed for white sugar.

- (3) Article 9 of Regulation (EC) No 1265/2001 provides that the production refund on white sugar is to be fixed at monthly intervals commencing on the first day of each month.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The production refund on white sugar referred to in Article 4 of Regulation (EC) No 1265/2001 shall be equal to 31,805 EUR/100 kg net for the period from 1 to 31 May 2005.

Article 2

This Regulation shall enter into force on 1 May 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 178, 30.6.2001, p. 63.

COMMISSION REGULATION (EC) No 690/2005**of 29 April 2005****fixing the maximum export refund on wholly milled and parboiled long grain B rice to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2032/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled and parboiled long grain B rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2032/2004 is hereby fixed on the basis of the tenders submitted from 25 to 28 April 2005 at 57,00 EUR/t.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 96.

⁽²⁾ OJ L 353, 27.11.2004, p. 6.

⁽³⁾ OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION REGULATION (EC) No 691/2005**of 29 April 2005****concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled and medium and long grain A rice issued in Regulation (EC) No 2031/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2031/2004 ⁽²⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽³⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 26(2) of Regulation (EC) No 1785/2003 and on the basis of the tenders submitted, to make no award.

- (3) On the basis of the criteria laid down in Article 14(4) of Regulation (EC) No 1785/2003, a maximum refund should not be fixed.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 25 to 28 April 2005 in response to the invitation to tender for the export refund on wholly milled and medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2031/2004.

Article 2

This Regulation shall enter into force on 30 April 2005.

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

Done at Brussels, 29 April 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 96.

⁽²⁾ OJ L 353, 27.11.2004, p. 3.

⁽³⁾ OJ L 61, 7.3.1975, p. 25. Regulation as last amended by Regulation (EC) No 1948/2002 (OJ L 299, 1.11.2002, p. 18).

COMMISSION DIRECTIVE 2005/31/EC**of 29 April 2005****amending Council Directive 84/500/EEC as regards a declaration of compliance and performance criteria of the analytical method for ceramic articles intended to come into contact with foodstuffs****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Council Directive 84/500/EEC of 15 October 1984 on the approximation of the laws of the Member States relating to ceramic articles intended to come into contact with foodstuffs ⁽²⁾ is a specific measure within the meaning of Article 5 of Regulation (EC) No 1935/2004. It concerns the possible migration of lead and cadmium from ceramic articles which, in their finished state, are intended to come into contact with foodstuffs, or which are in contact with foodstuffs, and are intended for that purpose.
- (2) Article 16 of Regulation (EC) No 1935/2004 provides that the specific measures are to require that materials and articles covered by those measures are accompanied by a written declaration stating that they comply with the rules applicable to them.
- (3) That requirement has not yet been set out in Directive 84/500/EEC. There is a need to lay down that obligation for all ceramic articles which are not yet in contact with foodstuffs to clearly distinguish them from decorative articles.
- (4) The national competent authorities should have access to documents demonstrating that the ceramic articles comply with the migration limits for lead and cadmium. Therefore, the manufacturer or importer into the Community should make information concerning analysis carried out available to them on request.
- (5) Directive 84/500/EEC lays down a method for the analysis of lead and cadmium. Technological progress has been made in that area and the analytical method set out in that Directive is only one amongst several

possible methods. This Directive should take technological progress into account and establish a set of performance criteria that the analytical method must comply with having regard to Commission Directive 2001/22/EC of 8 March 2001 laying down the sampling methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs ⁽³⁾.

- (6) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring the free movement of ceramic articles intended to come into contact with foodstuffs to lay down rules for a correct enforcement of Directive 84/500/EEC. This Directive does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (7) Directive 84/500/EEC should therefore be amended accordingly.
- (8) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 84/500/EEC is amended as follows:

1. The following Article 2a is inserted:

'Article 2a

1. At the marketing stages up to and including the retail stage, ceramic articles which are not yet in contact with foodstuffs shall be accompanied by a written declaration in accordance with Article 16 of Regulation (EC) No 1935/2004 of the European Parliament and of the Council (*).

That declaration shall be issued by the manufacturer or by a seller established within the Community and shall contain the information laid down in Annex III to this Directive.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ OJ L 277, 20.10.1984, p. 12.

⁽³⁾ OJ L 77, 16.3.2001, p. 14. Directive as last amended by Directive 2005/4/EC (OJ L 19, 21.1.2005, p. 50).

2. Appropriate documentation to demonstrate that the ceramic articles comply with the migration limits for lead and cadmium set out in Article 2 shall be made available by the manufacturer or the importer into the Community to the national competent authorities on request. That documentation shall contain the results of the analysis carried out, the test conditions and the name and the address of the laboratory that performed the testing.

(*) OJ L 338, 13.11.2004, p. 4.'

2. Annex II is replaced by the text in Annex I to this Directive.

3. A new Annex III, the text of which is set out in Annex II to this Directive, is added.

Article 2

1. Member States shall adopt and publish, by 20 May 2006 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions in such a way as to:

(a) permit the trade in and use of ceramic articles complying with this Directive, from 20 May 2006;

(b) prohibit the manufacture and importation into the Community of ceramic articles which do not comply with this Directive, from 20 May 2007.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 April 2005.

For the Commission

Markos KYPRIANOU

Member of the Commission

ANNEX I

ANNEX II

METHODS OF ANALYSIS FOR DETERMINATION OF THE MIGRATION OF LEAD AND CADMIUM**1. Object and field of application**

The method allows the specific migration of lead and/or cadmium to be determined.

2. Principle

The determination of the specific migration of lead and/or cadmium is carried out by an instrumental method of analysis that fulfils the performance criteria of point 4.

3. Reagents

— All reagents must be of analytical quality, unless otherwise specified.

— Where reference is made to water, it shall always mean distilled water or water of equivalent quality.

3.1. 4 % (v/v) acetic acid, in aqueous solution

Add 40 ml of glacial acetic acid to water and make up to 1 000 ml.

3.2. Stock solutions

Prepare stock solutions containing 1 000 mg/litre of lead and at least 500 mg/litre of cadmium respectively in a 4 % acetic acid solution, as referred to in point 3.1.

4. Performance criteria of the instrumental method of analysis**4.1. The detection limit for lead and cadmium must be equal to or lower than:**

— 0,1 mg/litre for lead,

— 0,01 mg/litre for cadmium.

The detection limit is defined as the concentration of the element in the 4 % acetic acid solution, as referred to in point 3.1, which gives a signal equal to twice the background noise of the instrument.

4.2. The limit of quantification for lead and cadmium must be equal to or lower than:

— 0,2 mg/litre for lead,

— 0,02 mg/litre for cadmium.

4.3. Recovery. The recovery of lead and cadmium added to the 4 % acetic acid solution, as referred to in point 3.1, must lie within 80-120 % of the added amount.**4.4. Specificity.** The instrumental method of analysis used must be free from matrix and spectral interferences.**5. Method****5.1. Preparation of the sample**

The sample must be clean and free from grease or other matter likely to affect the test.

Wash the sample in a solution containing a household liquid detergent at a temperature of approximately 40 °C. Rinse the sample first in tap-water and then in distilled water or water of equivalent quality. Drain and dry so as to avoid any stain. The surface to be tested is not to be handled after it has been cleaned.

5.2. *Determination of lead and/or cadmium*

- The sample thus prepared is tested under the conditions laid down in Annex I.
- Before taking the test solution for determining lead and/or cadmium, homogenise the content of the sample by an appropriate method, which avoids any loss of solution or abrasion of the surface being tested.
- Carry out a blank test on the reagent used for each series of determinations.
- Carry out determinations for lead and/or cadmium under appropriate conditions.'

ANNEX II

'ANNEX III

DECLARATION OF COMPLIANCE

The written declaration referred to in Article 2a(1) shall contain the following information:

1. the identity and address of the company which manufactures the finished ceramic article and of the importer who imports it into the Community;
2. the identity of the ceramic article;
3. the date of the declaration;
4. the confirmation that the ceramic article meets relevant requirements in this Directive and Regulation (EC) No 1935/2004.

The written declaration shall permit an easy identification of the goods for which it is issued and shall be renewed when substantial changes in the production bring about changes in the migration of lead and cadmium.'

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 22 December 2004

on the conclusion of the Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments

(2005/347/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 94 in conjunction with the first subparagraph of paragraph 2, the first subparagraph of paragraph 3 and paragraph 4 of Article 300 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 16 October 2001, the Council authorised the Commission to negotiate with the Principality of Monaco an agreement for securing the adoption by that State of measures equivalent to those to be applied within the Community to ensure effective taxation of savings income in the form of interest payments.
- (2) The text of the Agreement which is the result of these negotiations duly reflects the negotiating directives issued by the Council. It is accompanied by a Memorandum of Understanding between the European Community and the Principality of Monaco. Both texts are attached to Decision 2005/35/EC ⁽²⁾.
- (3) The application of the provisions of Directive 2003/48/EC ⁽³⁾ depends on the application, by the Principality of Monaco, of measures equivalent to those contained in that Directive, in accordance with an agreement concluded by that State with the European Community.

(4) According to Decision 2005/35/EC and subject to the adoption at a later date of a Decision on the conclusion of the Agreement, the Agreement was signed on behalf of the European Community on 7 December 2004.

(5) The Agreement as well as the accompanying Memorandum of Understanding should be approved on behalf of the Community.

(6) It is necessary to provide for a simple and rapid procedure for possible adaptations of Annexes 1 and 2 to the Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Principality of Monaco providing for measures equivalent to those laid down in Council Directive 2003/48/EC on taxation of savings income in the form of interest payments as well as the accompanying Memorandum of Understanding are hereby approved on behalf of the European Community.

The text of the Agreement as well as of the accompanying Memorandum of Understanding are attached to this Decision ⁽⁴⁾.

Article 2

The Commission is hereby authorised to approve, on behalf of the Community, the amendments to the Annexes to the Agreement which are required to ensure that they correspond to the information relating to the competent authorities notified under Article 5(a) of Directive 2003/48/EC and to the information in the Annex thereto.

⁽¹⁾ Opinion of 2 December 2004 (not yet published in the *Official Journal*).

⁽²⁾ OJ L 19, 21.1.2005, p. 53.

⁽³⁾ OJ L 157, 26.6.2003, p. 38. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

⁽⁴⁾ OJ L 19, 21.1.2005, p. 55.

Article 3

The President of the Council shall give the notification provided for in Article 16(1) of the Agreement on behalf of the Community ⁽¹⁾.

Article 4

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

Done at Brussels, 22 December 2004.

For the Council
The President
C. VEERMAN

⁽¹⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council

COUNCIL DECISION

of 18 January 2005

establishing, in accordance with Article 104(8) of the Treaty establishing the European Community, whether effective action has been taken by the Republic of Hungary in response to recommendations of the Council in accordance with Article 104(7) of that Treaty

(2005/348/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 104(8) thereof,

Having regard to the recommendation from the Commission,

Whereas:

- (1) In accordance with Article 104 of the Treaty, Member States are to avoid excessive government deficits.
- (2) The Stability and Growth Pact is based on the objective of sound government finances as a means of strengthening the conditions for price stability and for strong sustainable growth conducive to employment creation. The Stability and Growth Pact includes Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure⁽¹⁾, set out in Article 104 of the Treaty, in order to further the prompt correction of excessive general government deficits.
- (3) The Amsterdam Resolution of the European Council on the Stability and Growth Pact of 17 June 1997⁽²⁾ solemnly invites all parties, namely the Member States, the Council and the Commission, to implement the Treaty and the Stability and Growth Pact in a strict and timely manner.
- (4) By Decision 2004/918/EC⁽³⁾, the Council decided, in accordance with Article 104(6) of the Treaty, that an excessive deficit exists in Hungary.
- (5) In accordance with Article 104(7) of the Treaty and Article 3(4) of Regulation (EC) No 1467/97, the Council adopted on 5 July 2004 a recommendation to the Hungarian authorities to bring the existence of an

excessive deficit to an end as rapidly as possible and to take action in a medium-term framework to achieve the objective of bringing the deficit below 3 % of GDP by 2008 in a credible and sustainable manner, in accordance with the path for deficit reduction specified in the convergence programme submitted by the Hungarian authorities and endorsed in the Council opinion of 5 July 2004 on that programme⁽⁴⁾. This Recommendation established the deadline of 5 November 2004 for the Hungarian Government to take effective action regarding the measures envisaged to achieve the 2005 deficit target of 4,1 % of GDP. In this recommendation, the Council also recommended the Republic of Hungary to implement with vigour the measures envisaged in the May 2004 convergence programme, and in particular to stand ready to introduce additional measures, if necessary, with a view to achieving the general government deficit target for 2004 of 4,6 % GDP. In addition, the Council invited the Hungarian authorities to seize every opportunity to accelerate fiscal adjustment; to undertake the envisaged reforms of the public administration, health and education systems; and to ensure that planned tax cuts were adequately financed and make their implementation conditional upon the achievement of the deficit targets.

- (6) In accordance with Article 4(2) of Regulation (EC) No 1467/97, the Council, when considering whether effective action has been taken in response to its recommendations made in accordance with Article 104(7) of the Treaty, is to base its decision on publicly announced decisions by the Government of the Member State concerned.
- (7) An assessment of the publicly announced decisions taken by the Republic of Hungary between the issuing of the Council Recommendation in accordance with Article 104(7) of the Treaty and the deadline set in that Recommendation leads to the following conclusions:

— after the Council recommendation the Hungarian Government adopted a number of additional measures. They were based on the expenditure side and have contributed to a significant decline in the budget deficit in 2004 compared to 2003 and a more favourable and sustainable reorientation of growth. However, the action taken was not sufficient to achieve the 2004 budget deficit target of 4,6 % of GDP contained in the Council recommendation, which is expected to be missed by a sizeable margin,

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

⁽²⁾ OJ C 236, 2.8.1997, p. 1.

⁽³⁾ OJ L 389, 30.12.2004, p. 27.

⁽⁴⁾ OJ C 320, 24.12.2004, p. 11.

— a number of measures have been announced in the 2005 Budget that are aimed at further reducing the budget deficit in 2005, including an 'emergency' reserve package of 0,5 % of GDP against a possible overshooting of the 2005 target. However, they will not be sufficient to meet the deficit target of 4,1 % of GDP contained in the Council recommendation, which is also expected to be missed by a sizeable margin,

— the measures taken so far by the Hungarian authorities will not avoid a deviation from the planned adjustment path of the May convergence programme. In this context, the continued commitment of the Hungarian Government to have the excessive deficit corrected by 2008 needs to be underpinned by decisive measures of further fiscal consolidation and more determined pursuit of structural reforms.

- (8) Article 104(8) of the Treaty states that when the Council establishes that there has been no effective action in response to its recommendation in accordance with Article 104(7) of that Treaty, it may decide to make

this recommendation public. However, in line with the Stability and Growth Pact Resolution of the European Council, the Republic of Hungary agreed to make the recommendation public in July 2004,

HAS DECIDED AS FOLLOWS:

Article 1

The Republic of Hungary has not taken effective action in response to the Council Recommendation of 5 July 2004 within the period laid down in that Recommendation.

Article 2

This Decision is addressed to the Republic of Hungary.

Done at Brussels, 18 January 2005

For the Council

The President

J.-C. JUNCKER

COMMISSION

COMMISSION DECISION

of 10 December 2003

relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement

(Case COMP/E-2/37.857 — Organic peroxides)

(notified under document number C(2003) 4570 final and corrigendum C(2004) 4)

(Only the English, German and Spanish texts are authentic)

(2005/349/EC)

On 10 December 2003, the Commission adopted a decision (C(2003) 4570 final) relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement. On 7 January 2004, the Commission approved by written procedure E/2/2004 (C(2004) 4) a corrigendum to the German and Spanish versions of Decision C(2003) 4570 final. In accordance with the provisions of Article 21 of Regulation 17⁽¹⁾, the Commission herewith publishes the names of the parties and the main content of the decision, having regard to the legitimate interest of undertakings in the protection of their business interests. A non-confidential version of the full text of the decision can be found in the authentic languages of the case and in the Commission's working languages at DG COMP's website at http://europa.eu.int/comm/competition/index_en.html

I. SUMMARY OF THE INFRINGEMENT

Addresses and nature of the infringement

- (1) This Decision is addressed to the following undertakings and/or associations of undertakings:

— Akzo Nobel Chemicals International BV

— Akzo Nobel Polymer Chemicals BV

— Akzo Nobel NV

— Atofina SA

— Degussa UK Holdings Limited

— Peroxid-Chemie GmbH & Co KG

— Peroxidos Organicos SA

— AC Treuhand AG.

- (2) Beginning from 1971, the main producers of organic peroxides at that time (Akzo Nobel Chemicals International BV and Akzo Nobel Polymer Chemicals BV, Luperox GmbH (which became part of the main German subsidiary of Atofina SA) hereinafter Akzo and Peroxid-Chemie GmbH & Co KG) entered into and participated in a continuing agreement contrary to Article 81(1) of the Treaty and Article 53(1) of the EEA Agreement covering at times all and at times most of the Community and the EEA, by which they agreed on market shares, fixed the prices of the product, agreed on and implemented a mechanism for price increases, allocated customers and set up a machinery to monitor and enforce their agreements. Peroxidos Organicos S.A. (1975 to 1999) took part in a specific arrangement within the overall agreement. AC Treuhand AG (1993 to 1999) was involved as well.

Duration of the infringement

- (3) Duration of the participation

(a) Akzo Nobel Chemicals International BV, Akzo Nobel Polymer Chemicals BV and Akzo Nobel N.V. from 1 January 1971 to 31 December 1999;

(b) Atofina SA from 1 January 1971 to 31 December 1999;

⁽¹⁾ OJ 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1/2003 (OJ L 1, 4.1.2003, p. 1).

- (c) Peroxid-Chemie GmbH & Co. KG from 1 January 1971 to 31 December 1999;
- (d) Degussa UK Holdings Limited from 1 September 1992 to 31 December 1999;
- (e) Peroxidos Organicos SA from 31 December 1975 to 31 December 1999;
- (f) AC Treuhand from 28 December 1993 to 31 December 1999.

The market for Organic Peroxides

- (4) An organic peroxide is any organic molecule containing a 'peroxy' or oxygen-oxygen bond (-O-O-). Organic peroxides (hereinafter OP) are highly explosive and major accidents are not rare in the industry. They are available as solids (usually fine powders), liquids or pastes. OP and mixtures containing OP are used as accelerators, activators, catalysts, cross-linking agents, curing agents, hardeners, initiators and promoters. OP can be distinguished both by their three main 'applications' and by the seven 'classes'.
- (5) OP serve a critically important role in the plastics and rubber industries where they serve three main applications:
 - (a) the polymerisation of thermoplastic resins (so-called high polymer or HP applications)
 - (b) the curing of unsaturated polyester thermoset resins (so-called UP applications)
 - (c) cross-linking (so-called XL applications).
- (6) The Commission has found that the geographic scope of this business is at least EEA-wide. In 1999, the last full year of the infringement, the cartel covered more than 90 % of the EEA market for the product concerned, this market having a total estimated value in that year of EUR 250 million.

Functioning of the cartel

- (7) A main agreement started in 1971, with initially three participating members (Akzo, Peroxid-Chemie and Atofina (at that time Luperrox)). It consisted of subarrangements for high polymer and thermoset-OP, and was also split up by regional criteria. Regional subarrangements concerned France (until 1992), United Kingdom (until 1992), Spain (since the end of 1975) and the rest of Europe, following the main principles and rules of the overall agreement. For Cross-linking OP, another subarrangement was made in 1983, covering as well most European countries. These subar-

rangements had a substantial overlap with the overall agreement, e.g. the period under question, the mechanisms of mutual control and compensation, the parties, the products, the clients or the acting persons concerned can be found in each of the subarrangements.

- (8) The main agreement aimed at preserving market shares and coordinating price increases and is based on a written 'contract' from 1971. In order to achieve this, objective, detailed sales data of the participating companies were closely monitored by an independent body (AC Treuhand since 1993), clients were allocated and, in case of deviation from the intended market share, compensations were applied or clients were reallocated. Regular meetings took place in order to fine-tune the working of the agreement. The agreement contained numerous subarrangements on specific products or subproducts, or concerning regions. These subarrangements have, in part, only lasted for a limited period of time or have been integrated in other subarrangements. Perorsa was involved in a Spanish subarrangement.
- (9) AC Treuhand was found to have violated Article 81 of the Treaty and Article 53 of the EEA Agreement by organising meetings, mediating conflicts, proposing market shares and hiding incriminating evidence. AC Treuhand acted as an association of undertakings and/or as an undertaking.
- (10) The cartel underwent frictions in 1992 and ended at the end of 1999, after the parties' attempts to agree on quotas failed. Some subarrangements ended earlier.

II. FINES

Basic amount

- (11) The Commission considers that the undertakings concerned have committed a very serious infringement. The nature of the infringement and its geographic scope are such that the infringement must qualify as very serious, irrespective of whether or not the impact of the infringement on the market can be measured.

Differential treatment

- (12) Within the category of very serious infringements, the scale of likely fines makes it possible to apply differential treatment to undertakings in order to take account of the effective economic capacity of the offenders to cause significant damage to competition, as well as to set the fine at a level which ensures that it has sufficient deterrent effect. With a share of more than 40 % of the total of these markets, Akzo is the largest producer and should, therefore, be placed in the first category. Atofina and Peroxid-Chemie, with shares of around 20 to 25 % of the market, should be placed in the second category. Perorsa, with a market share under 5 % in Europe, should be in the third category.

- (13) Degussa UK Holdings (formerly called Laporte plc) is, since 1 September 1992, the parent company of Peroxid-Chemie and should be placed in the same category as Peroxid-Chemie, as it is jointly responsible with Peroxid-Chemie for the illicit activities of Peroxid-Chemie.
- (14) The division of the responsibility of Peroxid-Chemie and Degussa UK Holdings with regard to the fine is as follows. Peroxid-Chemie was a member of the agreement from 1 January 1971 until 31 December 1999, and Degussa UK Holdings is jointly and severally responsible for the time when it fully owned Peroxid-Chemie, from 1 September 1992 until 31 December 1999.
- (15) AC Treuhand is considered apart. The Commission acknowledges that addressing a decision to an undertaking and/or association of undertakings having a role of this kind in a cartel is to a certain extent a novelty. This has to be taken into account when deciding on the level of fines. In view of the foregoing the Commission considers it appropriate to impose a fine on AC Treuhand of EUR 1 000.
- (16) To take into account the size and aggregate resources of the undertakings and ensure that the fine has an adequate deterrent effect, the Commission considers that the starting amount should be adjusted for Akzo and Atofina.

Duration

- (17) The Commission has established that, Akzo, Atofina, and Peroxid-Chemie infringed Article 81(1) of the Treaty from 1 January 1971 until 31 December 1999, Perorsa from at least 31 December 1975 until 31 December 1999 and Degussa UK Holdings from 1 September 1992 until 31 December 1999, AC Treuhand acted as an undertaking and/or association of undertakings from 28 December 1993 until 31 December 1999.
- (18) For the purpose of calculating the fine, the Commission takes into account complete months and therefore fixes as the duration of the infringement by these undertakings a period of 29 years (Akzo, Atofina and Peroxid-Chemie), a period of 6 years (AC Treuhand), a period of 7 years and 4 months (Degussa UK Holdings) and a period of 24 years (Perorsa). For Peroxid-Chemie the period is split up in two subperiods, when it was responsible alone (21 years 8 months) and when it was responsible together with its parent company Degussa UK Holdings (7 years and 4 months).
- (19) The Commission concludes that the infringement was of long duration (more than five years) for AC Treuhand,

Akzo, Atofina, Degussa UK Holdings, Peroxid-Chemie and Perorsa. Accordingly increases of 245 % should be applied to the basic amounts of the fine imposed on Akzo and Atofina. Increases of 207,5 % should be applied to the basic amount of the fine imposed on Peroxid-Chemie. Increases of 70 % should be applied to the basic amounts of the fine imposed on Peroxid-Chemie/Degussa UK Holdings. Increases of 220 % should be applied to the basic amount of the fine imposed on Perorsa. These percentages are derived from increase of 10 % per year for the last twenty years of the infringement (1980 to 1999), and an increase of 5 % per year for the part of the infringement which took place 21 to 29 years ago (1971 to 1979).

Aggravating circumstances

- (20) Atofina has been fined previously for its involvement in four cartels, and Peroxid-Chemie/Degussa UK Holdings have been fined for their involvement in one cartel. Therefore repeat offence will be considered as aggravating circumstance.
- (21) The Commission accordingly considers that the basic amount of the fine to be imposed should be increased by 50 % in the case of Atofina to reflect the fact that it had already been an addressee of Commission decisions in a considerable number of previous cartel cases, and by 50 % in the cases of Degussa UK Holdings and Peroxid-Chemie, to reflect the fact that they had been the addressee of one previous Commission cartel decision, either directly (Degussa UK Holdings) or through the undertaking to which it belonged (Peroxid-Chemie).

Attenuating circumstances

- (22) Atofina strengthened the Commission's arguments to prove the 29 year duration of the cartel.
- (23) In line with a principle of fairness, it is proposed to apply a specific attenuating circumstance 'co-operation outside the Leniency notice' for Atofina. This attenuating circumstance will prevent that Atofina would pay a higher fine after its co-operation than it would have paid without co-operation.
- (24) In the light of the above, the Commission does consider it appropriate to grant a reduction of the basic amount of EUR 94,19 million for effective cooperation outside the scope of the leniency notice for Atofina.

Application of the 10 % turnover limit

- (25) The 10 % worldwide turnover limit mentioned in Article 15(2) of Regulation 17 applies to Perorsa and Peroxid-Chemie.

Application of the 1996 Leniency Notice

Non-imposition or a very substantial reduction in its amount (Section B: 75 to 100 % reduction)

- (26) Akzo is granted immunity from fines for having been the first undertaking to report the cartel to the Commission.

Significant reduction of a fine (Section D: reduction from 10 to 50 %)

- (27) Atofina is granted a 50 % reduction for its cooperation in the Commission's investigation. Among the companies qualifying for a significant fine reduction, Atofina was the first company to co-operate with the Commission and provided the most useful contribution. Like the other companies that cooperated with the Commission, it also did not substantially contest the facts on which the Commission based its allegations.

- (28) Peroxid-Chemie and Degussa UK Holdings are granted a 25 % reduction for their co-operation in the Commission's investigation. The evidence it provided arrived later and its co-operation was more limited than that of Akzo and Atofina.

- (29) Perorsa, which was the last company to cooperate, is granted a 15 % reduction.

Ability to pay

- (30) No company claimed inability to pay.

Decision

1. The following fines are imposed:

- | | |
|---|-------------------|
| (a) Akzo Nobel Polymer Chemicals BV, Akzo Nobel NV, Akzo Nobel Chemicals International BV, jointly and severally liable | EUR 0 |
| (b) Atofina SA | EUR 43,47 million |
| (c) Peroxid-Chemie GmbH & Co. KG | EUR 8,83 million |
| (d) Peroxid-Chemie GmbH & Co. KG and Degussa UK Holdings Limited, jointly and severally liable | EUR 16,73 million |
| (e) AC Treuhand AG | EUR 1 000 |
| (f) Peroxidos Organicos SA | EUR 0,50 million, |

2. The undertakings and/or associations of undertakings listed shall immediately bring the infringements to an end, in so far as they have not already done so. They shall refrain from repeating any act or conduct as the infringement found in this case and from any act or conduct having the same or similar object or effect.

COMMISSION DECISION**of 7 May 2004****concerning the aid granted by Spain to olive pomace enterprises — State aid C 21/02 (ex NN 14/02)***(notified under document number C(2004) 1635)***(Only the Spanish text is authentic)***(2005/350/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,

After giving notice to the interested parties to submit their comments in accordance with the above Article ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 14 December 2001, the Commission asked the Spanish authorities for information on the aid scheme for olive pomace enterprises.
- (2) By letter dated 4 January 2002, the Spanish authorities notified the Commission of the aid scheme for olive pomace enterprises described in the Decision to initiate the procedure provided for in Article 88(2) of the Treaty.
- (3) Since the aid scheme had already been adopted, it was transferred to the register of unnotified aid (aid No NN 14/02).
- (4) By letter of 12 March 2002, the Commission informed Spain of its decision to initiate the procedure provided for in Article 88(2) of the Treaty with respect to the aid scheme.
- (5) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.

- (6) By letter dated 15 April 2002, Spain submitted a series of comments. By letter dated 2 April 2004, Spain submitted additional information.

- (7) The Commission has not received any comments from interested parties.

II. DETAILED DESCRIPTION OF THE AID

- (8) Title, scheme: aid scheme for olive pomace enterprises.
- (9) Budget: the maximum budget is estimated at EUR 1 202 024,21.
- (10) Duration: one year.
- (11) Beneficiaries: olive pomace extracting, refining and bottling enterprises.
- (12) Objective of the measures: to finance the adjustment of production processes to the new specifications set out in the Order of the Office of the Prime Minister of 25 July 2001 laying down limits for certain polycyclic aromatic hydrocarbons in olive pomace oil ⁽³⁾ and to guarantee the normal operation of mills during the 2001/2002 marketing year.
- (13) Possible effect of the aid: distortion of competition by favouring certain olive pomace products and breach of the corresponding common market organisation.
- (14) Aid intensity, eligible costs, overlap with other schemes: interest-rate subsidy for loans and subsidies for guarantees for those loans. The size of the loans varies according to the beneficiary.

⁽¹⁾ OJ C 93, 18.4.2002, p. 2.

⁽²⁾ See footnote 1.

⁽³⁾ *Boletín Oficial del Estado* No 178, 26.7.2001, p. 27397.

- (15) The grounds for initiating the procedure are given below.
- (16) The Ministry of Agriculture, Fisheries and Food Order of 14 November 2001 establishing a credit line for enterprises which extract, refine and bottle olive pomace oil ⁽⁴⁾ provides for loans totalling a maximum of ESP 5 000 million (EUR 30.05 million) with an interest rate subsidised by the Ministry of Agriculture, Fisheries and Food (hereafter referred to as MAFF), which can also subsidise guarantees for those loans.
- (17) The loans are intended to finance the adjustment of production processes to the new specifications set out in the Order of the Office of the Prime Minister of 25 July 2001 and to guarantee the normal operation of mills during the 2001/02 marketing year.
- (18) The maximum loan for each beneficiary corresponds to the recognised rights determined by the Olive oil Agency for MAFF. In determining rights, account is taken of the accredited volume of olive oil stocks at all stages of the production process in each branch of the industry on 3 July 2001, the volume of oil delivered to bottling plants for commercial distribution from that date until the date of entry into force of the MAFF Order of 14 November 2001 and a maximum standard price of ESP 125 (EUR 0,761266) per kilogram of stocks.
- (19) Beneficiaries must have adjusted or begun to adjust their production processes to the new specifications before the first deadline for the payment of interest and the production volume for the 2001/2002 marketing year must be similar to that for the previous three marketing years.
- (20) The maximum loans for the three branches are:
- EUR 22 537 953,91 for extracting enterprises,
 - EUR 4 507 590,78 for refineries,
 - EUR 3 005 060,52 for bottlers.
- (21) The *Instituto de Crédito Oficial* (ICO) (Official Credit Institute), in conjunction with financial institutions, offers loans on the following conditions:
- loans are for one year,
 - the interest rate is the ICO reference rate for one-year loans at the time the loan is granted,
 - the margin of the financial institutions is 0,75 percentage points,
 - the risk is covered by the financial institutions,
 - the interest-rate subsidy provided by MAFF is of three percentage points, the beneficiaries having to pay a minimum of 1,5 %.
- (22) MAFF may also establish subsidies for guarantees provided, where appropriate, by the *Sociedad Estatal de Caución Agraria* (State Agricultural Guarantee Institute) where this is necessary for obtaining loans. The subsidy for the guarantee is intended to cover the administration costs up to 1 % of the outstanding balance of the loan for which the guarantee is provided.
- (23) In initiating the procedure, the Commission took account of the following points.
- (24) The interest-rate subsidy for the loans constitutes aid granted by the State to olive pomace extracting, refining and bottling enterprises. In addition, certain enterprises also receive another form of aid granted by the State comprising a subsidy to cover part of the cost of administering the guarantees provided for the subsidised loans.
- (25) The loans are intended in part to finance the adjustment of production processes to the new standards and specifications laid down in the Order of the Office of the Prime Minister of 25 July 2001. However, the size of the subsidised loans and the aid are not linked to the cost of the adjustments to production processes. In fact, the maximum loan entitlement per beneficiary is that recognised by the Olive oil Agency of MAFF, based on the accredited volume of stocks of oil at all stages of processing for each industry on 3 July 2001 and the volume of oil delivered to bottling industries for commercial distribution. The Commission, at this stage, had no information to indicate that this aid was linked to investments related to eligible expenditure detailed in the Community Guidelines for State aid in the agriculture sector ⁽⁵⁾.

⁽⁴⁾ Boletín Oficial del Estado No 278, 20.11.2001. p. 42443.

⁽⁵⁾ OJ C 28, 1.2.2000, p. 2.

- (26) Therefore, on the basis of the information available, the Commission took the view that the planned aid in the form of interest-rate subsidies on loans and a subsidy to cover part of the cost of guarantees was State aid intended to improve the financial situation of producers but which in no way contributed to the development of the sector (point 3.5 of the Community Guidelines for State aid in the agriculture sector). Therefore, at that stage, any aid that might have been granted appeared to be operating aid, incompatible with the common market. This aid has no lasting effect on the development of the sector concerned and its immediate effects disappear with the measure itself (see judgment of the Court of First Instance of 8 June 1995 in Case T-459/93, *Siemens SA v Commission* ⁽⁶⁾). The direct consequence of these aid measures is to improve the production and marketing opportunities of the beneficiaries in relation to other operators not receiving comparable aid (both in the Member State concerned and in other Member States).
- (27) Furthermore, this aid for olive pomace extracting, refining and bottling enterprises is for a product, olive oil, that is subject to a common market organisation, in accordance with Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽⁷⁾, and there are limits on the extent to which Member States may intervene in the operation of such market organisations, which are the exclusive responsibility of the Community. The Court of Justice has consistently held (see, *inter alia*, the judgment of 26 June 1979 in Case 177/78, *Pigs and Bacon Commission v Mc Carren and Company Limited* ⁽⁸⁾) that common organisations of the market must be considered comprehensive and exhaustive systems which preclude the Member States from adopting derogations or measures which conflict with them. Therefore, it appeared at this stage that the aid must be considered to infringe the common organisation of the market and, therefore, Community rules.
- (28) In the light of the above, the Commission took the view that the aid could be considered to be operating aid incompatible with the common market and that it did not appear to qualify for any of the exemptions provided for in Article 87(3) of the Treaty; it consequently decided to initiate the procedure provided for in Article 88(2) of the Treaty.
- (30) On 3 July 2001, the Spanish Government, via the Ministry of Health and Consumer Affairs, decided to prohibit the movement of all olive pomace oil on the Spanish market at all points along the food chain.
- (31) The immobilisation of and the prohibition of sale to the public of olive oil was decided exclusively to protect the interests of consumers, since the various quality checks carried out during the previous few days by the different bodies responsible for ensuring compliance with health standards had revealed that at least a proportion of the olive pomace oil on the market contained certain compounds of the group of polycyclic aromatic hydrocarbons in concentrations that might present a risk to consumers.
- (32) The Spanish Government, via the Office of the Prime Minister, therefore published the Order of 25 July 2001 laying down limits for certain polycyclic aromatic hydrocarbons in the oils concerned and establishing standardised working procedures for the production of oil-pomace oil.
- (33) The stocks of pomace oil affected by the measure were estimated at 30 000 tonnes stored at the 56 extraction plants active in Spain, 12 000 tonnes at the seven refineries and another 8 000 tonnes at Spain's 150 bottling plants.
- (34) MAFF realised the great difficulty the 50 000 tonnes immobilised right in the middle of the olive oil production period would cause, since with a harvest for the year expected to exceed one million tonnes, more than 80 000 tonnes of pomace oil would be produced, and producers could find themselves at the beginning of 2002 with 130 000 tonnes of pomace oil for which there would be scant possibility of finding a market.

III. COMMENTS BY SPAIN

- (29) By letter dated 15 April 2002, Spain put forward the following arguments.

⁽⁶⁾ [1995] ECR II-1675.

⁽⁷⁾ OJ 172, 30.9.1966, p. 3025/66. Regulation as last amended by the 2003 Act of Accession.

⁽⁸⁾ [1979] ECR 2161.

- (35) By-products of oil production, pomace and olive pomace pastes (*alperujos*) are removed from Spanish oil mills by pomace oil extractors and, given the serious crisis, it is doubtful whether extractors would ship pomace and olive pomace pastes from mills to their own installations to produce pomace oil. This would have caused an environmental disaster of incalculable proportions because oil mills are not equipped for the indefinite storage of by-products nor for their decontamination.

- (36) The removal of by-products from oil mills by pomace oil extractors totally solves the environmental problems caused by the olive oil production process. Similarly, the pomace oil extraction — refining — bottling — distribution chain plays a decisive role in the economic activity of the sector (10 % of Spanish final agricultural production).
- (37) If production in the olive oil food chain were to stop, it would be impossible to finance the new marketing year, thus paralysing the sector, because payment obligations arising from the financing of the previous marketing year were not all met and the financial institutions were therefore unwilling to finance the new marketing year.
- (38) The Government's aim was to help those undertakings deprived of revenue from their usual sales by the health alert to make payments relating to the previous marketing year and so regain creditworthiness with lending bodies before the start of the new marketing year, as well as to encourage production processes that present a full health guarantee and restore consumer confidence.
- (39) The sector was faced with an exceptional situation stemming from the suspension of the market by the Spanish authorities for reasons of food safety, although neither Community nor Spanish legislation laid down maximum levels for the substances detected. It is a small measure designed to mitigate the effects of an exceptional situation, i.e. the suspension of a market, something that could result in very serious consequences for the whole Spanish olive oil sector.
- (40) The aid is granted in return for a number of commitments from beneficiaries. An initial requirement is to have begun the adjustment of production processes to comply with the new Spanish rules on the presence of certain polycyclic aromatic hydrocarbons in olive pomace oils, not previously covered by Community or Spanish legislation. Beneficiaries also have to undertake to achieve a production level in the 2001/2002 marketing year similar to that in the previous three marketing years. The development of the olive pomace sector and the removal of contaminating residues is therefore guaranteed.
- (41) The objective of this aid is not simply to improve the financial situation of producers without contributing to the development of the sector. The aid is compatible with the common market because the measures are incentives requiring that beneficiaries provide something in return.
- Furthermore, it is incorrect to affirm that they are granted solely on the basis of price, quantity, unit of production or unit of the means of production. In addition to a quantitative factor for determining the size of the loans, beneficiaries must fulfil a number of obligatory requirements.
- (42) The Commission communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*)⁽⁹⁾ recognises that Community agriculture is in an unfavourable position compared with other sectors as regards the need to obtain short-term loans and its ability to finance such loans. Such loans may not be used to selectively aid particular sectors or economic operators in the agricultural sector for reasons not exclusively linked to those difficulties. However, State aid for such loans may exclude other economic activities or operators who, in the opinion of the Member State, have fewer difficulties in obtaining short-term loans.
- (43) In conclusion, Spain takes the view that:
- the aid is intended to deal with an exceptional occurrence and could be compatible with the common market under Article 87(2)(b) of the Treaty,
 - the aid is intended to mitigate the consequences of the suspension of the market following a health alert. The aim is not to place beneficiaries in an advantageous position but rather to maintain a productive activity that is absolutely necessary for the stability of the environment within the olive oil production chain,
 - the aid is an incentive for which beneficiaries must provide something in return and which contributes to the development of the sector and that consequently Article 87(3)(c) of the Treaty applies,
 - the absence of short-term aid would prevent the normal production of olive oil and paralyse the whole olive oil production chain, thus seriously affecting trading conditions and producing irreparable environmental damage, to an extent contrary to the common interest,
 - the sector concerned, because of this exceptional situation of lost markets caused by a lack of consumer confidence, also lost the confidence of the banks in its creditworthiness as regards the financing of the marketing year and required aid from the authorities in obtaining the necessary financing.

⁽⁹⁾ OJ C 44, 16.2.1996, p. 2.

- (44) By letter dated 2 April 2004, Spain submitted additional information. According to that information, because of the suspension of the market following a health alert and the adoption of new rules by the public authorities, all olive pomace oil had to be withdrawn from the market. The oil was returned to the bottlers to be refined again to remove polycyclic aromatic hydrocarbons and then to be rebottled and relabelled before being returned to the market.
- (45) The stocks of olive pomace oil affected by the public measure were estimated at 50 000 tonnes. As the maximum budget is estimated at EUR 1 202 024,21, the aid per tonne would be EUR 24. As the cost of a tonne of olive pomace oil is EUR 600, the amount of aid corresponds to 4 % of the cost of the oil.
- (46) The cost for the sector of withdrawing the oil, debottling it, reprocessing it and rebottling it in order to put it back on the market has been very high and has caused processors in the sector significant losses. The costs are much higher than the aid granted.
- (50) In this case, the aid confers on beneficiaries an advantage that alleviates the normal burden on their budget. It is granted by the State or through State resources. It is specific or selective in that it favours certain companies or products, in this case olive pomace extracting, refining and bottling enterprises.
- (51) To fall within the scope of Article 87(1), aid must also affect competition and trade between Member States. This criterion implies that the beneficiaries of the measure must engage in an economic activity. Case law on this provision has repeatedly stated that international trade is considered to be affected when the beneficiary company engages in an economic activity which is the subject of trade between the Member States. By the very fact that the aid strengthens the position of the beneficiary company in relation to other companies competing in intra-Community trade, trade can be considered to be affected.
- (52) In the case at issue, the beneficiaries engage in an economic activity, olive pomace extracting, refining and bottling, that is the subject of trade between the Member States. Spain shipped olive pomace oil worth EUR 7 160 250 to the rest of the Community in 2000 and received shipments worth EUR 2 941 310 ⁽¹⁰⁾.

IV. ASSESSMENT OF THE AID

Article 87(1) of the Treaty

- (47) The interest-rate subsidy for the loans involves State aid for olive pomace extracting, refining and bottling enterprises. Furthermore, certain enterprises will also receive State aid in the form of a subsidy to cover part of the cost of administering the guarantees provided for the subsidised loans. Consequently, the Commission is of the opinion that these measures must be considered selective State aid.
- (48) Articles 87 and 88 of the Treaty apply to all agricultural products listed in Annex I subject to a common market organisation. Olive pomace extracting, refining and bottling involve a product, olive oil, that is subject to a common market organisation. Articles 87 and 88 therefore apply to this aid.
- (49) According to Article 87(1), any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.
- (53) In fact, the beneficiaries operate in a sector which is particularly open to competition. It must be stressed that there is intense competition in the olive oil sector between producers of the Member States whose products are the subject of intra-Community trade. Spanish producers participate fully in that competition by supplying substantial quantities of products to other Member States.
- (54) Consequently, these aid measures may affect trade in olive oil between Member States, as happens when aid confers an advantage on operators in one Member State to the detriment of those in others. The measures concerned have a direct and immediate effect on the production costs of olive pomace oil in Spain. They therefore confer an economic advantage over enterprises in other Member States, which do not have access to comparable aid. They thereby distort or threaten to distort competition.
- (55) In view of the above, the aid at issue must be considered as State aid meeting the criteria laid down in Article 87(1). However, there are some exceptions to the principle of incompatibility laid down in Article 87(1).
- ⁽¹⁰⁾ Source: Eurostat.

Article 87(2)(b) of the Treaty

- (56) Article 87(2)(b) provides that aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market. According to Spain, these aid measures are justified on the grounds that they are intended to make good the damage caused by an exceptional occurrence.
- (57) Spain argues that the suspension of the market by the Spanish authorities for reasons of food safety constitutes an exceptional occurrence and that the aid may therefore be compatible with the common market under Article 87(2)(b).
- (58) When considering exceptions from the general principle laid down by Article 87(1) that State aid is incompatible with the common market, the Commission holds that the notion of 'exceptional occurrence' contained in Article 87(2)(b) must be interpreted restrictively. Hitherto, the Commission has accepted as exceptional occurrences wars, internal disturbances or strikes and, with certain reservations and depending on their extent, major nuclear or industrial accidents and fires which result in widespread loss. Because of the inherent difficulties in foreseeing such events, the Commission evaluates the compatibility of such aid on a case-by-case basis, having regard to its previous practice and the scale of the occurrence at issue (point 11.2.1 of the Community Guidelines for State aid in agriculture).
- (59) In the case at issue, the aid was granted, according to the Spanish authorities, because of their suspension of the market in olive pomace oil for reasons of food safety following the measures taken by the public authorities. However, Spain has not demonstrated that the suspension of the market constitutes an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty.
- (60) Consequently, these aid measures do not qualify for a derogation under Article 87(2)(b) as aid to make good the damage caused by exceptional occurrences.

Article 87(3) of the Treaty

- (61) The exceptions provided for in Article 87(3) may be granted only when the Commission determines that the aid measure is needed to attain one of the listed objectives. To allow measures which do not meet that condition to benefit from these exceptions would be tantamount to allowing infringements of trade between Member States and distortions of competition without any justification on the grounds of Community interest

and would consequently be granting illegal advantages to operators in certain Member States.

- (62) The Commission considers that the aid measures in question were not intended as regional aid to encourage new investments or job creation, nor to compensate for disadvantages relating to infrastructure affecting all the producers in a region, but as aid to the agricultural sector. Consequently, this aid is eminently sectoral and must be evaluated in accordance with Article 87(3)(c).
- (63) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible with the common market.
- (64) The adjustment of production processes to the specifications set out in the Order of the Office of the Prime Minister of 25 July 2001 is a requirement for receipt of the aid. However, neither the size of the subsidised loans nor the size of the aid is linked to the cost of adjusting production process. In fact, the maximum loan entitlement per beneficiary is that recognised by the Olive oil Agency of MAFF, based on the accredited volume of olive oil stocks at all stages of the production process in each branch of the industry on 3 July 2001 and the volume of oil delivered to bottling plants for commercial distribution. The Spanish authorities have not provided any information to show that the aid is linked to investments related to the eligible expenditure referred to in the Community Guidelines for State aid in agriculture. In addition, on the assumption that the aid is linked to investments, Spain has provided no information to show that this investment aid fulfils the conditions laid down by the above guidelines.
- (65) In its comments, Spain refers to the Commission communication on State aids: subsidized short-term loans in agriculture (*crédits de gestion*), but has provided no information to show that this aid fulfils the conditions laid down in that communication.

- (66) In particular, this aid must be available indiscriminately to all economic operators in the agricultural sector. If particular economic activities or operators are excluded, the Member State must demonstrate that exclusion is in all cases duly justified. Spain has provided no such proof. The aid must be limited to the amount strictly necessary to compensate for the disadvantage, which the Member State must quantify. Spain has provided no information on this. Therefore, these aids do not fulfil the conditions laid down by the above communication.

- (67) Spain, in its letter dated 2 April 2004, explained that the suspension of the market following a health alert was ordered by the Spanish administration on 3 July 2001 for reasons of food safety. This obliged producers to withdraw all olive pomace oil from the market and return it to processors to be refined again to remove polycyclic aromatic hydrocarbons and then rebottled and relabelled so it could be returned to the market.
- (68) The cost to the sector of withdrawing the oil, debottling it, refining it and relabelling it in order to put it back on the market was much higher than the aid granted.
- (69) The health alert was declared after various checks revealed the presence of a high content of polycyclic aromatic hydrocarbons in olive pomace oil, including benzopyrene, which, according to the World Health Organisation, is carcinogenic. In the absence of specific legislation, the Office of the Prime Minister approved a Ministerial Order laying down limits for certain polycyclic aromatic hydrocarbons in olive pomace oil.
- (70) As a general rule, the Commission considers that the responsibility for meeting the quality and safety requirements for oil laid down by Community and national legislation lies with the undertakings concerned. Losses arising from the need to refine olive pomace oil again in order to put it back on the market because it does not meet the legal requirements must be considered to be part of the normal entrepreneurial risk assumed by undertakings working in the sector. The Commission could, therefore, not normally consider the payment of aid to cover such losses as being in the common interest.
- (71) However in the present case, the Commission has taken into consideration the fact that until July 2001 no limit had been fixed by Community or national legislation for certain polycyclic aromatic hydrocarbons in olive pomace oil. Under these circumstances, checks for polycyclic aromatic hydrocarbons were not routinely undertaken as part of the normal checks carried out in the sector concerned. The fact that losses caused by withdrawing, debottling, refining, rebottling and relabelling the oil in order to put it back on the market were incurred by the majority of the undertakings working in the sector suggests that in this specific case the losses incurred fall outside the normal entrepreneurial risk.
- (72) An analogy can be made with point 11.4 of the Community Guidelines for State aid in agriculture, which states that the Commission authorises aid of up to 100 % of the actual cost of measures to combat animal and plant diseases as part of an appropriate programme at Community, national or regional level for the prevention, control or eradication of diseases. There must be a provision, whether laid down by law, regulation or administrative action, to the effect that the competent national authorities should be involved in dealing with the disease. Only diseases which are a matter of concern for the public authorities and not measures for which farmers must reasonably take responsibility themselves may be the subject of aid measures. The objective of the aid may be preventive or compensatory measures or a combination of both. In the case in question, no such national or Community provisions existed at the time the problem arose, but the swift adoption in July 2001 of rules setting limits for certain polycyclic aromatic hydrocarbons in olive pomace oil clearly demonstrated public concern regarding this problem.
- (73) In this context, the Commission authorised, on the basis of Article 87(3)(c) of the Treaty, aid for the destruction of feedingstuffs contaminated with dioxin (aid No NN 105/1998). This aid was limited to the cost of transporting and destroying contaminated citrus pellets and feedingstuffs in a manner that takes account of environmental and public health considerations. Until that date, no upper limit had been fixed in Community legislation for the presence of dioxin in materials to be used for the preparation of feedingstuffs.
- (74) In the light of the above, the Commission considers that this aid facilitates the development of economic activities in the olive pomace oil sector. In addition, in so far as the cost to the sector of withdrawing olive pomace oil from the market and returning it to processors for refining again to remove polycyclic aromatic hydrocarbons and then rebottling and relabelling for marketing was higher than the aid granted, the Commission takes the view that the granting of the aid will not adversely affect trading conditions to an extent contrary to the common interest.
- ## V. CONCLUSIONS
- (75) The Commission finds that Spain has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty. Its granting was illegal, given that it was granted before the Commission could decide on its compatibility with the common market. However, the aid is compatible with the common market and is eligible for the derogation provided for in Article 87(3)(c) of the Treaty as a measure intended to facilitate the development of the sector,

HAS ADOPTED THIS DECISION:

Article 2

Article 1

This Decision is addressed to the Kingdom of Spain.

The State aid Spain has implemented for olive pomace extracting, refining and bottling enterprises in the form of subsidies for interest on loans and for the cost of administering guarantees, provided for in the Ministry of Agriculture, Fisheries and Food Order of 14 November 2001 establishing a credit line for enterprises which extract, refine and bottle olive pomace oil, is compatible with the common market.

Done at Brussels, 7 May 2004.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION
of 20 October 2004
concerning the aid scheme implemented by the Kingdom of Spain for the airline Intermediación Aérea SL

(notified under document number C(2004) 3938)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2005/351/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the Articles ⁽¹⁾ cited above, and having regard to these comments,

Whereas:

I. PROCEDURE

- (1) By letter S(2002)4231 of 11 April 2002, registered under No NN/110/02, the Commission was informed that the Kingdom of Spain had implemented aid for the airline Intermediación Aérea SL (hereinafter referred to as Intermed) for the provision of air transport services on the Gerona–Madrid–Gerona route. By letter of 23 May 2002, the Commission asked the Spanish authorities for all relevant information. The latter replied by letter of 1 July 2002, registered on 5 July 2002.
- (2) By letter of 13 December 2002, the Commission informed the Kingdom of Spain of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty with regard to this aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on the parties concerned to submit their comments on the aid.
- (4) By letter of 9 January 2003 from the Permanent Representation of Spain to the European Union, the Spanish authorities asked for further time to reply to the letter of 13 December 2002. By letter TREN/A4(2003)838 of 20 January 2003, the Commission granted an additional period of 15 working days.
- (5) The Spanish authorities sent their comments by letter of 18 March 2003, reference A24-3996, registered by the Secretariat-General of the Commission on 19 March 2003.
- (6) The Commission received comments on this subject from parties concerned. It forwarded them to the Kingdom of Spain by letters of 13 March and 2 April 2003, allowing it an opportunity to comment on them, and received its comments by letter of 7 May 2003.

⁽¹⁾ OJ C 32, 11.2.2003, p. 2.

⁽²⁾ See note 1.

II. DETAILED DESCRIPTION OF THE AID

Legal basis of the aid

- (7) According to the information in the Commission's possession, the measures provided for by the Spanish authorities appear in the Contract relating to air routes serving the cities of Gerona and Madrid concluded on 26 March 2002 between the Generalitat de Catalunya (Autonomous Government of Catalonia), the Diputació de Girona (Gerona Regional Council), the Gerona Chamber of Commerce and Industry and the representative of Intermed (hereinafter referred to as the contract).

Aims of the aid

- (8) The aid is intended to promote the development of competitive, high-quality air transport on the Gerona–Madrid–Gerona route through the use of aircraft which meet appropriate conditions of comfort and reliability and to secure the proper level of profitability on this route.

Procedure to select the company to provide the service

- (9) Given the lack of a scheduled service between the cities of Gerona and Madrid since no air carrier offered this service, the Autonomous Government of Catalonia contacted several national carriers as well as carriers in other Member States of the Community (Aerolíneas de Baleares (AeBal), Spanair S.A. (Spanair), Air Europa Líneas Aéreas (Air Europe), KLM UK Ltd, Intermed, Air Catalunya S.A. (Air Catalunya), Ibertrans Aérea S.A. (Ibertrans) and Navegación y Servicios Canarios S.A. (Naysa)) individually by letter during the period from July to November 2001 to inform them of its initiative to encourage the establishment of this air link and to call on them to submit tenders or state that they were prepared to ensure this air link.
- (10) At the end of this process, the authorities of the Autonomous Government of Catalonia found that the only air carrier which had shown that it had the availability and capacity to ensure a regular air service and to fulfil the public service obligations inherent in it was Intermed and, consequently, the contract was concluded with this carrier.

The Gerona–Madrid–Gerona air link

- (11) According to the information received from the Spanish authorities, the Gerona–Madrid–Gerona air link was provided, firstly, by means of a scheduled service operated by Intermed as of 15 April 2002 with a 48-seat ATR 42-300 aircraft and, secondly, by a charter service operated by the complainant in this case as of 3 April 2002 using an SA-227 aircraft.
- (12) Gerona airport is a small airport at which passenger numbers have developed as follows ⁽³⁾:

Development of passenger traffic

Year	Number of passengers	Year	Number of passengers
1994	399 070	1999	631 235
1995	547 739	2000	651 402
1996	480 506	2001	622 410
1997	533 445	2002	557 187
1998	610 607	2003	1 448 796

⁽³⁾ Website: www.aena.es of Aeropuertos Españoles y Navegación Aérea, September 2004.

Content of the contract

- (13) The contract stipulates that, for the provision of the service in question, Intermed will use a turboprop ATR 42-300 aircraft having the following chief characteristics:
- 48 seats arranged in 12 rows with an inclination of 30 °;
 - maximum loading capacity 4 687 kg;
 - volume of baggage hold 8,94 m³;
 - maximum altitude 5 485 m (18 000 feet);
 - flight speed 300 kt (556 km/h).
- (14) Initially, there will be two flights a day from Monday to Friday with the following timetables:
- morning: departure from Gerona at 07.00/departure from Madrid at 09.00.
 - afternoon: departure from Gerona at 17.00/departure from Madrid at 19.30.
- (15) In general terms, the flight timetables must always allow passengers from Gerona a minimum stay of five hours in Madrid from the time of arrival at the destination.

Funding of the service

- (16) The maximum total amount of aid for the period covered by the contract is EUR 4 337 086,18. The Autonomous Government of Catalonia and the Gerona Regional Council undertake to bear the cost of funding the air service between Gerona and Madrid up to the following annual limits:
- 2002 financial year: for the 2002 financial year, during the first six months of operation of the air link, the Generalitat de Catalunya (Autonomous Government of Catalonia) and the Diputació de Girona (Gerona Regional Council) equally bear a maximum amount of EUR 410 582,34 each. For the rest of the 2002 financial year, the Autonomous Government of Catalonia and the Gerona Regional Council bear the cost of providing funding for this period up to the sum of EUR 34 166,62 for the Autonomous Government of Catalonia and EUR 135 227,75 for the Gerona Regional Council.
 - 2003 financial year: for this period, including any regularisation of the 2002 financial year, the ceiling is EUR 1 182 883,13, with EUR 641 972,13 borne by the Autonomous Government of Catalonia and EUR 540 911 by the Gerona Regional Council.
 - 2004 and 2005 financial years: for this period, the ceiling is EUR 1 081 822, with EUR 540 911 from the Gerona Regional Council as funding for the first half of each financial year, and EUR 540 911 from the Autonomous Government of Catalonia as funding for the second half of each financial year.
- (17) The aid paid to Intermed is calculated on the basis of the average annual occupancy rate of the seats in the aircraft operating on the Gerona–Madrid–Gerona route by applying the formula set out in Annex V to the contract.

- (18) According to the information from the Spanish authorities, the cost per flight, calculated on the basis of an average occupancy rate of 32 persons, is EUR 3 980,55, broken down as follows:

Item	EUR
Depreciation of the aircraft	353,16
Insurance	480,00
Line costs (including checking of the electrical system, the avionics and the landing gear and inspection of the fuel injection system)	250,00
Fuel	623,37
Staff costs (cabin and ground crews, including social security)	1 067,93
Airport charges and landing fees	447,81
Handling ⁽¹⁾	364,09
Eurocontrol (route charge)	52,89
Passenger services (catering, press, etc.)	372,00
Total	3 980,55

⁽¹⁾ The company had a self-handling permit. Handling may therefore be regarded as internal costs and entered as general expenditure.

Advertising measures

- (19) The Gerona Regional Council also undertakes to establish and finance all advertising for the promotion and marketing of this air link during the period of validity of the contract up to a maximum of EUR 120 202.
- (20) Similarly, the Gerona Chamber of Commerce, Industry and Navigation undertakes to do whatever proves to be necessary, within its field of competence, to support and ensure the smooth functioning of the air service covered by the contract.

Termination of the contract

- (21) It is provided that the contract will be terminated as of right in the event, for example, of another air carrier establishing an air service between Gerona and Madrid with characteristics similar to those of the air service covered by the contract in terms, in particular, of the type of aircraft, frequency, fares and period of service without public aid or any other State funding.

Duration of the aid

- (22) The contract is concluded for the period from 26 March 2002 to 31 December 2005. However, the service was suspended in December 2002 following the initiation of the Commission's formal investigation procedure.

Other provisions

- (23) The contract in question also contains provisions regarding the occupancy rate, regularity, punctuality, groundhandling services and applicable fares.

Grounds for the decision to initiate the procedure

- (24) In its decision to initiate the formal investigation procedure, the Commission expressed doubts regarding the compatibility of the aid in question with Article 86(2) of the EC Treaty, in particular the lack of compliance with the procedure established by Article 4 of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes ⁽⁴⁾.
- (25) In particular, the Commission asked Spain to send it, firstly, data showing the need for compensation and the net costs of the public service in question and the data used to calculate the volume of compensation and, secondly, the reasons which justify non-compliance with the procedure established by Article 4 of Regulation (EEC) No 2408/92.

III. COMMENTS FROM PARTIES CONCERNED

- (26) The company Air Catalunya points out that the air route between Gerona and Madrid was served, on the one hand, by the beneficiary of the aid and, on the other, by itself without public funding from 3 April 2002. The company draws attention to the harmful consequences it has suffered and the fact that there has been an obvious distortion of competition. It points out that the Gerona-Madrid-Gerona link has not been the subject of a public service obligation in accordance with the procedures established by Article 4 of Regulation (EEC) No 2408/92. The aid in question cannot be said to be compatible with the Treaty as it does not meet the requirements of necessity and proportionality which are inherent in a public service role. Air Catalunya therefore suspended its service in December 2002.
- (27) Austrian Airlines A.G. (Austrian Airlines) adds that the rules established in the Guidelines on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector have not been followed in the case at issue.

IV. COMMENTS BY THE KINGDOM OF SPAIN

- (28) The Spanish authorities point out that, since the formal investigation procedure was initiated in December 2002, the payment of aid to Intermed has been suspended and that the company was consequently forced to suspend the Gerona-Madrid air service in December 2002 as it could not cover the costs involved, which shows that the air service in question is not profitable for any company.
- (29) The part-funding of the Gerona-Madrid route is subject to a time limit, in particular until the route in question is consolidated and becomes profitable on its own.
- (30) The Spanish authorities consider that the procedure which led to the selection of Intermed is not in compliance with the procedure laid down in Article 4 of Regulation (EEC) No 2408/92 to impose public service obligations on a given route.
- (31) The Autonomous Government of Catalonia presented a formal request to the Spanish Ministry for Regional Development with a view to imposing a public service obligation (PSO) on the Gerona-Madrid route in conformity with Regulation (EEC) No 2408/92. However, this request was rejected by the Ministry in question on the grounds that there were not sufficient reasons to invoke Article 4 of that Regulation.

⁽⁴⁾ OJ L 240, 24.8.1992, p. 8. Regulation as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

Consideration as a public service

- (32) The Spanish authorities consider that the material requirements demanded by Regulation (EEC) No 2408/92 for the service in question to be considered a public or general interest service are fully met.
- (33) The fact that no airline is able to operate the route shows how little economic interest the route generates. Only public authority intervention therefore made it possible to guarantee the Gerona–Madrid route with certain assurances regarding the stability and regularity of the service. In this regard, it is important to point out that Air Catalunya started operating the Gerona–Madrid route at the same time as Intermed, i.e. in April 2002. Before that date and since 28 October 2001, the date on which the previous company stopped operating the route, no company had been covering the Gerona–Madrid route. This route, which is considered essential, was not operated for five months, justifying the necessary intervention by the public authorities in view of the importance of this route for citizens.
- (34) The Spanish authorities draw attention to the importance of establishing an air link between Gerona and Madrid for the economic development of the region.

Consequences of the infringement of Article 4 of Regulation (EEC) No 2408/92

- (35) However, since the formal conditions for imposing the obligation have not been fulfilled, i.e. a call for tenders open to all companies and communicated to the Commission and the other Member States, the subsidy cannot benefit from the presumption that no State aid has been given within the meaning of Article 87 of the EC Treaty and must therefore be subject to the general rules of the Treaty which govern this matter. This analysis is confirmed by the guidelines for the evaluation of State aid to air carriers in the Commission communication on the application of Articles 92 and 93 of the Treaty and Article 61 of the EEA Agreement to State aids in the aviation sector ⁽⁵⁾, paragraph 23 of which states that ‘compensation of losses incurred by a carrier which has not been selected according to Article 4 of Regulation (EEC) No 2408/92 will continue to be assessed under the general State aid rules. The same rule applies to compensations which are not calculated on the basis of the criteria of Article 4(1)(h) of the Regulation’.
- (36) According to the Spanish authorities, the absence of a formal declaration of a public service obligation does not in any way affect the public service nature of the route in question.

The compensation is compatible with Article 86(2) of the EC Treaty

- (37) According to the Spanish authorities, the compensation granted to Intermed may be considered to be State aid within the meaning of Article 87 of the EC Treaty, which is unlawful if no prior notification is sent to the Commission and Article 4 of Regulation (EEC) No 2408/92 is not complied with, but is nevertheless compatible with the common market pursuant to Article 86(2) of the Treaty. Although the latter is not the proper framework for the funding of public services imposed on air carriers, the particular features of this case and, more especially, the low impact on competition and Community trade, the suspension of the aid immediately following the initiation of the formal investigation procedure, the consequential suspension of the air service by Intermed, the low intensity of the aid and the short duration of the agreement limited to eight months may justify the exceptional application of the provision in question.
- (38) For Article 86(2) to be applied, the compensation must be necessary and proportional.

⁽⁵⁾ OJ C 350, 10.12.1994, p. 5.

Need for the compensation

- (39) The requirements imposed on Intermed in the agreement regarding regularity, continuity, capacity and the fares for the service make the flights unprofitable for any company at all. Indeed, the conditions imposed by the authorities give rise to additional costs which a company operating on a commercial basis could not itself bear.
- (40) The proof of this is that there is no significant competitor covering the Gerona–Madrid route subject to the requirements of frequency, capacity and continuity which have been imposed on Intermed. The company which operated this route in the past was forced to cease doing so as it was uneconomic. The fact is that several airlines which were asked by the Autonomous Government to offer such a service showed no interest in doing so and made it clear that they doubted whether such a service was economically viable.
- (41) Air Catalunya cannot be regarded as a significant competitor. In fact, Air Catalunya had been invited to take part in the selection procedure, but its tender could not be accepted since the company does not hold an air operator's certificate (AOC) or a licence to operate in Spain ⁽⁶⁾. Even if the procedure provided for in Article 4 of Regulation (EEC) No 2408/92 for the imposition of the public service obligation had been followed, Air Catalunya would not have been able to take part in the tender procedure, which was restricted to companies which hold a licence to operate scheduled services. At any rate, the terms on which it offered its flights, which were not scheduled, differed considerably from the frequency and capacity imposed on Intermed. For example, when few seats were occupied in the aircraft chartered by Air Catalunya, the flight was cancelled and passengers were left without any rapid and efficient means of transport to get to Madrid.
- (42) Lastly, the lack of profitability on the route in question is underlined by the fact that, even though the Intermed service has been withdrawn, no company, not even Air Catalunya, is providing a service.

Proportionality of the subsidy

- (43) The aid granted to Intermed does not exceed the minimum compensation required to offset the additional costs incurred in meeting the requirements laid down by the authorities. The compensation given to Intermed amounts to EUR 919 879,98. As is clear from Annex III to the Agreement, the cost per flight, calculated on the basis of an average occupancy rate of 32 persons, is EUR 3 980,55. A total of 640 flights were operated by Intermed during the period of validity of the agreement generating revenue of EUR 876 934,30. The shortfall as a result of providing the service was about EUR 1 670 608,70. This figure is calculated from the cost of the flight, i.e. EUR 3 980,55, multiplied by the number of flights operated, in other words EUR 2 547 552,00, less the revenue received, namely EUR 876 943,30. Consequently, the aid granted by the public authorities (EUR 919 879,98) was less than the shortfall sustained by the company when operating on the Gerona–Madrid route between April and December 2002.
- (44) As the Court of Justice of the European Communities has consistently held, 'the grant of State aid may, under Article 86(2) of the Treaty, escape the prohibition laid down in Article 87 of that Treaty provided that the sole purpose of the aid in question is to offset the extra costs incurred in performing the particular task assigned to an undertaking entrusted with the operation of a service of general economic interest and that the grant of the aid is necessary in order for that undertaking to be able to perform its public service obligations under conditions of economic equilibrium' ⁽⁷⁾.

⁽⁶⁾ Initially (for two months), Air Catalunya operated with the charter flight permit issued by the Directorate-General for Civil Aviation to the Danish company North Flying and then with the licence held by the company Oestavi.

⁽⁷⁾ See Case C-174/97 *La Poste* [1998] ECR I-1303.

Limited impact on competition and intra-Community trade

- (45) The aid given to Intermed is of low intensity as it is less than EUR 1 million. To this must be added the relative shortness of the contract (only eight months: April to December 2002).
- (46) The position of Air Catalunya or other potential competitors on the route in question will not be damaged in future since payment of the aid was suspended on initiation of the procedure, and the Autonomous Government and the Gerona Regional Council have undertaken to revoke formally the contract concluded with Intermed.
- (47) Any negative impact of the grant of aid to Intermed on competition and trade between the Member States is therefore minimised.

Application of the *Altmark* case law

- (48) The Spanish authorities consider that the case law which emerges in the *Altmark* case (pending before the ECJ at the date on which the Spanish authorities sent their comments) would not be applicable to the case at issue since this case is concerned with the application of Article 73 of the Treaty to impose public service obligations outside the framework provided for by the applicable regulations on inland transport.

Non-recovery of the aid

- (49) The Spanish authorities consider that the procedure initiated following the subsidies granted to Intermed can be concluded by adopting a Commission Decision that declares the aid to be unlawful and requires it to be suspended, but does not order the aid paid to be recovered and regards it as compatible with the common market pursuant to Article 86(2).

V. ASSESSMENT OF THE AID

Evaluation of this aid in accordance with Article 87(1) of the Treaty

- (50) Article 87(1) of the Treaty indicates that any aid granted by the States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or certain production is incompatible with the common market insofar as it affects trade between Member States.

Financial advantage

- (51) Paragraph 18 of the Commission Communication on the application of Articles 92 and 93 of the EC Treaty and Article 61 of the EEA Agreement to State aid in the aviation sector establishes the presumption that no aid is involved provided that a public service obligation was imposed and the relevant compensation calculated in conformity with the procedures provided for in Article 4 of Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes. The criteria for assessing whether aid is involved in compensation for public services were subsequently clarified by the judgment of 24 July 2003 in the *Altmark* case ⁽⁸⁾.
- (52) As explained in recitals 9 to 23 to this Decision, the authorities of the Autonomous Government of Catalonia selected the company without fulfilling the obligations established in Article 4 of Regulation (EEC) No 2408/92, which are essential to guarantee the principle of equal treatment and proper functioning of the procedure.

⁽⁸⁾ See Case C-280/00 *Altmark* [2003] ECR I-7747.

- (53) In particular,
- the Commission was not informed of the imposition of a public service obligation on the Girona–Madrid–Girona route,
 - these obligations were not published in the *Official Journal of the European Union*,
 - the other Member States were not consulted,
 - the invitation to tender was not published in the *Official Journal of the European Union* and
 - the tenders submitted by the air carriers were not communicated to the other Member States concerned or to the Commission.
- (54) The Spanish authorities consider that the measure in question is, nonetheless, compensation for public service obligations imposed on Intermed.
- (55) The Commission considers that the only way of establishing public service obligations in the aviation sector is by applying Article 4 of Regulation (EEC) No 2408/92. In this Regulation, the Council has established uniform, non-discriminatory rules for the granting of air traffic rights on routes on which public service obligations have been imposed. The criteria for calculating the compensation are clearly defined. In the absence of any information to the contrary, reimbursement calculated in accordance with Article 4(1)(h) of the Regulation would have made it possible to presume that there was no financial advantage for the air carrier concerned ⁽⁹⁾.
- (56) Article 4(1)(h) of Regulation (EEC) No 2408/92 provides that ‘a Member State may reimburse an air carrier, which has been selected under subparagraph (f), for satisfying standards required by a public service obligation imposed under this paragraph; such reimbursement shall take account of the costs and revenue generated by the service’. The Commission considers that the measure envisaged by the Spanish authorities in regard to the company Intermed does not comply with the provisions of Article 4 of the Regulation.
- (57) It follows that the said presumption of the non-existence of aid does not apply in this case.
- (58) Paragraph 23 of the guidelines on State aid in the aviation sector states that ‘compensation of losses incurred by a carrier which has not been selected according to Article 4 of Regulation (EEC) No 2408/92 will continue to be assessed under the general State aid rules. The same rule applies to compensations which are not calculated on the basis of the criteria of Article 4(1)(h) of the Regulation’. Similarly, paragraph 17 establishes that ‘the acceptability of the reimbursement shall be considered in the light of the State aid principles as interpreted in the Court of Justice’s case law’.

⁽⁹⁾ See Judgment of the Court of First Instance of 5 August 2003, Joined Cases T-116/01 and T-118/01, *P & O European Ferries* [2003] ECR I 118, states that ‘in accordance with the Commission’s settled practice, the fact that such a tender procedure is conducted before a Member State makes a purchase is normally considered sufficient for the possibility that the Member State is seeking to grant an advantage to a given undertaking to be ruled out (see, in particular, Information from the Commission — Community framework for State aid for research and development (OJ 1996, C 45, p. 5), paragraph 2.5, and, to this effect, the Community guidelines on State aid to maritime transport (OJ 1997, C 205, p. 5), Chapter 9)’.

- (59) The Commission takes the view that where, in a specific sector, Community regulations stipulate that public service obligations must be awarded by a tender procedure, failure to comply with these regulations means that the compensation granted normally constitutes aid within the meaning of Article 87(1) of the Treaty. Nonetheless, the Commission assesses whether the measure in question grants a financial advantage to Intermed, and in particular, whether the compensation in question complies with the criteria established by the Court's case law, in particular the judgment of 24 July 2003 in the *Altmark* case.
- (60) This judgment confirms that amounts granted as compensation for public service obligations are not State aid provided several conditions are met. According to the Court, it follows from those judgments⁽¹⁰⁾ 'that, where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 92(1) of the Treaty. However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied'⁽¹¹⁾.
- (61) The Court has established four conditions. The first three conditions apply in all cases. The fourth condition provides for two alternatives in order to eliminate any financial advantage whatsoever from the compensation.
- (62) According to the first condition established by the Court, the recipient undertaking must actually have been required to discharge public service obligations and those obligations must have been clearly defined. According to the second condition, the parameters on the basis of which the compensation is calculated must have been established beforehand in an objective and transparent manner.
- (63) In the case at issue, the recipient undertaking has been required to discharge certain obligations which are defined in the contract. These obligations as well as the parameters for calculation of the compensation, as established in Annexes III, IV and V to the contract, are the result of negotiations conducted between the competent regional authorities and the company which had already been selected to provide the air transport service. In fact, the Autonomous Government of Catalonia had contacted several carriers individually by letter during the period July to November 2001 in order to inform them of its initiative to encourage the establishment of this air route and to invite them to submit tenders or to state that they were prepared to operate this air service. During this process, the regional authorities invited only the airlines contacted to submit a tender. These letters contain no details about the obligations imposed on the companies or the parameters regarding compensation. It cannot be ruled out that the airlines which did not respond to the request from the regional authorities might have been interested in concluding the contract if more specific details about these obligations and the parameters for calculating the compensation had been available when the request was sent out by the regional authorities.

The Commission considers that, in the case at issue, the public service obligations were not defined in a clear and transparent manner and that, consequently, the first condition laid down in the *Altmark* judgment was not satisfied.

- (64) Furthermore, the contract concluded on 26 March 2002 between the Autonomous Government of Catalonia, the Gerona Regional Council, the Chamber of Trade and Industry of Gerona and the representative of Intermediación Aérea SL (Intermed) was simply announced by a press release but was not officially published and, according to the Commission's information, was not accessible to interested third parties. In addition, in the air transport sector the parameters for calculating compensation in advance in an objective and transparent manner are established by the method laid down by the Community legislator in Article 4 of Regulation (EEC) No 2408/92, which has not been complied with.

⁽¹⁰⁾ See Judgment of 7 February 1985, *ADBHU*, Case 240/83 [1985] ECR 531, paragraphs 3, last sentence, and 18, and the Judgment of 22 November 2001, *Ferring*, Case C-53/00 [2001] ECR I-9067, paragraph 27.

⁽¹¹⁾ Paragraphs 87 and 88 of the *Altmark* judgment.

- (65) In addition, the Commission considers that the parameters on the basis of which the compensation is calculated in the case at hand were not established in advance in an objective and transparent manner. The second condition of the *Altmark* judgment has therefore not been satisfied.
- (66) According to the third condition laid down by the Court, the compensation must not exceed what is necessary to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations. Compliance with such a condition is essential to ensure that the recipient undertaking is not given any advantage which distorts or threatens to distort competition by strengthening that undertaking's competitive position. The purpose of this condition is to avoid overcompensation being paid to undertakings and to avoid the situation where the type and amount of compensation granted means that the undertaking has surplus cash which it could devote to activities which might distort competition. In the aviation sector, the method used by the legislator to avoid such overcompensation and to minimise any harmful effects of limiting market access is strict compliance with the tender procedure laid down in Article 4 of Regulation (EEC) No 2408/92.
- (67) The Commission considers that such a tender procedure prior to a purchase by a Member State is normally regarded as sufficient to rule out the possibility that the Member State concerned is seeking to grant an advantage to a particular undertaking. The Court of First Instance has confirmed this approach ⁽¹²⁾. In the absence of an invitation to tender, it believes that it is difficult to determine precisely whether the amount received by Intermed corresponds to the costs arising from discharging the public service obligations, or whether it represents overcompensation and an advantage in its favour.
- (68) The Spanish authorities consider that the amount of the subsidy granted is less than the deficit run up in the months during which the service was operated and that, consequently, there has been no overcompensation. The Commission considers that, in the absence of objective means of establishing the level of compensation pursuant to the compulsory rules laid down by the Council, it cannot be ruled out that other companies may have been able to offer the services in question with a lower level of subsidy.
- (69) The Commission considers that the third condition of the *Altmark* judgment is not satisfied in the case at issue.
- (70) The fourth condition contains two alternatives:
- (a) either 'the undertaking which is to discharge public service obligations, in a specific case, is chosen pursuant to a public procurement procedure which would allow for the selection of the tenderer capable of providing those services at the least cost to the community',
- (b) or 'the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations'.

⁽¹²⁾ Court judgment of 5 August 2003, Joined Cases T-116/01 and T-118/01, *P & O European Ferries*, [2003] ECR II-118. See footnote 9.

- (71) The first alternative of the fourth condition is not satisfied in the case at issue. The selection procedure followed by the Spanish authorities does not comply with the criteria of transparency and objectivity which are essential for any public tender procedure, as pointed out in recitals 51 and 52 to this Decision, to be regarded as genuine competition and therefore cannot be regarded as sufficiently transparent to ensure 'the least cost to the community'.
- (72) The second alternative of the fourth condition referred to in recital 70(b) seems to apply in principle only where there is no obligation to issue an invitation to tender and not where the obligation exists but has not been complied with. Nonetheless, assuming that the second alternative of the fourth condition should be applied to the case at issue, the Commission must conclude that it has not been complied with. The compensation was not calculated on the basis 'of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those requirements, taking into account the relevant receipts and a reasonable profit for discharging the obligations'. As explained in the analysis of the second condition, the authorities did not carry out any advance analysis of the costs or of whether or not they were compatible with this standard, but confined themselves to providing compensation for the actual costs incurred by the operator in question. The Spanish authorities have not provided any data which enable the Commission to carry out such a check. In these circumstances, it is obvious that the fourth condition laid down in the *Altmark* judgment has also not been satisfied.
- (73) The Commission therefore finds that none of the conditions of the *Altmark* judgment has been satisfied in the case at issue. In the light of the foregoing, the measure involves an advantage for the beneficiary.

Transfer of State resources

- (74) The concept of State aid under the terms of the Treaty and as interpreted by the Court of Justice refers to any advantage granted directly or indirectly through State resources or constituting an additional burden for the State or the bodies appointed or set up for this purpose.
- (75) In the case at issue, the contract provides that the beneficiary company will receive a maximum of EUR 4 337 086,18 for the duration of the contract funded by the Autonomous Government of Catalonia and the Gerona Regional Council. As confirmed by the Spanish authorities, the amount of aid actually paid amounts to EUR 919 879,98. The fact that this amount was directly granted by the Spanish authorities clearly confirms the presence of State resources.

Selective nature of the measure

- (76) The measures in question concern only one transport sector, namely air transport, and the provision of a single air route: Gerona–Madrid–Gerona.
- (77) The contract was concluded with a single airline. From the information received from the Spanish authorities, it is not possible to deduce that the same measures would have applied to other companies which might have decided to provide scheduled air transport services between Madrid and Gerona.
- (78) The measure in question is therefore considered to be selective.

The impact on competition and intra-Community trade

- (79) In order to make a finding of a distortion of competition, it is sufficient for the State intervention artificially to modify certain elements of an undertaking's production cost and to strengthen that undertaking's position vis-à-vis other undertakings competing in intra-Community trade⁽¹³⁾. The Court considers⁽¹⁴⁾ that it is not impossible that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may nonetheless have an effect on trade between Member States. Furthermore, the Court also stressed that aid could be capable of affecting trade between Member States and distorting the conditions of competition, even if, while in competition with undertakings in other Member States, the undertaking receiving the aid is not participating itself in cross-border activities. Where a Member State grants aid to an undertaking, internal supply may be maintained or increased with the consequence that the opportunities for undertakings established in other Member States to offer their services to the market of that Member State are reduced⁽¹⁵⁾.
- (80) In accordance with the third recital thereto and Article 1(a) thereof, Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid⁽¹⁶⁾ does not apply to the transport sector. According to the Court's case law, there is no threshold or percentage below which it may be considered that trade between the Member States is not affected. The relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected⁽¹⁷⁾.
- (81) In the case at issue, the air link between Gerona and Madrid is served by two operators, one receiving public funding and the other not receiving public funding.
- (82) It is true that the contract contains a termination clause which applies in the event of another air carrier establishing an air service between Gerona and Madrid with characteristics similar to those of the air service covered by the contract concerned in terms, in particular, of the type of aircraft, frequency, fares and the period of service without public aid or any other State funding.
- (83) However, if any competing operator provides services which do not comply with the abovementioned characteristics (for example, the use of a smaller aircraft), the selective nature would even be confirmed since two operators would be operating on the same route, one receiving aid and the other not. In fact, the complainant in this case operates the Gerona-Madrid-Gerona air link without receiving public aid. According to the information received from the Spanish authorities, the complainant has established a charter flight operation on the Gerona-Madrid-Gerona route using aircraft with less than 20 seats, which does not meet the requirements of the contract.
- (84) Furthermore, the measures in question affect trade between the Member States since they concern a company whose transport activity, which by its nature directly affects trade, covers part of the common market. In addition, they distort competition within this market since they are aimed at only one single undertaking which is in competition with another Community airline, in particular since the entry into force of the third air transport liberalisation package (third package) on 1 January 1993. Under these circumstances, the granting of advantages to Intermed by the Spanish authorities is aid within the meaning of Article 87 of the EC Treaty.

⁽¹³⁾ Court judgments of 2 July 1974, *Italy v Commission* Case 173/73 [1974] ECR 709, and of 17 September 1980, *Philip Morris*, Case 730/79 [1980] ECR 2671.

⁽¹⁴⁾ Paragraphs 77 to 82 of the *Altmark* judgment.

⁽¹⁵⁾ Court judgment of 21 March 1991, *Italy v Commission*, Case C-303/88 [1991] ECR I-1433, paragraph 27, judgment of 13 July 1988, *France v Commission*, Case 102/87 [1988] ECR I-4067, paragraph 19, and judgment of 21 March 1991, *Italy v Commission*, Case C-305/89 [1991] ECR I-1603, paragraph 26.

⁽¹⁶⁾ OJ L 10, 13.1.2001, p. 30.

⁽¹⁷⁾ *Altmark* judgment, paragraph, 81; judgment of 21 March 1990, *Belgium v Commission*, 'Tubemeuse', Case C-142/87 [1990] ECR I-959, paragraph, 43, and judgment of 14 September 1994 *Spain v Commission*, Cases C-278/92 to C-280/92 [1994] ECR I-4103, paragraph 42.

Advertising for promotion and marketing

- (85) The measures agreed by the Gerona Regional Council with a view to establishing and financing all the advertising for the promotion and marketing of this air route during the period of validity of the contract up to a maximum of EUR 120 202 must also be regarded as State aid. These measures, which are financed from public funds, are intended to make the creation of the new air service known to the general public.

Conclusion

- (86) As the conditions of Article 87(1) of the Treaty are met, the Commission must conclude that the measure is a State aid measure which must be examined in order to ascertain whether it is compatible with the Treaty.

Legality of the aid

- (87) The Commission deplores the fact that Spain implemented the aid in contravention of Article 88(2) of the EC Treaty.

Compatibility of the aid

Application of Article 87(2) and (3)

- (88) Having determined that the measures under consideration are in the nature of State aid falling within the scope of Article 87(1) of the Treaty, an assessment confirmed by the Spanish authorities, the Commission must examine whether the measures may be considered compatible with the common market within the meaning of Article 87(2) and (3) and Article 86(2) of the Treaty.
- (89) The Commission must assess the compatibility of the aid pursuant to Article 87(2)(a) of the Treaty, according to which aid having a social character, granted to individual consumers, is compatible with the common market, provided that the aid is granted without discrimination related to the origin of the products concerned. According to the Commission Communication on State aid in the aviation sector, the aid must have a social character, i.e. it must, in principle, only cover specific categories of passengers travelling on a route (children, handicapped people, low income people). However, in case the route concerned links an underprivileged region, mainly islands, the aid could cover the entire population of this region. According to the same communication, the aid has to be granted without discrimination as to the origin of the services, that is to say whatever EEA air carriers operate the services. This also implies the absence of any barrier to entry on the route concerned for all Community air carriers.
- (90) In the case at issue, the aid has been paid solely to one airline operating the link in question, to the exclusion of the competing operator. The legal basis of this aid does not seem to allow other airlines access to the aid scheme. Consequently, this aid does not satisfy the first of the conditions required, namely non-discrimination between operators.
- (91) The derogation provided for in Article 87(2)(b) does not apply since, in the case at issue, the aid is not intended to make good the damage caused by natural disasters or exceptional occurrences.
- (92) Article 87(3) lists the aid which may be considered to be compatible with the common market.

(93) In order to safeguard the proper functioning of the common market, and having regard to the principles set out in Article 3(1)(g) of the Treaty, the derogations from Article 87(1), as defined in Article 87(3), must be strictly interpreted when examining an aid scheme or any individual measure. Furthermore, in view of the increased competition following the liberalisation of air transport, the Commission must abide by a rigorous policy of monitoring State aid to make sure that it does not have any secondary effects which are contrary to the common interest:

- paragraphs (a) and (c) allow derogations for aid to promote or facilitate the development of certain areas ⁽¹⁸⁾. The Commission notes that the Gerona region is not an area covered by Article 87(3)(a) and that this derogation is therefore not applicable. The Commission further notes that the Gerona region is not eligible to benefit from the derogation in Article 87(3)(c) of the Treaty, except districts situated in the Pyrenees which are not relevant in this case;
- paragraphs (b) and (d) are not applicable since the aid is not intended to promote an important project of common interest or to remedy a serious disturbance in the economy of a Member State or to promote culture and heritage conservation and, in any case, the Spanish authorities have not invoked the derogation;
- the derogation provided for in paragraph (c) concerns aid to facilitate the development of certain economic activities. The Commission considers that operational aid which is not intended to encourage investment may be authorised only in exceptional circumstances. To this end, it notes that the aid is neither for environmental nor for training purposes. Furthermore, the Commission can allow this derogation to apply to the restructuring of an undertaking. This is not the case with Intermed.

(94) However, the aid can be compared to start-up aid, an analysis of which is made in recital 101.

Application of Article 86(2) of the Treaty

(95) The only justification invoked by the Spanish authorities concerns the application of Article 86(2) of the Treaty. In this respect, the Commission considers that, for aid to be declared compatible on the basis of this provision of the Treaty, two conditions must be satisfied: the necessity and the proportionality of the aid.

(96) The Commission should point out that the Spanish authorities do not contest that the provisions regarding Article 4 of Regulation (EEC) No 2408/92 have not been complied with. This would suggest that the Spanish authorities did not consider it necessary to impose public service obligations on the air link in question. This was confirmed when the administrative procedure had already been initiated by the Commission since, at the request of the Catalan regional authorities of 13 June 2002, the competent Spanish authorities refused to initiate the procedure to impose public service obligations on the grounds that there were not sufficient reasons to invoke Article 4 of the said Regulation ⁽¹⁹⁾. In these circumstances, it would be contradictory to maintain, on the one hand, that the service is necessary within the framework of Article 86(2) of the Treaty and, on the other, to consider that the service in question is not necessary in order to apply the normal legal framework applicable to public service obligations in the aviation sector.

⁽¹⁸⁾ Commission Communication on guidelines on regional State aid (OJ C 74, 10.3.1998). Reference to such regional aid is also made in paragraph 36 of the guidelines on State aid in the aviation sector. See also footnote 5.

⁽¹⁹⁾ Comments from the Spanish authorities sent by letter of 18 March 2003 registered at the Secretariat-General of the Commission on 19 March 2003.

- (97) In the absence of compliance with the procedure established in Article 4 of Regulation (EEC) No 2408/92, the proportionality of the aid also cannot be confirmed. The Spanish authorities consider that the amount of the subsidy granted is less than the deficit run up in the months during which the service was operated and that there has therefore not been any overcompensation. The Commission does not dispute that the amount of aid is less than the deficit for the service, but it does consider that, in the absence of objective means for establishing the level of compensation pursuant to the mandatory rules laid down by the Council, it cannot be ruled out that other companies would have been able to offer the service in question with a lower level of subsidy.
- (98) As is clear from the Court's case law ⁽²⁰⁾, a joint assessment of compatibility must be carried out where certain arrangements of the aid contravene specific provisions of the EC Treaty other than Articles 87 and 88, and are inextricably linked to the object of the aid in such a manner that it is impossible to evaluate them separately. In such a situation, the conditions of these other provisions would be added to the compatibility requirements arising from Article 86(2) of the EC Treaty. In addition, it is clear that a State aid procedure must never lead to a result which is contrary to the specific provisions of the Treaty ⁽²¹⁾, or to Community regulations adopted on the basis of such provisions.
- (99) In the case at issue, the procedure in Article 4 of Regulation (EEC) No 2408/92 is inextricably linked to the aid. In accordance with this case law, it is not possible to declare aid compatible if the arrangements for granting it have not complied with Article 4 of Regulation (EEC) No 2408/92. Furthermore, the last sentence of Article 86(2) of the Treaty also contains an additional requirement: 'the development of trade must not be affected to such an extent as would be contrary to the interests of the Community'. The Commission considers that, in a case such as this, it would be contrary to the Community interest to authorise aid which has been granted in breach of Regulation (EEC) No 2408/92.
- (100) Consequently, the aid in question cannot be declared to be compatible with Article 86(2) of the Treaty.

Start-up aid

- (101) In recital 278 of Commission Decision 2004/393/EC of 12 February 2004 concerning advantages granted by the Walloon Region and Brussels South Charleroi airport to the airline Ryanair in connection with its establishment at Charleroi ⁽²²⁾, the Commission considers that aid measures that allow the development and better operation of regional airport infrastructures that are currently under-used and represent a cost to the local community may be of interest at European Community level and form part of the objectives of the common transport policy.
- (102) In this Decision, the Commission considered that certain operational aid intended to help the launch of new airlines or strengthen certain frequencies may be a necessary tool for the development of small regional airports. The measures may indeed persuade the interested companies to take the risk of investing in new routes. However, in order to declare such aid compatible on the basis of Article 87(3)(c) of the Treaty, it should be determined whether this aid is necessary and in proportion to the objectives sought, and whether it affects trade to an extent that is contrary to the common interest.
- (103) Operating aid is rarely likely to be declared compatible with the common market as it usually distorts conditions of competition in the areas where it is granted, without however being capable, because of its very nature, of achieving any of the aims laid down by the exemption provisions in the Treaty. In fact, as it does not involve any technical or structural alteration to the business and favours only its commercial development, it only allows the business to offer artificially favourable conditions to its clients and to increase its profit margin without justification.

⁽²⁰⁾ Judgment of 22 March 1977, Case 74/76, *Iannelli*, [1977] ECR 557.

⁽²¹⁾ Judgment of 15 June 1993, Case C-225/91, *Matra v Commission* [1993] ECR I-3203.

⁽²²⁾ OJ L 137, 30.4.2004, p. 1.

- (104) There are, however, a number of exceptions to this principle and the Commission has in the past declared this type of aid compatible, provided certain conditions are met ⁽²³⁾.
- (105) In order to declare such aid compatible on the basis of Article 87(3)(c), it is therefore necessary to determine whether the aid paid in the case at issue is necessary and proportionate to the objective sought and whether it does not affect trade to a degree which is contrary to the common interest.

Aim of the measure and presence of Community interest

- (106) The first condition for granting start-up aid is that it forms part of a coherent airport development project and reflects a willingness to develop the profitability of infrastructures that are not always profitable.
- (107) The promotion of regional development, tourism, the local economy or the regional image will therefore be no more than a spin-off of this coherent policy intended first and foremost to develop airport activities on a long-term basis.
- (108) Regional airports could also provide a solution to one problem of transport policy: that of capacity saturation at major airports ⁽²⁴⁾.
- (109) In this case, no information suggests that other companies wishing to start up routes between Gerona and other destinations have had access to similar aid. The Commission has not been informed about the existence of any such project for the development of airport activities. The Spanish authorities merely state that Gerona airport did not have any scheduled flights until the establishment of the service between Gerona and Madrid.

The need for aid

- (110) The Commission defined the criterion of the need for aid in the *Ryanair* Decision ⁽²⁵⁾. In this respect, start-up aid must be essential for the development of the airport. Certain conditions must be met.
- (111) Firstly, the aid granted to the airlines should apply only to the opening of new routes or new frequencies, generating an increase in the net volume of passengers departing from the regional airport, so that part of the risk borne by the company is taken on.
- (112) Secondly, the aid should not be paid where the route is already being operated: the risk being run by the company is less, maybe even zero, and the need for aid is not justified. Thus, when a company already operates a route from an airport, it will not be able to benefit from public aid.
- (113) Thirdly, aid must not be paid to an airline for any new route that it starts operating in substitution for, and following the abandonment of, an old route that had previously benefited from start-up aid. All other things being equal, the airport would not have any net positive effect in terms of the number of passengers arriving at its site. Furthermore, the aid could not be granted for a route provided by the company in replacement for another route that it had previously served from another airport located in the same economic catchment area or population centre. The Commission in fact considers it essential that start-up aid does not create any spiral subsidy, for example through such relocations of routes once the maximum aid has been granted. Such a practice would in fact run contrary to the whole objective of start-up aid, which is development of the airport concerned in keeping with the common interest.

⁽²³⁾ *Ryanair* Decision, recital 281.

⁽²⁴⁾ *Ryanair* Decision, recital 287 to 296.

⁽²⁵⁾ *Ryanair* Decision, recitals 298 to 307.

- (114) Fourthly, aid must not be intended to assist a new entrant to open links that are already open and enter into direct competition with an existing operator already working on that route from the airport. The new arrival must rely on its own strength alone, and not on public aid, to compete with an existing operator.
- (115) With regard to the first, second and fourth conditions, it should be pointed out that the Gerona–Madrid–Gerona route was being operated by another company until 28 October 2001, but that the company abandoned the service as unprofitable. The route was not being operated by another carrier at the time of conclusion of the contract between the public authorities concerned and Intermed on 26 March 2002. However, another operator, Air Catalunya, started operating the same link a few days later, on 3 April 2002. Intermed started operating on 15 April 2002. The fact that the two companies started operating the Gerona–Madrid–Gerona route 12 days apart makes it impossible to determine clearly and definitively whether the service provided by Intermed can be considered to be a new route.
- (116) The third condition is met in the case at issue since the Madrid–Gerona–Madrid route was the first operated by Intermed.
- (117) The start-up expenditure on marketing and advertising to make the route known may be considered to be necessary in view of its aim, which is to inform the general public about the existence of such an air route.

The incentive nature of the aid

- (118) Aid must have an incentive effect: it must allow a business to develop an activity that it would not have embarked upon without public support. This activity, however, must prove itself to be profitable without aid in the long term. For this reason, aid intended for launching new connections or for increasing frequencies must be limited in time. Aid is used to launch a new route, but it cannot maintain the route artificially: routes must eventually be economically viable.
- (119) The Commission has considered that, in the framework of start-up aid in the aviation sector ⁽²⁶⁾, a maximum period of five years following the opening of each connection is reasonable, in particular for intra-European, point-to-point links.
- (120) In the case at issue, the part-funding of the Gerona–Madrid route and the publicity measures are limited in time (the contract was valid for three years), in particular until the route in question has been consolidated and achieves profitability itself or because another air operator, without public aid or any other State funding, establishes an air service between Gerona and Madrid which has the same characteristics as the service covered by the contract concerned as regards, in particular, the type of aircraft, frequency, fares and service period.

Proportionality of the aid

- (121) Proportionality must be established in the form of two links between the aid and its context. Firstly, there must be a strict link between the aim of the airport development, via the net growth of passenger traffic, and the level of aid paid to the airline. The total aid must therefore be calculated per passenger. An airline that cannot deliver to an airport the volume of passengers necessary for its development will not therefore be unduly favoured. Conversely, a company that meets the targets that make development of the airport possible will reap the benefit.

⁽²⁶⁾ Ryanair Decision, recitals 312 to 314.

- (122) The second link which must be assessed with regard to proportionality between the aid and the costs incurred by its beneficiary. The Commission points out that the aid intensity, which the Commission limits to 50 % in the case of start-up aid, does not apply to all the operating costs, net of receipts, of the airline concerned.
- (a) The only costs eligible for start-up aid are the additional start-up costs that the air operator would not have to bear once 'cruising speed' is reached and that require a public contribution in order to share the risk of non-viability linked to the start-up period. In the case of Intermed, they concern, for example, the marketing and advertising costs incurred at the outset for making the link known, and the start-up costs borne by Intermed at the Gerona site.
- (b) Conversely, aid cannot be granted in relation to Intermed's standard operational costs such as hire or depreciation of aircraft, fuel, crew salaries or catering service costs.

Transparency, equal treatment of operators and non-discrimination in granting of aid

- (123) The amount of aid granted to an airline for the development of air services must be transparent. For example, it should be calculated per embarking passenger in order to be easily identified and identifiable.
- (124) The fact that an airport is ready to grant aid in return for economic services such as the launch of new routes must be publicised in order to make it possible for the interested airlines to present themselves and stake their claim. The rules and principles relating to procurement contracts and concessions should therefore be observed where applicable.
- (125) Objective criteria must be developed by any airport wishing to encourage development of air services in terms of maximum totals and periods for aid, in order to ensure equal treatment between airlines.
- (126) Appeal procedures must be provided at Member State level in order to ensure that no discrimination is exercised in the granting of aid and that no airline is favoured unfairly at a given airport.

Penalties and repayment mechanisms

- (127) Penalty mechanisms must be implemented as and when a carrier fails to keep to the undertakings that it has made in relation to an airport when the aid is paid. A system for recovering aid may allow the airport to ensure that the airline is honouring its commitments. The contract in the case at issue does in fact contain a mechanism for recovering aid if Intermed does not honour its commitments.

Overlapping with other aid

- (128) The aid granted cannot in principle be combined with other subsidies received by air carriers if it is aid of a social nature or compensation for public services defined as aid. Neither may it, in accordance with the rules of proportionality described above, be combined with other aid for the same costs, including aid paid in another State. The sum total of aid from which a new route benefits must never exceed 50 % of the start-up costs for the destination in question.
- (129) In order to preserve the incentive character of start-up aid for air links over time as a development tool for regional airports only, the Commission believes it necessary to ensure that such aid cannot give any indirect advantage to large airports already largely open to international traffic and competition. Specific attention should therefore be paid to limiting eligible costs when an airline links Gerona (in this case) with a major airport such as Madrid.
- (130) In addition, such aid cannot be granted when access to a route has been reserved for one carrier only under Article 4 of Regulation (EEC) No 2408/92, and in particular paragraph 1(d) of that Article.

- (131) In the case at issue, Intermed does not receive, for its routes from Gerona, subsidies by way of social aid or compensation for public services, as referred to above. Nor is access to the route operated by Intermed from Gerona reserved for this carrier alone under a tender procedure as provided for in Article 4 of Regulation (EEC) No 2408/92.

Description of measures required to be undertaken by the Member State concerned in order to make the aid compatible

- (132) The Commission notes that the aid paid by the Autonomous Government of Catalonia, the Gerona Regional Council, and the Chamber of Commerce and Industry of Gerona to Intermed fulfils some of the conditions applicable to start-up aid intended to promote air services operating out of regional airports, but that others have not been fulfilled and that conditions must therefore be imposed in certain cases to ensure compatibility.

- (133) The amounts paid by the Autonomous Government of Catalonia, the Gerona Regional Council, and the Chamber of Commerce and Industry of Gerona as funding for the air service between Gerona and Madrid are considered to be compatible with the common market as start-up aid for new routes, subject to the following conditions:

- (a) The contributions must form part of a programme for the development of Gerona airport;
- (b) All of the contributions must be subject to a time limit. This period will not exceed a maximum of five years following the opening of the route in question.
- (c) These contributions may not be paid if the aid is intended to help a new entrant to open links that are already open and to enter into direct competition with an existing operator who is already operating this route under similar conditions departing from Gerona airport.
- (d) The contributions must be justified by means of a development plan established by Intermed and validated beforehand by the competent authorities for the route concerned. This plan will specify the costs incurred and eligible, which must be directly concerned with the promotion of the route in order to make it viable without aid following the termination of the contract. Eligible costs are those directly related to the start-up, as described in recital 122 to this Decision. The competent authorities will, if necessary, be assisted by an independent auditor during this task.
- (e) The sum total of aid from which a new route benefits must never exceed 50 % of the start-up and advertising costs for the destination in question. Similarly, the contributions paid may not exceed 50 % of the actual costs in connection with this destination.
- (f) Any contributions paid by the Autonomous Government of Catalonia, the Gerona Regional Council, and the Chamber of Commerce and Industry of Gerona which, at the end of the start-up period provided for in the contract, prove to have exceeded the criteria thus laid down must be reimbursed by Intermed.
- (g) Spain must establish a non-discriminatory, transparent aid scheme to ensure equal treatment for airlines wishing to develop new air services departing from Gerona airport, in accordance with the objective criteria established by this Decision.

- (134) Should these conditions not be met, Spain must recover all of the corresponding aid referred to in the above recital.

VI. CONCLUSIONS

The Commission concludes that Spain has unlawfully implemented aid for the airline Intermediación Aérea SL in breach of Article 88(3) of the Treaty. However, in view of the contribution which this aid may make toward launching new air transport services and the lasting development of a regional airport, part of the aid may be declared to be compatible with the common market, subject to the conditions set out in recital 133,

HAS ADOPTED THIS DECISION:

Article 1

The State aid implemented by the Kingdom of Spain for the airline Intermediación Aérea SL, amounting to EUR 919 879,98, on the one hand, and EUR 120 202 on the other, is hereby declared to be compatible with the common market on the basis of Article 87(3)(c) as start-up aid for new routes, subject to the following conditions.

Article 2

1. The contributions shall form part of a programme for the development of Gerona airport.
2. All of the contributions shall be subject to a time limit. This period shall not exceed a maximum of five years following the opening of the route in question.
3. These contributions may not be paid if the aid is intended to help a new entrant to open links which are already open and to enter into direct competition with an existing operator who is already operating this route under similar conditions departing from Gerona airport.
4. The contributions shall be justified by means of a development plan established by Intermed and validated beforehand by the competent authorities for the route concerned. This plan shall specify the costs incurred and eligible, which must be directly concerned with the promotion of the route in order to make it viable without aid when the contract between Intermed and the Autonomous Government of Catalonia, the Gerona Regional Council and the Chamber of Commerce and Industry of Gerona expires.
5. The eligible costs, directly related to start-up, shall meet the following conditions:
 - (a) they shall cover the additional start-up costs which the airline would not have had to bear if it had been fully operational and which require a public contribution in order to share the risk of non-viability linked to the start-up period;
 - (b) conversely, they shall not cover standard operational costs such as hire or depreciation of aircraft, fuel, crew salaries or catering service costs.

The competent authorities shall, if necessary, be assisted by an independent auditor during this task.

6. The total sum of aid from which a new route benefits shall never exceed 50 % of the start-up and advertising costs for the destination in question. Similarly, the contributions paid may not exceed 50 % of the actual costs in connection with this destination.

7. Any contributions paid by the Autonomous Government of Catalonia, the Gerona Regional Council and the Chamber of Commerce and Industry of Gerona which, at the end of the start-up period provided for in the contract, prove to have exceeded the criteria thus laid down shall be reimbursed by Intermed.

8. Spain shall establish a non-discriminatory, transparent aid scheme to ensure equal treatment for airlines wishing to develop new air services departing from Girona airport, in accordance with the objective criteria laid down in this Decision.

Article 3

1. The Kingdom of Spain shall take all necessary measures to recover, from the beneficiary, aid which is incompatible with the common market as referred to in Article 2 and unlawfully made available.

2. Recovery shall take place immediately in accordance with the procedures of national law, provided that they permit the immediate, effective implementation of this Decision. The aid recovered shall include interest compounded from the date on which the aid is made available to the beneficiary until the date of recovery. The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent in the framework of regional aid.

Article 4

The Kingdom of Spain shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with it.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 20 October 2004.

For the Commission
Loyola DE PALACIO
Vice-President

DECISION No 2/2005
of 30 March 2005
of the Committee established under the Agreement on Mutual Recognition between the EC and the
Swiss Confederation on amending Chapter 3 of Annex 1
(2005/352/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Mutual Recognition in relation to Conformity Assessment (the Agreement) signed on 21 June 1999, and in particular Article 10(4)(e) and 18(2) thereof;

Whereas by means of Ordinance of EDI of 27 March 2002 on the safety of toys (RO 2002 1082) as last amended on 2 October 2003 (RO 2003 3733), the Swiss Confederation has amended its legislative, regulatory and administrative provisions relating to toys in such a way that those provisions can be deemed equivalent under Article 1(2) of the Agreement to the corresponding European Community legislation;

Whereas Chapter 3, (Toys), of Annex 1 should be amended to reflect this;

Whereas according to Article 10(4)(e) and 18(2), the Committee may modify Annex 1 to this Agreement,

HAS DECIDED AS FOLLOWS:

1. Chapter 3, Toys, Annex I, Section I, to the Agreement is amended in accordance with the provisions set out in the Annex to this Decision.
2. This Decision, done in duplicate, shall be signed by the Co-Chairs or other persons authorised to act on behalf of the Parties. This Decision shall be effective from the date of the latter of these signatures.

Done at Bern, 30 March 2005.

On behalf of the Swiss Confederation

Heinz HERTIG

Done at Brussels, 23 March 2005.

On behalf of the European Community

Joanna KIOUSSI

ANNEX

AMENDMENTS TO THE AGREEMENT

In Annex 1, Product Sectors, Chapter 3, (Toys), Section I, (Legislative, regulatory and administrative provisions), 'Provisions covered by Article 1(1)' is deleted and replaced by 'Provisions covered by Article 1(2)'.

In Annex 1, Product Sectors, Chapter 3, Toys, Section I, in the list headed 'Switzerland', the Swiss legal references should be deleted and replaced by the following list:

'Federal Law of 9 October 1992 on foodstuffs and commodities (RO 1995 1469) as last amended on 21 March 2003 (RO 2003 4803)

Ordinance of 1 March 1995 on commodities (RO 1995 1643) as last amended on 15 December 2003 (RO 2004 1111)

Ordinance of EDI of 27 March 2002 on the safety of toys (RO 2002 1082) as last amended on 2 October 2003 (RO 2003 3733)'.

Information relating to the entry into force of the Agreement between the European Community and the Government of the People's Republic of China and on cooperation and mutual administrative assistance in customs matters

The Agreement between the European Community and the Government of the People's Republic of China and on cooperation and mutual administrative assistance in customs matters ⁽¹⁾, entered into force on 1 April 2005, the procedures provided for in Article 22 of the Agreement having been completed on 17 March 2005.

⁽¹⁾ OJ L 375 of 23.12.2004, p. 20.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 663/2005 of 28 April 2005 fixing the rates of the refunds applicable to certain cereal and rice products exported in the form of goods not covered by Annex I to the Treaty

(Official Journal of the European Union L 108 of 29 April 2005)

On page 27 the Annex is replaced by the following Annex:

‘ANNEX

Rates of the refunds applicable from 29 April 2005 to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty ⁽¹⁾

(EUR/100 kg)

CN code	Description of products ⁽²⁾	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
1001 10 00	Durum wheat:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases	—	—
1001 90 99	Common wheat and meslin:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	—	—
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– – in other cases	—	—
1002 00 00	Rye	—	—
1003 00 90	Barley		
	– where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– in other cases	—	—
1004 00 00	Oats	—	—
1005 90 00	Maize (corn) used in the form of:		
	– starch:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	4,139	4,139
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	1,178	1,178
	– – in other cases	4,139	4,139
	– glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 ⁽³⁾ :		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	3,104	3,104
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	0,884	0,884
	– – in other cases	3,104	3,104
	– where goods falling within subheading 2208 ⁽⁴⁾ are exported	1,178	1,178
	– other (including unprocessed)	4,139	4,139
	Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize:		
	– where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	3,800	4,139
	– where goods falling within subheading 2208 ⁽⁴⁾ are exported	1,178	1,178
	– in other cases	4,139	4,139

⁽¹⁾ The rates set out in this Annex are not applicable to exports to Bulgaria, with effect from 1 October 2004, and to the goods listed in Tables I and II to Protocol No 2 the Agreement between the European Community and the Swiss Confederation of 22 July 1972 exported to the Swiss Confederation or to the Principality of Liechtenstein with effect from 1 February 2005.

(EUR/100 kg)

CN code	Description of products ⁽²⁾	Rate of refund per 100 kg of basic product	
		In case of advance fixing of refunds	Other
ex 1006 30	Wholly milled rice:		
	– round grain	—	—
	– medium grain	—	—
	– long grain	—	—
1006 40 00	Broken rice	—	—
1007 00 90	Grain sorghum, other than hybrid for sowing	—	—

⁽²⁾ As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E to Commission Regulation (EC) No 1520/2000 shall be applied (OJ L 177, 15.7.2000, p. 1).

⁽³⁾ The goods concerned fall in under CN code 3505 10 50.

⁽⁴⁾ Goods listed in Annex III to Regulation (EC) No 1784/2003 or referred to in Article 2 of Regulation (EEC) No 2825/93 (OJ L 258, 16.10.1993, p. 6).

⁽⁵⁾ For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.