II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 June 1985

concerning an aid scheme in favour of the textile and clothing industry in France funded by means of parafiscal charges

(Only the French text is authentic)

(85/380/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

On 5 July 1984, the French Government belatedly informed the Commission of three decrees amending and extending previously existing aid schemes for the textile and clothing industry, funded by two parafiscal charges levied under the same procedure as value added tax on sales of textile and clothing products in France.

By Decrees No 84/388, No 84/389 and No 84/390, published in the *Official Gazette of the French Republic* of 25 May 1984, the Comité de développement et de promotion du textile et de l'habillement (CDPTH) was created and two previous parafiscal charges, based on decrees No 82/1242 and No 82/1243 in respect of which the Commission delivered a final negative decision on 20 July 1983, were merged in order to provide for one aid scheme in favour of the textile and clothing industry. The decrees entered into force retrospectively on 1 January 1984, whereby the French Government failed to comply with its obligations under Article 93 (3) of the EEC Treaty.

Under those three decrees, the scheme provided for aid amounting to some FF 250 million annually, of which a certain amount was earmarked for joint research, development and promotion projects. The remaining proceeds from the parafiscal charges were to be allocated to individual aid measures for textile and clothing firms for the purpose of modernization and rationalization investment.

The two schemes had been in force, with certain amendments and extensions, since 1965 in the case of the textile industry and since 1969 in the case of the clothing industry. Following initial scrutiny, the Commission took the view that the measures in question would help to provide the recipient industries with considerable financial support, on a scale and in such forms that trade was bound to be affected and conditions of intra-Community competition distorted. On account of their objectives and duration, the Commission considered these measures tantamount to operating aid. Furthermore, they could be combined with other general or specific measures of assistance for which the textile and clothing/knitwear industries were eligible. The two decrees contained no provisions designed to prevent increases in production capacity in branches already experiencing surpluses, nor did

they lay down conditions for reciprocal commitments on the part of the recipient firms operating in these branches which could meet the requirements of the Community textiles and clothing industry aid guidelines.

Therefore, the Commission considered that the aids in question would not promote any development which from the Community point of view, would be adequate to counteract their trade distorting effects and that the aids — by favouring the undertakings in question operating 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.

The Commission took the view that the proposed aids did not meet the conditions necessary to benefit from one of the derogations laid down in Article 92 of the EEC Treaty and it initiated the procedure provided for in the first subparagraph of Article 93 (2) thereof.

By letter of 30 July 1984, it gave the French Government notice to submit its comments.

II

The French Government, in submitting its comments under the procedure provided for in Article 93 (2) of the EEC Treaty by letter of 31 August 1984 firstly declared that no aids had been granted nor would be granted until a final Commission decision had been taken.

As to the substance, the French Government pointed out that the newly created Committee had not started to operate and that the detailed arrangements specifically applying to the planned aids had not yet been finally decided by that Committee. These would be submitted to the Commission at a later date.

By letter dated 18 April 1985, the French Government submitted the additional comments to which it had alluded, according to which the detailed arrangements implementing the proposed aid scheme are as follows :

— financial assistance amounting to FF 150 million in 1985 in the form of a reduction of 6 percentage points on interest rates in respect of commercial loans amounting to FF 1 000 million for investments in technologically advanced equipment,

— the aids are intended to increase productivity and the quality of products in order to enable the industry to compete more effectively with imports from countries with low labour costs.

In addition, the French Government pointed out that the aid programme was not intended to increase total textile and clothing production capacity and that the scheme had a very limited global impact in view of the net grant equivalent which would be in the range of between 4 % and 7,5 %, most probably averaging 5,5 %.

Finally, the French Government considered that the scheme's macro-economic effect on competition in the EC would be next to nothing as the parafiscal charges were levied on the French industry itself.

In commenting under the same procedure, three other Member States and one federation of firms in the sectors concerned supported the Commission's view and expressed great concern about the support measures. They emphasized that the French textile and clothing industry had previously benefited from very considerable financial assistance *inter alia* under schemes to reduce social security contribtions and that the new aids would be liable to distort competition in the Community by conferring unfair advantages on the recipients in competition with other Community textile and clothing producers. Furthermore, they highlighted the positive development of the French textile and clothing industry during the last two or three years on the basis of which they considered that the aids would be totally unjustified.

III

In the clothing and textile sectors there is trade between Member States — as sufficiently documented by statistical evidence — and competition is very keen. The French textile and clothing industry — producing about 20 % of total textile and clothing value added in the EC — plays a very active part in intra-Community trade by shipping some 30 % of its total output to other Member States.

In this case, the proposed measures have been communicated by the French Government to the Commission with explicit reference to Articles 92 to 94 of the EEC Treaty, thus recognizing and accepting their aid character. Equally, by calculating the net grant equivalent of the proposed measures, the French Government itself points to a reduction by — most probably — 5,5 % of investment costs which the textile and clothing companies in France would normally have to bear.

Furthermore, the fact that a system of financial support is serviced by a charge designed for that purpose and imposed on the undertakings or producers concerned has no influence on the aid character of the system, as under Articles 92 to 94 of the EEC Treaty such measures have to be examined in the same way as aid properly so-called. Any other approach would have the effect of opening a loophole in Article 92 thereof and would lead to a system of permanent aids, the amount of which would be unforeseeable and difficult to review.

In the sectors concerned, characterized by a high volume of trade between Member States and keen competition, the proposed aids are liable to affect this trade and distort or threaten to distort competition between Member States by favouring the French textile and clothing industries' undertakings within the meaning of Article 92 (1) of the EEC Treaty.

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.

Article 92 (1) lays down the principle that aid having the features therein described is incompatible with the common market.

The exceptions to this principle set out in Article 92 (2) are not applicable in this case because of the character and the purpose of the proposed aids.

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 in that of a single Member State. In order to safeguard the proper functioning of the common market and to take account of the principles set forth in Article 3 (f), the exceptions to the principle set forth in Article 92 stipulated in Article 92 (3) must be construed narrowly when any 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 recipients to adopt a course of action contributing to the attainment of one of the objectives sought.

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 unwarranted 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 based on the common interest referred to in Article 92 (3).

The French Government has been unable to give, or the Commission to discover, any justification for a finding that the planned aids fall within one of the categories of exceptions for which provision is made 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 France is not abnormally low nor is there serious underemployment within the meaning of the exemption specified in (a); and because the aid scheme applies to firms in given economic sectors irrespective of where they are located, it is not intended for the development of certain areas as provided for in the exemption specified in (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 French economy. A sectoral aid scheme in favour of the textile and clothing industry is not suited to remedying the kind of situation described in Article 92 (3) (b).

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' such development, when the need for aid is assessed from the standpoint of the Community rather than from that of a single Member State.

An examination of recent developments and the current situation shows that firms in those 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 and textile industries has been reflected in plant closures and workforce reductions, owing to overall market depression and increased imports from countries with low labour costs, the said industries are now firmly on the road to recovery. During 1984 and early 1985 it has increasingly become evident that a majority of firms in these industries throughout the Community by means of rapidly rising producticity, 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 EEC textile market.

Therefore, 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 theme; it would merely transfer remaining structural problems

and unemployment from one Member State to another and would, in addition, not meet the conditions defined in the Community guidelines on aid to the textile industry.

The French Government's proposal does not demonstrate the existence of any problems which are specific to French textile and clothing enterprises.

On the contrary, as far as the French textile and clothing industry is concerned, a number of economic indicators document recent restructuring and positive economic and financial developments. Investments have increased by 38 % between 1981 and 1983 against an average for French industry as a whole of 9 %. Equally, investments as a share of turnover increased from 2,6 % to 4 %, again well above the total industry average. Net profits have recovered and show a considerable improvement compared to previous years, particularly leading to a significantly improved rate of self-financing. Despite continuing pressure from imports from countries with low production costs, output is stable or even increasing in most sub-sectors of the industry. Total textile exports increased by 18 % in 1984, which has brought the share of production exported to 46 %. Since 1981, export growth rates have exceeded import growth rates by several percentage points.

All these indicators lend support to the view that the former depressions have lifted and that the situation is continuing to improve. As a result, the present situation of the French textile and clothing industry is such as to enable firms to invest using their own financial resources without State aid.

Moreover, massive restructuring, re-tooling and the increased application of the latest available technology have made the French textile and clothing industry more productive and efficient and much better able to manufacture high-quality products and, thus, to compete internationally.

Furthermore, the rate of job losses has considerably slowed down and stands — for the period 1981 to 1983 — at minus 3,8 % against a Community textile and clothing industry average of minus 10,2 %.

It also has to taken into account that the French industries in question have, for very many years, benefitted from considerable public financial support, be it under general, regional or, indeed, specific aid schemes, which has contributed significantly to the positive development described above. During the period 1982 to 1984 alone, the industry benefited from financial aid amounting to FF 3 500 million.

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, in some cases, survived only on account of restructuring, and productivity and quality improvements secured out of their own resources. As a share amounting to some 30 % of the production of the textile and clothing industries which it is proposed to aid is exported to the other Member States, in a situation where demand is only increasing slowly, it is very unlikely that trading conditions would remain unaffected.

In addition, the French Government's proposal to aid the textile and clothing industries comes close to being equivalent to an aid scheme for general investment and modernization of existing equipment in that sector, 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.

The proposal lacks any reference to a selective approach in respect of the different sub-sectors and does not define any criteria to be used for checking the viability of companies.

No provision is made under the proposal in respect of the simultaneous application of other 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 according to the type of investment projected and would, thus, further accentuate the effects of the aid programme.

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

It is therefore evident that the aid scheme in question does not conform to the objectives defined in the Community guidelines on aids to the textile and clothing industry.

The French Government points to a net grant equivalent resulting from the aid scheme of most probably 5,5 % of total investment in the industry and considers that such aid intensity has a very limited effect on competition.

While in comparison with previous aids granted by the French Government to the textile and clothing industry the intensity of the scheme currently proposed may appear to be more limited, it nevertheless has to be concluded that the proposed aids are to be granted to facilitate investment which reduces the costs normally allowed for in the budgets of the undertakings in question. In a market where the volume of trade between Member States is substantial, all aid, whatever its amount or intensity, and particularly aids of an intensity of 5,5 % net grant equivalent distort or threaten to distort normal competition since the companies receiving the aid obtain external assistance which does not accrue to their competitors. The specific intensity of 5,5 % may not be a very large percentage of the aggregate financial resources of an undertaking but the aid is nevertheless appreciable in the light of the toal investment costs of a company benefitting under the proposed sheme.

As to the French Government's claim that the macroeconomic effects of the proposed aid scheme would be next to nothing it has to be pointed out that competitiveness is determined at company level and that the aids envisaged would enable those firms benefiting under the scheme to significantly reduce their investment costs and, consequently, modify their prices.

In view of all the foregoing considerations, it is clear that the proposed aids under the scheme of assistance for the benfit of the textile and clothing industries in France by favouring the undertakings in the sectors concerned, the market situation of which would no longer be solely determined by their own efficiency, merits and powers, would operate only in the national interest of the said Member State and would not contribute to a development which would be adequage to counteract the resulting distortion of trade at Community level.

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

HAS ADOPTED THIS DECISION :

Article 1

The aid for the benefit of textile and clothing undertakings provided for by Decrees No 84/388, No 84/389 and No 84/390 published in the *Official Gazette of the French Republic* on 25 May 1984, the detailed arrangements for the implementation of which were communicated to the Commission by letter of 18 April 1985, is incompatible with the common market under Article 92 of the EEC Treaty and France shall refrain from implementing the said aid scheme.

Article 2

France 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 French Republic.

Done at Brussels, 5 June 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission