COMMISSION

COMMISSION DECISION

of 21 December 1993

on the proposal to award aid to SST-Garngesellschaft mbH, Thüringen

(Only the German text is authentic)

(Text with EEA relevance)

(94/266/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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

The Commission decided on 6 April 1993 to open the procedure provided for in Article 93 (2) of the EC Treaty in respect of the German authorities' proposal to grant DM 4 669 000 in aid to SST-Garngesellschaft mbH, a family-owned company located in Brattendorf, *Land* Thüringen, towards the cost of the installation of new facilities for the production of polyester staple fibre. The entire output of the new plant would supply the company's spinning mill for the production of specialized polyester yarn that is not produced elsewhere in the Community. The aid has an overall intensity of 30,2 %, with total investment costs amounting to DM 15 460 000.

Notwithstanding that the proposed aid would be provided under regional aid schemes that have been authorized by the Commission, the proposal was not properly notified to the Commission pursuant to Article 93 (3) of the EC Treaty in accordance with the pre-notification requirement set out in the Code on aid to the synthetic fibre industry [1] (hereinafter referred to as 'the Code').

In deciding to open the procedure, the Commission also pointed out that there were doubts as to whether the aid was required to compensate for the economic disadvantages caused by the division of Germany, as was claimed by the German authorities. Furthermore, the aided investment was going to result in new production capacity rather than a significant reduction as required by the Code.

The German Government was informed of the Commission's decision by letter dated 19 April 1993. Other interested parties were informed by publication of the letter [2].

II

The German Government submitted comments by letters dated 7 June, 14 July and 2 December 1993 and at meetings with the Commission on 7 July, 6 October and 30 November 1993.

The German authorities noted that, before economic and monetary unification with the Federal Republic of Germany on 1 July 1990, the production of synthetic fibres and investment decisions in the former German Democratic Republic were largely under the control of a single organization, the Chemiefaserkombinat 'Wilhelm Pieck', in Schwarza. Production was limited to fibres and yarns of only three of the polymers covered by the Code : polyamide, polyacrylonitrile and polyester. Polypropylene fibre was imported from Czechoslovakia and Bulgaria in accordance with Comecon agreements.

The German authorities stated that, between 1985 and 1989, synthetic fibre production in the new Länder was as follows :

[1] OJ No C 346, 30. 12. 1992, p. 2.

[2] OJ No C 210, 4. 8. 1993, p. 9.

Production

(tonnes)

Type of fibres/yarns	Year				
	1985	1986	1987	1988	1989
Polyamide yarn	42 903	46 279	48 561	53 493	54 691
Polyamide staple	5 634	5 970	6 066	5 253	6 289
Polyester yarn	26 470	25 845	25 737	25 388	26 266
Polyester staple	43 509	35 332	43 603	42 406	44 435
Acrylic staple	36 430	36 717	35 024	48 456	58 635
Total	154 946	150 143	158 991	174 996	190 316

1989 production levels, against a total production capacity of 192 000 tonnes, did not change significantly before economic and monetary union with the Federal Republic on 1 July 1990.

The German authorities explained that, after unification, the Chemiefaserkombinat Schwarza was broken up and efforts were started to restructure the synthetic fibre industry in the new Länder. That meant releasing decision making as to investments and products from the constraints imposed by the planned economy of the former GDR, and reducing production capacity, which has previously been fully used, to the level of forecast consumption in the new Länder, estimated at approximately 150 000 tonnes.

The German authorities stated that the technology of the facilities under the control of the Chemiefaserkombinat and the economic structure of the industry generally was out of line with the rest of the Community because the management of the production facilities concerned had been unable to respond to movements in the market or to decide investment strategy without political consent which took into account wider factors, such as the development of the industry elsewhere in the Eastern bloc. Accordingly, while synthetic fibre producers elsewehre in the Community had been able to restructure and rationalize their activities by exploiting new technology, developing new products and entering new markets, this had not been possible for the industry in the former GDR. As a result, restructuring the industry in the new Länder would involve adaptation of the facilities of the successor companies to the Chemiefaserkombinat as well as fresh investments by new companies such as SST.

The German authorities illustrated the effect of State control on the industry by noting that, while synthetic fibre producers elsewhere in the Community had responded to changing demand by progressively increasing their capacity for the production of polypropylene staple fibre and filament yarn (from 104 000 tonnes in 1992), no polypropylene fibre or yarn had been produced in the former GDR.

Furthermore, although the German authorities now considered over-optimistic their earlier estimates of the size of the overall reduction in capacity that would result from the restructuring of the industry in the new Länder, they were certain that the process would place a heavy burden on the new Länder with significant job losses, causing considerable economic and social hardship in the areas affected. The Land Thüringen had been particularly badly affected by the restructuring of the synthetic fibre and textile industries with a job loss of over 85 % between 1 January 1991 and 31 December 1992.

The German authorities stated that the investment in question was an element in the strategy by which the synthetic fibre industry in the former GDR was being restructured. By the end of 1994, the net effect of restructuring, taking account of the investment in question, would be a reduction of approximately 25 % on the total capacity of the former GDR.

By type of fibre, this total is made up as follows:

capacity

(tonnes)

Polyamide yarn	44 875
Polyester yarn	27 000
Polyester staple	39 200
Acrylic staple	20 000
Polypropylene fibre	12 000
Total	143 075

By company, the total is made up as follows:

	Polyamide yarn	Polyester yarn	Polyester staple	Acrylic staple	Polypropylene staple
Märkische Faser AG			30 000	20 000	
Rhône-Poulenc Rhotex	1 875				
Thüringischen Faser AG	15 000				
SST-Garngesellschaft			9 200		
Hoechst	5 000	27 000			
Lausitzer Teppichfaserwerk	23 000				12 000
Total	44 875	27 000	39 200	20 000	12 000

III

The only party to submit written comments under the Article 93 (2) procedure was the Apparel, Knitwear and Textiles Alliance, by a letter dated 29 September 1993. The German Government did not reply to the letter.

Oral comments were received from the International Rayon and Synthetic Fibres Committee.

IV

The aid in question undoubtedly constitutes aid within the meaning of Article 92 (1) of the EC Treaty, as it would allow SST-Garngesellschaft mbH to carry out the planned investment without having to bear all of the cost. Furthermore, as there is intra-Community trade in polyester staple (approximately 165 000 tonnes of unprocessed fibres in 1992 and approximately 6 000 tonnes of processed fibres), the proposed aid would be likely to distort competition and affect trade among the Member States.

The aid in question totals DM 4 669 000, with an intensity of 30,2 %, a grant of DM 3 410 000 under the joint Federal Government/*Länder* scheme for improving regional economic structures, for which the 22nd general plan [1] was recently approved by the Commission, with an intensity of 22,08 %, and DM 1 259 000 in the form of an investment tax allowance under the arrangement whose extension was also recently authorized by the Commission [2] with an intensity of 8,14 %. For both schemes, the intensity of the aid is below the levels authorized by the Commission.

However, as the aid would benefit a producer of synthetic fibres, it could only be considered compatible with the common market if it did not adversely affect trading conditions to an extent contrary to the common interest.

Since 1977, aid to the synthetic fibre industry has been subject to constraints. The current version of the Code relates to the production and texturization of four fibres — polyester, polyamide, acrylic and polypropylene — irrespective of the end-use, and to their polymerization where integrated with fibre production in terms of the machinery involved. The Code states clearly that authorization of proposals to grant aid to synthetic fibre producers is conditional on a significant reduction in the production capacity of the prospective beneficiary. SST itself does not currently produce any synthetic fibres so that a capacity reduction is not possible. The aid does not meet the requirements of the Code. Also, the German authorities did not provide any detailed arguments in support of their view that Article 92 (2) (c) should be applied to the proposed aid. As this is a new investment, and in the absence of any convincing arguments to the contrary, there does not seem to be any evidence to suggest that any aid is required to compensate for economic disadvantages caused by the division of Germany, over and above the aid schemes authorized by the Commission pursuant to Article 92 (3). Therefore, Article 92 (2) (c) does not apply.

However, without prejudice to the Code, the Commission recognizes the unique and exceptional structure of the synthetic fibre industry of the former GDR. In particular, the Commission accepts that the industry was united under the control of a single holding company, the Chemiefaserkombinat, which specifically determined the nature and scale of investments within the industry as well as the location of production facilities and that those operating in the industry were constrained by the need to conform with political objectives rather than market forces.

The Commission also recognizes the inefficiency and uncompetitiveness of the industry of the former GDR as a result of its existing within the constructive framework of a planned economy and outside commercial markets, and the consequent need for restructuring.

[1] Not yet published in the Official Journal.
[2] OJ No C 71, 13. 3. 1993, p. 6.

Furthermore, the Commission acknowledges the specific contribution that the investment for which the regional aid is proposed would make to the cohesion of the Community. In particular, it would create 80 jobs in an area that has suffered heavy job losses since the unification of Germany and is among the regions eligible for support from 1994 onwards under Objective 1 of the Structural Funds.

In view of the socio-economic situation (per capita GDP/PPS is considerably lower than 75 % of the Community average), Thüringen may be classed as a region eligible for regional aid by virtue of Article 92 (3) (a) of the EC Treaty.

Accordingly, the Commission is prepared to take into account the strategy by which the synthetic fibre industry of the former GDR is being restructured in considering the proposal to award aid to SST, in the light of the common interest in improving, through the reduction of capacity, the rate of capacity utilization in the production of synthetic fibres in the Community.

Between 1978 — the first full year in which aid to the synthetic fibre industry in the Community was subject to constraints — and 1992, there was a reduction of around 25 % in the total capacity of the industry as synthetic fibre producers, sometimes benefiting from State aid, restructured or moved away from synthetic fibres into other activities. The reduction excludes the effect of the addition of the capacity of the former GDR afer 1 July 1990, the date of the economic and monetary unification of Germany, and does not take account of changes in capacity for the production of polypropylene fibre which, as noted earlier, was not produced in the former GDR in accordance with Comecon agreements.

During that period, the average rate of capacity utilization for Community production of synthetic fibres covered by the Code rose from approximately 63 % in 1977 to approximately 82 % in 1989. The average rate of capacity utilization has since fallen to 80 %, partly as a result of unification of Germany and the addition of the production capacity of the former GDR that had been under Communist control in the Chemiefaserkombinat.

The Commission accepts that the strategy by which the synthetic fibre industry of the former GDR is being restructured, of which the investment in question is an element, will result in a net reduction of 25 %, bringing the total capacity down from 192 000 tonnes to 143 075 tonnes. As a reduction of this scale was achieved in the rest of the Community between 1977 and 1992, this is a significant reduction and is therefore in the common interest.

In view of all those considerations and without prejudice to the Code, the Commission concludes that, as a specific element of the strategy by which the synthetic fibre industry of the former GDR is being restructured which will reduce its capacity to 143 075 tonnes, the proposed aid to SST is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The award of aid totalling DM 4 669 000 to SST-Garngesellschaft mbH for the installation of facilities for the production of polyester staple fibre is compatible with the common market and may benefit from the measures provided in the joint Federal Government/Länder scheme for the improvement of regional economic structures and the investment tax allowance scheme.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 December 1993.

For the Commission

Karel VAN MIERT

Member of the Commission