II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 February 1985

on the United Kingdom's proposal to assist sections of the clothing, footwear, knitting and textile industries

(Only the English text is authentic)

(85/305/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 the said Article 93, and having regard to those comments,

Whereas :

I

By letter dated 18 April 1984, the United Kingdom Government had notified to the Commission a proposal to introduce a scheme of financial assistance under section 8 of the Industrial Development Act 1982 for the benefit of sections of the clothing, footwear, knitting and textile industries.

The declared aim of the proposed scheme was to enable small and medium-sized firms to undertake investment in advanced technology equipment. The scheme would have a limit of £ 20 million and aid would take the form of either grants of up to 20 % of investment costs or guarantees for 80 % and two years of loans granted by approved financial institutions for the purchase of advanced equipment.

Following an initial scrutiny, the Commission considered that the aim of improving productivity, cited by the United Kingdom as the main reason for the assistance, had largely been achieved. The Commission also considered that the clothing, knitting and textile industries' economic development — being relatively favourable in comparison to the trends experienced by some of its Community counterparts — had led to a situation where financial assistance would not promote a development which would be in the interest of the Community.

In addition, the Commission took the view that the programme notified by the United Kingdom Government did not meet certain conditions and criteria for sectoral aids.

The Commission considered that the programme notified to it would — by favouring certain undertakings or the production of certain goods in sectors where there is a high volume of trade and where competition is very keen — be likely to affect trade between Member States and would, thus, be incompatible with the common market. The Commission also considered that the scheme did not meet the conditions necessary to benefit from one of the derogations of Article 92 of the EEC Treaty.

The Commission initiated the procedure provided for in the first subparagraph of Article 93 (2), and, by letter of 19 June 1984, gave the United Kingdom Government notice to submit its comments.

II

The United Kingdom Government, in submitting its comments under the procedure provided for in Article 93 (2) by letters of 8 August 1984 and 11 December

1984 modified certain elements of its proposal and reduced the proposal guarantees from 80 to 70 % of total investment costs.

In commenting, however, the United Kingdom Government did not refer to the majority of objections raised by the Commission and, in particular, did not give sufficient economic justification for the proposed programme, which the Commission had requested in view of the recent positive development and success of the industries concerned.

The comments of three other Member States and one federation of firms in the sectors, submitted to the Commission under the Article 93 (2) procedure, supported the Commission's view and expressed great concern about the proposed support measures. They underlined that the aid programme would be liable to distort competition in the Community by giving unfair advantages to the recipients in competition with other Community textile and clothing manufacturers. Furthermore, they highlighted the positive development of the United Kingdom textile and clothing industry during recent years, on the basis of which they considered that aids would not be justified.

Six federations of firms of the sector in the United Kingdom, also submitting their comments to the Commission under the Article 93 (2) procedure, supported the proposed introduction of the scheme and highlighted the advantages of advanced technology and new production techniques. They pointed to the modest size of the scheme and considered that it would make a positive contribution towards the strengthening of the Community.

III

In the clothing, footwear, knitting and textile sectors there is a high volume of trade between Member States and competition is very keen. When State financial aid strengthens the position of undertakings compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid. In this case, the proposed aid programme, which would reduce the costs which the undertakings in the abovementioned industries in the United Kingdom would normally have to bear, is likely to affect trade and distort or threaten to distort competition between Member States by favouring the said United Kingdom industries within the meaning of Article 92 (1). Article 92 (1) lays down the principle that aid having the features there described is incompatible with the common market.

The exceptions from this principle set out in Article 92 (2) are not applicable in this case.

Article 92 (3) sets out which aids may be considered to be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market and taking into account the principles of Article 3 (f) the exceptions from the principle of Article 92 (1), as set out in Article 92 (3), must be construed narrowly when an aid scheme or any individual award is scrutinized.

In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aids, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective or where an aid is not necessary to that end would be to give unfair advantages to certain Member States' industries, the financial positions of which would merely be bolstered, and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

The United Kingdom Government has been unable to give, or the Commission to discover, any justification for a finding that the planned aid programme falls within one of the categories of exceptions in Article 92 (3).

With regard to the exemptions provided for in Article 92 (3) (a) and (c) relating to aids intended to promote or facilitate the development of certain areas, it must be observed that the standard of living in the United Kingdom is not abnormally low nor is there serious under-employment within the meaning of the exemption specified in (a); and because of its scope, namely firms in given economic sectors irrespective of where they are located, the aid scheme is not intended for the development of certain areas as provided for in the exemption under (c).

As regards the exemptions provided for in Article 92 (3) (b), it is evident that the scheme in question is not intended to promote the execution of an important project of common European interest, or to remedy a

serious disturbance in the United Kingdom economy. Although the economy of the United Kingdom faces social and economic difficulties, these are not the most serious in the Community. In this situation the danger of an escalation of State aids is most immediate and any State aid is most likely to affect trade between Member States.

With regard to the exemptions provided for in Article 92 (3) (c) in favour of 'aid to facilitate the development of certain economic activities', it must be observed that market conditions in the sectors concerned seem apt, without State intervention, to ensure normal development, and that the proposed aids cannot therefore be regarded as 'facilitating' the development, when the need for aid is assessed from the standpoint of the Community interest rather than of a single Member State.

Examination of recent development and the present situation of the Community industries concerned shows that firms in these sectors are more competitive today than they were in the past. After a number of years during which the damage inflicted on the Community clothing, knitting and textile industries has been obvious and serious in the large scale of plant closures and workforce reductions, owing to a global market depression and increasing imports from low-cost sources, the said industries are now firmly on the road to recovery. During 1984 it has increasingly become manifest that a majority of firms in these industries throughout the Community, by means of rapidly rising productivity, improved marketing and management skills, a high quality range of products and the application of a new generation of technologically advanced equipment has achieved the objectives of restructuring and has regained to a large extent the level of competitiveness required to ensure economic success and viability on the international textile market.

The Commission therefore concludes that specific aids to assist the textile and clothing industries in the Community are, in principle, no longer justified and, in particular, any new sectoral aid programme in favour of these industries would purely be a palliative measure in the national interest of the Member State proposing such a scheme. It would transfer remaining structural problems and employment from one Member State to another in the Community and would, in addition, not meet the conditions defined in the Community guidelines on aid to the textile industry.

This is particularly true in the case of the UK textile, clothing and knitting industries for which a number of significant pointers document the recent restructuring and positive economic development. New technologies, massive rationalization and re-tooling have already made the UK industries more efficient and much better able to produce high-quality yarns, fabrics and clothing; productivity has improved considerably as output per worker has increased by about 25 % since 1980. In addition, the argument put forward by the UK Government that the firms are unable to find the resources for the necessary investment because of low profitability is no longer justified as earnings have increased sharply and, consequently, there is a resurgence in investments which paves the way for continuing economic success and viability.

Furthermore, other indicators, such as production output and trading performance, lend strong support to the view that the former depressions started to lift in 1983 and that the situation is continuing to improve.

Particularly in view of the declared aim of the scheme — to enable investment in modern machinery — it has to be noted that it is in the United Kingdom that, because of considerably improved profits, the most intensive efforts in the Community are already being made to install new technology. In this context it must be observed that the United Kingdom industries in question have, over a number of years, benefited from considerable public financial support, be it under general, regional or specific aid programmes, which has contributed significantly to the positive development as described above.

As in the other branches to be aided, the negative trend in production output in quantity and value terms in the footwear industry has slowed down and even been reversed lately. In addition, an increase in the value of UK manufactured footwear and an improvement of the net output per worker and enterprise have been recorded over the past years, which can only partly be explained by a positive trend in capital expenditure and the level of reduction of the number of companies and in total employment. Moreover, while total exports in terms of quantity have not increased significantly of late, they have nevertheless progressed proportionately to the UK manufacturers' total sales, and in contrast, exports to other Member States reached more than 60 % of total exports in 1983/84.

Furthermore, the proposed aid programme would, in the situation described above, by artificially lowering the investment costs of companies in the sectors concerned, weaken the competitive position of other producers in the Community and would, therefore, have the effect of distorting competition and depressing prices, to the detriment and possible withdrawal from the market of producers which have hitherto survived owing to restructuring, productivity and quality improvements undertaken from their own resources. It should be noted that a large share of the production of the UK textile, knitting, clothing and footwear industries which it is proposed to aid is exported to the other Member States, in a situation where demand is only increasing slowly, so that it is therefore very unlikely that trading conditions would remain unaffected.

In addition, the UK Government's proposal to aid the clothing, knitting, footwear and textile industries comes close to being equivalent to an aid scheme for general investment and modernization of existing equipment, a category of aids about which the Commission has always had strong reservations, particularly in view of its 1971 and 1977 guidelines on aid to the textile industry. Under the present proposal no consideration in terms of restructuring is required of the firms, and the scheme would not allow for the required degree of selectivity of the investment which may therefore simply involve replacing existing machinery and, indeed, the extension of a firm's activities.

Furthermore, the description of the general aims of the scheme is not sufficiently clear and lacks quantitative objectives as to capacities, employment and restructuring and thus makes it virtually impossible for the Commission to evaluate the scheme in advance in terms of the resulting distortion of competition.

Despite the fact that the UK Government agreed to submit highly sensitive subsectors to a specific examination procedure, the proposal lacks any reference to a selective approach in respect of the different industries and does not sufficiently clearly define the criteria to be used for checking the viability of companies, nor does it clarify the thresholds to be applied to this end.

There are no provisions made under the proposal in respect of the simultaneous alternative application of different aid programmes in favour of the said industries and the possibility of aiding companies which are not eligible under the programme in question would neutralize the small degree of selectivity which exists in singling out firms for support and would, thus, be likely to accentuate the effects of the aid programme.

Equally, the simultaneous cumulative application of another existing aid scheme in addition to the aids available under this sectoral programme would increase the intensity of aid for any given investment up to 30 % and, thus, would also accentuate the negative effects of the proposed aids.

Neither the initial proposal nor the comments under the procedure, sufficiently demonstrate the existence of any problems which are specific to small and medium-sized enterprises. Thus the proposed aids are even more unlikely to promote such firms without affecting trading conditions between Member States and would distort competition without justification on grounds of Community interest.

Furthermore, the UK Government explicitly wishes to promote the more far-sighted small firms who can afford expenditure on advanced equipment. Such an objective and approach is even more dangerous than aiding all small companies, as granting aid to the already most competitive and dynamic firms serves merely to bolster their financial position without contributing to the attainment of an objective specified in Article 92 (3) while at the same being likely to increase the resulting distortion of competition.

It is concluded that the proposed aids under the scheme of assistance for the benefit of the UK clothing, footwear, knitting and textile industries as notified to the Commission and as modified under the Article 93 (2) procedure, by favouring the United Kingdom's undertakings in the sectors concerned, the market situation of which would no longer be solely determined by their own efficiency, merits and powers, would only be in the national interest of the said Member State and would not contribute to a development which from the Community point of view would be adequate to counteract the resulting distortion of trade.

Consequently, the aid proposal in question does not meet the conditions necessary for application of one of the derogations contained in 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 letter of 18 April 1984, modified by letters of 8 August 1984 and 11 December 1984 in the course of the procedure under Article 93 (2) of the EEC Treaty, to grant aid to sections of the clothing, footwear, knitting and textile industries.

Article 2

The United Kingdom 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 United Kingdom.

Done at Brussels, 13 February 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission