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**Committee on Subsidies
and Countervailing Measures**

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SUBSIDIES

Replies to Questions from BRAZIL¹ regarding the Updating Notification of the EUROPEAN COMMUNITIES²

The following communication, dated 27 April 2001, has been received from the Permanent Delegation of the European Commission.

¹ G/SCM/Q2/EEC/20

² G/SCM/N/48/EEC/Add.6, G/SCM/N/48/EEC/Add.13, G/SCM/N/48/EEC/Add.9

GERMANY¹

1. Bavarian Regional Programmes in Support of Commerce and Industry (Item 2 of the notification)

- (a) In response to Korea², Germany affirmed that "the eligible companies are industrial companies, arts and crafts and the service sector". Will all companies from these sectors that request the subsidy be automatically eligible to receive the investment grant or the interest rate subsidy to subsidize loans under this programme?

Reply

The Bavarian regional programme in support of commerce and industry 1998 (BR5) have been notified to and approved by the European Commission being in term of content and financing a supplement to the Joint Federal Government/Länder Scheme for Improvement of Regional Economic Structures (JS). Therefore, the implementation of the BR had to be in accordance to the Regulation of the 27th framework of the JS and where the is not applicable, in accordance to the Community Guidelines on State aid for small and medium sized enterprises. i.e:

- Industrial sectors and companies being excluded from subsidies under II.2. of the 27th framework of the JS, were also excluded from subsidies under the BRP.
- Outside the application am of the JS, subsidies under BRS were limited to small and medium sized enterprises in term of the Community Guidelines.

Until 1998 October 31, projects of the commercial touristic industry did not enter into the application area of the BRS.

- (b) **Is this subsidy available for the entire territory of Bavaria? What are the assisted areas under the Joint Federal Government? Laender Scheme for the Improvement of Regional Economic Structures?**

Reply

Granting subsidies under the BRS 1998 were limited to projects being carried out:

- in the areas of JS³
- in the areas of EFRD, i.e where financing out of the EFRD is possible
- in the area of the regional development programme of Bavaria (RDP Bavaria) i.e areas with agricultural character
- in the urban areas of Augsburg and Nürnberg/Fürth/Erlangen.

Projects of the commercial touristic industry of BRS 1998 have been included from 1998 November in the eligibility for subsidies under the BRP, in case there are carried out in the touristic areas determined by the touristic concept of the Bavarian State Government and section BIV, 1.5, 1.5.3. of the RDP Bavaria.

¹ G/SCM/N/48/Add.6

² G/SCM/Q2/EEC/10

³ A graph is available to interested delegations who are requested to contact Ms. S. Aspinall, Office 1028, Tel. 739 51 09.

Conclusions: The application area of BRS 1998 subsidies were available, in the entire territory of Bavaria excluding the urban areas of Aschaffenburg, Würzburg, Bamberg, Regensburg, Ingolstadt, Neu-Ulm (Ulm) and München. For the commercial touristic industries the above mentioned limitations were applicable.

(c) Could the EC/Germany provide Members with a copy of the "Community Framework on State Aid to SME"? (EC OJ 213/04 of 23.07.96)

Reply

Community guidelines on State aid for small and medium sized enterprises

(Published in the Official Journal. Only the published text is authentic: OJ C 213, 23.7.1996)

1. Introduction

1.1 The Community guidelines on State aid for small and medium sized enterprises (SMEs), which the Commission adopted on 20 May 1992⁴, stated that the Commission would review their operation no later than three years after the date of their publication. The findings of that review have been submitted to the Member States. On the basis of those findings the Commission has decided to amend or clarify a number of points in the 1992 guidelines. The de minimis rule, which applies irrespective of the size of the recipient firm, will now be covered by a separate notice rendering it more flexible.⁵ Aid towards intangible investment in the form of transfers of technology will be accorded the same favourable treatment as tangible investment. The definition of SMEs has been brought into line with the harmonised definition which the Commission has adopted.⁶ The main purpose of these changes is to arrive at rules which are clearer and simpler to apply, and to take account of developments in Community policy, particularly the recommendations set out in the White Paper on Growth, Competitiveness and Employment.

1.2 At its meeting in Cannes in June 1995, the European Council emphasised in its conclusions that SMEs "play a decisive role in job creation and, more generally, act as a factor of social stability and economic drive". But it is generally accepted that SMEs suffer from a number of handicaps that can slow down their development⁷. One of the main such handicaps is the difficulty in obtaining capital and credit, the chief causes of which are imperfect information, the risk shy nature of financial markets and the limited guarantees that SMEs are in a position to offer; SMEs' limited resources also restrict their access to information, notably regarding new technology and potential markets. The introduction of new regulatory arrangements often entails higher costs for SMEs. The imperfections in the market which limit the socially desirable development of SMEs justify the favourable consideration which the Commission has traditionally been prepared to give to State aid to SMEs, provided that such aid does not affect trade to a disproportionate extent relative to the contribution it makes to the achievement of Community objectives allowed by Article 92. The Community has in fact itself been implementing an action programme for SMEs.⁸

⁴ OJ No C 213, 19.8.1992, p. 2.

⁵ Commission notice on the de minimis rule for State aid: OJ No C 68, 6.3.1996, p. 9.

⁶ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

⁷ Report from the Commission to the European Council meeting in Madrid: CSE(95) 2087, pp.3 et seq

⁸ See, for example, Community Actions to assist SMEs and the Craft Sector; 1. Fourth Commission Activity Report on Enterprise Policy Year 1993 2. Commission Report on Coordination of the Activities in favour of Small and Medium-sized Enterprises (SMEs): COM(94) 221 final, 7.9.1994

1.3 The approach which Commission competition policy takes towards State aid for SMEs has to be consistent with its other policies, on such matters as enterprise, industrial competitiveness, research and technological development, and economic and social cohesion. The present guidelines are being published in order to inform Member States of the rules the Commission intends to apply when it vets aid to SMEs under Articles 92 and 93 of the EC Treaty, so that Member States know what to expect from the vetting process and in order to ensure that they are treated equally. For their part, Member States must satisfy themselves that any aid they propose to grant is transparent and that the Commission has been given all the information it needs to assess the impact on competition. The rules set out here apply regardless of the form taken by the aid.

2. When Community monitoring comes into play

2.1 Article 92⁹ of the EC Treaty imposes a general ban, subject to certain exceptions, on "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goodsin so far as it affects trade between Member States". State aid given to SMEs will usually be caught by this provision. Such aid confers an advantage on particular firms, unlike general measures, which may benefit all enterprises throughout the economy. And it may affect trade between Member States because many SMEs export part of their output to other Member States and because in most industries a strengthening in the position of SMEs on the local or national market will make it more difficult for producers from elsewhere in the Community to penetrate that market.

Nevertheless, some SMEs, and certain microenterprises in particular, carry on businesses in which there is no trade between Member States (providing local services, for example). Aid given to them for activities of this sort falls outside the scope of Article 92.⁸

2.2 The de minimis rule

Any aid given to a firm is capable of distorting competition; but not all aid has a perceptible effect on trade and competition between Member States. This is particularly true where the amount of aid involved is small, although such aid is not, as a general rule, intended exclusively for SMEs. Small amounts of aid are frequently granted under schemes administered by local or regional authorities.

In 1992, in an effort to reduce the administrative burden on the Member States and on the Commission itself which ought to be left to concentrate its resources on cases of real importance to the Community and in order to simplify matters for SMEs, the Commission introduced what is known as a de minimis rule¹⁰: this rule sets a threshold figure below which Article 110 can be said not to apply, so that a measure need no longer be notified in advance to the Commission under Article 93.¹²

⁹ OJ No C 213, 19.8.1992, p.2

¹⁰ The Version currently in force is the one set out in the Commission notice on the de minimis rule for State aid, referred to above.

¹¹ OJ No c 213, 19.8.1992, p.2

¹² Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

3. Scope of the guidelines

3.1 The Commission will follow these guidelines when it considers whether the exemption in Article 92¹³(c) applies to State aid granted to SMEs.

3.2 Definition of SMEs

For purpose of applying the guidelines, an SME is defined in accordance with the recommendation concerning the definition of SMEs adopted by the Commission on 3 April 1996.¹⁴ On the current definition, whose ceilings for turnover and balance sheet total can be reviewed every four years in accordance with Article 2 of the Annex to the Recommendation, an SME is an enterprise which:

- has fewer than 250 employees¹⁵ and
- has either, an annual turnover¹⁶ not exceeding ECU 40 million, or an annual balance sheet total not exceeding ECU 27 million, and
- conforms to the criterion of independence defined below.

Where it is necessary to distinguish between "small" and "medium-sized" enterprises, a "small" enterprise is defined as one which:

- has fewer than 50 employees and
- has either, an annual turnover not exceeding ECU 7 million, or

an annual balance sheet total not exceeding ECU 5 million, and

- conforms to the criterion of independence defined below. An enterprise is considered independent unless 25 per cent or more of the capital or of the voting rights is owned by an enterprise falling outside the definition of an SME or of a small enterprise, whichever may apply, or jointly by several such enterprises. This ceiling may be exceeded in two cases:

If the enterprise is held by public investment corporations, venture capital companies or institutional investors, provided no control is exercised either individually or jointly, if the capital is spread in such a way that it is not possible to determine by whom it is held and if the enterprise declares that it can legitimately presume that it is not owned as to 25 per cent or more by one enterprise, or jointly by several enterprises, falling outside the definitions of an SME or a small enterprise, whichever may apply.

The three tests workforce, turnover or balance sheet total, and independence are cumulative: all three must be satisfied. The independence test, according to which a large enterprise must not hold 25 per cent or more of the SME's capital, is based on practice in a number of Member States where

¹³ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4

¹⁴ See footnote 5

¹⁵ The number of employees is the number of annual work units (AWUs), that is to say the number of wage and salary earners employed full time for a whole year, with part-time or seasonal work being counted as fractions of a unit. The year to be taken is the last completed financial year.

¹⁶ The "turnover" referred to here is the "net turnover" defined in Article 28 of the Council's Fourth Company Law Directive on the annual accounts of certain types of companies (OJ No L 222, 14.8.1978, p. 11), as last amended by Directive 94/8/EC (OJ No L 82, 25.3.1994, p. 33), that is to say "the amounts derived from the sale of products and the provision of services falling within the company's ordinary activities, after deduction of sales rebates and of value added tax and other taxes directly linked to the turnover".

this percentage is the threshold at which supervision becomes possible. In order to ensure that only genuinely independent SMEs are included, there has to be a way of eliminating legal arrangements in which SMEs form an economic group much stronger than an individual SME. In calculating the thresholds referred to above, it is therefore necessary to cumulate the relevant figures for the beneficiary enterprise and for all the enterprises which it directly or indirectly controls through possession of 25 per cent or more of the capital or of the voting rights.

3.3 Industries covered

The present guidelines apply to aid granted to SMEs in all industries, with the exception of those where special Community rules governing State aid have been laid down under the EC or ECSC Treaty. Any aid given to SMEs in those industries is subject to the relevant rules for the particular industry. Such rules currently exist for steel, coal, shipbuilding, synthetic fibres, the motor industry¹⁷, fisheries and transport, and for products of Annex II to the Treaty (for activities at the production level plus those at the processing and/or marketing level).

4. The tests applied in assessing aid

4.1 General principles

The Commission may consider aid compatible with the common market in accordance with Article 92¹⁸(c) if it is intended "to facilitate the development of certain economic activities... where such aid does not adversely affect trading conditions to an extent contrary to the common interest". To qualify for exemption under this provision, a State aid measure must in the first place be in the nature of an incentive: it must under no circumstances have the sole effect of continuously or periodically reducing the costs which the enterprise would normally have to bear, while otherwise leaving the status quo untouched, as in the case of operating aid¹⁹, and it must be necessary in order to achieve objectives which market forces alone would not secure. The objectives pursued must be in the Community interest.

Lastly, the aid must be proportionate to the handicaps which have to be overcome in order to secure the socio economic benefits deemed to be desirable on grounds of the Community interest: the positive effect must outweigh the damaging effect which State aid has on competition and trade.

4.2 Purpose of the aid and admissible intensities

4.2.1 Tangible investment

The 1992 guidelines did not define "investment" for the purposes of the thresholds it laid down in point 4.1. In practice, the Commission has taken the view, for reasons of consistency, that the definition applied should be the one laid down in the principles of coordination of regional aid systems²⁰:

"investment" must be investment in fixed assets:

¹⁷ The rules will apply for as long as "codes", "guidelines", "frameworks" or the like are in force in the two last-named sectors.

¹⁸ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

¹⁹ There are certain exceptional circumstances in which operating aid is admissible in regions qualifying for regional aid under Article 92(3)(a). See the Commission communication on the method for applying Article 92(3)(a) and (c) to regional aid, and in particular point I.6 (OJ No C 212, 12.8.1988, p. 2).

²⁰ OJ No C 31, 3.2.1979, p. 9.

"in the creation of a new establishment, the extension of an existing establishment or in engaging in an activity involving a fundamental change in the product or production process of an existing establishment (by means of rationalization, restructuring or modernization)" or "by way of takeover of an establishment which has closed or which would have closed had such takeover not taken place."

The intensity is to be calculated by reference to the eligible costs, namely the actual costs of land, buildings and plant. In the case of a takeover of an establishment the selling price of the assets should be looked at.

Outside areas qualifying for domestic regional aid²¹, the Commission may grant exemption under Article 92²²(c) for aid to SMEs where the intensity of the aid, measured in gross grant equivalent²³ as a proportion of the costs referred to in the preceding paragraph, does not exceed:

- 15 per cent in the case of small enterprises, or
- 7.5 per cent in the case of medium-sized enterprises.

In assisted areas, the Commission may approve aid to SMEs which exceeds the level of regional

investment aid it has authorized for large enterprises in the area:

- by 10 percentage points gross in areas covered by Article 92²⁴(c), provided the total does not exceed 30 per cent net;
- by 15 percentage points gross in areas covered by Article 92²⁵(a), provided the total does not exceed 75 per cent net.

The aid ceiling will apply regardless of whether the aid is provided entirely from domestic sources or is part financed by the Community from the Structural Funds, and more especially the European Regional Development Fund (ERDF).

Where the Member State proposes financing in respect of costs other than the eligible costs defined above, the aid will have to be recalculated by reference to the eligible costs.²⁶ The Member States are also free to grant aid within the limits authorized by the de minimis rule towards expenditure which would not be eligible under the definitions given in the present guidelines.

4.2.2 Intangible investment in the form of transfers of technology

The Commission's White Paper on Growth, Competitiveness and Employment stresses the important role which the promotion of intangible investment has to play in a general policy on competitiveness and recommends that the tests of the acceptability of aid to industry be reviewed in

²¹ See the Commission communication on the method for applying Article 92(3)(a) and (c) to regional aid, published in OJ No C 212, 12.8.1988, p. 2, as amended by the Commission notice published in OJ No C 364, 20.12.1994, p. 8.

²² Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

²³ That is to say, the nominal (before tax) value of grants and the discounted before tax value of interest

²⁴ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

²⁵ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

²⁶ This rule does not apply to costs which are eligible for the classes of aid described below.

order to eliminate the bias in favour of tangible investment. The Commission's sympathetic approach to aid for R&D, training and consultancy should accordingly be broadened to include aid that is designed to encourage SMEs to use advanced technology which they would not have been able to develop themselves, by authorizing limited assistance towards the transfer of technology to SMEs from research laboratories or from other firms. Again, inequality in the information available to licensors and licensees regarding new technology, and other types of market imperfection associated with technology transfers, along with the irrecoverable character of the costs of acquiring specific technology or know how, may provide justification for public assistance towards spending of this kind by SMEs, while limiting the impact on competition. For SMEs outside areas qualifying for domestic regional aid, therefore, the Commission may authorize aid which does not exceed the following gross intensities, measured as a percentage of the cost of acquiring patent rights, licences, know how or unpatented technical knowledge²⁷:

- 15 per cent in the case of small enterprises, or
- 7.5 per cent in the case of medium-sized enterprises.

In assisted areas the Commission may approve aid to SMEs which exceeds the level of regional investment aid it has authorized for large enterprises in the area:

- by 10 percentage points gross in areas covered by Article 92²⁸(c), provided the total does not exceed 30 per cent net;
- by 15 percentage points gross in areas covered by Article 92²⁹(a), provided the total does not exceed 75 per cent net.

As at 4.2.1 above, the aid ceiling will apply regardless of whether the aid is provided entirely from domestic sources or is partfinanced by the Community from the Structural Funds, and more especially the ERDF.

4.2.3 Consultancy services, training and dissemination of knowledge

Aid of up to 50 per cent gross will generally be allowed for consultancy services provided by outside consultants to new or established SMEs or for the training given to their staff in such fields as management, financial matters, new technology (especially information technology), pollution control, protection of intellectual property rights or the like, or for the purpose of assessing the feasibility of new ventures. But each scheme will be judged on its merits, with particular reference to the distance of the activity from the marketplace, any cost ceilings for individual firms, any possibilities of combination with other forms of aid, and other relevant factors. In certain exceptional circumstances, the Commission may allow aid of more than 50 per cent. Assisted areas are one such case. Aid for general information campaigns may also qualify for a higher intensity if the financial benefit to the individual firm is small.

It is important to specify that such measures do not cover:

²⁷ The rules which follow do not concern the costs of acquiring patent rights, licences, etc. which form part of the eligible costs of an R&D project put forward by the recipient in accordance with the fourth indent of Annex II to the Community framework on State aids to research and development (OJ No C 45, 17.2.1987, p. 5.) and which qualify for the rates admissible for the type of R&D project of which they form part.

²⁸ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

²⁹ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p. 4.

- aid relating to investment liable to entered on the assets side of the enterprise's balance sheet as intangible assets (costs of R&D, concessions, patents, licences, etc.) and dealt with at points 4.2.2 and 4.2.5 above, or continuous or periodic aid not acting as an incentive and relating to the enterprise's usual operating expenditure (routine tax consultancy services, regular legal services, advertising, etc.).

4.2.4 Aid for the transfer of SMEs

In its recommendation of 7 December 1994 on the transfer of small and medium-sized enterprises³⁰, the Commission drew attention to the problem of SMEs, and particularly family businesses, being forced to cease trading owing to insuperable difficulties in transferring them. If the buyer is an SME too, it may be given aid to help with the takeover in accordance with the rules on aid to tangible investment at point 4.2.1 above.

4.2.5 Aid for environmental protection

Aid for environmental protection will be considered in the light of the Community guidelines on State aid for environmental protection.³¹ Environmental aid granted to SMEs may be up to 10 percentage points gross above the rate ordinarily allowed in the case of large enterprises.

4.2.6 Aid for R&D

Aid for R&D will be considered in the light of the Community framework for State aid for research and development.³² R&D aid granted to SMEs may be up to 10 percentage points gross above the rate ordinarily allowed in the case of large enterprises.

4.2.7 Aid for employment

Aid for employment will be considered in the light of the guidelines on aid to employment.³³ In particular, the Commission will be favourably disposed towards aid to create new jobs in SMEs.

4.2.8 Aid for other purposes

The majority of the aid schemes for SMEs which are notified to the Commission fall into the categories listed above. But the Commission may be prepared to authorize aid towards other justified measures designed to help SMEs, e.g. by encouraging cooperation between them, or towards measures to promote culture and heritage conservation, provided that they do not affect trading conditions and competition within the Community to an extent that is contrary to the common interest.

5. Procedural aspects

5.1 The present guidelines replace the Community guidelines on State aid for small and medium sized enterprises (SMEs) adopted by the Commission on 20 May 1992.³⁴ They shall apply as from the date of their publication in the Official Journal of the European Communities.

³⁰ OJ No L 385, 31.12.1994, p. 14. See also the Commission Communication on that Recommendation: OJ No C 400, 31.12.1994, p. 1

³¹ The version which currently applies is the one published in OJ No C 72, 10.3.1994, p. 3.

³² The version which currently applies is the one published in OJ No C 45, 17.2.1996, p. 5.

³³ The version which currently applies is the one published in OJ No C 334, 12.12.1995, p. 4.

³⁴ See footnote 3.

5.2 The guidelines do not affect the obligation imposed on Member States by Article 93³⁵ of the EC Treaty to inform the Commission of all schemes of assistance to SMEs and of any alteration to such schemes, unless the scheme is de minimis. To facilitate matters for both the Member States and its departments, the Commission sent Member States a standard form for such notifications by letter dated 22 February 1994³⁶. For cases where the amount or intensity of the aid is low, the Commission has also introduced a simplified form and an accelerated clearance procedure³⁷.

5.3 These guidelines are without prejudice to schemes already authorized when the guidelines are published, but such schemes may be reviewed under Article 93.³⁸

5.4 The operation of these guidelines will be reviewed after they have been in force for three years; they may be revised in consequence if necessary.

Q2. Consolidation programme of the Land Mecklenburg-Western Pomerania on the granting of public financial aid to small and medium-sized commercial and industrial enterprises – special fund to support companies (Item 4 of the Notification)

- (a) **The notification of this programme states that loans are made at *market conditions*. What are the criteria and parameters used as a reference for the definition of these "*market conditions*"? Could the EC/Germany present the specific conditions under which the loans are made?**

Loans made to the enterprises on the following terms:

- Non-recurrent fee of not more than 2 per cent on disbursement
- Maximum duration of ten years.
- The fixed rate of interest for the entire duration is set in accordance with the customary current rate of bank interest on longer term loans applying at the time of disbursement (at present 7 per cent).

A concession may be granted to the effect that a payment obligation for a specific year will apply only up to 50 per cent of the profit for the respective year before deduction of income and/or corporation tax. Interest due that is not paid in one year on account of such concession is payable in the following year.

- The applicant may be granted up to redemption free years and a further year's deferral. Repayments may be agreed according to the circumstances of the individual enterprise.
- Provision of collateral for the overall agreement may be selected so that the scope for any necessary further borrowing is not disproportionately restricted.

- (b) **What are the eligibility criteria for the companies that desire to receive loans under this programme? The notification mentions that it is "*usually restricted*" to SMEs. What kinds of companies and operating in which fields have in fact benefited from this programme during the period covered by this notification? Could the EC/Germany describe the characteristics and objectives of these projects?**

³⁵ Commission Recommendation of 3 April 1996 concerning the definition of SMEs: OJ No L 107, 30.4.1996, p.4

³⁶ Ref. SG(94) D/2472.

³⁷ The version currently in force is the one set out in the Commission communication to the Member States on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes, published in OJ No C 213, 19.8.1992, p. 10.

³⁸ OJ No C 213, 19.8.1992, p.2

Reply

Eligible for these loans are commercial, small and medium-sized enterprises with operational facilities in Mecklenburg-Western Pomerania having fewer than 250 full-time employees and either an annual turnover not exceeding €40 million or a balance sheet total not exceeding €27 million. Not more than 25 per cent of the share capital may be held by enterprises that do not meet the above criteria for small and medium-sized enterprise. Specific sectors with excess capacity in industry, farming, fisheries and agribusiness are excluded.

The granting of a consolidation loan is conditional upon the enterprise generally showing prospects of positive development and demonstrating this by means of a correspondingly sustainable consolidation concept. In particular, the consolidation concept should show the contributions to be made by the enterprise, the shareholders and the credit institutions involved.

The beneficiaries are small and medium-sized enterprises which demonstrate an acute need for funds to finance consolidation and/or growth and whose operating facilities are important in terms of labour market and structural policy for a region of Mecklenburg-Western Pomerania. There are no exclusions of specific sectors other than those given above.

Q3. Joint Scheme on "Improving the Regional Economic Structure"

(a) What were the assisted areas in the period covered by the notification?

In 1998, the new federal states represented assisted areas in their entirety. The new federal states qualified for "green box" treatment under Art. 8.2 of the Agreement on Subsidies and Countervailing Measures.

Assisted areas in the original states (not included the population of Berlin) covered 20.8 per cent of the West German population in the period from 1997 to 1999. The assisted areas; are identified in the map and the table which are included as annexes 1 and 2.

(b) What are the investment projects promoted under this programme?

The Joint Scheme on "Improving the regional economic structure" is the key instrument for reducing regional disparities. The primary aim of the scheme is to help structurally weak areas to reduce their disadvantages. The intention is that these regions should catch up with the general economic development and overcome deficiencies of development by creating/safeguarding competitive jobs. In order to achieve this, aim, funds are granted for investments in trade and industry. The amount of the grant depends on the size of the relevant company, the location of the project and on the intensity of the effects that are achieved by the investment. In addition to that, support can be granted for commerce-related infrastructure measures, where such projects boost the competitiveness and adaptability of business and new jobs are created or existing jobs safeguarded.

Moreover, support can be granted for certain non-investment-related business activities to boost the competitiveness and innovative capacities of SMEs (e.g. advice, training, applied research and development).

Annex 1³⁹

³⁹ A graph is available to interested delegations who are requested to contact Ms. S. Aspinall, Office 1028, Tel. 739 51 09.

Annex 2⁴⁰

Q4. Investment allowance for companies in the manufacturing and craft sectors in Eastern Germany where the majority holding is in Eastern German hands (Section 5, para. 2 of the 1996 Investment Allowance Act) and investment allowance for small and medium-sized companies (up to 250 employees) in the manufacturing and craft sectors in Eastern Germany (Section 5, para. 3 of the 1996 Investment Allowance Act) – Items 6 and 7 of the notification

- (a) **On items 6.5 and 7.5, *Duration of subsidy and other time-limits attached to it*, Germany states: "Investment completed before 31 December 1998". Does this mean that these programmes have been terminated?**

Reply

The programmes of the 1996 Investment Allowance Act have been terminated for Investments completed before 1 January 1999.

The 1996 Investment Allowance Act is followed by investment Allowance Act. It promotes the equity capital base of manufacturing and craft enterprises in special sectors (e.g. research and development, Institutes for Industrial design etc.) In the area of Eastern Germany (Section 2 para. 2 of the 1999 Investment Allowance Act). Promoted are investments begun after 31 December 1998 and completed before 1 January 2005 (small and medium-sized companies before 1 January 2002). The tax allowance amounts between 5 per cent up to 25 per cent of investment.

Q5. Regional Economic Support Programme (Item 8 of the Notification) (Land North-Rhine-Westphalia)

- (a) **Are the grants under this programme provided only to small and medium sized businesses?**

Reply

Under the RWP, SME as well as major enterprises based in municipalities identified as assisted areas of the 'Joint Federal/State task', Improving Regional Business Structures, can receive assistance.

- (b) **What are the eligibility criteria for the companies that are seeking grants under this subsidy?**

Reply

Assistance goes only to capital spending projects of private sector enterprises which create jobs in the assisted area, or safeguard existing jobs.

- (c) **What kinds of projects are eligible for subsidization under this programme? What kinds of projects have actually benefited from the programme?**

Reply

⁴⁰ A graph is available to interested delegations who are requested to contact Ms. S. Aspinall, Office 1028, Tel. 739 51 09.

Grants can be received for the acquisition of land, premises and machinery as well as intangible assets (limited where large enterprises are concerned) where:

- an establishment is set up
- an existing establishment is enlarged
- during the Start-up phase of the business, an establishment is acquired or set up for the first time
- an establishment is acquired that has been closed down or is threatened with closure
- an establishment is converted or streamlined

Grants can also go to business infrastructure projects such as the development of industrial and trade estates, and the establishment of 'start-up centres', provided this is carried out by a local authority or a non-profit entity, and the facilities are made available to commercial operators who are in turn entitled to assistance.

Q6. State Aid for Research and Development in the Sector of Biotechnology (Item 11 of the notification)

- (a) **What are the characteristics of the R&D projects supported under this programme?**
- (b) **What are the types of companies eligible under the programme criteria?**
- (c) **What is meant by "preventive research"? (Item 11.4)**
- (d) **How does this programme comply with the specificity criteria of Article 2 of the Agreement on Subsidies and Countervailing Measures?**

Reply

- (1) The "Biotechnology 2000" programme is intended to contribute to strengthen research in biotechnology, one of the most important key technologies for the future. The German government thus provides a number of measures to support biotechnology and genetic engineering.
 - development of strategically important platform technologies
 - commercialisation of know-how from science
 - reinforcing the knowledge base
 - contributions to a precautionary policy
- (2) Priority in the programme is given to companies which have the aim of turning the existing biotechnology know how into practical applications, i.e. small start-up technology companies not older than 5 years.
- (3) The expression "preventive research" may be misleading. What is meant are fields in which the government has to make provisions to protect citizens against harmful developments (precautions principle). Such a field is e.g. "biosafetyresearch".
- (4) The programme complies with the specific criteria of Article 2. Support of industry is only given for applied basic research and as cost-sharing grant under consideration of the specific EC-regulations for national subsidies.

ITALY¹

Q1. Incentives to Manufacturing and Extractive Enterprises in Disadvantaged Regions (Item 2)

- (a) **What are the disadvantaged areas covered by this programme?**

Reply

The disadvantaged areas covered are the regions specified in the Objective 1 of the structural funds policy. It concerns the development and structural adjustment of regions whose development is lagging behind, covering regions where per capita GDP is less than 75 per cent of the Community average. The Italian disadvantaged area are Campania, Apulia, Basilicata, Calabria, Sicily, Sardinia.

- (b) **What are the types of companies eligible for the benefits of the programme?**

Reply

The companies eligible have to operate in the areas covered by objective 1.

- (c) **What are the conditions and terms of the tax concession scheme?**

Reply

The Law No.341/95 provides a "fiscal bonus" in tax payment in the following five years from when subsidy is paid.

Q2. Soft Loans to companies that are entering new markets by the opening of commercial operations in non-EC countries

- (a) **Is this subsidy contingent upon export performance? How does it comply with footnote 4 of the SCM Agreement, which establishes that "This standard is met when the facts demonstrate that the granting of a subsidy ... is in fact *tied to actual or anticipated exportation or export earnings*. ...". (Emphasis added)?**

Reply

The measure is not specific to any sector and give a minimal effect on trade.

- (b) **Which are the types of companies eligible for the benefits of the programme?**

Reply

The programme is meant to facilitate the internationalisation of Italian companies (mostly small and medium sized ones), by helping them to create stable commercial operations abroad.

- (c) **What are the conditions and terms of the tax concession scheme?**

¹ G/SCM/N/48/EEC/Add.9

Reply

The soft loans are attributed to companies opening commercial operations in non-EU countries.

Q3. Support to Innovation and Development of SME (Item 3 of the notification)

(a) What are the eligibility criteria for this programme?

The Beneficiaries are SME's in industrial and services sector; SME's consortia.

(b) What types of projects for the innovation and development of SMEs have in fact been supported by this programme during the period covered by the notification?

The measure is not considered specific, but is granted only to support Italian SME's.

SPAIN¹

1. Development of Non-Energy Mining

(a) The notification of this programme affirms that this subsidy "is confined to zones defined by the EU Commission as Objective 1". What are these zones in Spain? What are their characteristics in economic terms?

The Objective 1 of the European Regional policy consists of development and structural adjustment of the regions whose development is lagging behind. The Gross Domestic Product (GDP) of these regions are of less than 75 per cent of the Community's average.

The regions eligible under Objective 1 for 1994-1999 period in Spain are : Andalucia, Asturias, Cantabria, Castilla y León, Castilla-La Mancha, Ceuta y Melilla, Comunidad Valenciana, Extremadura, Galicia, the Canary Islands and Murcia.

Q2. Support Initiative for Technology, Quality and Industrial Safety (ATYCA)

(a) What is the total amount of resources granted by this subsidy?

Reply

As mentioned in the Spanish notification on subsidies to the WTO for 1998 exercise, the amount granted was 19.926 million ESP.

Q3. Aid under technological programmes connected with the SEAT Modernization Plan (1994-1997)

(a) What is the percentage of the total amount of the research financing that is supported by this subsidy?

¹ G/SCM/N/48/EEC/Add.13

Reply

Approximately 10 per cent

- (b) **For a better evaluation of the effects of this programme on trade, could Spain inform the annual sales of SEAT for the year of 1998?**

Reply

The net turnover amount reached 827.534 million ESP

- (c) **Has this subsidy been terminated?**

Reply

This subsidies programme terminated in 1998.

Q4. R&D plan for the aeronautical sector

- (a) **What were the aircraft companies that have signed a cooperation agreement under this programme?**

Reply

Five Spanish companies signed a cooperation agreement

- (b) **How is the amount of the repayable advances for a given company defined or calculated?**

Reply

The amount of the repayable advances granted to projects can be up to 70 per cent of the cost, and was established for each project according to its merits and budgetary resources available.

- (c) **On what basis are the advances repaid? Are they related to the sales of the company?**

Reply

The advances are repaid in all cases. The rate of repayment varies according to the project, as it is related to the sales which apply technology or know-how acquired from the R&D projects.

- (d) **Has this subsidy been terminated?**

Reply

We recall the position of this Department, as contained in earlier correspondence on this subject, not to answer this questionnaire from the Brazilian Delegation at the WTO as long as Brazil does not provide sufficient information to that Organization concerning public aids granted in Brazil.

Q5. Regional Economic Incentives Scheme

- (a) **Which are the most disadvantaged areas that can receive aid from this subsidy?**

Reply

The regions included in the Regional Economic Incentives Scheme are the Autonomous Communities of Aragon, Andalucia, Asturias, Canarias, Cantabrica, Castilla-la-Mancha, Castilla-Leon, Extremadura, Galicia, Murcia, Valencia, Ceuta y Melilla. It consists of development and structural adjustment of the regions whose development is lagging behind. The Gross Domestic Product (GDP) of these regions are of less than 75 per cent of the Community's average.

In 1998, the average subsidy per investment project in all these regions as a whole amounted to 17.7 per cent of the investment eligible for the subsidy.
