COMMISSION DECISION

of 16 December 1981

on a proposal of the United Kingdom Government to grant aid for the export of two ships to Panama

(Only the English text is authentic)

(82/47/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having given notice in accordance with Article 93 to interested parties to submit their comments and having regard to those comments,

Whereas :

I

Aid granted by Member States in the form of export credits for ships is subject to Article 2 of Council Directive 81/363/EEC of 28 April 1981 on aid to shipbuilding [1]. This Article refers to the provisions of the OECD Council resolution of 30 July 1981.

Pursuant to Article 7 of the Annex to Council Decision 73/391/EEC [2] individual proposals to grant aid in the form of credit facilities are subject to a prior Community consultation procedure.

By telex dated 19 June 1981 the United Kingdom Government informed the Commission and the other Member States, as required by the abovementioned procedure, of its intention to grant credit over a 10-year period at an interest rate of 9 % for 95 % of the contract value of two product tankers of 29 900 grt. These ships were to be sold to Panama.

Pursuant to the OECD Council resolution of 30 July 1981, of which the Community is a signatory, and pursuant, accordingly, to Article 2 of Directive 81/363/EEC, official credit facilities may not exceed eight and a half years. The interest rate may not be less than 8 % and payment by delivery may not be less than 20 % of the contract price.

The United Kingdom Government signified that it wished to match credit terms with those offered by the Swedish Government for supply of vessels of the same type.

The Swedish Government has confirmed that it offered credit terms for supply of two similar vessels to Indonesia within the context of an aid scheme for a developing country. The Swedish Government poposed making a grant of 25 % of the contract price and financing 95 % of the remaining balance over 10 years.

II

In the course of the procedure established by Decision 73/391/EEC the Commission notified the United Kingdom Government on 25 June 1981 of its unfavourable opinion on the proposed aid, which did not appear to qualify for the derogations set out in the OECD resolution of 30 July 1981.

By letter dated 11 August 1981 the Commission gave notice to the United Kingdom Government, as required by Article 93 (2) of the EEC Treaty, to submit its comments on the presumed incompatibility of the proposed aid with the common market.

By letter dated 11 September 1981 the United Kingdom Government submitted its comments, stressing that it considered that it was justified in matching the Swedish offer. It had complied with the necessary pocedures enabling the Commission to reach a decision.

III

The examination of these proposals within the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits, as required by Council Decision 73/391/EEC, can in no way prejudge the substantive question of the compatibility of the aid within the meaning of Article 92 of the EEC Treaty and of Decision 81/363/EEC in relation to aids to shipbuilding.

The United Kingdom Government's proposed aid is likely to affect trade between Member States and to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the building and sale of ships.

[1] OJ No L 137, 23. 5. 1981, p. 39.
[2] OJ No L 346, 17. 12. 1973, p. 1.

The grant of such sales aid has the effect of maintaining certain production capacities in the United Kingdom shipbuilding industry and strengthening the financial position of certain United Kingdom undertakings, while yards in other Member States which do not receive such aid, or receive less aid, have to bear themselves all marketing costs pertaining to their vessels.

Article 2 of Directive 81/363/EEC provides that credit facilities granted by the Member States may be considered compatible with the common market provided that they comply with the OECD Council resolution of 30 January 1980 or with any agreements replacing the resolution, namely, in this case, the resolution of 30 July 1981.

The United Kingdom Government wishes to base the grant of credit facilities for the export of ships on more favourable terms than those normally available pursuant to the OECD Council resolution of 30 July 1981 in reliance on clause 8 thereof, whereby the governments concerned may offer such terms to match those of officially supported transactions or to alleviate the effects of contravention by other participants or competition from non-participating countries.

The Commission is not aware in this case of any offer from a non-participating country and the United Kingdom Government has not notified any such offer. Moreover, there has been no contravention of the normal terms of the resolution of 30 July 1981 by another participant. The Swedish offer, which seems to concern the same ships as the British offer, was made to an Indonesian shipowner and therefore the more favourable credit terms in question were warranted on genuine aid grounds. In contrast, the British offer is made to a Panamanian shipowner. The United Kingdom Government therefore does not have adequate grounds for making available credit terms more favourable than the normal terms of the resolution of 30 July 1981. Moreover, the signatories of the resolution wanted to avoid granting such terms for vessels destined to fly the flags of countries with open registry.

In its letter dated 11 September 1981 the United Kingdom Government itself acknowledged that clause 6 of the OECD Council resolution did not apply. Futhermore, it could provide no grounds for possible application of clause 7 of the resolution.

The United Kingdom Government's proposed aid therefore fails to satisfy one of the conditions for derogation set out in the OECD Council resolution.

The abovementioned proposal therefore fails to qualify for derogation under Article 2 of Directive 81/363/EEC, the only provision of the Directive which could apply. For the same reasons the aid does not qualify for derogation under Article 92 (3) of the EEC Treaty.

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom shall refrain from implementing its proposal, notified to the Commission by telex dated 19 June 1981, to grant credit facilities for the sale of two product tankers to a Panamanian shipowner.

Article 2

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

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 16 December 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission