COMMISSION DECISION

of 18 September 1996

amending Decision 92/317/EEC on State aid in favour of Hilaturas y Tejidos Andaluces SA, now called Mediterráneo Técnica Textil SA and its buyer

(Only the Spanish text is authentic)

(Text with EEA relevance)

(97/242/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

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

Having given notice in accordance with Article 93 of the EC Treaty to interested parties to submit their comments to it,

Whereas:

I

Hilaturas y Tejidos Andaluces SA (Hytasa), now called Mediterráneo Técnica Textil SA (MTT), was a private company which, following financial difficulties, was acquired in 1982 by Patrimonio del Estado. Hytasa manufactured textile products in its plants in Seville and its region.

From its acquisition in 1982 through to 1986, Patrimonio del Estado launched a restructuring plan financed through a Spanish sectoral scheme as well as capital injections amounting to Pta 6 600 million. These efforts did not prevent Hytasa's poor economic results. By the eve of Spanish accession to the Community, Hytasa's capital had virtually disappeared.

In 1989, following a complaint, the Commission required the Spanish authorities to supply information about alleged capital contributions made to Hytasa from 1986 onwards. From the reply by the Spanish authorities, the Commission determined that capital injections amounting to Pta 7 100 million had been paid to Hytasa.

In 1990, the Spanish authorities informed the Commission that Hytasa was being privatized. The conditions of the privatization process entailed a Pta 4 300 million capital injection by Patrimonio del Estado.

Among the different bidders for Hytasa, the Spanish authorities selected the offer of Hilaturas Gossypium SA based in Barcelona and Industria Textil del Guadiana SA, based in Badajoz. The Spanish Government considered that these buyers had made the most interesting offer in economic terms and afforded the best assurance for the future viability of the company. The assessment was based on the industrial recovery plan suggested by the buyers, their financial ability to carry out the foreseen future capital increases, their experience in the textile sector, and also the inherent advantage in the fact that the buyers already owned industrial and commercial structures which would help with the implementation of Hytasa's industrial plan.

According to the sale contract supplied by the Spanish authorities, the terms of the sale were the following:

— the sale price for all shares of the company was set at Pta 100 million,

— over a period of three years:

  — the buyers undertook not to sell their shares unless previously authorized by Patrimonio,

  — changes in the shareholding would be restricted to operations ensuring the maintenance of a majority stake by the buyers,

  — the buyers would not carry out any lay-offs unless prior agreement was reached with the workers' representatives, and only in the framework of schemes for early retirement or temporary suspensions of employment,

— the company would not pay dividends for a five-year period; in the same period, the buyers would not split the company or sell any part of it; they would keep all facilities existing at the time of the sale, as well as some real estate,

— proceeds of any sales of any other real estate would be kept within the company,

— the buyers would implement the recovery plan attached to the sale contract,

— all new brand names and other intangibles would be acquired by Hytasa,

— the capital increase of Pta 4 300 million carried out by Patrimonio at the time of the sale would be used to improve the financial situation of Hytasa, to finance investments and to cater for dismissals,

— the buyers waived any financial benefit arising from old claims of Hytasa against Patrimonio. They considered Hytasa's balance sheet on 30 June 1990 as part of the contract, with the proviso that the seller was to bear the financial consequences of any action taken prior to the sale of the company,

— the buyers undertook to increase the capital of the company by Pta 3 700 million and would pay 25 % of that sum at the moment of purchase.

In July 1990 [1] the Commission initiated the Article 93 (2) procedure in respect both of the Pta 7 100 million capital contributions provided by the State to Hytasa between the Spanish accession in 1986 and 1988 and of any additional aid that the State might have granted in connection with the sale of the company. The Commission considered that those financial interventions constituted aid within the meaning of Article 92 (1) and that such aid did not seem to qualify in principle for any of the exemptions provided for in Article 92 (2) and (3). The decision was notified to the Spanish Government by letter dated 3 August 1990.

On 16 October 1990 the Spanish Government gave its comments in the procedure. Among their arguments the Spanish authorities stated that no aid was involved in the sale of Hytasa, since the company was sold to the highest bidder, after being offered on the international market.

Afterwards the same authorities pointed out that even if the terms of the sale did involve some aid, the sale of Hytasa was more than just putting the company into private hands. It meant implementing a recovery plan drawn up by the buyers, who would participate in its financing through a capital contribution of Pta 3 700 million and would incorporate their know-how into the company's assets. In their view the sale was not designed simply to keep the company in business, but to ensure its economic, technical and financial recovery, for which reason the public intervention complied with the provisions applicable under Community law.

The Spanish authorities also indicated that the firm's location in Seville, eligible for regional aid, suggested that the exemption provided for under Article 92 (3) (a) could be applicable here.

Comments were received by letter dated 21 January 1991 from the German Federation of the Textile Industry in accordance with the procedure. The comments were transmitted to the Spanish authorities by letter dated 6 February 1991. The Spanish authorities replied to them by letter dated 27 March 1991.

A restructuring programme drawn up by the new owners was presented by the Spanish authorities with their comments at the opening of the procedure. The plan provided for the implementation of an investment programme of Pta 2 500 million. The main interventions concerned the cotton sector. An increase in the production of finished products was expected, ranging from 80 to 300 % as against the 1989 output.

The plan also provided for a reduction in the workforce from 1 050 employees in 1990 to 700 in 1992 through early retirements and incentives for departure. The cost of the incentives for departure to be borne by Hytasa was estimated at about Pta 2 040 million.

The plan envisaged a gradual improvement of Hytasa's financial situation. From losses amounting to Pta 1 957 million in 1990, the company anticipated a small profit of Pta 139 million in 1994.

The Commission raised doubts regarding this recovery plan, at a meeting with representatives of Patrimonio del Estado on 18 March 1991; it requested the Spanish authorities to present a revised restructuring plan. The new plan was submitted by the Spanish authorities on 13 June 1991.

The new plan provided for changes in the production and commercial policy of Hytasa. The company would sell only finished products with their production increasing between 50 and 230 %, according to the product. New production lines would be established, with a higher emphasis on design and fashion, so as to obtain a higher sales value for the product.

According to the information supplied, production capacity in the spinning and weaving operations would be reduced by between 51 and 40 % on 1989 figures. In order to fulfil additional needs for semi-finished material, the company would resort to external suppliers.

From 1 050 employees in 1990, the workforce would be reduced to 720 in 1992. The total cost of this reduction was estimated at Pta 1 250 million (Pta 750 million in 1990 and Pta 500 million in 1991).

The company would make losses in 1991 and 1992; by 1993, a modest positive result of Pta 95 million was expected. In 1994, the company would obtain a positive result of Pta 716 million.

In pursuance of the abovementioned procedure under Article 93 (2), the Commission took a final Decision on 25 March 1992, Decision 92/317/EEC [2].

[1] OJ No C 320, 20. 12. 1990, p. 14.

[2] OJ No L 171, 26. 6. 1992, p. 54.

The Decision found that the actions of Patrimonio del Estado in relation to Hytasa were to be considered State aid, given the public nature of Patrimonio's financial resources and because, on the basis of the 'private market-economy investor principle', it could not be considered that Patrimonio del Estado had acted as such.

The Commission established in its Decision 92/317/EEC that the capital contributions of Pta 7 100 million to Hytasa over the period 1986 to 1988 had been granted illegally since they had not been notified as should have been the case according to Article 93 (3). However, the Commission took into account the fact that Spanish industrial policy in respect of public companies before it joined the European Communities on 1 January 1986 had sometimes been based on principles radically different from those underlying the competition policy of the EC Treaty, and that after accession, the companies had had to adapt themselves to a new competitive environment. The capital contributions of Pta 7 100 million to Hytasa had mainly been aimed at facilitating this adaptation, and not at artificially relaunching its activities and, on that basis, the Commission, in Article 1 of its Decision, concluded that it could be considered that the aid met the conditions for the Article 92 (3) (c) exception.

However, the Commission held (as it stated in its Decision) that the aid of Pta 4 200 million [1] contained in the capital contribution provided by Patrimonio del Estado to Hytasa upon privatization in July 1990 was illegal because it was also awarded by the Spanish Government in breach of the provisions of Article 93 (3). Equally, the Commission considered that the aid was incompatible as it did not fulfil any of the conditions for qualification for any of the exceptions under Article 92 (2) and (3).

As to Article 92 (3) (a), the Commission considered that although Hytasa is situated in Seville, an area qualifying for regional aid under this Article, the aid to Hytasa was not granted under regional schemes previously approved by the Commission but on the basis of an *ad hoc* decision by the Spanish Government. Furthermore, it established that even if the aid were to be considered regional, it would not be eligible for compatibility under Article 92 (3) (a) since it did not genuinely contribute to the long-term development of the region.

Turning to Article 92 (3) (c), the Commission considered, after examining the initial restructuring plan and its revised version, that the planned reductions in production and sale of intermediate goods were largely offset by increases in manufacture and sale of finished products. On this basis, the Commission considered that Hytasa's restructuring plan did not provide a sufficient *quid pro quo* for the aid.

Regarding the cutback in the number of employees envisaged by the plan, the Commission considered, on the basis of the reductions achieved up to the date at which it had adopted Decision 92/317/EEC, that the objective of reducing the workforce to 720 in 1992 would not be attained.

In Articles 2 and 3 of the Decision, the aid was considered incompatible with the common market, and Patrimonio del Estado was therefore ordered to recover the Pta 4 200 million from the company.

II

On 19 June 1992, Spain brought an action pursuant to Article 173 of the EC Treaty for the annulment of Articles 2, 3, 4 and 5 of Decision 92/317/EEC.

In its judgment of 14 September 1994 in Joined Cases C-278/92, C-279/92 and C-280/92, Spain v. Commission [2], the Court of Justice accepted the argument that the element of Pta 4 200 million constituted aid within the meaning of Article 92 (1). The Court also agreed that this aid element was illegal since it had been granted in breach of the provisions of Article 93 (3).

The Court of Justice held, on the basis of the communication of the Commission on regional aid systems [3], that the Commission was justified in considering that aid granted on the basis of *ad hoc* decisions does not in principle meet the criterion of regional specificity. In those circumstances it is for the Member State concerned to establish that the aid in question actually fulfils the regional specificity criterion. However, the Court of Justice ruled that the Commission should first specify the criteria according to which it considers ad *hoc aid,* exceptionally, to be regional in character, as the fact that aid is granted on the basis of *ad hoc* decisions does not necessarily preclude it from being described as regional aid within the meaning of Article 92 (3) (a).

According to the Court of Justice, the Commission had not sufficiently argued its claim that the new restructuring plan would not ensure the viability of Hytasa. The Commission had not analysed the impact of the revised plan on restoring Hytasa's profitability, and the Court deemed such an analysis to be necessary in this case, given that the new restructuring plan provided for a substantial redirection of production towards the manufacture of finished products. The Court of Justice considered that the Commission's analysis of the compatibility of the aid with Article 92 (3) (a) did not therefore meet the criteria which it had itself established.

[1] This aid element resulted from subtracting the Pta 100 million paid by the buyer for the company from the Pta 4 300 million capital injection by Patrimonio del Estado.

[2] [1994] ECR, I-4103.

[3] OJ No C 31, 3. 2. 1979, p. 9.

On that basis, the Court of Justice annulled the second paragraph of Article 2 and Articles 3, 4 and 5 of Decision 92/317/EEC. Therefore, the procedure commenced under Article 93 (2) remains open and, given the partial annulment of Decision 92/317/EEC by the Court's judgment, the Commission must now adopt a Decision amending its Decision of 25 March 1992 and putting an end to the procedure.

III

In order to take due account of the judgment of the Court of Justice, the Commission must reassess whether the aid given by Patrimonio del Estado to Hytasa as part of its privatization is compatible with the common market.

Article 92 (2) sets out those cases where aid which corresponds to the definition contained in the first paragraph shall be compatible with the common market. The aid to Hytasa does not match any of these cases.

Article 92 (3) enumerates those cases where aid may be considered compatible with the common market. Point (a) refers to aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment. Point (c) refers to aid which facilitates the development of certain economic activities or certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

The aid given to Hytasa upon privatization was not given in the framework of a regional scheme, but by virtue of an *ad hoc* decision. As it has already been mentioned in Part II of this Decision, the Court of Justice held in its judgment of 14 September 1994 that the fact that the aid was given on the basis of an *ad hoc* decision does not preclude it from being described as regional aid for the purposes of Article 92 (3) (a). It is therefore necessary to assess whether the aid to Hytasa can be considered compatible with the common market not only pursuant to Article 92 (3) (c), as the Commission has done before, but also pursuant to Article 92 (3) (a) [1].

At the time when the aid was given, the Commission had established its policy on restructuring aid in point 228 of its *Eighth Report on Competition*. Restructuring aid should be strictly conditional on the implementation of a sound restructuring and/or conversion programme and duly and effectively serve to restore the viability of the production concerned. Its intensity and amount should be restricted to the strict minimum for supporting the firm during the inevitable transitional period before such a programme takes effect. The period involved should therefore be limited and the assistance gradually reduced. These conditions should be strictly observed; otherwise they might end up by transferring social or industrial problems from one Member State to another and merely give the recipient firms a moment of respite, since their problems might then reappear in exacerbated form.

When the Commission received the first restructuring plan for Hytasa, it took the view that it did not ensure the company's viability. It therefore asked the Spanish authorities to present a new plan that did so.

The Spanish authorities submitted a new plan, which covered the period 1991 to 1994, when the company would return to viability. It envisaged a radical reorientation of activity, concentrating on the final phase of the production process. There were also increases and decreases in production capacity, and therefore, no clear yardstick for assessing precisely any reduction in the activities of the company.

According to the plan, the share of finished cotton products in the turnover would rise from 42 % in 1990 to 64 % in 1994, whilst the share of cotton clothing would rise from 10 % in 1990 to 20 % in 1994. The share of finished wool products in the turnover would decrease between 31 and 16 % in the same period.

The staff would consist of 720 employees after the restructuring process, as opposed to 700 in the original plan.

The aid element (Pta 4 200 million) greatly exceeded the investment envisaged (some Pta 2 500 million). According to the company's balance sheet, net investments amounted in 1991 to Pta 1 418 million and in 1992 to Pta 1 000 million. As these net figures also contain the value of shutdown capacity (as negative figures) new investments were even higher than stated.

According to the submitted balance sheets, the company had an unusually high equity/capital ratio and huge assets. In 1991, the company's disclosed assets were Pta 14 991 million, compared to a total operating income of Pta 3 173 million. The resulting assets turnover of 0,2 in 1991, a ratio which refers to the firm's ability to generate sales through the use of its assets, indicates that the

[1] The exceptions contained in Article 92 (3) (b) and (d) are not applicable to this case.

company's output was too low and/or that the company kept unnecessary assets. Both possibilities would have had a negative impact on the company's profitability, as depreciation would have been much too high in relation to the turnover and the amount of assets which had to be financed. Even in 1994 — when the company was expected to reach viability — the total asset turnover of 0,5 would have been too low.

According to the Commission's analysis, the company held extremely large stocks, particularly in 1991, when the day's sales in stocks ratio was 429 days. Stock figures did not change in the subsequent balance sheet forecasts for the following years. This is remarkable, as a decrease in stocks would have been necessary for a successful restructuring. In this context, it should be mentioned that a comparison between the envisaged production of finished cotton units and the envisaged sales shows a growth in surplus production between 1991 and 1994 equivalent to Pta 3 000 million. In relation to 1991's net turnover (Pta 3 173 million), it is nearly 100 %.

The company's main problem was its poor profitability. The Commission notes that, in order to demonstrate the company's viability, the restructuring plan made some crucial assumptions which were not explained further. These are mainly a substantial growth in turnover from 1991 to 1994, considerably higher unit prices for finished cotton products and a significant amelioration of the workforce productivity.

Turnover was expected to rise by 70 % from 1991 to 1992 and 136 % by 1994. Both finished cotton products and cotton clothing were supposed to increase by 83 % in 1992, by 120 % in 1993 and by 175 % in 1994, in relation to the total turnover in 1991. Considering the cost structure of the company, an increase in turnover was essential for its restructuring. However, no explanation was given by the Spanish authorities to justify these increases, particularly that of 1991 to 1992. Bearing in mind that the company intended to produce and sell new products, something which usually entails particular difficulties at the beginning, these forecasts are too optimistic.

According to the plan, the company envisaged for its main line of production, finished cotton products, a 53 % increase in its average price per unit from 1990 to 1991. This is a crucial assumption, but no further information or justification for this price level was provided. The company would not have been able to reach viability in 1994 if the average price per unit for finished cotton products had been 15 % less than was estimated in the restructuring programme, even if this entailed a 30 % increase in the average price from 1990 to 1991.

As for the reliability of the improvement in the workforce cost structure, the Commission has calculated the tonnes, metres and units produced per worker for each year and has compared the figures with productivity levels for 1990 and 1991. According to the restructuring plan, most workers would have been active in the spinning and weaving of both cotton and wool, as well as in the production of finished cotton products. Although the ratios indicate that the productivity of the company's workforce was very poor, offering scope for improvement, the recovery envisaged by the restructuring programme was very steep and very rapid. According to the Commission's analysis, the productivity of the workforce in finished cotton products was expected to increase by 71 % from 1991 to 1992 and by 105 % from 1991 to 1993. The productivity in cotton clothing should have increased by 83 % from 1991 to 1992 and by 175 % up to 1994. The productivity in cotton spinning and weaving activities should have increased by 60 % from 1991 to 1992. Even if 1991 were to be considered an unproductive year and the output figures per employee were to be compared with the company's productivity in 1990, the progress expected would have been extreme.

While the company intended to increase its turnover by more than 130 % in a period of four years, the workforce dealing with administrative matters would be reduced from 291 in 1990 to 188 in 1994, that is, a 55 % reduction. This would only have been possible if certain administrative tasks had been outsourced, something which in turn would have meant a considerable increase in external services' costs; this, however, was not taken into account in the restructuring plan.

The large-scale expansion planned for sales in cotton clothing, which was designed as consumables, as well as the increasing need for semi-finished products, due to the limits in production capacity, should have resulted in an increase of raw materials and consumables, while the calculated expenditure remained modest. Unfortunately, no further information concerning margins or the need for semi-finished products was contained in the plan.

Taking all the abovementioned considerations into account, as well as the fact that some figures contained in the restructuring plan, as they were presented, do not make sense, the Commission has to conclude that the assumptions necessary to show the long-term viability of the company within a reasonable time scale are unrealistic and unreliable, as they cannot be generally accepted and no evidence was ever supplied which could have made such assumptions justifiable.

The capacity of the company to repay its debts on the basis of a lower (and more realistic) turnover also raises doubts. According to the plan, the company would have obtained a positive result in 1994 (some Pta 716 million).

It is unclear how the company's owners could have assumed and financed a restructuring process which might take longer to conclude than was envisaged in the plan.

Its lack of credibility is precisely the problem which the second restructuring plan presented poses to the Commission. As has already been stated, apart from the fact that the plan was based on forecasts which can be described at least as highly optimistic, the Spanish authorities have not furnished in recent years any evidence which suggests to the Commission that the aim is indeed to ensure the reconstruction and viability of the company. The Commission has to take equally into account the fact that the buyers would not or could not fulfil their obligation to pay 25 % of the capital increase as they were required to do in the framework of the sale contract, that is, Pta 925 million out of a total of Pta 3 700 million.

According to the information available to the Commission, only Pta 512 million were paid at the moment of the sale, half of the amount expected, and at the time of adoption of Decision 92/317/EEC no further contribution had been made to the company. This raises serious doubts as to the ability and will of Hytasa's buyers to meet their obligation to increase the company's capital by Pta 3 700 million. The Commission has to conclude that the lack of financial means on which the company could legitimately count means that the feasibility of the operation and the future existence of the company, which depended on the amount of resources committed as well as the rapidity with which this should be done, were jeopardized.

It is the view of the Commission that the fact that the company to be restructured is located in an area eligible for regional aid does not justify a permissive approach to restructuring aid. In the medium to long term, artificially sustaining companies which are ultimately not viable not only cannot be considered as being covered by the exception contained in Article 92 (3) (a), but is particularly damaging to the economy of those regions where resources available through regional schemes, given their shortage, should be used to create wealth, and thus neutralize their structural underdevelopment. Therefore, the restructuring process should allow the company to be economically viable in order to contribute to the real development of the region without requiring continual aid.

The Commission considers that the restructuring plan presented by the Spanish authorities in the case of Hytasa did not ensure the company's long-term viability. Therefore, the aid cannot be deemed to promote the economic development of the area within the meaning of Article 92 (3) (a) and cannot be considered compatible with the common market on its basis.

Neither can it be considered compatible with the common market on the basis of the exception contained in Article 92 (3) (c). It is the view of the Commission that aid to firms in difficulty entail a high risk for the common market as it could frustrate or unduly retard the process of structural adjustment by maintaining firms which under normal market conditions should disappear or restructure themselves. For this reason, the Commission requires that such aid be subjected to the implementation of a solid restructuring or conversion programme which restores the long-term viability of the beneficiary. As the restructuring plan submitted did not ensure the viability of Hytasa, the exception contained in Article 92 (3) (c) cannot be applied.

The Commission's view that the abovementioned restructuring plan did not render the company viable is confirmed by the financial interventions in its favour in which the Spanish authorities had to engage after 1992. The restructuring plan was never implemented. Following the bankruptcy of one of the owners, Hilaturas Gossypium, Improasa, the executive company of Patrimonio del Estado, acquired 30 % of MTT's shares in 1992. Several properties belonging to MTT were mortgaged in favour of Improasa for some Pta 726 million. Improasa also acquired promissory notes issued by MTT for some Pta 4 660 million.

In 1992, two credits amounting to Pta 300 million were given to the company by the Instituto de Fomento de Andalucía (IFA) [1], as part of an aid scheme approved by the Commission [2]. MTT finds itself at present in financial straits, with liabilities worth some Pta 10 000 million, so that it has been decided by the competent Spanish authorities to suspend indefinitely the payments of the company, with a view to its liquidation and the subsequent sale of its assets to pay its debts.

IV

In cases where aid is deemed incompatible with the common market, the Commission requires the Member State to reclaim the aid from the recipient (in this respect see the Commission's communication published on 24 November 1983 [3], as well as the judgments of the Court of Justice in Cases 70/72, Commission v. Germany [4] and 310/85, Deufil v. Commission [5]. As this is the case with the aid to Hytasa, the subject of this Decision, the Pta 4 200 million granted to this company must be recovered.

[1] The IFA. is a public entity belonging to the Andalusian Autonomous Community.
[2] State aid N 624/92.
[3] OJ No C 318, 24. 11. 1983, p. 3.
[4] [1973] ECR, p. 813.
[5] [1987] ECR, p. 901.

The recovery of the aid shall be made in accordance with Spanish law, including the provisions concerning interest due for late payment of amounts owing to the Government, such interest running from the date of the award of the aid (see the Commission's letter to the Member States SG(91) D/4577 of 4 March 1991, as well as the judgment of the Court of Justice in Case 142/87, Belgium v. Commission (1).

According to the case-law of the Court of Justice, such recovery of aid means that those provisions are to be applied in such a way that the recovery required by Community law is not rendered practically impossible. Any procedural or other difficulties in regard to the implementation of the measure cannot have any influence on its lawfulness (Case 142/87, previously cited).

According to the sales contract signed at the time by the Spanish authorities and the buyers, any important financial events which should occur as a consequence of acts prior to the sale of the company should be borne by the seller. This clause would allow the State to compensate the buyers for their obligation to reimburse the aid deemed by the Commission to be incompatible with the common market. As already stated in its Decision 92/317/EEC, the Commission considers that this would neutralize the essence of its Decision and would perpetuate the distortion of competition caused by the aid. This would constitute a means of circumventing the provisions regarding State aid contained in the Treaty, rendering them ineffective. Therefore, on the basis of the principle of the primacy of Community law, this provision shall not be carried out, and the company benefiting from the undue advantage conferred by the illegal aid will have to reimburse it,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision 92/317/EEC is amended as follows:

1. Article 2, second paragraph, is replaced by the following paragraph:

   'This aid is considered incompatible with the common market within the meaning of Article 92 (1) of the EC Treaty, as it does not meet the conditions for any of the exceptions contained in paragraphs 2 and 3 of the said Article to apply.';

2. Article 3 is replaced by the following text:

   'Article 3

   Patrimonio del Estado will recover from Mediterráneo Técnica Textil (formerly Hilaturas y Tejidos Andaluces SA (Hytasa)) the Pta 4 200 million granted. The recovery of the aid shall be made in accordance with Spanish law, including the provisions concerning interest due for late payment of amounts owing to the Government, such interest running from the date of the award of the aid.

   These provisions are to be applied in such a way that the recovery required by the Community law is not rendered practically impossible. Any procedural or other difficulties with regard to the implementation of the measure shall not have any influence on its effectiveness.';

3. Article 4 is replaced by the following text:

   'Article 4

   Any agreement providing for compensation to the buyers of Hilaturas y Tejidos Andaluces SA by the State or Patrimonio del Estado as a result of their obligation to reimburse the aid on the basis of this Decision shall not be carried out.'

Article 2

The Spanish Government shall inform the Commission within two months of notification of this Decision of the measures taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 18 September 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

(1) [1990] ECR, p. I-959.