COMMISSION

COMMISSION DECISION

of 28 October 1998

on State aid implemented by Spain in favour of SNIACE SA, located in Torrelavega, Cantabria

(notified under document number C(1998) 3437)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/395/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Whereas:

I. PROCEDURE

(1) By letter dated 17 April 1997 the Commission received a detailed complaint from a law firm representing the Austrian company Lenzing AG, the largest Community producer of viscose fibres, concerning various elements of illegal aid awarded to its Spanish competitor 'Sociedad Nacional de Industrias y Aplicaciones de Celulosa Espanola' SA (hereinafter referred to as SNIACE). The complaint included new information not provided with its original complaint dated 4 July 1996, in respect of which the Commission had found that there was insufficient evidence of State aid. The new information provided to the Commission included a copy of a viability plan for SNIACE produced by a private consultancy firm. The complainant alleged that SNIACE had received significant sums of State aid over a period of several years, stretching back to the late 1980s. That aid had not been notified to the Commission in accordance with Article 93(3) of the EC Treaty nor with the Code on aid to the synthetic fibres industry. The aid had distorted competition in a sector suffering from structural overcapacity and had served to keep SNIACE alive artificially.

(2) There followed a lengthy preliminary investigation, which included meetings between DG IV, the complainant, and the Spanish authorities on 17 May 1997 and 16 June 1997 respectively. The complaint was registered as non-notified aid under NN 118/97 on 17 July 1997.

(3) By letter dated 7 November 1997 the Commission informed the Spanish Government of its decision to initiate the procedure laid down in Article 93(2) of the Treaty in respect of several elements of presumed aid (see below).

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the presumed aid.

[1] OJ C 49, 14.2.1998, p. 2.

(5) By letter dated 19 December 1997, the Spanish Government replied to the Commission's letter opening the procedure which provided further information in support of its view that none of the matters under investigation constituted aid within the meaning of Article 92(1) of the EC Treaty.

(6) By letter dated 23 February 1997, the Commission requested clarification on certain points. The Spanish Government replied by letter dated 16 April 1998.

(7) The Commission received comments from interested parties. It forwarded them to the Spanish authorities, which was given the opportunity to react; its comments were received by letter dated 24 June 1998.

II. SNIACE

(8) SNIACE was founded in 1939 and is a producer of cellulose, paper, viscose fibres, synthetic fibres and sodium sulphate. It is based in Torrelavega, Cantabria, which since September 1995 has been a region eligible for aid pursuant to Article 92(3)(a). Before that date it had been a region eligible for aid pursuant to Article 92(3)(c).

(9) SNIACE currently has approximately 600 employees. It is one of five viscose fibres producers in the European Union with a capacity of approximately 32 000 tonnes (about 9 % of Community capacity). SNIACE also produces synthetic fibres, including polyamide filament yarn. SNIACE has obtained the following results in recent years:

(ESP million)

	1994	1995	1996	1997
Turnover	6 540	10 970	5 750	5 600
Profit (loss)	(1 780)	153	(1 951)	(500)

(10) When opening the Article 93(2) procedure, the Commission noted that the company had suffered financial difficulties for several years, which had featured in numerous press reports. Following an application made by the company in 1992, the Spanish Courts ordered suspension of payments in March 1993. This was lifted following a creditors' agreement in October 1996, whereby SNIACE's private creditors agreed to convert 40 % of their debts into shares. The public creditors did not participate in the agreement.

(11) At the end of 1997 the company's current liabilities totalled ESP 8,37 billion compared with ESP 4,54 billion of current assets and the net worth of the company was ESP 1,73 billion. In recent years the problems facing the company, which have included industrial relations disputes, have led to periodic shut-downs of production. The company ceased production for much of 1993. Production was again stopped for much of 1996 and early 1997. Production resumed in February 1997 and the company is currently trading as a going concern.

III. DETAILED DESCRIPTION OF THE AID MEASURES

(12) The Commission opened Article 93(2) proceedings in respect of the following elements of presumed aid:

(a) *the non payment of environmental levies owed by SNIACE since 1987.* The Commission noted the possibility of an element of State aid arising from the withholding over a period of several years of environmental levies owed by the company to the public Water Authority (Confederation Hidrogràfica del Norte). Given that the company appeared to have been in financial difficulties for some years, the effect of not paying these levies may have been to avoid the liquidation of the company;

(b) *non-enforcement of social security contributions since 1991.* The Commission expressed doubted whether the terms and conditions of two debt rescheduling agreements with the Social Security Treasury reflected market conditions:

(i) an agreement dated 8 March 1996 covering rescheduled debts totalling ESP 2,9 billion for the period February 1991 to February 1995 and imposing terms of 96 monthly payments from 1996 to March 2004 at the legal interest rate of 9 %; and

(ii) an agreement dated 7 May 1996 allowing a first year's grace and 84 monthly payments at the legal interest rate of 9 %;

(c) *a loan guarantee approved totalling ESP I billion approved by law 7/93.* The Commission expressed doubts that law 7/93 by which the Cantabrian regional government authorised a loan guarantee of ESP 1 billion to SNIACE contains a degree of State aid;

(d) *the financing arrangements for the planned construction of a waste treatment plant.* The Commission said it could not state with certainty that there would be no aid involved in the financing arrangements for a planned waste water treatment plant;

(e) *partial cancellation by Torrelavega City Council of debts totalling ESP 116 million.* The Commission noted that the actions taken by the Torrelavega City Council appeared to have reduced *de facto* the company's debts by ESP 116 million and that the fact that the City Council had reached a 'special agreement' with the company implied that it has used discretionary powers and that consequently State aid could be involved; and

(f) *agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE:*

Date of agreement	Principal (ESP)	Interest (ESP)	Rate of interest (legal interest)	Other terms/conditions
5.11.1993	897 million	465 million	10 %	Eight years repayment; mortgage on SNIACE's assets
31.10.1995	229 million	110 million	9 %	Eight years repayment; mortgage on SNIACE's assets

(13) The Commission doubted whether the terms and conditions of the above agreements reflected market conditions.

IV. COMMENTS FROM INTERESTED PARTIES

(14) Comments were received from one Member State (the United Kingdom), several Community competitors of SNIACE and the International Rayon and Synthetic Fibres Committee (CIRFS). Comments by the Bavarian Ministry of Economy, Transport and Technology were submitted well after the expiry of the deadline and consequently may not be taken into account in the context of this procedure.

(15) Säteri, a producer of viscose staple fibres, stated it had experienced unfair competition from SNIACE, particularly in Italy, the United Kingdom, Germany and France. As a result of illegal aid SNIACE had been able to set its prices at 10 to 20 % below those of Säteri. Svenska Rayon, a producer of viscose staple fibre, stated that in its view SNIACE had disturbed the viscose staple-fibre market over several years by selling at artificially low prices. This had particularly affected Svenska Rayon in the Italian market.

(16) Nylstar said it had been hit by unfair competition from SNIACE in the polyamide textile filament sector, particularly in the Spanish market. Textil Finanz, part of the Radici Group, said it was also particularly concerned about the possibility of the effect of illegal aid to SNIACE in the polyamide textile filament yarn sector. Bemberg referred to unfair competition from SNIACE in the polyamide textile filament yarn sector, especially in Italy, Germany, the United Kingdom, Spain, France and Switzerland due to the loss of sales and contracts caused by yarn price levels quoted by SNIACE which did not reflect current market conditions.

(17) Courtaulds plc, the second largest producer of viscose staple fibre in Europe, referred to overcapacity in the industry and to the action it had taken over the previous 10 years to reduce capacity and costs which had led to job losses in the United Kingdom, Germany and France. It stated that the migration of textile manufacturing to lower-cost economies had resulted in a long-term reduction in mill consumption in Europe of between 1,5 and 2 % per annum. This consumption had been replaced by imports of yarns, fabrics and garments, primarily from Asia and India. As a result, capacity had fallen in Europe from 687 000 tonnes in 1980 to 355 000 tonnes in 1998. Courtaulds alone had reduced capacity by 195 000 tonnes over the last 20

years, including a reduction of 30 000 tons at its Grimsby site in 1997. Courtaulds stated that there was clear evidence from trade data that SNIACE priced below other competitors. It stated that in the United Kingdom, Germany, Italy, Spain, France and Belgium SNIACE's prices were at least 20 % below Courtaulds' average prices. Moreover, it believed that the size of SNIACE's plant was uneconomic.

(18) The law firm representing Lenzing AG, whose original complaint had led to the opening of the proceedings, reiterated its view that the various elements of aid were illegal and incompatible with the common market. In particular it stressed that they were discretionary measures and did not constitute, as was claimed by the Spanish Government, general measures. It also reiterated its view that the aid measures had served to keep the company alive artificially.

(19) CIRFS stated that it was the representative body for the European man-made fibres industry. Its membership accounted for 92 % of production of viscose staple fibre and 76 % of production of polyamide textile filament yarn (the two main fibre types produced by SNIACE). It favoured the strict application of the State aid rules by the Commission. It emphasised that the viscose staple market in the Community is a mature market, with consumption in long-term decline. It forecast a further 7 % fall in consumption by 2002. Capacity was continuing to be reduced by European producers to bring it more closely into line with demand. Furthermore, capacity utilisation was at an unsatisfactory level for such a capital-intensive sector at about 81 and 84 % in 1996 and 1997 respectively. Viscose staple producers normally aimed for at least 90 % capacity utilisation in order to achieve a reasonable return on capital. It believed that in 1997 all of the five European Community producers had made losses on their viscose production. With regard to the polyamide textile filament yarn sector, CIRFS stated that this, too, was in a gradually declining long-term trend. Capacity in the Community was being gradually reduced, by a market-driven process of rationalisation and restructuring, to bring it more closely into line with demand. Capacity utilisation remained at below the 90 % level required to achieve satisfactory levels of profitability.

(20) The United Kingdom Representation to the European Union supported the view that aid had been used to allow SNIACE to continue in business and that this would inevitably lead to unemployment elsewhere in Europe, given the existing overcapacity in the synthetic fibres industry.

(21) In addition, Lenzing and Courtaulds expressed their concern, based on press reports, that a further new aid measure had been granted to SNIACE by a State-owned savings bank Caja de Cantabria, in the form of a loan with profit participation amounting to ESP 2 000 million which did not conform to normal market conditions.

V. COMMENTS FROM THE SPANISH GOVERNMENT

(22) In general terms, the Spanish Government reiterated the views it had expressed prior to the opening of the procedure, notably that the various public authorities concerned had followed the normal procedures laid down in Spanish law for the management of tax and social security debts and that they had in no way granted the company preferential treatment.

Non-payment of environmental levies owed by SNIACE since 1987

(23) The Spanish Government stated that in accordance with the provisions of the Water Act (Law 29/1985 of 2 August 1985) and implementing regulations, the Confederacion Hidrografica del Norte began in 1988 issuing assessments of the amount of waste levy payable for discharges made in 1987 and subsequent years, by individuals and businesses discharging waste water in the catchment area for which it was responsible. It issued SNIACE in 1988 with assessment No 282/1988, which calculated the company's tax liability at ESP 210 million in respect of effluents generated by its production processes during 1987.

(24) The company brought an economic/administrative complaint against this assessment before the Regional Economic Administrative Court of Asturias (TEARA), contesting its legality.

(25) Article 81 of the Rules of Procedure for Economic/Administrative Complaints, which were approved by Decree 1999/1981 of 20 August 1981 and were in force in 1988, provides that enforcement of decisions which have been challenged is to be suspended if the complainant lodges with the economic court a bank guarantee covering payment of the debt. In accordance with that provision, SNIACE provided TEARA with a guarantee amounting to ESP 210 million issued by Banco Espanol de Credito and covering assessment No 282/1988. The TEARA considered this to constitute a sufficient guarantee and suspended enforcement of the tax assessment pending its decision on the complaint. It eventually adopted a decision in which it upheld SNIACE's complaint and revoked and cancelled the effects of the tax assessment, returning the bank guarantee which the company had presented. The Confederacion Hidrografica del Norte refused to accept this decision and brought an appeal before the Central Economic Administrative Court (TEAC).

(26) In 1989 the Confederacion Hidrografica del Norte issued an assessment for 1988 which put SNIACE's tax liability in respect of that year at ESP 315 million (assessment No 271/89) and SNIACE, as in the case of the levy for the previous year, lodged a complaint with the TEARA and provided a bank guarantee issued by Banco Espanol de Crédito, as a result of which enforcement was suspended in accordance with the above rules of procedure. On the basis of the same legal arguments, the TEARA upheld SNIACE's complaint and revoked and cancelled the effects of tax assessment No 271/89 and, as in the previous case, returned the bank guarantee which SNIACE had presented. The Confederacion Hidrografica del Norte in turn brought an appeal against this second decision before the TEAC.

(27) The TEAC joined the two appeals and ruled on them in a single judgment which it delivered on 28 November 1990 and which upheld and confirmed the legality of the assessments for 1987 and 1988 (assessments Nos 282/88 and 271/89). Since the bank guarantees had been returned to SNIACE pursuant to the earlier decisions of the TEARA, the Confederacion Hidrografica handed over the two assessments to the State Tax Agency (Agencia Tributaria del Estado) for collection through the enforcement procedure.

(28) In April 1990 SNIACE was issued with waste levy assessment No 421/90, which put its liability in respect of 1989 at ESP 525 million and against which, as in the case of the assessments for 1987 and 1988, it lodged a complaint with the TEARA and provided a bank guarantee issued by Banco Espanol de Crédito.

(29) In the light of the ruling by the TEAC of 28 November 1990, the TEARA rejected the company's complaint on this occasion (on 8 March 1991) and confirmed the legality of assessment No 421/90, retaining the bank guarantee pending the outcome of the appeal brought by SNIACE. Since the bank guarantee presented had been retained, once the Court had dismissed SNIACE's appeal Banco Espanol de Crédito made over to the Confederacion Hidrografica the ESP 525 million covered by the guarantee plus the corresponding interest on late payment.

(30) The Spanish Government emphasised that the Rules of Procedure for Economic/Administrative Complaints, approved by Decree 1999/1981 of 20 August 1981 leaves the decision on whether or not to provide a guarantee to the discretion of the complainant; the advantage of the guarantee is that, once it has been accepted, enforcement of the contested decision is suspended until the court rules on the complaint.

(31) Given this situation, it was in the Spanish Government's view reasonable, from a legal standpoint, for SNIACE to provide bank guarantees when contesting the waste levy assessments issued in 1988, 1989 and 1990, since there was no uniform view of their legality. However, once the TEAC had ruled on 28 November 1990 that the assessments were lawful and the Confederación Hidrográfica had called in the guarantee covering assessment No 421/90 (amounting to ESP 525 million plus interest), this being the only guarantee that could be put into effect since, as mentioned above, those corresponding to 1987 and 1988 had been returned by the TEARA, it can be assumed that SNIACE would have found it difficult to persuade banks to issue guarantees in respect of complaints that would probably be rejected.

(32) Consequently, the assessments issued in 1991 and subsequent years, although challenged before the TEARA, were not guaranteed, nor was the enforcement procedure suspended: once the periods of time allowed for voluntary payment had expired, the assessments were in every case handed over to the State Tax Agency for collection throught the enforcement procedure.

(33) According to the Spanish authorities, the debts run up by SNIACE are as follows:

(ESP)

Period	Principal	Surcharge	Collected	Interest	Total due
1987	210 000 000	42 000 000	54 129 095	167 318 219	473 447 314
1988	315 000 000	63 000 000	31 254 644	250 977 329	628 977 329
1990	525 000 000	105 000 000		400 172 260	1 030 172 260
1991	525 000 000	105 000 000		339 761 301	969 761 301
1992	525 000 000	105 000 000		263 470 890	893 470 890
1993	525 000 000	105 000 000		200 327 055	830 327 055
1994	525 000 000	105 000 000		147 323 630	777 323 630
1995	525 000 000	105 000 000		89 415 411	719 415 411
Total	3 675 000 000	735 000 000	85 383 739	1 858 766 095	6 354 149 834

(34) Interest for late payment has been calculated up to 1 March 1998. This interest is calculated from the due date for payment at the official interest rate for each year; interest is payable on repayment of the debt.

(35) All debts arising from waste disposal levies to be paid by SNIACE and entrusted to the State Tax Agency for collection are now subject to compulsory collection procedure, in accordance with Book III of the General Regulations for Collection (Royal Decree 1684/1990 of 20 December, amended by Royal Decree 448/1995 of 24 March).

(36) The compulsory collection procedure for the payments has now reached the attachment (embargo) stage. This means that measures have been implemented ordering the attachment of goods and titles belonging to the debtor, to an amount sufficient to cover the total debt to be collected.

(37) The proceeds from the attachment of monies and short-term credits have already been applied to repayment of the debts and are included in the 'collected' column of the debts table above. The next step in the compulsory collection procedure is execution, by means of public auction, against immovable goods, including the factory and its plant and equipment belonging to SNIACE and subject to attachment.

(38) The Spanish authorities have stated that execution against attached immovable goods belonging to SNIACE creates problems deriving both from the company's situation and from the nature of the goods attached:

(a) The site of the attached factory and its plant and equipment are officially classified as land for industrial use, and both the factory and its plant and equipment are designed for SNIACE activities. This means the market for any sale is very limited, given that the land may not be utilised otherwise than for industrial purposes and that the modification of the facilities for any other activity would be too costly. Besides, the property has already been mortgaged for over ESP 5 000 million with a number of banking institutions as a result of trading loans granted to SNIACE prior to the institution of procedures for the redemption of debts for waste disposal levies. These mortgages, which date from before attachment, would remain effective in case of the sale of immovable goods, which very much diminishes the chances of sale.

(b) SNIACE is a going concern with a large workforce. The sale of the factory and its plant and equipment would very probably mean ending production and closing down the company. This in turn would lead to the creation of further debts for unpaid wages and compensation paid out for extinguishment of work contracts. Even if a purchaser were to be found for SNIACE's immovable goods, the proceeds would go to paying off these wage credits, which have priority over amounts due to the tax authorities in accordance with Spanish regulations.

(c) The debts which resulted in the attachment of the company's immovable goods are at present the subject of a number of administrative and legal proceedings and, as such, are not sound. Even though execution has not been suspended because SNIACE has not offered a guarantee before the courts, the tax authorities must at least act with due caution before proceeding with the sale of the immovable goods, since this is an irreversible action which could be declared invalid if the courts were to find in SNIACE's favour. Due caution has, indeed, characterised administrative behaviour in such cases up to now. Law 1 of 26 February 1998 on Rights and Duties of Tax Payers expressly covers this question, furnishing further proof of the sensitivity with which the tax authorities should proceed when taking irreversible decisions in regard to debts which are not definitive. This rule, which came into effect on 19 March 1998, limits the powers of the tax authorities to proceed with the disposal of goods attached in cases where repayment of the debt justifying attachment has been guaranteed. As for the steps taken by the Agenda Tributaria in order to ensure the payment of debts, the Spanish authorities stress that in this case the Agenda Tributaria has implemented all possible actions provided for in the law. Credits and titles have been attached, along with the factory, plant and equipment used for company activities.

(39) According to the Spanish authorities, the difficulties which have arisen during the execution procedure for the collection of the debt have led to discussions with the company and with the Confederacion Hidrografica del Norte, the body charged with redemption of the waste disposal levies owed by SNIACE, in order to reach a negotiated settlement for repayment of the debt in accordance with the stipulations of the General Collection Regulations in regard to deferred payment and payment in instalments. The terms and conditions for payment in instalments and the guarantees which SNIACE would have to pledge are at present under discussion.

(40) The Spanish authorities stressed that the fact that payment in instalments is being discussed with the company does not necessarily mean that this option will be adopted; the outcome will depend on conformity with relevant legal requirements, especially those regarding guarantees.

Non-enforcement of social security contributions since 1991

(41) The Spanish Government stated that a further rescheduling agreement for the outstanding debt to the social security system had been made, in accordance with the provisions of Article 40 and following the General Regulations on Collection of Social Security Contributions, approved by Royal Decree 1637/1995, of 6 October (Official State Gazette of 24.10.1995), namely an agreement dated 30 September 1997 covering rescheduled debts totalling ESP 3 510 387 323 for the period February 1991 to February 1997 plus surcharges of ESP 615 056 349 and imposing terms of 120 monthly instalments with interest payments only payable in the first and second years at the legal interest rate of 7,5 % followed by repayments in years three to 10 of the principal plus interest at increasing annual rates of 5, 5, 10, 10, 15, 15, 20 and 20 % respectively.

(42) As at April 1998 SNIACE, SA had made ESP 216 118 863 in repayments to Social Security under the new deferment Agreement.

(43) The Spanish Government stated that this new deferral of debt repayment incorporates the debt referred to in the aforementioned agreement of 8 March 1996, amended by the deferral granted on 7 May 1996, which was rendered invalid due to non-payment of the repayment schedule instalments, no sum relating to the same having been deposited by the company.

(44) The Spanish Government reiterated that the General Social Security Treasury had acted in accordance with the applicable rules and regulations and that their behaviour cannot be deemed to involve the grant of State aid. The rules and regulations in question are generally applicable to all firms in any of the situations specified therein, and do not relate to specific companies or sectors. Action taken by the Social Security authorities with a view to collecting the monies owed by SNIACE had at all times followed the procedure laid down by law in the General Regulations for the Collection of Social Security Revenue.

(45) The Spanish Government stressed that postponement of debt is allowed for as a general measure and is not decided on a discretionary basis by the authorities. The procedure for such postponement is laid down in Articles 40 to 43 of the General Regulations for the Collection of Social Security Revenue, which were approved by Royal Decree No 1637/1995 of 6 October 1995. According to those Regulations, social security debts may be postponed or paid in instalments, at the request of

those liable for payment, where their economic or financial situation prevents them from paying their debts (Article 40). In other words, postponement is granted whenever a firm so requests and fulfils the conditions laid down in the Regulations. Postponement decisions are in the interests of recovery of the debt by the social security system, since any other course of action would result in closure of the firm concerned, destroying any chances of securing payment.

(46) The Spanish Government added that as a guarantee for the repayment of the debt, the company offered to take out a first mortgage on the factory, plant and equipment located at Torrelavega in favour of the General Treasury for Social Security and the Salary Guarantee Fund (FOGASA), jointly. According to an evaluation made by American Appraisal Espana SA on 31 December 1996, the real value of the assets concerned amounted to ESP 25 580 000 000 However, because of the complexity and difficulty of the measures required to ensure that the security offered had full legal effect, SNIACE requested an extension to the deadline for setting up the guarantee. This extension was granted by the Director-General of the General Social Security Treasury on 19 December 1997, for a maximum of six months, in accordance with the provisions of Article 21 of the Order of 22 February 1996, during which time the notices of seizure issued by the General Social Security Treasury would not be acted upon.

(47) During the extension period, since the difficulties mentioned above persisted and the enterprise could not specify a definite date for final settlement, the company made a request for 'substitution of the security' in order to ensure that notices of seizure would not be acted upon. According to the Spanish authorities, an examination is underway to determine whether the new security would sufficiently cover the deferred debt.

(48) According to the Spanish authorities, this postponement cannot be deemed to constitute State aid to the company concerned since the terms under which the debt has to be paid, with interest payable at the statutory rate applicable on the date the postponement was granted, are in accordance with generally applicable and mandatory rules laid down in Spanish legislation.

(49) However, by letter dated 24 June 1998 the Spanish authorities stated that their position did not contradict the view of the complainant that deferment of debt is a discretionary government measure adopted after examination of each individual case; but while they accept that Article 20 of the General Social Security Law uses the word 'podran' (may) when referring to the authority's power to grant a deferment of payment of social security debts, only by an absolutely literal interpretation could the authority be said in the Spanish Government's view to have discretionary power. It argued that discretionary is not the same as arbitrary, which would imply the capricious and nonuniform application of the law to similar situations. The reality was that whenever an enterprise requested deferment because it is in an economic or financial situation that makes it impossible for it to pay its debts, and provided that it complies with the legal requirements laid down by current law (which would, of course, imply individual examination of the case), such a deferment is granted. In this context, the Spanish authorities argue that this measure is general practice and that the same criteria are applied in all cases.

(50) Finally, the Spanish Government maintains its argument that the granting of deferments protects the interests of the social security system, in terms of recovering debts, better than any other form of action that would imply the closure of enterprises, thus making it absolutely impossible for all, or even a significant part, of the debts involved to be recovered. Hence, preference is given to the method that is most advantageous to the social security system.

Loan guarantee approved totalling ESP 1 billion approved by Law No 7/93

(51) The Spanish Government maintained its view that there was no aid involved since the loan guarantee had never been formalised. It reiterated that Article 2 of Law No 7/1993 of 16 September 1993 simply authorised the Regional Government to award SNIACE a guarantee covering an ESP 1 billion loan. This had not in fact occurred, since the Law laid down a number of strict conditions that had to be met if the Regional Government was to provide the guarantee and which had not so far been met. Thus the guarantee had not been granted and had not been put into effect. Indeed, the company had not even requested it. The Spanish Government repeated that prior to any possible formalisation of this guarantee, it would submit a prior notification to the European Commission.

(52) The Spanish Government further argued that under Spanish private law (Article 440 of the Commercial Code and Articles 1822 to 1856 of the Civil Code) a guarantee is defined as a formal transaction: this means that, if a guarantee document is not supplied to the entity which is to undertake the risk, the guarantee does not exist and no rights or obligations are created by it. A guarantee is more than a mere declaration of intent. In order for the guarantee in question to be implemented, the following conditions would have to be fulfilled:

(a) confirmation of conformity with provisions of Law 7/93;

(b) a legal report on the guarantee document to be drawn up;

(c) a general audit report;

(d) a proposal for offering a guarantee by the Regional Government Minister for the Economy and Taxation;

(e) regional Government approval of the guarantee;

(f) drawing up of the guarantee document.

Financing arrangements for the planned construction of a waste treatment plant

(53) The Spanish Government stated that the construction of a treatment line is planned as part of the integrated water treatment plan for the River Besaya and not for the exclusive use of SNIACE, but that the project was currently only at the planning stage.

(54) The company is currently taking steps to install a waste recovery plant. Any action taken with regard to the treatment of discharges made by the company into the River Besaya is linked to measures taken under the general plan for waste water treatment in the Saja/Besaya basin, which has been declared as being in the national interest and is currently undergoing technical appraisal. Until this phase has been completed it is impossible to indicate what measures will ultimately have to be taken by firms making discharges into the River Besaya.

(55) According to the technical studies carried out so far under the general plan for waste water treatment in the Saja/Besaya basin, waste water discharged by industrial firms in the area, including SNIACE, will have to be treated at source by the firms themselves, and treated effluents will be allowed to be fed into the waste water system in accordance with the limits laid down in the Regulations on Discharges and subject to the payment of user charges reflecting the permissible pollutant load. The option of treating all the industrial waste water in a specific treatment line alongside the municipal water treatment plant has been rejected on the grounds of the complexity of such a solution.

(56) By letter dated 16 April 1998 the Spanish authorities added that SNIACE had already acquired the constituent parts of the waste water treatment plant without any form of public assistance and that there are consequently no concrete plans for the granting of any assistance of this nature.

Partial cancellation by the Torrelavega City Council of debts totalling ESP 116 million

(57) The Spanish authorities stated that the Municipality of Torrelavega had acted in all respects within its powers and that the 'release' of the said amount of taxes did not constitute in Spanish law a 'cancellation' of debt.

(58) The Torrelavega City Council had not participated in the Creditors' Agreement of October 1996 within the framework of the suspension of payments procedure, but had instead reached a separate special agreement based on the 'release' ('quita') and postponement ('espera') provisions of Spanish tax law and by which they accepted the same sacrifices as private creditors. That is, they agreed to grant the reduction of amount and extension of time laid down in the creditors' agreement and to allow payment in instalments over a period of five years, with a grace period and interest rates as laid down in the Creditors Agreement. The sole purpose of signing the special agreement was to guarantee the recovery of SNIACE's tax liability with regard to the municipal authorities, since the amounts 'released' were not covered by any form of guarantee and there were no assets free of lien. The agreement was strictly in accordance with Article 129, paragraph 4 of the General Tax Law.

(59) According to the Spanish authorities, Spanish bankruptcy law draws a clear distinction between the concept of cancellation and that of reduction of amount and extension of time. Cancellation may be granted only by law and usually concerns disaster situations that make it appropriate to waive taxes. Reductions of amount and extensions of time are granted purely with a view to the recovery or possibility of enforcing payment of at least part of a debt and are granted only in respect of bankruptcy proceedings in which, as in the case in question, the incontestable preference of mortgage creditors (Banco Espanol de Crédito) with a lien on land and buildings renders impossible any recovery measures.

(60) The Spanish authorities supplied the Commission with a copy of Mayoral Decision of the Torrelavega City Council No 4358/97 of 15 December 1997, which states *inter alia* that the amount of SNIACE's tax debts reached, at that date, a principal of ESP 216 245 424 plus business tax for 1996 of ESP 37 523 859 to which surcharges and statutory interest payments may be added. An amount of ESP 10 193 800 was guaranteed by distraint and some ESP 45 000 000 is pending compensation; under Article 73 of the General Tax Law, property tax has special preference under an Implicit Legal Mortgage.

(61) The Spanish authorities emphasised that the 'release' of debts relates to tax assessments not covered by priority claims or prior distraint and those which, like business tax (impuesto sobre actividades economicos — IAE), could and should have been annulled since they are based on a complete year's activity (circumstances which do not apply in the case of 1995 and 1996 when the company was closed down for many months):

(ESP)

Water and refuse collection fourth quarter 1994	3 808 525
Water and refuse collection first quarter 1995	1 230 231
Water and refuse collection second quarter 1995	1 410 205
Water and refuse collection third quarter 1995	1 205 407
Water and refuse collection fourth quarter 1995	1 217 353
Business tax 1995	37 854 610
Surcharges for enforced collection	24 837 978
Water and refuse collection first quarter 1996	1 254 510
Water and refuse collection second quarter 1996	1 404 795
Road tax 1996	6 700
Business tax 1996	37 523 859
Direct assessment of business tax 1995	4 449 635
Total	116 197 108

(62) According to the Spanish Government, the release from debt of ESP 116 million cannot be deemed to constitute direct or indirect aid because the City Council's decision was confined to eliminating, so to speak, those debts that could not be collected, some of which (such as the assessments of business tax for 1995 and 1996 and the surcharges for enforced collection) must be partly cancelled since the assessment was made on the basis of a year's full activity, whereas the company was hardly active at all in 1995 and 1996. Business tax is a tax whose rate is set by Central Government and is based on full economic activity. That is, they assume a full workforce and energy consumption in line with the enterprise's normal level of activity. In fact, production was suspended during this period and the amounts for both years should be automatically cancelled.

(63) Consequently, of the total amount covered by the agreement to 'release' debts, ESP 100 216 447 represented unenforceable debts — the amount for business tax because of the invalidity of the charge, and the surcharges which were an accounting item relating to the actual tax debt concerned by the release, so that the amount of this item should be understood as nothing more than accounting information without any practical effects whatsoever.

(64) The remaining amounts, for water rates and waste-collection charges, were also the subject of serious miscalculation, since the rate charged for waste collection, at least, is based on the assumption of full economic activity, which did not apply in the years 1994, 1995 and 1996. Those assessments will consequently be replaced with new assessments reflecting the real level of activity. The assessments of business tax for the years 1995 and 1996, amounting to ESP 79 497 353 were therefore completely unrealistic and ultimately have to be partly cancelled.

(65) The remainder of the debt included in the decision could under no circumstances be recovered through enforcement procedures since it enjoys no priority, and the City Council's decision therefore has no practical effect on the company since it relates to amounts that cannot be collected and amounts that had to be cancelled on account of the firm's lack of real economic activity.

(66) The Spanish authorities concluded that the municipal authorities of Torrelavega acted simply to ensure real and effective protection of their financial interests, doing everything possible to recover the SNIACE debt. Their actions had been in full compliance with the law and had never had the effect of diminishing the Municipality of Torrelavega's funds; neither could they be deemed to involve direct or indirect aid to SNIACE, since the release from debt was confined to amounts which, for a variety of reasons, could not actually be recovered.

Agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE

(67) The Spanish Government reiterated that FOGASA pays to employees the amounts owing to them for wages and compensation from enterprises that are insolvent or involved in bankruptcy proceedings. These benefits are paid to the workers, which means that entitlement to wage guarantees is exclusive to workers and never involves the provision of aid or loans to enterprises with labour-related debts. the Ministerial Order of 20 August 1985 governs the conclusion of agreements for the repayment of amounts paid by the Wages Guarantee Fund and expressly includes the possibility of agreements for the deferment and payment in instalments of debts, which may be entered into by the Wages Guarantee Fund, subject to the regulations laid down by the Order.

(68) In accordance with the Order of 20 August 1985, which enforces Article 32 of Royal Decree 505/85 of 6 March 1985, FOGASA signed two repayment agreements with SNIACE:

(a) dated 5 November 1993

Total amount including interest: ESP 1 362 708 700

Payment period: eight years

Instalments due: every six months

Interest rate: 10 %, which was the legal interest rate for 1993, in accordance with the provisions of the Order of 20 August 1985

Security: property mortgage

(b) dated 31 October 1995

Total amount including inte rest: ESP 339 459 878

Payment period: eight years

Instalments due: every six months

Interest rate: 9 %, which was the legal interest rate for 1995, in accordance with the provisions of the Order of 20 August 1985

Security: property mortgage

(69) The amount repaid by the enterprise under the two agreements as at June 1998 amounted to ESP 186 963 594.

(70) According to the Spanish authorities, the agreements do not involve an aid or subsidy granted by the State, as defined in Article 81 of the revised text of the General Budget Law: that is to say any free provision of public funds by the State or its autonomous bodies to public or private individuals or bodies to promote an activity of social interest or to facilitate the achievement of a public aim, or, in a more general sense, as in the case of any form of aid that is granted and charged to the State budget

or the budget of any of its autonomous bodies, as well as subsidies or aids financed, in whole or in part, by European Union funds. Rather, they concern credits to which the body in question is entitled with regard to enterprises because of subrogation of the rights and actions of workers who have received benefits.

(71) Finally, the Spanish Government argued that the rules and regulations in question are generally applicable to all firms in any of the situations specified therein, and do not relate to specific companies or sectors. Fogasa pays employees the amounts that are owed to them and never makes any payment to the companies concerned; it is forbidden from doing so by the applicable legislation.

(72) In addition to commenting on the issues under investigation under the procedure, the Spanish Government also reacted to the observations by third parties that the reported loan of ESP 2 000 million by the Caja Cantabria in favour of SNIACE contained State aid. It refuted the allegations and stated *inter alia* that the Caja is a credit institution governed by private law which has to take its investment decisions on the basis of profitability and solvency criteria. In the light of the information available at this stage, the Commission accepts that the alleged aid awarded by the Caja Cantabria does not fall within the scope of the procedure. However it can by no means exclude the possibility that aid may be involved and reserves the right to continue its investigation into this matter outside the context of this procedure.

VI. ASSESSMENT OF THE PRESUMED AID

(73) The Commission must first determine whether or not the various measures subject to the procedure contain State aid within the meaning of Article 92(1) of the EC Treaty. In the light of the information available the Commission's assessment is as follows.

(74) SNIACE is one of five viscose fibres producers in the Community. Its products are traded between Member States, and there is competition among producers. Intra-Community trade for viscose fibre (Combined Nomenclature number 5504 10 00) amounted to approximately 101 000 tonnes in 1997. SNIACE operates in a sector in decline, which has resulted in rationalisations in capacity being made by some of its competitors. Production in the EEA of these fibres declined from 760 000 tonnes in 1992 to 684 000 tonnes in 1997 (a reduction of 10 %) and consumption fell in the same period by 11 %. The average capacity utilisation rate in that period was about 84 %, which is low for such a capital-intensive sector. In addition to supplying the Spanish market, SNIACE has traditionally supplied other European markets, notably Italy and France. In addition SNIACE produces synthetic fibres, namely polyamide filament yarn. This is a sector which also suffers from substantial overcapacity, with an average capacity utilisation rate in 1995 to 1997 of only 76 %.

Non-payment of environmental levies owed by SNIACE since 1987

(75) As at l March 1998, it appears that the total value of unpaid debts on environmental levies for waste, including surcharges and interest charges for the period 1987 to 1995 had risen to about ESP 6 268 766 095 (rather than the ESP 6 354 149 834 stated by the Spanish authorities, which did not take account of the amounts already collected in 1987 and 1988). Yet the enforcement procedure for the collection of these debts was apparently instituted some eight years ago, following the ruling made on 28 November 1990 by the Central Economic Administrative Court on the legality of the assessments for 1987 and 1988. As the Spanish authorities themselves admit, the enforcement procedure has no suspensory effect in this case, since SNIACE has not secured bank guarantees against the contested environmental levy assessments (except for 1988).

(76) However, the Commission accepts that under Spanish law it is the tax authority and not the Confederación Hidrográfica del Norte which is the responsible body for managing the collection of these debts from SNIACE. As at June 1998 ESP 85 383 739 had been recovered, which represents little more than a mere 1 % of the total claim. Meanwhile the amount of debts, including interest at the legal interest rate and surcharges, continues to rise.

(77) The Commission notes that it has proved difficult to execute the collection of the debts, notably because of the serious financial situation facing SNIACE and the legal challenges brought by SNIACE against the annual assessments. By not proceeding to execution so far and thereby possibly provoking the liquidation of the company, the tax authority may have acted in such a way as to maximise its prospects of recovering at least a proportion of the unpaid environmental levies which would otherwise have been impossible due to the existence of other creditors with a higher priority.

(78) In conclusion, the investigation carried out by the Commission has not allowed it to conclude at this stage that the non-payment of environmental levies definitely constitutes State aid. In view of the complex legal issues surrounding the question of whether or not the public authorities have offered SNIACE preferential treatment by not recovering the unpaid levies, the Commission intends to defer a decision on this element until a later stage.

Non-enforcement of social security contributions since 1991

(79) The Commission does not dispute the Spanish authorities' argument that the Social Security Treasury has acted in such a way as to protect its claims. The Commission must also stress that it in no way questions the general social security system in Spain.

(80) Nevertheless the Spanish authorities have acknowledged that if the Social Security Treasury had proceeded to enforce its claims, the consequence could have been the closure of the company. It is thus evident that in this case tolerance by the Social Security Treasury of deferred payment of SNIACE's social security contributions over a period of many years has conferred an appreciable advantage on the company.

(81) It is also evident that the applicable Social Security regulations afford the authorities a margin of discretion in the treatment of individual cases and that this is precisely what has occurred in this case. The Commission must stress that it is the degree of discretion which the Social Security Treasury was able to exercise in this particular case, and moreover to a firm which appeared to be suffering from a lack of viability, which leads the Commission to reject the Spanish authorities' contention that the action taken by the Social Security Treasury with regard to SNIACE constitutes general measures [1].

(82) Notwithstanding the fact that the Social Security Treasury has acted in accordance with the applicable legislation, the treatment of SNIACE's debts, through various rescheduling agreements, does not seem to have been consistent with prevailing market conditions. The Commission's practice has been to make a comparison with the value at the relevant time of the reference rate fixed for the Member State concerned. However, no such rate was fixed for Spain until August 1996. Therefore, in determining whether or not such a rate is consistent with market conditions, in previous cases involving rescheduling of social security debts [2], the Commission has made a comparison with the prevailing average rate of interest charged by private banks in Spain on loans over more than three years. In this case, according to statistics published by the Spanish Central Bank, the average rate of interest charged by private banks on loans longer than three years during the period in question was as follows: 1991 18,24 %; 1992 17,28 %; 1993 16,19 %; 1994: 12,51 %; 1995: 13,09 %; 1996: 11,06 % [3]. The other conditions of the rescheduling agreements, with the bulk of the repayments of principal and interest timed towards the end (apparently in order to facilitate the company's recovery) are also not in confomity with credits under normal market conditions.

(83) It must therefore be concluded that the agreements contained State aid within the meaning of Article 92(1) of the Treaty which was illegal not having been been notified to the Commission pursuant to Article 93(3) of the Treaty. It is difficult to quantify the precise amount of illegal aid involved but it is at least equal to the financial advantage arising from the reduced interest rate applied and effective from when the debts were incurred.

Loan guarantee approved totalling ESP 1 billion approved by Law No 7/93

(84) While it is unfortunate that the Spanish authorities did not notify the Commission of the intention of the Cantabrian regional assembly to authorise the granting of the guarantee in question, especially bearing in mind the fact that the company produces *inter alia* polyamide fibre, a product falling within the scope of control of the Code on aid to the synthetic fibres industry, the Commission can accept that the regional assembly itself does not grant guarantees and that a number of separate additional administrative steps would have been required to put the guarantee into effect. In addition, the Commission is unaware of any

[1] Advocate-General Jacobs indicates in his opinion of 24 September 1998 in Case C-256/97 D. M. Transport SA that 'it is clear that in certain circumstances continued and generous tolerance of late payment of social security contributions may confer an appreciable commercial advantage on the recipient undertaking and in extreme cases be tantamount to relief from those contributions' (point 33).

[2] For example in the Tubacex Case; OJ L 8, 11.1.1997.

[3] The reference rates which have subsequently applied to Spain are as follows: 1.8.1996 to 1.11.1996: 13,45 %; 1.11.1996 to 1.1.1997: 11,40 %; 1.1.1997 to 1.8.1997: 10,56 %; 1.8.1997 to 1.1.1998: 6,22 %; 1.1.1999 to date 0,620 %.

evidence demonstrating that the passing of the Law conferred a commercial advantage on SNIACE. Consequently, on condition that the Spanish Government notifies the Commission in advance of any proposal to formalise the guarantee, the Commission concludes that Law 7/93 of itself does not confer any special advantage on SNIACE and does not therefore constitute a State aid.

Financing arrangements for the planned construction of a waste treatment plant

(85) The Commission notes that according to the information provided by the Spanish Government the implementation of the regional plan for treatment of waste in the Saja/Besaya basin is at the technical appraisal stage and that until this phase has been completed it will not be known what measures may ultimately have to be taken with regard to discharges made by firms (including SNIACE) into the River Besaya. The Commission also notes the assurances given by the Spanish Government that action already taken by SNIACE with regard to the installation of waste water treatment facilities has been made without any form of public intervention and moreover that no such public assistance is envisaged. Accordingly, the investigation by the Commission has not allowed it to establish the existence of aid elements in this respect.

Partial cancellation by the Torrelavega City Council of debts totalling ESP 116 million

(86) On the basis of the information provided by the Spanish Government, Torrelavega City Council appears to have acted in such a manner as to protect all those claims against SNIACE which it is legally able to enforce under Spanish law. The Commission has also examined whether the public creditor's behaviour in this case was determined by the intention to maximise the chances of recovery of the unpaid taxes and whether its actions were comparable to those of the private creditors. As the Commission acknowledged when opening the procedure, by not subscribing to the private creditors' agreement of October 1996 (which stipulated *inter alia* the conversion of 40 % of the debts into shares) within the framework of the suspension of payments procedure, the public authorities were able, in principle, to protect their entire claims. In addition, the Commission can accept that the separate agreement between Torrelavega City Council and SNIACE, which effectively went in parallel with the creditors' agreement, does not appear to have accorded SNIACE any more generous treatment than that reached in the private creditors' agreement. On the contrary, the 'release' from debts was confined essentially to amounts which could not actually be recovered, notably since the company was not economically active for much of 1995 and 1996 and that the amounts due have consequently to be reassessed, though no details of the modified assessments have yet been provided to the Commission.

(87) Accordingly, on the basis of the available information the Commission can accept that the actions of the municipal authorities in Torrelavega coming within the scope of the proceedings did not confer any undue advantage on SNIACE or result in the cancellation of debts and did not therefore constitute State aid.

Agreements between SNIACE and the wages guarantee fund FOGASA covering the repayment of an amount totalling ESP 1,702 billion, corresponding to overdue salaries of the workforce paid by FOGASA on behalf of SNIACE

(88) The Commission reiterates, as it stated in the opening of the procedure, that it does not object to the intervention of FOGASA in so far as it settles on behalf of the company, in accordance with its (FOGASA's) regulations, the valid claims of employees of SNIACE that they would not otherwise have received. However, in accordance with constant Commission practice any discretionary contribution by the State to these costs must be regarded as aid and not as a general measure if it conferred financial advantages on the company regardless of whether the payments are directly to the company or are administered to the employees through a government agency.

(89) According to the Commission's understanding of these arrangements, FOGASA has discretionary power to postpone or split up the repayments up to a period of eight years. The deferred payments accrue at the legal interest rate. Notwithstanding that these arrangements are in accordance with the applicable legislation, they do not seem to have been consistent with the prevailing market conditions. For the same reasons as given in relation to the social security debts above (the fact that there was no reference rate fixed for Spain until August 1996), the Commission has made a comparison with the average rate of interest charged by private banks on loans longer than three years during the period in question, which was as follows:- 1993: 16,19 %; 1994: 12,51 %; 1995: 13,09 %; 1996: 11,06 %. These rates are considerably more than

the rates payable under the agreements. Furthermore, the Commission continues to have doubts that the company is able to meet the terms of the agreements in the light of its financial difficulties. Despite repeated requests, the Spanish Government failed to provide specific details of the nature of the mortgage put up as security to FOGASA.

(90) Consequently, following the approach adopted above in relation to social security debts it must therefore be concluded that the rescheduling agreements with FOGASA contained State aid within the meaning of Article 92(1) of the EC Treaty which was illegal, not having been notified to the Commission. As in the case of the social security debts, quantification of the precise amount of the illegal aid is difficult, but the aid is at least equal to the financial advantage arising from the fact that the interest rate payable under the rescheduling agreements were only 10 and 9 % respectively.

(91) Having established that illegal State aid is contained in the non-payment of environmental levies, rescheduling of the social security debt and the FOGASA repayment agreements, the Commission must decide whether or not such aid is incompatible with the common market and the working of the EEA Agreement.

(92) Article 92(1) of the EC Treaty lays down the principle that aid having the characteristics specified therein is incompatible with the common market. The derogations from that principle set out in Article 92(2) of the EC Treaty do not apply to the case in point, given the nature and objectives of the aid.

(93) With regard to the exceptions provided for in Article 92(3)(a) and (c) for aid that promotes or facilitates the development of certain areas, the Commission notes that the region in which SNIACE is located has since September 1995 been a region eligible for regional aid pursuant to Article 92(3)(a) and prior to that date was eligible for regional aid pursuant to Article 92(3)(c). However, the assistance afforded to SNIACE does not have the requisite features to facilitate the development of certain economic areas within the meaning of this Article, inasmuch as it was granted in the form of operating aid, that is to say, not conditional on investment or job creation. Furthermore, operating aid in Article 92(3)(a) areas could only exceptionally be covered by this exception when granted under restricted and controlled conditions in relation to firms in difficulty (see below).

(94) As far the derogation pursuant to Article 92(3)(b) is concerned, the aid was clearly not intended to promote a project of common European interest or to remedy a serious disturbance in the Spanish economy. Nor has the Spanish Government attempted to justify the aid on such grounds.

(95) As regards the derogation pursuant to Article 92(3)(d) of the Treaty, the aid was clearly not intended to promote culture and heritage conservation.

(96) Thus, for the measures in favour of SNIACE the Commission's assessment concentrates on the non-regionally specific element of Article 92(3)(c) of the Treaty, which lays down an exception for 'aid to facilitate the development of certain activities' where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The aid to SNIACE could be categorised as an aid to a firm in difficulty, given its financial position during the period when the aid was awarded.

(97) The Commission considers that aid to firms in difficulties carries the greatest risk of transferring unemployment and industrial problems from one Member State to another; it acts as a means of preserving the status quo by preventing forces at work in the market economy from their normal consequences in terms of disappearance of uncompetitive firms in their process of adaptation to changing conditions in competition; at the same time, such aid may bring about disruptive effects on competition and trade through its influence upon the pricing policies of beneficiaries opting for undercutting strategies to stay on the market.

(98) For this reason, the Commission has over the years developed a special approach for the assessment of aid to firms in difficulty. The Community guidelines on State aid for rescuing and restructuring firms in difficulty [1] define a number of conditions which such aid must fulfil. They distinguish between rescue aid and restructuring aid.

[1] OJ C 368, 23.12.1994, p. 12.

(99) Rescue aid, that is, aid merely granted to keep a firm in business while the causes of their difficulties are discovered and a remedy worked out, can be authorised as compatible with the common market if it:

(a) consists of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates;

(b) is restricted to the amount needed to keep the firm in business (for example, covering wage and salary costs and routine supplies);

(c) is paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; and

(d) is warranted on the grounds of serious social difficulties and would not have any adverse effects on the industrial situation in other Member States.

(100) The general principle is that restructuring aid will only be authorised where it is in the Community interest and is linked to a viable restructuring/recovery programme submitted in detail to the Commission. A restructuring plan must satisfy all of the following conditions:

(a) the plan must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic forecasts of future operating conditions;

(b) the plan must offset as far as possible any potential adverse effects on competitors;

(c) the amount and intensity of the restructuring aid must be restricted to the minimum needed to enable the restructuring to take place and be related to the benefits anticipated from the Community's perspective. Therefore, restructuring aid beneficiaries are normally expected to make a significant contribution to the restructuring plan from internal resources or from external commercial financing.

(101) Finally, since 1977, the freedom of Member States to award aid to the synthetic fibres industry has been subject to constraints, which were introduced to curb the provision of aid that would result in an increase in capacity for the production of the main synthetic fibres. As SNIACE is a producer of synthetic fibres and as the aid in question appears in part to be by way of support for such activities, the measures in question could only be considered compatible with the common market if they also conformed with the Code on aid to the synthetic fibres industry. Although the aid goes back over a period of several years, it must be examined against the terms of the current version of the Code. The Code covers *inter alia* investment aid for the extrusion and texturisation of four fibres — polyester, polyamide, acrylic and polypropylene. The Code states clearly that, with respect to larger firms (that is, firms which are not SMEs), the Commission will only authorise such aid (at up to 50 % of the applicable aid ceiling) if the aid would result in a significant reduction in the relevant capacity, or if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in capacity.

(102) In this case the Spanish Government did not seek to argue that the measures constituted rescue or restructuring aid. Nor did it put forward any evidence of any valid restructuring plan or a proposed reduction in SNIACE's market presence. This would appear to confirm that the aid had the effect simply of allowing the company to continue in business.

(103) As far as the viability plan submitted to the Commission by the complainant prior to the opening of the procedure is concerned, the Spanish Government merely confirmed its view that the consultant's conclusion 'the viability of SNIACE is only possible through the granting of subsidies which would enable investment projects to be undertaken and debts renegotiated' was purely a private opinion reflected in a private study and did not necessarily reflect the views of the Spanish authorities.

(104) Moreover, with regard to SNIACE's synthetic fibres activities, the Commission is not aware of any plans which would lead to a significant reduction in capacity. In addition, capacity utilisation rates in this sector, in which there is substantial intra-Community trade, remain unsatisfactory.

VII. **CONCLUSIONS**

(105) Accordingly, the Commission finds that Spain has unlawfully implemented aid in the form of the rescheduling of the social security debt and of two FOGASA repayment agreements contrary to Article 93(3) of the Treaty and that it is incompatible with the common market and the functioning of the EEA Agreement.

(106) Since the aid is illegal and incompatible with the common market, it should be recovered and its economic effect annulled,

HAS ADOPTED THIS DECISION:

Article 1

The following State aid which Spain has granted to Sociedad Nacional de Industrias y Aplicaciones de Celulosa Espanola SA (SNIACE) is incompatible with the common market:

(a) in so far as the rate of interest was below market rates, the agreement 8 March 1996 (as amended by agreement of 7 May 1996) between SNIACE and the Social Security Treasury to reschedule debts covering ESP 2 903 381 848 in principal, as further amended by agreement of 30 September 1997 to reschedule debts covering ESP 3 510 387 323 in principal; and

(b) in so far as the rate of interest was below market rates, the agreements of 5 November 1993 and 31 October 1995 between SNIACE and the wage guarantee fund FOGASA covering ESP 1 362 708 700 and ESP 339 459 878 respectively (including interest).

As regards the other matters that were the subject of the proceedings opened pursuant to Article 93(2) of the EC Treaty, namely a loan guarantee approved totalling ESP 1 billion approved by Law No 7/93, the financing arrangements for the planned construction of a waste treatment plant and the partial cancellation of debts by the Torrelavega City Council, these measures do not constitute aid and the procedure can be closed. However, Spain must inform the Commission within a period of two months from the date of this decision of the modified assessments made by Torrelavega City Council in respect of SNIACE's business taxes for the years 1995 to date. As regards the unpaid environmental levies during the period 1987 to 1995, the Commission will take a separate decision in due course.

Article 2

1. The Kingdom of Spain shall take the necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to it.

2. Recovery shall be effected in accordance with the procedures of national law. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until their actual recovery. Interest shall be calculated on the basis of the applicable reference rate.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 28 October 1998.

For the Commission

Karel VAN MIERT

Member of the Commission