II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 February 1983

by virtue of Article 93 (2) of the EEC Treaty in relation to a proposal for aids in the textile and clothing industry (undertakings 34 and 57)

(Only the Dutch and French texts are authentic)

(83/320/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 to the parties concerned to submit their comments as provided for in Article 93, and having regard to those comments,

I

Whereas by its letter dated 14 May 1982 the Belgian Government notified the Commission of its intention to grant aid to two undertakings : one involved in combed wool spinning, the other producing carpets and floor coverings.

Whereas the undertaking involved in combed wool spinning, which employs 109 persons, intends to use the aid to increase its production by 15 % within two years, of which 98,3 % is destined for the EEC market.

Whereas the aid for this enterprise would amount to Bfrs 8 750 000, two-thirds of which would be used for replacement of machinery.

Whereas the undertaking producing carpets and floor coverings, which employs 246 persons, intends to use the aid to increase its production by 5,4 % within two years, of which 83,44 % is destined for the EEC market.

Whereas the aid for this undertaking would amount to Bfrs 8 180 000 and would be used for replacement of machinery, improvement of production control processes and changes in raw material.

Whereas the Commission initiated on 12 August 1982 the procedure provided for in the first sentence of Article 93 (2) of the EEC Treaty in respect of the aids in question on the ground that such aids will affect trading conditions to an extent contrary to the common interest and that they will therefore be incompatible with the common market;

Whereas the Commission also considered that the two aids were not in conformity with the conditions laid down in the sectoral aid scheme in favour of the textile and clothing industry approved by the Commission on 18 November 1981 and in force in Belgium since 1 January 1982.

II

Whereas the Belgian Government, in submitting its comments ander the procedure provided for by Article 93 (2) of the EEC Treaty, confirmed the information of which the Commission was already aware and has not provided new facts justifying a change in the Commission's position.

Whereas the comments of two Member States other than Belgium and two federations of firms in the sectors, submitted to the Commission under the procedure of Article 93 (2) of the EEC Treaty, shared the Commission's opinion and underlined the problems of over-capacity which the subsector of combed wool spinning is facing and stressed the sensitivity of the subsector of carpet production because of the volume of trade and the degree of competition between Member States. The comments also underlined that the proposed aids would transfer the problems from the undertaking in question to its competitors.

III

Whereas the aids proposed by the Belgian Governments are likely to affect trade between Member States and distort competition by favouring the undertakings in question or the production of their goods within the meaning of Article 92 (1) of the EEC Treaty.

Whereas the terms of the Treaty provide that aids fulfilling the criteria set out in Article 92 (1) of the Treaty shall be incompatible with the common market. The exemptions from this incompatibility set out in Article 92 (3) of the EEC Treaty specify objectives to be pursued in the Community interest and not that of the individual recipient. These exemptions must be strictly construed in the examination both of regional or sectoral aid schemes and of individual cases of application of general aid systems. In particular, they may be granted only when the Commission can establish that this will contribute to the attainment of the objectives specified in the exemptions, which the recipient firms could not attain by their own actions under normal market conditions alone.

Whereas to grant an exemption where there is no compensatory justification would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any resulting benefit in terms of the interest of the Community, while at the same time accepting that undue advantages should accrue to certain Member States.

Whereas, when applying the principles set out above in its examination of individual cases, the Commission must be satisfied that there exists on the part of the particular recipient a specific compensatory justification in that the grant of aid is required to promote the attainment of one of the objectives set out in Article 92 (3). Where such evidence cannot be provided and, especially where the aided investment would at all events take place unmodified, it is clear that the aid does not contribute to the attainment of the objectives specified in the exemptions but serves to increase the financial strength of the undertaking in question.

Whereas, in the cases in question, there does not appear to be such a compensatory justification on the part of the undertakings benefiting from the aid.

Whereas on 18 November 1981 the Commission decided to raise no objection to the implementation of a sectoral aid scheme in favour of the textile and clothing industry in Belgium. Once the sectoral aid scheme was put into operation, undertakings in that sector in Belgium could benefit from no other specific, regional or general aid.

Whereas an aid granted to an individual undertaking within the context of this sectoral aid scheme could benefit from the derogation of Article 92 (3) (c) of the EEC Treaty only if all the conditions of the sectoral aid scheme as accepted by the Commission were satisfied. Of particular importance for the cases in question are the requirements to undertake significant efforts to restructure in order once again to become viable and the requirements as to capacity and production changes under the aid.

Whereas the larger part of the aids would be used to cover the costs of replacing out-of-date machinery. Such a use does not provide adequate justification for the restructuring plans of the two enterprises to be considered compatible with the sectoral aid scheme in operation in Belgium, especially when the subsector of combed wool spinning, in the case of one undertaking, is facing severe over-capacity problems at Community level and when in the subsector of carpets and floor coverings the Belgian industry is already highly competitive as is the case of the other undertaking in question.

Whereas by using the aid neither of the two undertakings will reduce its capacity; they will in fact increase production by 15 and 5,4 % respectively. As practically the entirety of the production of the first undertaking, involved in combed wool spinning, a subsector facing severe over-capacity problems in the Community, is destined for the Community market (81,2 % going to other Member States and 17,1 % to Belgium) it is evident that the aid in question will worsen the sectoral problems already existing at Community level while at the same time provoking their transfer from one Member State to the others. As

in the case of the second undertaking involved in the production of carpets and floor coverings, a subsector in which Belgium is highly competitive at Community level, a very large part of the production of the undertaking, which is to be increased by using the aid, is destined for the Community market (68,11 % going to other Member States and 15,33 % to Belgium), the aid in question will affect trading conditions to an extent contrary to the common interest.

Whereas, in view of the above, the Belgian Government has not been able to provide, nor has the Commission found, any evidence which establishes that the proposed aids meet all the conditions in relation to the sectoral aid scheme in operation in Belgium necessary to benefit from the derogation of Article 92 (3) (c) of the EEC Treaty.

Whereas, furthermore, the proposed aids cannot benefit from the derogations set out in Article 92 (3) (a) and (b) of the EEC Treaty since the standard of living in the areas concerned is not abnormally low and there is no serious underemployment; whereas the aids do not promote the execution of important projects of common European interest or remedy a serious disturbance in the economy of Belgium,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium shall refrain from implementing the proposal, notified to the Commission by letter received on 17 May 1982, to grant aids to an undertaking involved in combed wool spinning and to an undertaking producing carpets and floor coverings.

Article 2

The Kingdom of Belgium shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 8 February 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission