COMMISSION DECISION

of 8 February 1983

concerning a subsidy granted by the United Kingdom Government in 1980 and 1981 to owners of fishing vessels

(Only the English text is authentic)

(83/315/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 regard to Council Regulation (EEC) No 100/76 of 19 January 1976 on the common organization of the market in fishery products [1], as last amended by Regulation (EEC) No 3443/80 [2], and in particular Article 26 thereof, and to Council Regulation (EEC) No 3796/81 [3], which replaced Regulation (EEC) No 100/76 with effect from 1 June 1982, and in particular Article 28 thereof,

Having given notice, in accordance with the first subparagraph of Article 93 (2), to the parties concerned to submit their comments, and having regard to these comments,

I

Whereas, in accordance with Article 93 (3) of the EEC Treaty, the United Kingdom Government notified the Commission by letters dated 17 September 1980 and 4 May 1981 from its Permanent Representation to the European Communities of its intention to grant an exceptional subsidy, for 1980, to owners of fishing vessels registered in the United Kingdom ;

Whereas this aid, granted direct to owners of fishing vessels, was based solely on vessel length ; whereas, in order to qualify for the aid, vessels had to belong to the applicant on 7 August 1980, be registered and fitted out for fishing on that date and have carried out a minimum of fishing between 1 January and 7 August 1980 ;

Whereas the level of the subsidy varied from £ 275 for vessels of less than 35 feet to £ 30 745 for vessels of more than 190 feet ; whereas the grant of the aid was not made subject to any conditions regarding the use of the money paid or the subsequent use of the vessel ; whereas, lastly, the sum set aside for the aid was £ 14 million ;

Whereas the United Kingdom Government gave several reasons for granting the aid ; whereas it stated firstly that the poor market situation for fishery products in the summer of 1980, the rise in production costs and the measures for conserving resources threatened the very existence of a significant proportion of the United Kingdom fleet ; whereas it then emphasized its desire to prevent the uncontrolled break-up of the fleet immediately prior to the revision of the common fisheries policy, at that stage planned for the end of 1980 ; whereas it referred lastly to the importance of fishing for certain areas of the United Kingdom already seriously affected by unemployment and the social repercussions of any increase in the unemployment level ;

Whereas, in its notification of 17 September 1980, the United Kingdom Government ruled out the possibility of the aid being extended beyond the 1980/81 tax year ; whereas, however, in accordance with Article 93 (3) of the EEC Treaty, it notified the Commission by letter dated 29 April 1981 from its Permanent Representation to the European Communities of its intention to grant, for 1981, aid identical to that granted in 1980 ; whereas the sum set aside for the purpose was £ 25 million ;

Whereas the United Kingdom Government gave as its reason for extending the aid the continuing deterioration of the market and the ensuing threat to the survival of the United Kingdom fleet ;

Whereas the aids thus decided on for 1980 and 1981 fall within the scope of Articles 92 to 94 of the EEC Treaty by virtue of Articles 26 and 28 of Regulations (EEC) No 100/76 and (EEC) No 3796/81 ;

Whereas, following initial scrutiny, the Commission took the view that the aids were cash aids granted without any undertaking on the part of the recipients and offering no hope of a lasting improvement in their situation, that they had a substantial direct impact on competition and trade between the Member

(1) OJ No L 20, 28. 1. 1976, p. 1.
(2) OJ No L 359, 31. 12. 1980, p. 13.
(3) OJ No L 379, 31. 12. 1981, p. 1.

States and that they were therefore incompatible with the common market within the meaning of Article 92 of the Treaty; whereas it accordingly decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the above aids and, to this effect, by letter of 1 July 1980, gave the United Kingdom Government formal notice to submit its comments;

Whereas the proposed measures were, however, put into effect before a final decision had been taken under this procedure; whereas the United Kingdom Government thus failed in its obligations under Article 93 (3) of the EEC Treaty;

II

Whereas in its reply to the Commission dated 30 September 1981 the United Kingdom Government stated that, in the absence of an agreement on the revision of the common fisheries policy, it considered the measures in question to be necessary and justified for maintaining the structure of the United Kingdom fishing fleet and preventing its being broken up; whereas it stressed furthermore that if such aids were not granted there was a risk that the vessels likely to benefit from the reform of the common fisheries policy would disappear even before it was implemented;

Whereas several Member States and several other parties concerned have submitted their comments to the Commission; whereas certain Member States and sectoral organizations share the Commission's view; whereas other Member States feel that the absence of a Community fisheries policy may lead Member States to introduce aids to prevent the current situation from deteriorating; whereas several sectoral organizations would like to see the granting of fisheries aids harmonized within the Community;

III

Whereas the subsidy in question is a cash aid payable directly to recipients and thus has an immediate impact on their production costs, placing them at a definite advantage over other Community fishermen;

Whereas intra-Community trade in fishery products for human consumption is substantial and accounts for approximately 30 % of total landings for human consumption in the Community as a whole; whereas, for its part, the United Kingdom market in fishery products is becoming more accessible year by year to imports from the nine other Member States; whereas, in 1980, such imports represented 16 % by volume of total landings by United Kingdom fishermen, compared with 6 % in 1975;

Whereas the reference by the United Kingdom authorities to the absence of a Council decision on the revision of the common fisheries policy does not constitute justification for granting national aids;

IV

Whereas it follows from the above that the aids in question introduced by the United Kingdom Government in 1980 and 1981 are likely to affect trade between the Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty;

Whereas Article 92 (1) of the EEC Treaty states that aids fulfilling the criteria laid down therein are incompatible in principle with the common market; whereas exceptions to this incompatibility, which are the only exceptions relevant to the case in point, are set out in paragraph 3 of the said Article and lay down the objectives followed in the Community's interest and not only in the interest of individual sectors of the national economy; whereas these exceptions are to be strictly interpreted when scrutinizing any aid programme of a regional or sectoral nature or any individual case of application of general aid schemes; whereas exceptions may be allowed only in cases where the Commission can establish that the aid is necessary for achievement of one of the objectives set out in these provisions;

Whereas to allow such exceptions in respect of aids which do not offer such a compensatory advantage would amount to allowing trade between Member States to be affected and competition to be distorted without justification on grounds of Community interest and would result in unfair advantages for certain Member States;

Whereas it has not been possible to establish the existence of such a compensatory advantage in the case in point; whereas the United Kingdom Government was unable to provide any evidence, and the Commission could find none, that the aids in question fulfilled the conditions required for allowing one of the exceptions provided for in Article 92 (3) of the EEC Treaty;

Whereas the aids in question are clearly not designed to promote or facilitate the development of certain areas; whereas, on regional criteria, Article 92 (3) (a) and (c) is accordingly inapplicable;

Whereas such aids constitute neither an important project of common European interest nor measures capable of remedying a serious disturbance in the United Kingdom economy; whereas Article 92 (3) (b) of the Treaty is accordingly inapplicable;

Whereas a subsidy for owners of fishing vessels based solely on the length of their vessels, since it is designed solely to alleviate temporarily the cash situation of recipients, constitutes an operating aid with no impact on their long-term structural situation; whereas, in general, the Commission has always been opposed to such aid since, as a rule, such aid does not in itself fulfil the conditions for eligibility for the exception provided for in Article 92 (3) (c) of the EEC Treaty, since it is not likely to facilitate the development of certain activities within the meaning of that provision;

Whereas, in its communication to the Council of 25 May 1978 on sectoral aid policy, the Commission made it clear that temporary aids to mitigate the social consequence of a crisis situation must be linked with restructuring objectives for the sector in question and subject to action by recipients to facilitate conversion; whereas this does not apply in the case of the aids in question;

Whereas it follows from the above that the aids in question do not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The exceptional subsidies for owners of fishing vessels as decided on by the United Kingdom Government for 1980 and 1981 are incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Such subsidies must accordingly no longer be granted.

Article 2

The United Kingdom shall inform the Commission, within one month of the notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the United Kingdom.

Done at Brussels, 8 February 1983.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission