COMMISSION

COMMISSION DECISION

of 31 July 1992

on the granting of aid to steel undertakings by the Danish and Dutch Governments

(Only the Danish and Dutch texts are authentic)

(92/411/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 95 (1) and (2) thereof,

Having consulted the Consultative Committee and with the unanimous assent of the Council,

Whereas :

In order to help protect the environment by reducing carbon dioxide emissions and improving energy efficiency, the Danish and Dutch authorities have decided to introduce a specific additional tax on carbon dioxide and energy coupled with arrangements providing reliefs for firms. In Denmark, the reliefs consist in particular of :

— a system of progressive refund of part of the tax paid : the amount of the refund increases in parallel with the proportion of the firm's value added accounted for by the tax,

— a grant where the tax accounts for more than 3 % of the firm's value added, eligibility for the grant being subject to the carrying out of an energy expert's report and to the implementation of the energy-saving measures advocated in the report. The grant comes on top of the progressive refund so as to cover the amount of the tax still payable, except for Dkr 10 000 (ECU 1 260) which the firm must pay itself.

In the Netherlands, the reliefs relate to the part of the tax that is based on energy consumption (the other half of the tax being based on the carbon dioxide content of fuels) and consist of a reduced rate of taxation for firms whose natural gas consumption exceeds a threshold of 10 million m^3 a year.

In both countries, firms subject to the tax will therefore incur additional costs despite these reliefs. The Commission, to which these tax arrangements were notified in accordance with Article 93 of the EEC Treaty, took the view that the relief measures comprised aid elements since they favoured certain undertakings in the two Member States.

It concluded that the aid was compatible with the common market since its object was to limit the loss of competitiveness of the recipient firms, as a result of their being subject to the tax, as compared with their competitors in countries which had not introduced such a tax, and since it did not jeopardize the positive effects which the introduction of the tax was likely to have in terms of environmental protection.

In April 1992, thereof, the Commission decided not to oppose the granting of the aid, though it stipulated that, if Community legislation were subsequently introduced in this area, the Danish and Dutch Governments would have to bring their taxes and therefore the related aid measures into line with it.

However, the Commission excluded ECSC steel undertakings from eligibility for the aid. This is because the aid is not included amongst the types of aid authorized by Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry [1]. The granting of the aid is consequently prohibited under Article 4 point (c) of the ECSC Treaty.

However, the additional costs incurred by Danish and Dutch firms as a result of their being subject to the tax will affect their competitiveness compared with their competitors inside and outside the Community. The goal of not impeding the competitiveness of steel undertakings contributes to achievement of the objectives laid down in

[1] OJ No L 362, 31. 12. 1991, p. 57.

the ECSC Treaty, and in particular those laid down in Articles 2 and 3 thereof. Accordingly, it would be unjustified to exclude the Danish and Dutch steel industries from eligibility for the relief measures.

The Community is thus faced with a situation not provided for in the ECSC Treaty and one in which it must act. Accordingly, use should be made of the first paragraph of Article 95 of the Treaty to enable the Community to pursue the objectives set out in the introductory articles of the Treaty and to authorize through an *ad hoc* decision the payment of the aid to the steel industry in the two Member States.

ECSC steel undertakings in Denmark and the Netherlands will henceforth qualify, on the same terms as other undertakings, for the measures providing relief from the specific additional tax on carbon dioxide and energy introduced in each of the two Member States. Any amendment to the relief measures initially authorized by the Commission will have to be notified to the Commission where they are likely to have effects on the steel industry. Such notifications will be examined in accordance with the procedures established by Decision No 3855/91/ECSC so that the Commission can check within reasonable deadlines that the aid thus amended complies with the restrictions set by this Decision.

The Member States will report twice a year on the aid thus granted and on its use. Since the tax is being introduced in the Netherlands on 1 July 1992, this Decision will enter into force there as from that date.

So as to ensure consistency with Decision No 3855/91/ECSC, this Decision will apply until 31 December 1996,

HAS ADOPTED THIS DECISION:

Article 1

Aid of the type authorized for activites not covered by the ECSC Treaty by Decisions of 8 April 1992 in respect of Denmark and of 29 April 1992 in respect of the Netherlands which are intended to reduce the increase in the tax burden on steel undertakings in Denmark and the Netherlands resulting from the introduction, in those two Member States, of a specific additional tax designed to protect the environment by reducing carbon dioxide emissions and by improving energy efficiency and the granting of which is not reserved exclusively to the steel industry may be considered to be compatible with the common market.

Article 2

The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to alter the aid authorized in Article 1.

The Commission shall examine any such planned alterations in accordance with the provisions of Article 6 (4) and (5) of Decision No 3855/91/ECSC.

Article 3

The Kingdom of Denmark and the Kingdom of the Netherlands shall supply the Commission twice a year with reports on the aid disbursed over the previous six months and, if appropriate, the uses to which the aid was put and the results obtained over the same period.

Article 4

This Decision shall enter into force:

— on 1 July 1992 in the Kingdom of the Netherlands,

— on the day of its notification to the Kingdom of Denmark.

It shall apply until 31 December 1996.

Article 5

This Decision is addressed to the Kingdom of Denmark and the Kingdom of the Netherlands.

Done at Brussels, 31 July 1992.

For the Commission

Leon BRITTAN

Vice-President