II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 April 1985

on the German Government's proposal to grant an aid in favour of a producer of polyamide yarn situated in Neumünster

(Only the German text is authentic)

(85/343/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 5 November 1984, the Government of the Federal Republic of Germany notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of its intention to grant financial assistance to a producer of polyamide filament yarn and polyamide staple and carpet yarn situated in Neumünster.

The aid would be granted under the Law relating to investment subsidies (Investitionszulagengesetz) and would amount to DM 4,5 million, that is 10 % of the total investment to be undertaken by the company in question.

Following an initial scrutiny, the Commission considered that the proposed aid would not help to restructure the production facility in question within the meaning of the Commission's synthetic fibre and yarn aid code of 1977 as extended in 1979, 1981 and 1983 as the assistance would neither lead to a decrease in capacity nor a conversion away from synthetic fibres and yarns.

As the projected investment concerned only the modernization of the production facility and because in the notification of 5 November 1984 the German Government itself referred to the aid as being for the purpose of replacing certain machines which had been installed during the 1960s, the Commission also considered that the aid would equally not meet the conditions set by the 1971 and 1977 Community guidelines for aid to the textile, clothing and man-made fibre industry under which only restructuring efforts qualify for aid.

Finally, the Commission considered that in a situation where the other Community synthetic fibre and yarn producers continued to undertake great efforts to adapt to the present market situation by considerably reducing capacities, the aid in question would not promote a development which from the Community point of view would be adequate to counteract its trade-distorting effects and that the aid — by favouring the undertaking in question in a sector where there is a high volume of trade and where competition is very keen — would be liable to affect trade between Member States and would, thus, be incompatible with the common market.

Therefore, the Commission took the view that the aid did not meet the conditions necessary to benefit from one of the exceptions laid down in Article 92 and initiated the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty.

By letter of 18 December 1984, it gave the German Government notice to submit its comments.

II

The German Government, in submitting its comments under the procedure provided for in Article 93 (2) by letter of 13 February 1985, pointed out that only about 50 % of the projected investment concerned polyamide yarn, while the rest related to texturization, polyester, general services, production process technique and utilisation technique for textile purposes. It also declared that in polyamide production a continuous process would be installed which would have considerable rationalization effects and that the capacity would not increase beyond 35 000 tonnes, which it stated to be the present production capacity. Equally, the market share of the firm in Western Europe would remain unchanged at 1,4 % and the projected investment would maintain and secure 1 210 permanent jobs.

The German Government also pointed out that the normal administrative procedure under the Investitionszulagengesetz would rule out the granting of an aid for pure replacement purposes. Therefore, it concluded that the proposed aid would be in line with the synthetic fibre and yarn aid code.

In commenting under the same procedure, three other Member States, one federation of firms in the sector and four individual companies, supported the Commission's view and expressed great concern about the proposed support measure. In these comments it was stressed that the sector in question still suffered from serious problems of overcapacity and depressed prices and that in such a situation the aid would be liable to distort competition in the Community by giving an unfair advantage to the potential beneficiary.

III

There is a high volume of trade in polyamide filament yarn and staple and carpet yarn with 66 % of total Community production being traded within the Community. The company in question, which, in contrast to the German Government's claim, has a market share of 4,1 % in filament yarn and of 5,1 % in staple and carpet yarn in the Community, participates very actively in this intra-Community trade by shipping 69 % of its production output of these products to other Member States.

There is substantial overcapacity in polyamide yarn in the EEC as — despite a recent cyclical upswing resulting primarily from lower imports from the USA because of the higher value of the dollar and which must also be seen in the light of very low shipment levels in previous years — the geographical shift in production shares continues in favour of the Third World and as the general shift from polyamide towards polyester also persists. As a result, there is heavy competition amongst polyamide producers in the Community, most of which continue to lose money in polyamide production as prices are very depressed. Polyamide belongs to the group of products which is subject to industry agreements under which capacities are to be reduced.

When State financial aid strengthens the position of an undertaking 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, which would reduce the investment costs which the firm situated in Neumünster, Germany, would normally have to bear, is liable to affect trade and distort or threaten to distort competition between Member States by favouring the said enterprise within the meaning of Article 92 (1) of the EEC Treaty. 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 because of the character of the proposed aid and as the Law under which the aid is to be granted is not intended for such a purpose.

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) of the EEC Treaty, the exceptions from the principle laid down in 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 and aid is not necessary to that end would be to give unfair advantages to certain Member States' industries or undertakings, 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 within the meaning of Article 92 (3).

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

In synthetic fibres and yarns in general and particularly in polyamide filament yarn and polyamide staple and carpet yarn there is a high level of trade between Member States and competition is very keen, because of persistent and uncontested overcapacities and depressed prices as documented above. For these reasons, synthetic fibres and yarns including polyamide, are subject to the synthetic fibre discipline introduced by the Commission in 1977 and notified to the Member States by letter of 19 July 1977 and published in the Bulletin of the European Communities of July/August 1977 (point 1.5.3) and of November 1977 (point 2.1.47), and extended in 1979, 1981 and 1983.

In its letter of 8 August 1983 by which it extended the system of control of aids for a further two-year period ending 19 July 1985, the Commission pointed out to Member States that it would express an unfavourable a priori opinion with regard to proposed aids, be they sectoral, regional or general, which had the effect of increasing the net production capacity of companies in this sector. It also reminded Member States that it would continue to give sympathetic consideration to proposals to grant aid for the purpose of speeding up or facilitating the process of conversion away from synthetic fibres into other activities or restructuring leading to reductions in capacity.

All aids to the synthetic fibre sector do not only have to meet the conditions of the synthetic fibre discipline but are also subject to the 1971 and 1977 Commission guidelines for aids to the textile industry, under which the granting of aids to investment must be linked to the achievement of clear restructuring objectives as opposed to a simple modernization of production facilities.

The projected investment in this case, however, concerns the installation of a continuous process instead of the currently-employed 'high-speed' process, which is divided into two separate stages. This continuous technique replaced the old process several years ago and most polyamide producers already use it, so that the project in question is no more than a normal modernization of an out-of-date plant in order to remain competitive. It cannot be described as restructuring and therefore should be carried out using the financial resources of the undertaking without the use of State aid.

Furthermore, the Commission has always been opposed in principle to operating aids and has considered that particularly in textiles, clothing and synthetic fibres and yarn investment made by an enterprise for the purpose of keeping it in business or maintaining its level of business without affecting any basic change does not qualify for assistance.

While explaining in its comments under the Article 93 (2) procedure the normal administrative procedures under the Investitionszulagengesetz in order to avoid aids in favour of replacement investments, the German Government has not presented any evidence from which it would be clear that aids in favour of normal modernization and rationalization and in favour of investments in order to adapt to modern technical standards, which have developed since the installment of the plant to be replaced, can be avoided.

In 1979, when examining the Investitionszulagengesetz, the Law under which the aid in question is to be granted, the Commission requested from the German Government that the criteria adopted for promoting rationalization investment should be amended in order to rule out any granting of operating aids. In 1981 the Commission reiterated its objections in respect of these criteria since they could still not ensure that only basic rationalization investment and not replacement investment would qualify for aid.

In addition, the German Government in its notification of 5 November 1984 explicitly referred to the investment proposed as replacement investment.

In respect of the German Government's claim that only about 50 % of the projected investment concerned polyamide, it has to be noted that the 'texturization' processing stage cannot logically be separated from the actual production of the yarn as it is only after texturizing — which in most firms is a fully integrated production stage — that most yarns are sold on the market for the purpose of textile utilization. Equally, the projects proposed in the fields of general services of the firm in question, production process technique and utilization technique for textile purposes, are part of a synthetic fibre and yarn producer's normal strategy for remaining in business, and are necessary to maintain a company's competitive position in the market place, particularly in areas of continuous and relatively rapidly changing product characteristics such as fibres and yarns.

There is therefore nothing peculiar to the investment projects in question which would justify the Commission in exempting the proposed aid in favour of these investments from the rules set by the synthetic fibres and yarn aid code under which such aids are to be avoided.

Nor can the remainder of the aid proposed in favour of polyester be exempted from the rules of the aid code, as polyester is also a product covered by this discipline and the German Government has been unable to give any justification for a finding that the proposed aid for polyester would be in line with the conditions set by this aid code.

The German Government indicated in its comments under the procedure that the proposed investment would not increase the existing production capacity of the firm, which is stated to be 35 000 tonnes. However, the company itself, for the purpose of the synthetic fibre and yarn producers' agreement to jointly reduce capacities, authorized by the Commission in 1984, has declared several times, most recently in December 1984, that it has a total production capacity of 28 500 tonnes. Only this difference of 6 500 tonnes which would imply an increase of capacity under the investment project in question, would explain why the company, by installing the continuous production process, can rationalize and improve productivity as claimed while at the same time maintaining and securing all its present 1 210 permanent jobs.

The German Government points to the market share of 1,4 % of the potential beneficiary. This figure, however, is calculated on the basis of total man-made fibre and yarn production in Western Europe, takes into account all synthetic and cellulosic products for textile and non-textile utilization and, therefore, is misleading.

In the sector of polyamide filament yarn and staple and carpet yarn the share of the firm in total Community production stands at 4,1 % and 5,1 % respectively. As a result, the negative impact an aid in favour of these products would have on trade is much more significant than claimed.

Finally, the potential beneficiary is a subsidiary of the foremost industrial group in Germany, with diversified interests in many sectors, which is partly State-owned and whose financial strength is considerable, so that market forces are sufficient in themselves to secure normal development and the investment envisaged without State intervention.

In view of the above and with regard to the exception provided for in Article 92 (3) (c) of the EEC Treaty in favour of 'aid to facilitate the development of certain economic activities', it must be observed that the proposed aid, by artificially lowering the modernization and rationalization costs of the undertaking in question, would weaken the competitive position of other producers in the Community and would therefore have the effect of further reducing capacity utilization and depressing prices, to the detriment of and possible withdrawal from the market of producers which have hitherto survived owing to restructuring, productivity and quality improvements undertaken from their own resources. Thus the proposed aid, which would favour the undertaking in question, the market position of which would no longer be solely determined by its own efficiency, merits and powers, cannot be considered as 'facilitating the development' or contributing to a development which from the Community point of view would be adequate to counteract the trade distorting effects of the aid.

With regard to the exceptions provided for in Article 92 3 (a) and (c) of the EEC Treaty relating to aids intended to promote or facilitate the development of certain areas, it must be observed that the standard of living in the Neumünster area is not abnormally low nor is there serious under-employment within the meaning of the exception in Article 92 (3) (a). In addition, the sectoral effects of regional aids to the industry in question in this case need to be controlled even for the most underdeveloped areas, to which Neumünster does not even belong, which is why the Commission must exercise its analysis of the economic and social situation in the framework of the Community interest which in this sector is to reduce capacities. In the situation the industry concerned is currently in and likely to remain in the foreseeable future, the investment which is proposed to be aided does not restructure the production plant and, thus, is not likely to make it financially and economically viable and would not secure the jobs currently provided.

Therefore, the proposed aid would not promote the economic development of the Neumünster area within the meaning of Article 92 (3) (c), as it would not bring to the area any lasting increase in income or reduction in unemployment, but would be likely to distort competition in intra-Community trade without making the necessary compensatory contribution to regional development.

As regards the exemption provided for in Article 92 (3) (b) of the EEC Treaty, it is evident that the aid 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 German economy. Although the economy of Germany 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.

Consequently, the aid proposal in question does not meet the conditions which must be fulfilled in order for exceptions in Article 92 (2) and (3) of the EEC Treaty to apply,

HAS ADOPTED THIS DECISION :

Article 1

The Federal Republic of Germany shall not implement its proposal, notified to the Commission by letter of 5 November 1984 and supplemented by letter of 13 February 1985 in the course of the procedure under Article 93 (2) to grant an aid of DM 4,5 million to a producer of polyamide yarn situated in Neumünster.

Article 2

The Federal Republic of Germany shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply herewith.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 2 April 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission