II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 December 2000

on State aid which the Netherlands is planning to implement in the form of development assistance for two general cargo vessels and two pulp and paper carriers to be built by Bodewes/Pattje for use in Indonesia

(notified under document number C(2000) 4185)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2003/730/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to Council Regulation (EC) No 1540/98 of 18 July 1998 establishing new rules on aid to shipbuilding [1], and in particular Article 3(5) thereof,

Having called on interested parties to submit their comments pursuant to those provisions [2],

Whereas:

I. PROCEDURE

(1) By two letters dated 14 April 1999, the Dutch authorities notified the Commission of their plan to grant aid in the form of development assistance to Indonesia for the purchase of two general cargo vessels and two pulp and paper carriers. By letters dated 7 May and 11 October 1999, the Commission requested additional information that was supplied by letters dated 15 September 1999 and 3 December 1999.

(2) By letter SG (2000)D/101519 dated 16 February 2000, the Commission informed the Dutch Government that it had decided to initiate the procedure provided for in Article 88(2) of the EC Treaty.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission called on interested parties to submit their comments.

(4) The Commission received no comments from third parties.

II. DETAILED DESCRIPTION OF THE AID

(5) The proposed aid is to be granted under a general export financing scheme for Dutch exports to Indonesia in the form of subsidised loans or grants for projects that are not commercially viable.

(6) The two general cargo vessels (each 8 600 gt) are destined for Bagasuna Samudera Gemilang, a small independent chartering and transport company based in Jakarta. The pulp and paper carriers (each 9 000 gt) are destined for PT Riau Lintas Samudera, a small privately owned shipping company in Sumatra. In both cases, the ships will be built by Pattje Shipyards bv, which submitted a bid in response to a private, restricted international invitation to tender issued by the buyers. The total contract value in each case is NLG 60 million. The development assistance in each case takes the form of a grant of NLG 15 million, corresponding to an aid intensity of 25 %. According to the Dutch authorities, the Indonesian companies would not be able to buy the vessels without the grants. The projects will help to improve the quality, size and capacity of the Indonesian fleet and thus contribute towards the country's economic development.

[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ C 101, 8.4.2000, p. 11.
[3] See footnote 2.

(7) The Commission decided to initiate the Article 88(2) procedure because it had doubts whether the condition in Article 3(5) of Regulation (EC) No 1540/98 requiring offers of development assistance to be open to bids from different yards had been respected.

III. **COMMENTS FROM THE NETHERLANDS**

(8) The Netherlands submitted comments by letters dated 7 April, 3 July and 3 October 2000, with the last letter confirming information provided at bilateral meetings held with the Commission departments on 25 July, 4 September and 15 September 2000.

(9) In their comments, the Dutch authorities reiterated that the relevant Dutch scheme had been published and was well known to Dutch shipyards. The scheme has been officially notified in the Dutch State Gazette and has been published in both Dutch and English by means of brochures that have been widely distributed at home and abroad and on Ministry websites. Regular information meetings about developing-country markets are also organised by the Ministry of Economic Affairs.

(10) The Dutch authorities have also reiterated that, under their development assistance scheme, support is available to all Dutch companies but that the developing-country buyer is responsible for issuing tenders and awarding contracts. They emphasised that yards generally identify projects themselves and then apply for development assistance and that it is not the role of the authorities to interfere in commercial negotiating procedures.

However, in order to allay the Commission's concerns, the Dutch authorities have undertaken to make some changes to their internal procedures so as to provide greater transparency regarding practical projects in the shipbuilding sector while, at the same time, preserving their non-interventionist role in the identification of projects and in the buyer's decision-making process.

(11) In future cases, they will take active steps to draw the attention of different yards to the possibility of development assistance for particular shipbuilding projects. Under the new procedure (which cannot be applied retroactively to the present cases), a shipyard would be required to inform the Dutch authorities of a possible application for aid at least one month in advance of submitting the formal application. Within 48 hours of receiving this 'pre-notification', the authorities would fax summary details of the project (type of vessel, indicative contract value and name and address of developing-country buyer) to all shipyards in the Netherlands that had the necessary shipbuilding capacity. Upon receipt of the formal aid application, the Dutch Ministry of Foreign Affairs will forward a confirmation of receipt to the developing-country buyer. This letter will expressly state that aid is available to all Dutch shipyards. It will also enclose a copy of the English version of the brochure explaining the Dutch scheme. Finally, the Dutch authorities have undertaken that no decision on an application will be taken within two months of receipt of the formal application.

(12) As regards the two specific projects, the Dutch authorities explained that the aid should not be regarded as hidden operating aid to Pattje. The yard is part of the Bodewes shipbuilding group, which is profit-making (with profits equivalent to between 2,5 % and 5 % of turnover) and is working at full capacity (with a full orderbook until the end of 2001). The Dutch authorities have verified that the contract price is in line with market prices by comparing these prices with those of similar Dutch-built ships for EEA buyers which have been granted normal contract-related production aid.

(13) The Dutch authorities also argued that there had not been any distortion of competition. In evidence, they pointed out that there had been no reactions to the notification of the aid to the OECD or to the Commission's initiation of the Article 88(2) procedure. Furthermore, they provided documentary evidence showing that there had been both Dutch and international competition for the projects. In that context, they pointed out that Bodewes/Pattje are members of Conoship, the joint sales and market organisation for a number of Dutch shipyards which were thus all aware of the aid possibilities for the projects.

Assessment of the aid

(14) The aid granted for the vessels in question must be assessed under Article 3(5) of Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding as it concerns aid granted as development assistance to a developing country.

(15) According to Article 3(5) of the Regulation, aid granted as development assistance to a developing country may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party 6 in its agreement concerning the interpretation of Articles 6 to 8 of the Understanding on export credits for ships, hereinafter referred to as the 'OECD criteria'. The Commission must verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the OECD criteria.

(16) As indicated when the procedure was initiated, the Commission considers that the projects comply with the OECD criteria and have a genuine development content. In particular, it notes that:

— requirement that the flag must not be a flag of convenience is met,

— Indonesia is on the list of countries eligible for development assistance,

— the owners of the vessels are registered in Indonesia and are not non-operational subsidiaries of a foreign company,

— the vessels will be used only in Indonesian waters and cannot be resold without the approval of the Dutch government,

— the aid intensity is not less than 25 %.

(17) However, Article 3(5) also stipulates that the Commission should also satisfy itself that the offer of development assistance for the particular project is open to bids from different yards. The Commission had doubts whether this condition was respected and therefore decided to initiate the procedure laid down in Article 88(2).

(18) Those doubts have, however, now been allayed.

(19) The information provided by the Dutch authorities as part of the procedure gave the impression that other yards were not informed about the particular projects since such action was not in line with general Dutch procedures for development assistance. Nevertheless, it is clear from the additional information made available to the Commission that several other Dutch shipyards were aware of the projects to be assisted through their membership of Conoship. This joint sales and market organisation of 10 yards located in the north of Holland informs all members about possible projects and assists them with their grant applications. Conoship has confirmed in writing that all members were made fully aware of this particular project. It can therefore be concluded that the development assistance was effectively open to bids from different yards.

Conclusion

(20) In the light of the above, it can be concluded that the proposed aid fulfils all the conditions laid down in Article 3(5) of Regulation (EC) No 1540/98 and is therefore compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which the Netherlands is planning to implement as development assistance for developing countries in the form of grants with an aid intensity of 25 % in connection with the sale by Bodewes/Pattje bv of two general cargo vessels and two pulp and paper carriers to Indonesia is compatible with the common market.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 13 December 2000.

For the Commission

Mario MONTI

Member of the Commission