

Official Journal

of the European Union

L 185



English edition

Legislation

Volume 52

17 July 2009

Contents

I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

REGULATIONS

- ★ **Council Regulation (EC) No 625/2009 of 7 July 2009 on common rules for imports from certain third countries (Codified version)** 1
- ★ **Council Regulation (EC) No 626/2009 of 13 July 2009 concluding the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of certain graphite electrode systems originating in India** 16
- Commission Regulation (EC) No 627/2009 of 16 July 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables 19
- Commission Regulation (EC) No 628/2009 of 16 July 2009 on the issuing of import licences for applications lodged during the first seven days of July 2009 under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat 21

II *Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory*

DECISIONS

Council

2009/552/EC, Euratom:

★ Council Decision of 16 July 2009 appointing a new Member of the Commission of the European Communities	23
---	----

Commission

2009/553/EC:

★ Commission Decision of 24 March 2009 on the measure C 52/07 (ex NN 64/07) implemented by Spain for the Plan to support the textile and clothing industry (notified under document number C(2009) 2017) ⁽¹⁾	24
--	----



⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 625/2009

of 7 July 2009

on common rules for imports from certain third countries

(Codified version)

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 instruments establishing the common organisation of agricultural markets and to the instruments concerning processed agricultural products adopted in pursuance of Article 308 of the Treaty, in particular the provisions of those instruments which allow for derogation from the general principle that all quantitative restrictions or measures having equivalent effect may be replaced solely by the measures provided for in those same instruments,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries⁽¹⁾ has been substantially amended several times⁽²⁾. In the interests of clarity and rationality the said Regulation should be codified.
- (2) The common commercial policy should be based on uniform principles.
- (3) Under Article 14 of the Treaty, the internal market comprises since 1 January 1993 an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.
- (4) Completion of the common commercial policy as it pertains to rules for imports is the only means of ensuring that the rules applying to the Community's trade with third countries correctly reflect the integration of the markets.

(5) Greater uniformity in the rules for imports should be achieved by laying down, as far as possible given the particular features of the economic system in the third countries in question, provisions similar to those applied under the common rules for other third countries.

(6) The common rules applicable to imports also apply to coal and steel products, without prejudice to any measures implementing an agreement relating specifically to such products.

(7) The liberalisation of imports, namely the absence of any quantitative restrictions, should therefore form the starting point for the Community rules.

(8) In the case of some products, the Commission should examine import terms and conditions, import trends, the various aspects of the economic and commercial situation, and the measures, if any, to be taken.

(9) For those products, it may become apparent that there should be Community surveillance over certain of these imports.

(10) It is for the Commission and the Council to adopt the safeguard measures called for by the interests of the Community with due regard for existing international obligations.

(11) Surveillance or safeguard measures confined to one or more regions of the Community may nevertheless prove more suitable than measures applying to the whole Community. However, such measures should be authorised only exceptionally and where no alternative exists. It is necessary to ensure that such measures are temporary and cause the minimum of disruption to the operation of the internal market.

(12) If Community surveillance is applied, release for free circulation of the products concerned should be made subject to presentation of a surveillance document

⁽¹⁾ OJ L 67, 10.3.1994, p. 89.

⁽²⁾ See Annex III.

meeting uniform criteria. That document should, on simple application by the importer, be issued by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import. The surveillance document should therefore be valid only during such period as the import rules remain unchanged.

- (13) In the interests of good administrative management and to assist Community operators, the content and layout of the surveillance document should be aligned as far as possible with the common import licence forms provided for in Commission Regulation (EC) No 738/94 of 30 March 1994 laying down certain rules for the implementation of Council Regulation (EC) No 520/94 establishing a Community procedure for administering quantitative quotas ⁽¹⁾; Commission Regulation (EC) No 3168/94 of 21 December 1994 establishing in the field of application of Council Regulation (EC) No 517/94 on common rules for imports of textile products from third countries not covered by bilateral agreements, protocols or other arrangements or by other specific Community import rules a Community import licence ⁽²⁾; and Commission Regulation (EC) No 3169/94 of 21 December 1994 amending Annex III to Council Regulation (EEC) No 3030/93 on common rules for imports of certain textile products from third countries and establishing in the field of application of the Regulation a Community import licence ⁽³⁾, bearing in mind the technical characteristics of the surveillance document.
- (14) It is in the interests of the Community that the Member States and the Commission should make as full as possible an exchange of information resulting from Community surveillance.
- (15) It is necessary to adopt precise criteria for assessing possible injury and to introduce an investigation while still allowing the Commission to introduce appropriate measures in urgent cases.
- (16) To this end, detailed provisions should be introduced on the opening of investigations, on the checks and inspections required, on the hearing of those concerned, the treatment of information obtained and the criteria for assessing injury.
- (17) The provisions on the investigations introduced by this Regulation do not prejudice Community or national rules concerning professional secrecy.
- (18) It is also necessary to set time-limits for the initiation of investigations and for determinations as to whether, or not, measures are appropriate, with a view to ensuring

that such determinations are made quickly, in order to increase legal certainty for the economic operators concerned.

- (19) In the interests of uniformity in rules for imports, the formalities to be carried out by importers should be simplified and should be identical regardless of the place where the goods clear customs. It is therefore desirable to provide that any formalities should be carried out using forms corresponding to the specimen annexed to this Regulation.
- (20) Surveillance documents issued in connection with Community surveillance measures should be valid throughout the Community, irrespective of the Member State of issue.
- (21) The textile products falling under Council Regulation (EC) No 517/94 of 7 March 1994 on common rules for imports of textile products from certain third countries not covered by bilateral agreements, protocols or other arrangements, or by other specific Community import rules ⁽⁴⁾ are subject to specific treatment at Community and international levels. They should therefore be completely excluded from the scope of this Regulation,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PRINCIPLES

Article 1

1. This Regulation applies to imports of products originating in the third countries referred to in Annex I, with the exception of textile products covered by Regulation (EC) No 517/94.
2. Imports into the Community of the products referred to in paragraph 1 shall take place freely and so shall not be subject to any quantitative restrictions, without prejudice to the measures which may be taken under Chapter V.

CHAPTER II

COMMUNITY INFORMATION AND CONSULTATION PROCEDURE

Article 2

The Commission shall be informed by the Member States if trends in imports appear to call for surveillance or safeguard measures. This information shall contain the available evidence on the basis of the criteria laid down in Article 8. The Commission shall pass on this information to all Member States forthwith.

⁽¹⁾ OJ L 87, 31.3.1994, p. 47.

⁽²⁾ OJ L 335, 23.12.1994, p. 23.

⁽³⁾ OJ L 335, 23.12.1994, p. 33.

⁽⁴⁾ OJ L 67, 10.3.1994, p. 1.

Article 3

1. Consultations may be held either at the request of a Member State or on the initiative of the Commission.

2. Consultations shall take place within eight working days following receipt by the Commission of the information provided for in Article 2 and, in any event, before the introduction of any Community surveillance or safeguard measure.

Article 4

1. Consultations shall take place within an advisory committee, hereinafter referred to as 'the Committee', made up of representatives of each Member State with a representative of the Commission as chairman.

2. The Committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Consultations shall cover in particular:

(a) terms and conditions of import, import trends, and the various aspects of the economic and commercial situation as regards the product in question;

(b) matters concerning the administration of the trade agreements between the Community and the third countries referred to in Annex I;

(c) the measures, if any, to be taken.

4. Consultations may be conducted in writing, if necessary. The Commission shall in this event inform the Member States, which may express their opinion or request oral consultations within a period of five to eight working days to be decided by the Commission.

CHAPTER III

COMMUNITY INVESTIGATION PROCEDURE

Article 5

1. Where, after the consultations referred to in Articles 3 and 4, it is apparent to the Commission that there is sufficient evidence to justify an investigation, the Commission shall initiate an investigation within one month of receipt of information from a Member State and publish a notice in the *Official Journal of the European Union*. This notice shall:

(a) give a summary of the information received, and provide that all relevant information is to be communicated to the Commission;

(b) state the period within which interested parties may make known their views in writing and submit information, if such views and information are to be taken into account during the investigation;

(c) state the period within which interested parties may apply to be heard orally by the Commission in accordance with paragraph 4.

The Commission shall commence the investigation, acting in cooperation with the Member States.

2. The Commission shall seek all information it deems to be necessary and, where it considers it appropriate, after consulting the Committee, endeavour to check this information with importers, traders, agents, producers, trade associations and organisations.

The Commission shall be assisted in this task by staff of the Member State on whose territory these checks are being carried out, provided this Member State so wishes.

Interested parties which have made themselves known in accordance with the first subparagraph of paragraph 1, as well as the representatives of the exporting country, may inspect all information made available to the Commission within the framework of the investigation, as distinct from internal documents prepared by the authorities of the Community or its Member States, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 7 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission indicating the information required.

3. Member States shall supply the Commission, at its request and following procedures laid down by it, with the information at their disposal on developments in the market of the product being investigated.

4. The Commission may hear the interested parties. Such parties must be heard where they have applied in writing within the period laid down in the notice published in the *Official Journal of the European Union*, showing that they are actually likely to be affected by the outcome of the investigations and that there are special reasons for them to be heard orally.

5. Where information is not supplied within the time-limits set by this Regulation or by the Commission under this Regulation, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Commission finds that any interested party or third party has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.

6. Where it appears to the Commission, after the consultations referred to in paragraph 1, that there is insufficient evidence to justify an investigation, it shall inform the Member States of its decision within one month of receipt of the information from the Member States.

Article 6

1. At the end of the investigation, the Commission shall submit a report on the results to the Committee.

2. Where, within nine months of the initiation of the investigation, the Commission considers that no Community surveillance or safeguard measures are necessary, the investigation shall be terminated, within one month, after consulting the Committee. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefore, shall be published in the *Official Journal of the European Union*.

3. If the Commission considers that Community surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Chapters IV and V, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time-limit may be extended by a further maximum period of two months. The Commission shall then publish a notice in the *Official Journal of the European Union* setting forth the duration of the extension and a summary of the reasons therefore.

4. The provisions of this Chapter shall not preclude the taking, at any time, of surveillance measures in accordance with Articles 9 to 14 or, where a critical situation, in which any delay would cause injury which it would be difficult to remedy, calls for immediate intervention, safeguard measures in accordance with Articles 15, 16 and 17.

The Commission shall immediately take the investigation measures it considers to be still necessary. The results of the investigation shall be used to re-examine the measures taken.

Article 7

1. Information received in pursuance of this Regulation shall be used only for the purpose for which it was requested.

2. The Council, the Commission, the Member States and the officials of any of these, shall not reveal any information of a confidential nature received in pursuance of this Regulation, or any information provided on a confidential basis, without specific permission from the supplier of such information.

3. Each request for confidentiality shall state the reasons why the information is confidential.

However, if it appears that a request for confidentiality is unjustified and if the supplier of the information wishes neither to make it public nor to authorise its disclosure in general terms

or in the form of a summary, the information concerned may be disregarded.

4. Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

5. Paragraphs 1 to 4 shall not preclude reference by the Community authorities to general information and in particular to reasons on which decisions taken in pursuance of this Regulation are based. These authorities must, however, take into account the legitimate interests of the legal and natural persons concerned that their business secrets should not be divulged.

Article 8

1. Examination of the trend in imports, of the conditions in which they take place and of the serious injury or threat of serious injury to Community producers resulting from such imports shall cover in particular the following factors:

- (a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Community;
- (b) the price of the imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Community;
- (c) the consequent impact on the Community producers of similar or directly competitive products as indicated by trends in certain economic factors such as:
 - production,
 - utilisation of capacity,
 - stocks,
 - sales,
 - market share,
 - prices (i.e. depression of prices or prevention of price increases which would normally have occurred),
 - profits,
 - return on capital employed,
 - cash flow,
 - employment,

2. In conducting the investigation, the Commission shall take account of the particular economic system of the countries referred to in Annex I.

3. Where a threat of serious injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

- (a) the rate of increase of the exports to the Community;
- (b) the export capacity in the country of origin or export, already in existence or which will be operational in the foreseeable future, and the likelihood that the resulting exports will be to the Community.

CHAPTER IV

SURVEILLANCE

Article 9

1. Where the Community's interests so require, the Commission may, at the request of a Member State or on its own initiative:

- (a) decide to introduce retrospective Community surveillance of certain imports, in accordance with the procedure laid down by the Commission;
- (b) decide, for the purposes of monitoring the trend of these imports, to make certain imports subject to prior Community surveillance, in accordance with Article 10.

2. The surveillance measures shall have a limited period of validity. Unless otherwise stipulated they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

Article 10

1. Products under prior Community surveillance may be put into free circulation only on production of a surveillance document. That document shall be issued by the competent authority designated by Member States, free of charge, for any quantity requested and within a maximum of five working days following receipt by the national competent authority of an application by any Community importer, regardless of his place of business in the Community. That application shall be deemed to be received by the national competent authority no later than three working days after submission, unless it is proven otherwise.

2. The surveillance document shall be made out on a form corresponding to the model in Annex II.

Except where the decision to impose surveillance provides otherwise, the importer's application for a surveillance document shall contain only the following:

- (a) the full name and address of the applicant (including telephone and fax numbers and any number identifying the applicant to the competent national authority), plus the applicant's VAT registration number if he is liable for VAT;
- (b) where appropriate, the full name and address of the declarant or of any representative appointed by the applicant (including telephone and fax numbers);
- (c) a description of the goods giving their:
 - trade name,
 - combined nomenclature code,
 - place of origin and place of consignment,
- (d) the quantity declared, in kilograms and, where appropriate, any other additional units (pairs, items, etc.);
- (e) the value of the goods, cif at Community frontier, in euro;
- (f) the following statement, dated and signed by the applicant, with the applicant's name spelt out in capital letters:

'I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Community.'

3. The surveillance document shall be valid throughout the Community, regardless of the Member State of issue.

4. A finding that the unit price at which the transaction is effected exceeds that indicated in the surveillance document by less than 5 % or that the total value or quantity of the products presented for import exceeds the value or quantity given in the surveillance document by less than 5 %, shall not preclude the release for free circulation of the product in question. The Commission, having heard the opinions expressed in the Committee and taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 %.

5. Surveillance documents may be used only for such time as arrangements for the liberalisation of imports remain in force in respect of the transactions concerned. The surveillance documents may not in any event be used beyond the expiry of the period which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance, and which shall take account of the nature of the products and other special features of the transactions.

6. Where the decision taken under Article 9 so requires, the origin of products under Community surveillance must be proven by a certificate of origin. This paragraph shall not prejudice other provisions concerning the production of any such certificate.

7. Where the product under prior Community surveillance is subject to regional safeguard measures in a Member State, the import authorisation granted by that Member State may replace the surveillance document.

8. Surveillance document forms and extracts thereof shall be drawn up in duplicate, one copy, marked 'Holder's copy' and bearing the number 1, to be issued to the applicant, and the other, marked 'Copy for the competent authority' and bearing the number 2, to be kept by the authority issuing the document. For administrative purposes the competent authority may add supplementary copies to form 2.

9. Forms shall be printed on white paper free of mechanical pulp, dressed for writing and weighing between 55 and 65 grams per square metre. Their size shall be 210 × 297 mm. The type space between the lines shall be 4,24 mm (one sixth of an inch). The layout of the forms shall be followed precisely. Both sides of copy No 1, which is the surveillance document itself, shall in addition have a yellow printed guilloche pattern background so as to reveal any falsification by mechanical or chemical means.

10. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an indication of the printer's name and address or a mark enabling the printer to be identified.

Article 11

Where the Community's interests so require, the Commission may, at the request of a Member State or on its own initiative, if the situation referred to in Article 15(1) is likely to arise:

— limit the period of validity of any surveillance document required,

— make issue of that document subject to certain conditions and, as an exceptional measure, subject to insertion of a revocation clause, or, with the frequency and for the length of time indicated by the Commission, to the prior information and consultation procedure referred to in Article 3.

Article 12

Where import of a product has not been made subject to prior Community surveillance within a period of eight working days following the end of the consultations referred to in Article 3, the Commission may introduce, in accordance with Article 17, surveillance confined to imports into one or more regions of the Community.

Article 13

1. Products under regional surveillance may be put into free circulation in the region concerned only on production of a surveillance document. That document shall be issued by the competent authority designated by the Member State(s) concerned, free of charge, for any quantity requested and within a maximum of five working days of receipt by the national competent authority of an application by any Community importer, regardless of his place of business in the Community. That application shall be deemed to have been received by the national competent authority no later than three working days after submission, unless it is proved otherwise. Surveillance documents may be used only for such time as arrangements for imports remain liberalised in respect of the transactions concerned.

2. Article 10(2) shall apply.

Article 14

1. Member States shall communicate to the Commission within the first ten days of each month in the case of Community or regional surveillance:

- (a) in the case of prior surveillance, details of the sums of money (calculated on the basis of cif prices) and quantities of goods in respect of which surveillance documents were issued during the preceding period;
- (b) in every case, details of imports during the period preceding the period referred to in point (a).

The information supplied by Member States shall be broken down by product and by country.

Different provisions may be laid down at the same time and by the same procedure as the surveillance arrangements.

2. Where the nature of the products or special circumstances so require, the Commission may, at the request of a Member State or on its own initiative, amend the timetables for submitting this information.

3. The Commission shall inform the Member States.

CHAPTER V

SAFEGUARD MEASURES

Article 15

1. Where a product is imported into the Community in such greatly increased quantities or on such terms or conditions as to cause, or threaten to cause, serious injury to Community producers of like or directly competing products, the Commission, in order to safeguard the interests of the Community, may, acting at the request of a Member State or on its own initiative, alter the import rules for that product by providing that it may be put into free circulation only on production of an import authorisation, the granting of which shall be governed by such provisions and subject to such limits as the Commission shall lay down.

2. The measures adopted shall be communicated forthwith to the Council and the Member States and shall take effect immediately.

3. The measures referred to in this Article shall apply to every product which is put into free circulation after their entry into force. In accordance with Article 17 they may be confined to one or more regions of the Community.

However, such measures shall not prevent the release for free circulation of products already on their way to the Community provided that the destination of such products cannot be changed and that those products which, under Articles 10 and 13, may be put into free circulation only on production of a surveillance document are in fact accompanied by such a document.

4. Where intervention by the Commission has been requested by a Member State, the Commission shall take a decision within a maximum of five working days of receipt of such a request.

5. Any decision taken by the Commission under this Article shall be communicated to the Council and to the Member

States. Any Member State may, within one month following the day of communication, refer such decision to the Council.

6. If a Member State refers the decision taken by the Commission to the Council, the Council may, acting by a qualified majority, confirm, amend or revoke the decision of the Commission.

If within three months following referral of the matter to the Council the latter has not taken a decision, the measure taken by the Commission shall be deemed revoked.

Article 16

1. The Council may, in particular in the situation referred to in Article 15(1), adopt appropriate measures. It shall act by a qualified majority on a proposal from the Commission.

2. Article 15(3) shall apply.

Article 17

Where, on the basis, in particular, of the factors referred to in Article 8, it emerges that the conditions laid down for the adoption of measures under Chapter IV and Article 15 are met in one or more regions of the Community, the Commission, after having examined alternative solutions, may exceptionally authorise the application of surveillance or safeguard measures limited to the region(s) concerned if it considers that such measures applied at that level are more appropriate than measures applied throughout the Community.

Those measures must be temporary and must disrupt the operation of the internal market as little as possible.

Those measures shall be adopted in accordance with the procedures laid down in Articles 9 and 15 respectively.

Article 18

1. While any surveillance or safeguard measure applied in accordance with Chapters IV and V is in operation, the consultations within the Committee provided for in Article 3 shall be held, either at the request of a Member State or on the initiative of the Commission. The purpose of such consultations shall be:

(a) to examine the effects of the measure;

(b) to ascertain whether the application of the measure is still necessary.

2. Where, as a result of the consultations referred to in paragraph 1, the Commission considers that any surveillance or safeguard measure referred to in Chapters IV and V should be revoked or amended, it shall proceed as follows:

- (a) where the Council has taken no decision on a measure taken by the Commission, the latter shall amend or revoke such measure forthwith and shall immediately deliver a report to the Council;
- (b) in all other cases, the Commission shall propose to the Council that the measures adopted by the Council be revoked or amended. The Council shall act by a qualified majority.

Where this decision concerns regional measures of surveillance, it shall apply as from the sixth day following its publication in the *Official Journal of the European Union*.

CHAPTER VI FINAL PROVISIONS

Article 19

1. This Regulation shall not preclude the fulfilment of obligations arising from special rules contained in agreements concluded between the Community and third countries.

2. Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States of:

- (a) prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property;
- (b) special formalities concerning foreign exchange;

- (c) formalities introduced pursuant to international agreements in accordance with the Treaty.

The Member States shall inform the Commission of the measures or formalities to be introduced or amended in accordance with this paragraph. In the event of extreme urgency, the national measures or formalities in question shall be communicated to the Commission immediately upon their adoption.

Article 20

1. This Regulation shall be without prejudice to the operation of the instruments establishing the common organisation of agricultural markets or of Community or national administrative provisions derived therefrom or of the specific instruments adopted under Article 308 of the Treaty applicable to goods resulting from the processing of agricultural products. It shall operate by way of complement to those instruments.

2. In the case of products covered by the instruments referred to in paragraph 1, Articles 9 to 14 and Article 18 shall not apply to those in respect of which the Community rules on trade with third countries require the production of a licence or other import document.

Articles 15, 17 and 18 shall not apply to those products in respect of which such rules make provision for the application of quantitative import restrictions.

Article 21

Regulation (EC) No 519/94 is repealed.

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

Article 22

This Regulation shall enter into force on the 20th day following 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, 7 July 2009.

For the Council
The President
A. BORG

ANNEX I

LIST OF THIRD COUNTRIES

Armenia

Azerbaijan

Belarus

Kazakhstan

North Korea

Russia

Tajikistan

Turkmenistan

Uzbekistan

Vietnam

ANNEX II

EUROPEAN COMMUNITY

SURVEILLANCE DOCUMENT

Holder's copy	1	1. Consignee <i>(name, full address, country, VAT number)</i>		2. Issue number	
				3. Proposed place and date of import	
				4. Authority responsible for issue <i>(name, address and telephone No)</i>	
		5. Declarant/representative as applicable <i>(name and full address)</i>		6. Country of origin <i>(and geonomenclature code)</i>	
				7. Country of consignment <i>(and geonomenclature code)</i>	
	1			8. Last day of validity	
9. Description of goods			10. CN code and category		
			11. Quantity in kilograms (net mass) or in additional sets		
			12. Value in euro, cif at Community frontier		
13. Additional remarks					
14. Competent authority's endorsement Date: Signature: (Stamp)					

15. ATTRIBUTIONS			
Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto.

EUROPEAN COMMUNITY

SURVEILLANCE DOCUMENT

Copy for the competent authority	2	1. Consignee <i>(name, full address, country, VAT number)</i>		2. Issue number	
				3. Proposed place and date of import	
				4. Authority responsible for issue <i>(name, address and telephone No)</i>	
		5. Declarant/representative as applicable <i>(name and full address)</i>		6. Country of origin <i>(and geonomenclature code)</i>	
				7. Country of consignment <i>(and geonomenclature code)</i>	
	2	8. Last day of validity			
		9. Description of goods		10. CN code and category	
				11. Quantity in kilograms (net mass) or in additional sets	
				12. Value in euro, cif at Community frontier	
13. Additional remarks					
14. Competent authority's endorsement Date: Signature: (Stamp)					

15. ATTRIBUTIONS			
Indicate the quantity available in part 1 of column 17 and the quantity attributed in part 2 thereof			
16. Net quantity (net mass or other unit of measure stating the unit)		19. Customs document (form and number) or extract No and date of attribution	20. Name, Member State, stamp and signature of the attributing authority
17. In figures	18. In words for the quantity attributed		
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			
1.			
2.			

Extension pages to be attached hereto.

ANNEX III

REPEALED REGULATION WITH LIST OF ITS SUCCESSIVE AMENDMENTS

Council Regulation (EC) No 519/94
(OJ L 67, 10.3.1994, p. 89).

Council Regulation (EC) No 1921/94
(OJ L 198, 30.7.1994, p. 1).

Council Regulation (EC) No 538/95
(OJ L 55, 11.3.1995, p. 1).

Council Regulation (EC) No 839/95
(OJ L 85, 19.4.1995, p. 9).

Council Regulation (EC) No 139/96
(OJ L 21, 27.1.1996, p. 7).

Only Article 2

Council Regulation (EC) No 168/96
(OJ L 25, 1.2.1996, p. 2).

Council Regulation (EC) No 752/96
(OJ L 103, 26.4.1996, p. 1).

Council Regulation (EC) No 1897/96
(OJ L 250, 2.10.1996, p. 1).

Council Regulation (EC) No 847/97
(OJ L 122, 14.5.1997, p. 1).

Council Regulation (EC) No 1138/98
(OJ L 159, 3.6.1998, p. 1).

Council Regulation (EC) No 427/2003
(OJ L 65, 8.3.2003, p. 1).

Only Article 22(1) and (2)

Commission Regulation (EC) No 110/2009
(OJ L 37, 6.2.2009, p. 4).

ANNEX IV

CORRELATION TABLE

Regulation (EC) No 519/94	This Regulation
Article 1(1) and (2)	Article 1(1) and (2)
Article 1(4)	—
Article 2	Article 2
Article 3, first sentence	Article 3(1)
Article 3, second sentence	Article 3(2)
Article 4	Article 4
Article 5(1), introductory wording	Article 5(1), first subparagraph, introductory sentence, introductory wording
Article 5(1), point (a)	Article 5(1), first subparagraph, introductory sentence, final wording and points (a), (b) and (c)
Article 5(1), point (b)	Article 5(1), second subparagraph
Article 5(2) to (6)	Article 5(2) to (6)
Article 6	Article 6
Article 7(1)	Article 7(1)
Article 7(2), point (a)	Article 7(2)
Article 7(2), point (b), first subparagraph	Article 7(3), first subparagraph
Article 7(2), point (b), second subparagraph	Article 7(3), second subparagraph
Article 7(3)	Article 7(4)
Article 7(4)	Article 7(5)
Articles 8 to 14	Articles 8 to 14
Article 15(1) and (2)	Article 15(1) and (2)
Article 15(3), point (a)	Article 15(3), first subparagraph
Article 15(3), point (b)	Article 15(3), second subparagraph
Article 15(4), (5) and (6)	Article 15(4), (5) and (6)
Articles 16, 17 and 18	Articles 16, 17 and 18
Article 19(1)	Article 19(1)
Article 19(2), point (a), introductory wording	Article 19(2), first subparagraph, introductory wording
Article 19(2), point (a)(i), (ii) and (iii)	Article 19(2), first subparagraph, points (a), (b) and (c)
Article 19(2), point (b)	Article 19(2), second subparagraph
Article 20	Article 20
Article 21	—
Article 22	—
Article 23	—
—	Article 21
Article 24	Article 22
Annex I	Annex I
Annex IV	Annex II
—	Annex III
—	Annex IV

COUNCIL REGULATION (EC) No 626/2009**of 13 July 2009****concluding the partial interim review pursuant to Article 11(3) of Regulation (EC) No 384/96 of the anti-dumping duty on imports of certain graphite electrode systems originating in India**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Articles 9 and 11(3) thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

1. EXISTING MEASURES

- (1) Following an investigation ('the original investigation'), the Council, by Regulation (EC) No 1629/2004 ⁽²⁾ imposed a definitive anti-dumping duty on imports of certain graphite electrode systems originating in India.

1.1. Initiation of an interim review

- (2) On the request of Hindustan Electro Graphite Limited ('HEG' or 'the company'), an Indian exporting producer subject to the anti-dumping measures in force, a partial interim review of the above-mentioned Regulation was initiated pursuant to Article 11(3) of the basic Regulation.
- (3) This partial interim review was initiated based on prima facie evidence provided by the company that, as far as they were concerned, the circumstances on the basis of which measures were established had changed and that these changes were of a lasting nature.
- (4) The request alleged that the cost of production of the product concerned had reduced due to production efficiencies since the original investigation, and that the company had been able to significantly increase their export prices. They claimed therefore that the continued imposition of measures at the existing level, which were based on the level of dumping previously established, was no longer necessary to offset dumping.

- (5) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of a partial interim review, the Commission published a notice ('Notice of Initiation') ⁽³⁾ and commenced an investigation, limited in scope to the examination of dumping.

1.2. Parties concerned by the investigation

- (6) The Commission officially advised HEG, as well as the representatives of the exporting country and the Community industry, of the initiation of the review. Interested parties were given the opportunity to make their views known in writing and to request a hearing.

- (7) The Commission sent a questionnaire to the applicant and received a reply within the deadlines set for that purpose. The Commission sought and verified all the information it deemed necessary for the determination of dumping and carried out a verification visit at the premises of HEG in Bhopal, India.

1.3. Review investigation period

- (8) The investigation of dumping covered the period from 1 April 2007 to 31 March 2008 ('the review investigation period' or 'RIP').

2. PRODUCT CONCERNED AND LIKE PRODUCT**2.1. Product concerned**

- (9) The product concerned by the current review is the same as that in the original investigation, i.e. graphite electrodes of a kind used for electric furnaces, with an apparent density of 1.65 g/cm³ or more and an electrical resistance of 6.0 µΩ.m or less, falling within CN code ex 8545 11 00 and nipples used for such electrodes, falling within CN code ex 8545 90 90 whether imported together or separately, originating in India.

2.2. Like product

- (10) The current review has shown that the graphite electrode systems produced by HEG and sold on the Indian domestic market are similar to those exported to the Community and therefore could be considered to be like product to the product concerned.

⁽¹⁾ OJ L 56, 6.3.1996, p. 1.

⁽²⁾ OJ L 295, 18.9.2004, p. 10.

⁽³⁾ OJ C 164, 27.6.2008, p. 15.

3. DUMPING

3.1. Normal value

- (11) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the domestic sales of the product concerned to independent customers were representative, i.e. whether the total volume of such sales was equal to or greater than 5 % of the total volume of the corresponding export sales to the Community. The domestic sales of HEG were found to be representative during the investigation period.
- (12) The Commission then identified those product types sold domestically by that company which were identical or directly comparable with the types sold for export to the Community.
- (13) Domestic sales of a particular product type were considered as sufficiently representative when the volume of that product type sold on the domestic market to independent customers during the investigation period represented 5 % or more of the total volume of the comparable product type sold for export to the Community.
- (14) The Commission then examined whether the domestic sales of each type of graphite electrode system sold domestically in representative quantities could be considered as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of profitable domestic sales to independent customers, of each exported product type, on the domestic market during the investigation period.
- (15) For those domestic sales of each type of graphite electrode system sold domestically in representative quantities where the sales were over 80 % profitable by volume, normal value was therefore based on the actual domestic price of all transactions during the investigation period.
- (16) For all other exported types also sold on the domestic market, where the sales were less than 80 % profitable by volume, normal value was based on the domestic sales price of the profitable transactions during the investigation period.
- (17) Wherever domestic prices of a particular product type could not be used in order to establish normal value, another method had to be applied. In accordance with Article 2(3) of the basic Regulation the Commission instead calculated a constructed normal value, as follows.
- (18) Normal value was constructed by adding to the exporter's manufacturing costs of the exported types, a reasonable amount for selling, general and administrative

expenses ('SG&A expenses') and a reasonable margin of profit.

- (19) In all cases SG&A expenses and profit were established pursuant to the methods set out in Article 2(6) of the basic Regulation. To this end, the Commission examined whether the SG&A expenses incurred and the profit realised by the exporting producer on sales on the domestic market of the like product constituted reliable data and in this case determined that it was suitable to be used to construct normal value.

3.2. Export price

- (20) All export sales of the product concerned by HEG were made directly to independent customers in the Community, and therefore the export price was established on the basis of the prices actually paid or payable for the product concerned in the RIP in accordance with Article 2(8) of the basic Regulation.

3.3. Comparison

- (21) The comparison between the normal value and the export price was made on an ex-factory basis and at the same level of trade. In order to ensure a fair comparison, account was taken, in accordance with Article 2(10) of the basic Regulation, of differences in factors which were demonstrated to affect prices and price comparability. On this basis, allowances, where applicable and justified, were made for differences in rebates, transport costs, insurance, handling charges, packaging, credit costs and import duties.

3.4. Dumping margin

- (22) As provided for under Article 2(11) of the basic Regulation, the weighted average normal value by type was compared with the weighted average export price of the corresponding type of the product concerned.
- (23) HEG's dumping margin expressed as a percentage of the net, free-at-Community-frontier price, duty unpaid, was found to be de minimis in the sense of Article 9(3) of the basic Regulation.

4. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (24) In accordance with Article 11(3) of the basic Regulation, it was also examined whether the changed circumstances could reasonably be said to be of a lasting nature.
- (25) Whereas the cost of production of the company had not significantly decreased since the original investigation, the export price of the product concerned had increased substantially during the RIP, thereby removing the dumping findings of the original investigation.

- (26) Latest available data collected for the period after the RIP showed the import prices from HEG to have remained both high and stable, thereby confirming that the company continued with its non-dumping behaviour after the RIP.
- (27) It was also found that, during the RIP, exports by HEG to markets other than the EU were made at prices above prices on the Indian domestic market.
- (28) In these circumstances, the findings from the RIP can be considered to be lasting.

5. ANTI-DUMPING MEASURES

- (29) As stated above, HEG was found to be dumping at a de minimis level during the RIP. It is however noted that, while the dumping margin established for the company concerned in the original investigation was 22,4 %, the anti-dumping duty presently in force against this company is 0 % ⁽¹⁾. This results from the fact that there are parallel countervailing duties in force on imports of the product concerned. In these circumstances, the

finding of de minimis dumping has no immediate impact on the level of the measures currently in force ⁽²⁾.

6. DISCLOSURE

- (30) Interested parties were informed of the essential facts, considerations and findings of the investigation and were given an opportunity to comment. No comments were received,

HAS ADOPTED THIS REGULATION:

Article 1

The partial interim review of the anti-dumping measures applicable to imports of certain graphite electrode systems originating in India, initiated pursuant to Article 11(3) of Regulation (EC) No 384/96 is hereby concluded without amending the level of the anti-dumping measure in force.

Article 2

This Regulation shall enter into force on the day following 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, 13 July 2009.

For the Council

The President

E. ERLANDSSON

⁽¹⁾ See recital 30 of Regulation (EC) No 1629/2004.

⁽²⁾ OJ L 295, 18.9.2004, p. 4.

COMMISSION REGULATION (EC) No 627/2009**of 16 July 2009****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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 July 2009.

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

Done at Brussels, 16 July 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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	MK	26,9
	ZZ	26,9
0707 00 05	TR	114,1
	ZZ	114,1
0709 90 70	TR	103,7
	ZZ	103,7
0805 50 10	AR	52,3
	TR	53,0
	ZA	71,6
	ZZ	59,0
0808 10 80	AR	126,4
	BR	80,9
	CL	88,2
	CN	93,5
	NZ	94,7
	US	92,2
	ZA	82,1
	ZZ	94,0
0808 20 50	AR	168,4
	CL	81,3
	NZ	87,2
	ZA	101,0
	ZZ	109,5
0809 10 00	HR	90,0
	TR	182,1
	XS	103,5
	ZZ	125,2
0809 20 95	TR	332,5
	US	236,3
	ZZ	284,4
0809 30	TR	134,2
	ZZ	134,2

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 628/2009**of 16 July 2009****on the issuing of import licences for applications lodged during the first seven days of July 2009
under tariff quotas opened by Regulation (EC) No 616/2007 for poultry meat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Commission Regulation (EC) No 616/2007 of 4 June 2007 opening and providing for the administration of Community tariff quotas for poultry meat originating in Brazil, Thailand and other third countries ⁽³⁾, and in particular Article 5(5) thereof,

(1) Regulation (EC) No 616/2007 opened tariff quotas for imports of products in the poultry meat sector.

(2) The applications for import licences lodged during the first seven days of July 2009 for the subperiod 1 October to 31 December 2009 relate, for some quotas, to quantities exceeding those available. The extent to which licences may be issued should therefore be determined and an allocation coefficient laid down to be applied to the quantities applied for.

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have been lodged pursuant to Regulation (EC) No 616/2007 for the subperiod 1 October to 31 December 2009 shall be multiplied by the allocation coefficients set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 17 July 2009.

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

Done at Brussels, 16 July 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 238, 1.9.2006, p. 13.

⁽³⁾ OJ L 142, 5.6.2007, p. 3.

ANNEX

Group No	Order No	Allocation coefficient for import licence applications lodged for the subperiod from 1.10.2009-31.12.2009 (%)
1	09.4211	0,439
5	09.4215	27,345272
7	09.4217	62,153962

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 16 July 2009

appointing a new Member of the Commission of the European Communities

(2009/552/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Article 1

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 215 thereof,

Mr Karel De GUCHT is hereby appointed a Member of the Commission for the period from 17 July 2009 to 31 October 2009.

Article 2

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 128 thereof,

This Decision shall take effect on 17 July 2009.

Article 3

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

Whereas:

Done at Brussels, 16 July 2009.

in a letter dated 5 July 2009, Mr Louis MICHEL resigned from his post as a Member of the Commission with effect from 14 July 2009. He should be replaced for the remainder of his term of office,

For the Council
The President
C. BILDT

COMMISSION

COMMISSION DECISION

of 24 March 2009

on the measure C 52/07 (ex NN 64/07) implemented by Spain for the Plan to support the textile and clothing industry

(notified under document number C(2009) 2017)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2009/553/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Spanish authorities on 6 May 2008, to which they responded by letter dated 12 June 2008.

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

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

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

Whereas:

(4) On 11 September 2008, a meeting was held between the different Spanish Ministries and the Commission. The Spanish authorities provided further information by letter dated 17 September 2008.

(5) On 3 October 2008 and 19 February 2009, the Commission requested further information by e-mail, to which the Spanish authorities replied on 21 October 2008 and 20 February 2009.

1. PROCEDURE

(1) On 5 July 2006, the Commission received a complaint concerning a programme that Spain had put in place to assist its textile industry ('*Plan de apoyo al sector textil y de la confección*', hereinafter 'the Textile Plan').

(2) By letter dated 1 August 2006, the Commission requested the Spanish authorities to provide all necessary information concerning this Textile Plan, to which they replied by letter dated 29 September 2006, registered as received on 2 October 2006.

(3) On 13 November 2007, the Commission initiated the formal investigation procedure. After its publication, the Commission received comments from two interested parties, who wished to remain anonymous, on 22 February 2008 and on 9 April 2008 respectively. The Commission requested clarifications by letter dated 18 April 2008, to which the Spanish authorities replied by letter dated 30 May 2008. The Commission forwarded the interested parties' comments to the

2. DESCRIPTION OF THE RECIPIENT AND THE AID MEASURES

2.1. Objectives of the Spanish Textile Plan

(6) The aim of the Textile Plan is to assist textile companies to adjust to the full liberalisation of trade in textiles and foster their competitiveness, whilst maintaining the highest possible number of companies and jobs within the sector. The plan was also designed to offset the adverse effects of the liberalisation of trade in textile and clothing products on workers and entire areas of activity.

(7) It included direct measures to help companies (technical research, innovative projects, and export promotion). Other measures were targeted more specifically at training and recruitment issues but were also of indirect benefit to companies and helped to promote the industrial redevelopment of regions affected by the relocation of companies in the sector.

⁽¹⁾ OJ C 239, 11.10.2007, p. 12.

2.2. Recipients

- (8) The Textile Plan applied to all companies in the textile and clothing sector whose industrial activities were affected by general collective agreements in the textile and clothing sector or which came under headings 17, 18.1 and 2 of the National Classification of Economic Activities (CNAE). According to information provided by the Spanish authorities there were 15 438 companies with 211 831 workers in the sector in 2001; by 2007 these figures had fallen to 11 554 companies with 140 541 workers and in 2008 there were only 127 354 workers left. This corresponds to a 25 % drop in the number of companies between 2001 and 2007 as a result of globalisation of the sector.
- (9) 75 % of the Spanish textile and clothing sector is made up of companies with fewer than 10 workers and 35 % of companies in the sector have 1 or 2 employees.

2.3. Measures

- (10) The Commission initiated a formal investigation procedure in respect of the following measures:

1. *Programme to promote technical research in the textile and clothing sector*

- (11) The objective of this specific measure was to promote industrial research and technological development projects that increased firms' technological capacity and fostered research and development (R & D) cooperation between companies in the textile and clothing sector and research bodies and also encouraged the dissemination of results.
- (12) Projects qualifying for this aid measure were R & D projects, investment in tangible or intangible assets (only for SMEs, with the aim of incorporating advanced technologies in their production processes), projects to disseminate the results of R & D activities and projects to create and develop inter-company cooperation agreements.
- (13) According to the Spanish authorities, this programme was based on approved aid scheme N 415/2004⁽¹⁾. The programme sought to promote technical research in the textile and clothing sector. Between 2005 and 2007 its budget was EUR 12,5 million in the form of

grants and EUR 51 million in the form of interest-free loans, repayable over 12 years, which included a 2-year grace period.

2. *Programme for the industrial redevelopment of areas affected by structural changes in the textile sector*

- (14) The aim of this measure was to assist the industrial redevelopment of areas affected by structural change. The following projects were eligible:

a) investments in technical and industrial infrastructure;

b) creation of new industrial activities;

c) technological partnerships between innovative companies, in the form of e.g. science/technology parks, innovation and technology centres, European innovation and technology centres, development agencies, technology transfer bodies;

d) efforts by various companies to revitalise the local economy;

e) development of companies from well-established sectors that incorporated technological processes;

f) creation and expansion of emerging sectors.

- (15) Between 2006 and 2008 funding of EUR 11,1 million was provided in the form of grants and EUR 155,2 million in the form of interest-free loans with a 15-year term and a 5-year grace period. The Spanish authorities indicated that the measure was based on approved scheme N 101/2005⁽²⁾.

3. *Special loans granted by the Empresa Nacional de Innovación S.A. (ENISA)⁽³⁾ for modernising SMEs*

- (16) The measure provided for preferential loans equivalent to the capital contribution to promote the modernisation of SME products, processes and management and the creation of new technology companies in areas affected by structural change. Economically and financially sound SMEs were eligible; large firms and firms in difficulty were excluded. ENISA granted the projects selected a 0,5 % interest rate subsidy. The fixed interest rate was Euribor 1 year + 0,25 % for loans with a term of 4-8 years and a grace period of 2-6 years. The maximum subsidy per company was EUR 30 000.

⁽¹⁾ Commission Decision C(2004) 4709 of 1 December 2004 on measure N 415/2004; Promotion of technical research in the textile sector (2005 to 2007) (OJ C 72, 24.3.2006, p. 2).

⁽²⁾ Commission Decision C(2005) 1532 of 18 May 2005, aid for restructuring of declining industrial zones (OJ C 235, 23.9.2005, p. 3).

⁽³⁾ ENISA is a public undertaking linked to the Ministry of Industry, Tourism and Trade via the Directorate-General for Policy on SMEs.

- (17) The measure was allocated a budget of EUR 4,07 million between 2006 and 2008. It was intended that the aid element (an interest-rate subsidy of 50 basis points) should be within the de minimis threshold of EUR 200 000 ⁽¹⁾.

4. Loans at preferential rates granted by ICO

- (18) Under this measure, companies benefited from loans at preferential rates for innovative productive investments. These loans were based on an agreement between the Ministry of Industry, Tourism and Trade and, since 5 September 2006, the public finance body *Instituto de Crédito Oficial* (ICO). The ICO acted as an intermediary between the commercial banks involved, whilst the Ministry of Industry, Tourism and Trade financed the preferential rates. The financing conditions were as follows:

- a) up to 70 % of the investment, VAT excluded, limited to the EU State aid ceilings;
- b) investments limited to new assets;
- c) investment must be made within two years from signature of the operation (three years under exceptional circumstances, subject to a reasoned request to the ICO);
- d) the recipient could choose between a term of five years with no grace period, seven years with a two-year grace period and ten years with a two-year grace period;
- e) the credit institution could choose between an interest rate of Euribor 6 months + 0,75 % or Euribor 6 months + 0,50 % if the operation was guaranteed by a mutual guarantee scheme. The credit institution could not receive any commission and early repayment carried a 1 % penalty in the case of a fixed interest rate. The operation was carried out by participating banks and savings banks.
- f) the final recipient company paid Euribor interest less 0,5 %;
- g) in order to make it easier for the companies to receive guarantees, 67 % of the guarantee costs granted by the regional mutual guarantee schemes was refinanced by the *Compañía Española de Reafianzamiento S.A.* (CERSA);

- h) the Ministry of Industry, Tourism and Trade granted an annual interest rate of up to 1,25 % in general or up to 1 % if guaranteed by a mutual guarantee scheme.

Companies or groups of companies whose main activity involved distribution were excluded. The planned budget for this measure was EUR 450 million.

5. Promoting exports of Spanish products (ICEX)

- (19) The Spanish Institute for Foreign Trade (ICEX) had implemented several aid measures under the Textile Plan:

- a) creation of information infrastructure such as Internet portals;
- b) services to companies for their group participation in trade fairs;
- c) advice about the export potential of firms that had so far not exported.

- (20) The measures were implemented as part of initiatives such as the Global Fashion Plan (*Plan Global de la Moda*), the Spanish Habitat Plan (*Plan Hábitat de España*), official stands, sectoral plans, export consortia, plans for setting up businesses abroad, plans to promote Spanish brands, introductory plans to foreign trade promotion (PIPE), assistance for participation in fairs, meetings of representatives, trade missions, business investment and cooperation forums, creation and updating of data bases of operators, communication and advertising campaigns.

6. Continuing training

- (21) The aim of this measure was to provide training for workers employed in the Spanish textile and clothing sector in order to improve their skills and thereby enhance the company's competitiveness and keep pace with modernisation.
- (22) Under national legislation ⁽²⁾, in order to help finance their specific training programmes, firms could use part of the contributions paid during the previous year to the Social Security General Fund for specific training programmes by deducting them from their ordinary social security contributions. Some percentages had been improved for the textile and clothing sector:

⁽¹⁾ In accordance with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5).

⁽²⁾ Royal Decree 395/2007 of 23.3.2007, Order TAS 2307/2007 of 27.7.2007 and Law 51/2007 of 26.12.2007.

- for companies with 1 to 2 employees: 100 % of the contribution or EUR 420 (EUR 420 in the general measure),
 - for companies with 3 to 5 employees: 100 % of the contribution or EUR 600 (EUR 420 in the general measure),
 - for companies with 6 to 9 employees: 100 % of the contribution or EUR 720 (in the general measure the only requirement was 100 % of the contribution),
 - for companies with 10 to 49 employees: 100 % of the contribution (instead of 75 %),
 - for companies with 50 to 249 employees 80 % of the contribution (instead of 60 %),
 - for companies with 250 or more employees: 60 % of the contribution (instead of 50 %).
- (23) Companies were also entitled to an additional credit of 5 % to offset the working time lost during training.
- (24) To benefit from these measures companies had to present a retraining plan to the Spanish Employment Service describing the changes in the production process, the introduction of a new organisational structure, training for new machinery and retraining for laid-off workers. They also had to give productivity and job maintenance targets in a separate paper and indicate the amount of the investment and their own contribution. This retraining plan also needed the approval of the sector's Joint Committee (50 % business representatives and 50 % from the textile sector unions).

7. Safeguarding the jobs of older workers

- (25) In line with Spain's general legislation, a company employing a worker who is over 60 years old is entitled to a 50 % reduction in social security contributions. In the Textile Plan the age has been brought forward to 55 years for workers with an open-ended contract and who have worked for the company for at least five years.

8. Guarantee waiver for deferred payments to the social security system

- (26) Under Spain's general social security legislation (Article 33(4) of Royal Decree 1415/2004 of 11 June 2004) social security debts can be deferred and paid in instalments if certain conditions are met, including the provision of guarantees to cover these debts. However, its

implementing provisions ⁽¹⁾ allow the Spanish authorities to authorise a guarantee waiver for social security debts in 'exceptional circumstances'.

2.4. Legal basis of the scheme

- (27) The legal basis for measure 1 (recitals 11 to 13) is Order ITC/217/2005 of 4 February 2005 ⁽²⁾, which is based on Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽³⁾.
- (28) Measure 2 (recitals 14 and 15) was based on aid measures N 101/2005 approved by Commission Decision C(2005) 1523 (recital 15) and XR/70/2007 under the regional investment aid scheme ⁽⁴⁾.
- (29) The legal basis for measure 3 (recitals 16 and 17) is Law 30/2005 of 29 December 2005 ⁽⁵⁾.
- (30) The legal basis for measure 4 is the 21st additional provision of the above-mentioned Law 30/2005 – Action by the Official Credit Institute on loans for firms in the textile, footwear, furniture and toys sector.
- (31) Measure 5 (recitals 19 and 20) was based on Articles 14(1)(d) and 17(3)(m) of Law 38/2003 of 17 November 2003.
- (32) Measure 6 (recitals 21 to 24) is governed by Royal Decree 1046/2003 of 1 August 2003, Order TAS/500/2004 of 13 February 2004.
- (33) The general provision covering measure 7 (recital 25) is in Royal Decree Law 5/2006 of 9 June 2006.
- (34) Measure 8 (recital 26) is covered by Article 33(4) of Royal Decree 1415/2004 of 11 June 2004.

2.5. Duration of the scheme

- (35) The Textile Plan was apparently signed in June 2006 and applied until 31 December 2008. According to information provided by the Spanish authorities on 17 September 2008, there are no plans to extend it further (as mentioned under Article I(2) of the Textile Plan itself). Measure 1, however, applied from 2005 to 2007.

⁽¹⁾ Article 33(4)(d) of Royal Decree 1415/2004 of 11 June 2004.

⁽²⁾ Official State Gazette (B.O.E.) of 9 February 2005.

⁽³⁾ OJ L 10, 13.1.2001, p. 33.

⁽⁴⁾ OJ C 169, 21.7.2007, p. 18.

⁽⁵⁾ General State Budget Act, 27th additional provision.

3. REASONS FOR INITIATING THE PROCEDURE

- (36) In its decision of 13 November 2007 to initiate the formal investigation procedure (decision to initiate the procedure), the Commission expressed its doubts about the compatibility of the measures with the common market and referred to the possibility of an undue combination of the different measures under the Textile Plan.
- a) As regards measure 1, scheme N 415/2004 only applied until 2007, whereas the Textile Plan applied until 2008. The Spanish authorities had to explain how the intended aid measures for technical research complied with the conditions of scheme N 415/2004.
- b) Regarding measure 2, the Commission had doubts about how the measure complied with all the conditions of the Community block exemption Regulation for regional aid ⁽¹⁾.
- c) Concerning measure 3, it was unclear to the Commission how the Spanish authorities would comply with the *de minimis* Regulation.
- d) The Commission was concerned that the *de minimis* measure 4 could be unduly combined with other types of aid for the same eligible costs.
- e) As for measure 5, the information provided by the Spanish authorities was insufficient to assess whether it was compatible with the Commission block exemption Regulation for small and medium-sized enterprises ⁽²⁾.
- f) The legal basis for measures 6 and 7 had not been given.
- g) As for measure 8, the Commission was unsure whether the measure was discriminatory and required prior notification to the Commission.

4. COMMENTS FROM SPAIN

- (37) The Spanish authorities maintained that the decision to initiate the procedure was at variance with the Italgrani II case-law ⁽³⁾.

⁽¹⁾ OJ L 302, 1.11.2006, p. 29.

⁽²⁾ Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

⁽³⁾ Judgment of the Court of Justice in Case C-47/91 Italy v Commission (Italgrani II) [1994] ECR I-4635.

Measure 1

- (38) The Spanish authorities explained that besides the legal basis of N 415/2004, a scheme for large undertakings, which expired on 31 December 2007 and had been mentioned in earlier correspondence, also applied, as did scheme XS 50/2005 ⁽⁴⁾ for SMEs, already approved, and which expired on 30 June 2007.
- (39) The budget actually disbursed was EUR 14,24 million in grants and EUR 36,72 million in interest-free loans with a 12-year term. On 21 October 2008, the Spanish authorities reiterated their compliance with the conditions laid down in the scheme and confirmed that scheme N 415/2004 had not been and would not be applied after 31 December 2007 and that scheme XS 50/2005 had not been and would not be applied after 30 June 2008.

Measure 2

- (40) The Spanish authorities explained that scheme N 101/2005 expired once Regulation 1628/2006 came into force ⁽⁵⁾. The Spanish authorities subsequently notified scheme N 430/2006, which was withdrawn on 26 January 2007. Since then, according to information provided by the Spanish authorities on 30 May 2008, the measures were based on XR/70/2007 ⁽⁶⁾. The synthetic fibres industry was not eligible for schemes N 101/2005 and XR/70/2007, according to paragraph 4 of Order ITC/1014/2005 and paragraph 4 of Order ITC/3098/2006, as amended by paragraph 3 of Order ITC/643/2007.
- (41) The Spanish authorities also confirmed that the measure could qualify as initial investment, as in Ministerial Order ITC/643/2007 of 2 October 2007 amending Order ITC/3098/2006 ⁽⁷⁾. The description of the recipients in paragraph 4 of Ministerial Order ITC/643/2007 corresponded to the definition of initial investment as provided for by the Regional Aid Guidelines ⁽⁸⁾ and Regulation No 1628/2006.

- (42) The budget disbursed was EUR 10,97 million in grants and EUR 150,8 million in repayable loans.

⁽⁴⁾ XS 50/2005 Programme to promote technical research for the textile/clothing sector (OJ C 19, 26.1.2006, p. 3).

⁽⁵⁾ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).

⁽⁶⁾ OJ C 169, 21.7.2007, p. 18.

⁽⁷⁾ BOE of 10.10.2006.

⁽⁸⁾ Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

Measure 3

- (43) The Spanish authorities confirmed that the recipients were exclusively SMEs. The estimated maximum amount of aid of EUR 30 000 per company had been calculated on the basis of a maximum loan of EUR 1 000 000. From 1 January 2006 until 13 January 2008, ten companies benefited from the measure, whilst 23 companies were refused. The interest rate subsidy of 0,5 percentage points had not been granted.

- (44) On 30 May 2008 and at the meeting on 11 September 2008, the Spanish authorities underlined that financing had been granted on normal market terms but that large undertakings and firms in difficulty were excluded. The Spanish authorities confirmed this in writing by letter of 21 October 2008 and undertook not to apply this measure until the expiry of the Textile Plan.

Measure 4

- (45) The legal basis for this measure was the *de minimis* Regulation. The maximum loan per recipient was fixed at EUR 2,3 million. The *de minimis* thresholds were respected at all times. These amounts could not be combined with other aid if it meant that the permitted *de minimis* threshold was exceeded. Accordingly, every recipient had to fill in an annual declaration form. The ICO drew up annual records of the measure, which were sent to the credit institutions that collaborated with the ICO.

- (46) By September 2008, EUR 54,79 million of the EUR 450 million had been disbursed. The maximum amount of a loan was EUR 2,3 million. Interest rates were between 5,59 % and 4,94 % after the European reference rate for Spain became 5,19 %. The Spanish authorities confirmed that they had applied the new Communication on Reference Rates ⁽¹⁾ as of 1 July 2008. According to the Spanish authorities, the participating financial bodies determined the margin that was added to the reference rate. The ICO also provided them with information about the average margins applied in Spain on the basis of data provided by the Bank of Spain.

- (47) On 21 October 2008, the Spanish authorities presented an overview of the *de minimis* aid granted in 2006, 2007 and 2008, together with the corresponding declarations. The Spanish authorities undertook to comply with the *de minimis* Regulation in future.

Measure 5

- (48) The measures in question were general measures open to all sectors. The subsidised activities were similar to those mentioned in Article 5 of the SME Regulation. It was

very difficult to estimate the amount of aid as the scheme was applied intermittently, indirectly and unclearly.

- (49) Between 2006 and 2008 funds totalling EUR 7,5 million were disbursed. The Spanish authorities indicated that this measure, which also benefited large undertakings, was covered by the *de minimis* Regulation.

- (50) As regards application of the *de minimis* Regulation, the Spanish authorities explained that ICEX required from each recipient a declaration of the aid received based on the eligible costs pursuant to Article 14(1)(d) of Law 38/2003 of 17 November 2003. Recipients were required to inform ICEX of future subsidies. In line with Article 17(3)(m), ICEX had to check compatibility with other aid received on the basis of the same eligible costs. The Spanish authorities provided a table showing that the *de minimis* aid granted by the ICO and the ICEX from 2006 to 2008 in the textile and clothing sector did not exceed the threshold of EUR 200 000 per company over three tax years.

Measure 6

- (51) The measure was of a general nature, although it was primarily targeted at SMEs. Therefore only firms with fewer than 5 employees could receive higher amounts than those paid in the previous year to the Social Security General Fund. Other recipients could only recover a percentage of the contribution paid for special training purposes in the current financial year. According to the Spanish authorities, the aid intensity for SMEs was about 11,3 % and 20 % for large enterprises. The planned budget was EUR 50 000 per year.
- (52) By 13 January 2008, only one company had been selected for the measure. The Spanish authorities confirmed that in accordance with the rescue and restructuring Guidelines ⁽²⁾, firms in difficulty were excluded from the scheme.

Measure 7

- (53) The Spanish authorities stressed that firms were only eligible if their employees over the age of 55 had been employed by the company for at least 5 years, which reduced eligibility to approximately 50 %. Most of the recipients (53 %) were women, while 76 % had very low skills and training, which made it difficult for them to find another job.

- (54) The Spanish authorities stressed that Article 137(1) and Article 4 of the EC Treaty gave Member States autonomy in social security matters.

⁽¹⁾ OJ C 14, 19.1.2008, p. 6.

⁽²⁾ Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

(55) By 1 January 2008, 6 313 employees in 2 015 firms had benefited from the scheme, corresponding to 16,6 % of firms and 4,5 % of employees in the sector. 56 % of the recipient companies benefited from the measure for only one worker, 30 % for 2, 3 or 4 workers and 13 % for between 5 and 30 workers; only 1 % benefited from the measure for more than 30 workers. 1 428 companies received a subsidy of less than EUR 500. The budget for this measure was EUR 15 million per year. The average aid per worker aged 55-58 was EUR 151/month, which corresponds to an intensity of 8,3 % of labour costs. Aid to workers aged 59 years amounted to EUR 44/month, i.e. 2,6 % of labour costs. Only 5,2 % of workers in the sector were eligible for this measure. The average impact for a company was 0,3 % of its labour costs.

(56) Despite its name, this was not a measure aimed at maintaining employment but an alternative to early retirement. The Spanish authorities also claimed that the amount of EUR 151/month was a sufficient incentive for keeping the person employed rather than hiring the same person and not declaring him.

(57) The measure could be applied to the synthetic fibres industry if the company had its main activity in the textile sector and if it was included in the collective bargaining for the textile and clothing sector rather than the chemical industry. Consequently there was only a slight possibility that these synthetic fibre producers would benefit from the measure.

Measure 8

(58) By letter of 17 September 2008 the Spanish authorities confirmed that this was a general measure and that no tax deferrals had been granted to companies in the textile sector under the Textile Plan.

(59) On 21 October 2008, the Spanish authorities agreed that in the unlikely event of a textile or clothing company requesting a guarantee exemption for tax deferrals, the request would be dealt with on the basis of the general legislation and not the Textile Plan.

(60) Lastly, the Spanish authorities undertook to comply with the Community legislation on the combination of de minimis measures.

5. COMMENTS FROM INTERESTED PARTIES

(61) The Commission received comments from two parties, who wished to remain anonymous.

(62) The first set of comments rejected sectoral State aid to the textile industry because it distorted competition. The authors favoured the line taken by the Commission in the decision to initiate the procedure and underlined that

the Textile Plan set no limits on the subsidies that each company could receive. The justifications put forward by the Spanish authorities were insufficient. Aid for R & D was useful, but should be limited to SMEs. They considered that State aid for intangible assets should be rejected because it was too easily misused. Furthermore, although training measures for employees laid off from the textile industry were beneficial, giving an 80 % discount on social security contributions would only benefit employees indirectly and was not acceptable. If textile companies had more advantages than other sectors as regards paying social security debts by instalments, this would constitute unlawful State aid.

(63) The other comments referred to Geotexan's extremely low prices on the Spanish market, which could be due to implementation of the Spanish Textile Plan.

6. SPAIN'S RESPONSE TO THE INTERESTED PARTIES' COMMENTS

(64) The Spanish authorities argued that the Commission did not classify the measures as State aid in the decision to initiate the procedure but simply referred to that possibility. Spain also replied that the training subsidy for companies with 50-249 employees amounted to a 20 % rather than an 80 % increase. The intensity complied with the limits given in Article 4 of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid⁽¹⁾. Moreover, the recipient of the training measure was the worker, who could either stay in the company or upgrade his training in order to seek a new job.

(65) As regards the second comment, the Spanish authorities argued that the allegations were submitted late and no proof was provided. The aim of the Textile Plan was to adapt companies in the sector to market liberalisation and not to favour the position of any specific company. As to the company expressly mentioned, Geotexan was founded in 2004. According to the eligibility criteria for maintaining older workers in their jobs, they needed to have worked in the company for over five years, which was not possible in this case. There is no record of Geotexan having benefited from the training aid measures. In any event, it would have received a subsidy of EUR 970 per year, which would not be a decisive factor in developing an aggressive pricing policy.

(66) In short, the comments did not contain any new legal facts or grounds and they were presented in general terms without providing any proof. Hence they should not be taken into account.

⁽¹⁾ OJ L 10, 13.1.2001, p. 20.

7. ASSESSMENT

7.1. State aid nature of the measures

- (67) As stated in Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
- (68) According to the Spanish authorities, measure 3 had not been applied: the 0,5 % interest rate subsidy had not been granted and funding was based on normal market conditions. The Commission asked the Spanish authorities for information about the interest rates actually granted to the ten recipients. The Spanish authorities replied on 13 March 2009. The interest rate was less than the year's lowest reference rate in only two cases (a loan of EUR 300 000 and another of EUR 100 000 at an interest rate of 4 114 % in 2007, when the lowest reference rate was 4,62 %). Given the tiny difference between the two rates, the Commission must conclude that the State aid would have been so small that it would fall below the *de minimis* threshold. The Spanish authorities undertook not to apply this measure until the Plan expired. In these circumstances, the Commission must conclude that the amount of aid was less than the *de minimis* threshold and that it was not a question of State aid.
- (69) On measures 4 and 5 the Spanish authorities said that they were covered by the Commission Regulation on *de minimis* aid and therefore did not constitute State aid. The Commission must accordingly examine whether the conditions of the *de minimis* Regulation were fulfilled.
- (70) As regards measure 4 the Spanish authorities provided evidence of having complied with the *de minimis* Regulation in the past and undertook to do so in future. They also gave assurances that they had complied with the new Communication on Reference Rates since 1 July 2008.
- (71) Regarding measure 5, the *de minimis* Regulation excludes aid for export promotion. In general, export aid is traditionally defined in Article 1(d) as 'aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity'. The *de minimis* Regulation further clarifies in recital 6 that 'aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid'. Thus, if aid is granted for group participation in trade fairs, it is covered by the *de minimis* Regulation⁽¹⁾. By letter of 30 May 2008 the Spanish authorities confirmed that the measure was intended to encourage firms that had so far not exported to come to international fairs. It therefore met that condition. Aid for setting up information infrastructure via Internet portals is not export aid and therefore falls within the scope of the *de minimis* Regulation. Lastly, the provision of consultancy services to foster companies' export potential is covered by the *de minimis* Regulation and therefore does not come under the definition of export aid.
- (72) Nevertheless, the Commission continued to harbour doubts about whether the Spanish authorities had complied with the *de minimis* Regulation in the past. It therefore asked the Spanish authorities to prove on the basis of Article 3(3) of the *de minimis* Regulation that it had been complied with in the past as regards measures 4 and 5. The Commission also called on the Spanish authorities to undertake to respect the Regulation in future, in accordance with Article 3(1). This implied that the ceiling of EUR 200 000 per undertaking had been respected in all three tax years, especially as regards possible combination with other measures in the Textile Plan based on the same eligible costs. As already mentioned in recital 47, the Spanish authorities provided evidence that the *de minimis* Regulation had been complied with in the past and they undertook to respect it in future. Therefore, measures 4 and 5 do not constitute State aid.
- (73) Measure 8 is a general measure provided for by Spanish law which, according to the Spanish authorities, had never been applied under the Textile Plan. If a company requested a tax deferral in future, the Spanish authorities undertook to apply the general rules and not this measure. Since measure 8 had not been applied, no State aid was involved.
- (74) Measures 1, 2, 6 and 7 were granted through State resources. These measures appear to offer a better selective advantage to companies from the textile and clothing sector than the conditions applied under the general rules and consequently to favour those undertakings. There is extensive trade in the textile and clothing sector so the measures could affect trade between Member States. Therefore, these measures constitute State aid within the meaning of Article 87(1) of the Treaty.

⁽¹⁾ See also Commission Decision C 89/01 of 24 September 2002 on an aid scheme which the Federal Republic of Germany is planning to implement — 'Guidelines on assistance for SMEs — Improving business efficiency in Saxony' (OJ L 91, 8.4.2003, p. 13), and, in particular recital 72 (aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market ... does not normally constitute export aid).

7.2. Compatibility with the common market

Measures 1 and 2

- (75) Concerning measure 1, the Commission noted that the approved aid scheme N 415/2004 is only applicable to large enterprises and eligible R & D activities: personnel costs, relevant instruments and equipment, external consultancy costs, operating costs and additional general costs deriving from the research activity. The budget was EUR 16 million in the form of grants and EUR 74,45 million in the form of subsidised loans.
- (76) The Textile Plan defined the following as eligible projects for large enterprises: R & D projects, projects to disseminate the results of R & D activities and projects to set up and develop inter-company cooperation agreements. The budget was EUR 12,5 million in the form of grants and EUR 51 million in the form of subsidised loans.
- (77) On 13 January 2008 the Spanish authorities reiterated that they would respect the conditions imposed on the scheme. On this basis, the Commission must conclude that measure 1 for large undertakings fulfils the criteria laid down in the scheme.
- (78) As regards measure 1 for SMEs, which according to the Textile Plan are the main focus of measure 1, the Spanish authorities explained that it would be covered by aid scheme XS 50/2005. The objectives of scheme XS 50/2005 are to promote research projects for SMEs, enhance cooperation between SMEs and research entities and to disseminate research results. Like the previous scheme, this one covers personnel costs, relevant instruments and equipment, external consultancy costs, operating costs and additional general costs deriving from the research activity, as well as investment in tangible and intangible assets and consultancy services. The annual budget was EUR 22 million in the form of grants and subsidised loans.
- (79) The eligible projects of the Textile Plan were R & D projects, investments in tangible and intangible assets with a view to incorporating advanced technologies in their production processes, projects to disseminate the results of R & D activities and projects to set up and develop inter-company cooperation agreements.
- (80) The Commission is of the view that measure 1 applicable to SMEs fulfils the criteria laid down in aid scheme N 415/2004, which has already been approved, and in aid scheme XS 50/2005.
- (81) As for measure 2, it was based on approved aid scheme N 101/2005, which lasted from June to 1 November 2006. The aim of this scheme was to encourage the restructuring of declining industrial areas in assisted regions. The scheme was open to all industrial enterprises that invested in assisted regions except the coal, steel and synthetic fibre sectors. The aid had to be disbursed as interest-free loans of a maximum duration of 10 years including a 5-year grace period. The planned budget was EUR 400 million.
- (82) The Textile Plan meets the basic criteria apart from the one for interest-free loans. These had a maximum duration of 15 years with a 5-year grace period instead of the maximum duration of 10 years as specified in point 11 of the scheme. After examining this point the Commission must accept it since Chapter I 7,2 of Order ITC/3098/2006 states that the maximum duration is 10 years plus a 5-year grace period. The Commission must therefore conclude that measure 2 meets the criteria laid down in the scheme.
- (83) On 3 July 2006, the Spanish authorities re-notified the scheme in order to bring it into line with the new regional aid guidelines⁽¹⁾ (N 430/2007) and on 26 January 2007 they withdrew it in order to base it on Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid⁽²⁾. On 20 March 2007 scheme XR/70/2007 was adopted.
- (84) In accordance with Order ITC/3098/2006 and Order ITC/643/2007, eligible projects included: technical infrastructure, setting up technology parks, transfer of specialist know-how, strengthening and diversifying the local economy, creating new industrial activities, developing mature sectors and creating and expanding emerging sectors. The synthetic fibres industry was not eligible and the measure qualified as initial investment.
- (85) The Commission is therefore of the view that measure 2 fulfils the criteria set out in approved aid schemes N 101/2005 and XR/70/2007.
- (86) The Spanish authorities also undertook not to apply the measures after the expiry of the schemes they were based on. The Commission therefore considers that measures 1 and 2 were covered by those schemes and should thus constitute compatible aid.
-
- ⁽¹⁾ Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).
- ⁽²⁾ OJ L 302, 1.11.2006, p. 29.

Measure 6

- (87) The Commission considers that this measure on specific training is not covered by either Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) ⁽¹⁾ or the previous Regulation on aid for training, as the measure does not concern 'new employment' and large enterprises also benefit from it.
- (88) The Commission must therefore assess it directly on the basis of Article 87(3)(c) of the Treaty. Accordingly, aid to facilitate the development of certain economic activities may be considered compatible with the common market, where it does not adversely affect trading conditions to an extent contrary to the common interest.
- (89) The Commission will assess the compatibility of measure 6 by analogy ⁽²⁾ with the Training aid Regulation between 2006 and 1 August 2008 and with the General block exemption Regulation from 29 August 2008 until 31 December 2008.
- (90) The intensity of the specific training aid was 19,96 % for SMEs and 20 % for large enterprises. This aid intensity is well below the threshold of 35 % that the Training aid Regulation imposes on the application for training aid and the 25 % imposed by Article 39 of the General block exemption Regulation.
- (91) Furthermore, the amounts barely diverge from the general rules. The increase depends on the number of staff employed and the contribution paid to the social security system the previous year. The conditions for entitlement to the measure were very restrictive, as the companies had to establish a plan, which needed to be approved by the Joint Committee (see recital 24).
- (92) On 20 February 2009, the Spanish authorities confirmed that the additional incentive effect for large enterprises pursuant to Article 8(3) of the General block exemption Regulation was already taken into account in paragraph I. 1.A c) of the Textile Plan. Accordingly, the applicant companies had to present a retraining plan to the Public Employment Service detailing the employment objectives and the specific measures. The Public Employment Service checked that one or more of the requirements in the above Article of the General block exemption Regulation were met. This plan included a

document giving the productivity and job maintenance objectives and the size of the investment in question. The Joint Committee also issued a report on the retraining plan submitted by each company or group. On the basis of the information provided in the plan and the report submitted by the Industrial Observatories, the Member State checked that the criteria for the incentive effect for large enterprises were met.

- (93) The Commission must conclude that the effect of the aid on competition and trade is very limited. The Commission therefore considers that the measure does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers this measure compatible with the common market on the basis of Article 87(3)(c) of the Treaty.

Measure 7

- (94) Measure 7 is also granted through State resources and apparently favours the sector. Regarding compatibility, it does not appear to be covered entirely by Article 15 of Regulation (EC) No 800/2008 (General block exemption Regulation) or by Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽³⁾, given that 37 firms out of a total of 11 544 active in the sector in 2007 are large enterprises and the measure does not concern new employment. Therefore, the present measure is assessed on the basis of Article 87(3)(c) ⁽⁴⁾.
- (95) State aid in the form of wage subsidies designed to raise the demand for disadvantaged workers 'can provide additional incentives to enterprises to increase their levels of employment of this category of workers.' The workers concerned fall within the category of disadvantaged workers by being over 50 years old. 76 % of the workers aged between 55 and 59 years had low training and skills, which prevented their transfer to other sectors if they were laid off. As regards the number of workers concerned, only 10 215 of the 123 574 employees in the sector in 2008 were aged between 55 and 59 and only 6 700 had worked in the company for more than 5 years and had open-ended contracts. This figure corresponded to 5,2 % of all workers in the sector and the intensity of the measure per company was estimated at 0,3 % of their labour costs, which is well under the threshold of 50 % of the eligible costs provided for in Article 40 of the General block exemption Regulation. The impact of the measure was also slight as it mainly concerned (74 %) microenterprises and the amount of aid was minimal (0,3 % of labour costs). Although the financial impact for the company was minimal, according to the Spanish

⁽¹⁾ OJ L 214, 9.8.2008, p. 3.

⁽²⁾ See the Commission Decision of 2 June 2004 in Case N 443/03, Second water circuit, Belgium (C(2004) 1356 final).

⁽³⁾ OJ L 337, 13.12.2002, p. 3.

⁽⁴⁾ See the reasoning in measure A2 in Commission Decision N 244/2008 Spanish Programme for the footwear, tanning and leather manufacturing sector (OJ C 52, 5.3.2009, p. 1).

authorities it provided an incentive to keep the employees in question in their jobs for a few more years rather than firing them or employing them undeclared. Therefore, the aid appeared to be necessary, proportional and well-targeted at the age group of disadvantaged workers.

- (96) As regards the negative effects of the aid, it should be noted that the measure is focused solely on the textile and clothing sector, a declining industry with 40 % job losses since 2001.
- (97) After weighing up the positive and negative effects, it was concluded that the aid had positive effects because it encouraged firms – mainly microenterprises – to keep on their workers aged over 55 years in their jobs (instead of employing them undeclared), until they reached the age of 60, whilst the distortion of competition was likely to be limited due to the very small amount of aid.
- (98) Measure 7 is therefore compatible with the common market and in line with Article 87(3)(c) of the Treaty.

8. CONCLUSION

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted by Spain under measures 1 and 2, referred to in recitals 11 to 15, in respect of a programme to

promote technical research and a programme for the industrial redevelopment of the textile and clothing sector was covered by the approval of schemes N 415/2004 and N 101/200 and by schemes XS 50/2005 and XS 70/2007 and therefore does not constitute State aid.

2. Measures 3, 4 and 5, referred to in recitals 16 to 20, concerning preferential loans granted by ENISA for the modernisation of SMEs, loans with a preferential interest rate granted by the ICO and export promotion undertaken by the ICEX are below the threshold set by the *de minimis* Regulation and therefore do not constitute State aid.

3. The aid granted by Spain under measures 6 and 7, referred to in recitals 21 to 25, offering continuing training for employees and maintaining the jobs of older workers in the textile and clothing sector are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 24 March 2009.

For the Commission

Neelie KROES

Member of the Commission

2009 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 1 000 per year (*)
EU Official Journal, L + C series, paper edition only	22 official EU languages	EUR 100 per month (*)
EU Official Journal, L + C series, paper + annual CD-ROM	22 official EU languages	EUR 1 200 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 700 per year
EU Official Journal, L series, paper edition only	22 official EU languages	EUR 70 per month
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 400 per year
EU Official Journal, C series, paper edition only	22 official EU languages	EUR 40 per month
EU Official Journal, L + C series, monthly CD-ROM (cumulative)	22 official EU languages	EUR 500 per year
Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week	multilingual: 23 official EU languages	EUR 360 per year (= EUR 30 per month)
EU Official Journal, C series — recruitment competitions	Language(s) according to competition(s)	EUR 50 per year

(*) Sold in single issues: up to 32 pages: EUR 6
from 33 to 64 pages: EUR 12
over 64 pages: Priced individually.

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

Sales and subscriptions

Priced publications issued by the Publications Office are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>