COMMISSION

COMMISSION DECISION

of 24 March 2009

on the measure C 52/07 (ex NN 64/07) implemented by Spain for the Plan to support the textile and clothing industry

(notified under document number C(2009) 2017)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2009/553/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 the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) On 5 July 2006, the Commission received a complaint concerning a programme that Spain had put in place to assist its textile industry ('*Plan de apoyo al sector textil y de la confección*', hereinafter 'the Textile Plan').

(2) By letter dated 1 August 2006, the Commission requested the Spanish authorities to provide all necessary information concerning this Textile Plan, to which they replied by letter dated 29 September 2006, registered as received on 2 October 2006.

(3) On 13 November 2007, the Commission initiated the formal investigation procedure. After its publication, the Commission received comments from two interested parties, who wished to remain anonymous, on 22 February 2008 and on 9 April 2008 respectively. The Commission requested clarifications by letter dated 18 April 2008, to which the Spanish authorities replied by letter dated 30 May 2008. The Commission forwarded the interested parties' comments to the Spanish authorities on 6 May 2008, to which they responded by letter dated 12 June 2008.

(4) On 11 September 2008, a meeting was held between the different Spanish Ministries and the Commission. The Spanish authorities provided further information by letter dated 17 September 2008.

(5) On 3 October 2008 and 19 February 2009, the Commission requested further information by e-mail, to which the Spanish authorities replied on 21 October 2008 and 20 February 2009.

2. DESCRIPTION OF THE RECIPIENT AND THE AID MEASURES

2.1. Objectives of the Spanish Textile Plan

(6) The aim of the Textile Plan is to assist textile companies to adjust to the full liberalisation of trade in textiles and foster their competitiveness, whilst maintaining the highest possible number of companies and jobs within the sector. The plan was also designed to offset the adverse effects of the liberalisation of trade in textile and clothing products on workers and entire areas of activity.

(7) It included direct measures to help companies (technical research, innovative projects, and export promotion). Other measures were targeted more specifically at training and recruitment issues but were also of indirect benefit to companies and helped to promote the industrial redevelopment of regions affected by the relocation of companies in the sector.

[1] OJ C 239, 11.10.2007, p. 12.

2.2. **Recipients**

(8) The Textile Plan applied to all companies in the textile and clothing sector whose industrial activities were affected by general collective agreements in the textile and clothing sector or which came under headings 17, 18.1 and 2 of the National Classification of Economic Activities (CNAE). According to information provided by the Spanish authorities there were 15 438 companies with 211 831 workers in the sector in 2001; by 2007 these figures had fallen to 11 554 companies with 140 541 workers and in 2008 there were only 127 354 workers left. This corresponds to a 25 % drop in the number of companies between 2001 and 2007 as a result of globalisation of the sector.

(9) 75 % of the Spanish textile and clothing sector is made up of companies with fewer than 10 workers and 35 % of companies in the sector have 1 or 2 employees.

2.3. **Measures**

(10) The Commission initiated a formal investigation procedure in respect of the following measures:

1. *Programme to promote technical research in the textile and clothing sector*

(11) The objective of this specific measure was to promote industrial research and technological development projects that increased firms' technological capacity and fostered research and development (R & D) cooperation between companies in the textile and clothing sector and research bodies and also encouraged the dissemination of results.

(12) Projects qualifying for this aid measure were R & D projects, investment in tangible or intangible assets (only for SMEs, with the aim of incorporating advanced technologies in their production processes), projects to disseminate the results of R & D activities and projects to create and develop inter-company cooperation agreements.

(13) According to the Spanish authorities, this programme was based on approved aid scheme N 415/2004 [1]. The programme sought to promote technical research in the textile and clothing sector. Between 2005 and 2007 its budget was EUR 12,5 million in the form of grants and EUR 51 million in the form of interest-free loans, repayable over 12 years, which included a 2-year grace period.

2. *Programme for the industrial redevelopment of areas affected by structural changes in the textile sector*

(14) The aim of this measure was to assist the industrial redevelopment of areas affected by structural change. The following projects were eligible:

a) investments in technical and industrial infrastructure;

b) creation of new industrial activities;

c) technological partnerships between innovative companies, in the form of e.g. science/technology parks, innovation and technology centres, European innovation and technology centres, development agencies, technology transfer bodies;

d) efforts by various companies to revitalise the local economy;

e) development of companies from well-established sectors that incorporated technological processes;

f) creation and expansion of emerging sectors.

(15) Between 2006 and 2008 funding of EUR 11,1 million was provided in the form of grants and EUR 155,2 million in the form of interest-free loans with a 15-year term and a 5-year grace period. The Spanish authorities indicated that the measure was based on approved scheme N 101/2005 [2].

3. *Special loans granted by the Empresa Nacional de Innovación S.A. (ENISA) [3] for modernising SMEs*

(16) The measure provided for preferential loans equivalent to the capital contribution to promote the modernisation of SME products, processes and management and the creation of new technology companies in areas affected by structural change. Economically and financially sound SMEs were eligible; large firms and firms in difficulty were excluded. ENISA granted the projects selected a 0,5 % interest rate subsidy. The fixed interest rate was Euribor 1 year + 0,25 % for loans with a term of 4-8 years and a grace period of 2-6 years. The maximum subsidy per company was EUR 30 000.

[1] Commission Decision C(2004) 4709 of 1 December 2004 on measure N 415/2004: Promotion of technical research in the textile sector (2005 to 2007) (OJ C 72, 24.3.2006, p. 2).

[2] Commission Decision C(2005) 1532 of 18 May 2005, aid for restructuring of declining industrial zones (OJ C 235, 23.9.2005, p. 3).

[3] ENISA is a public undertaking linked to the Ministry of Industry, Tourism and Trade via the Directorate-General for Policy on SMEs.

(17) The measure was allocated a budget of EUR 4,07 million between 2006 and 2008. It was intended that the aid element (an interest-rate subsidy of 50 basis points) should be within the de minimis threshold of EUR 200 000 [1].

4. *Loans at preferential rates granted by ICO*

(18) Under this measure, companies benefited from loans at preferential rates for innovative productive investments. These loans were based on an agreement between the Ministry of Industry, Tourism and Trade and, since 5 September 2006, the public finance body *Instituto de Crédito Oficial* (ICO). The ICO acted as an intermediary between the commercial banks involved, whilst the Ministry of Industry, Tourism and Trade financed the preferential rates. The financing conditions were as follows:

a) up to 70 % of the investment, VAT excluded, limited to the EU State aid ceilings;

b) investments limited to new assets;

c) investment must be made within two years from signature of the operation (three years under exceptional circumstances, subject to a reasoned request to the ICO;

d) the recipient could choose between a term of five years with no grace period, seven years with a two-year grace period and ten years with a two-year grace period;

e) the credit institution could choose between an interest rate of Euribor 6 months + 0,75 % or Euribor 6 months + 0,50 % if the operation was guaranteed by a mutual guarantee scheme. The credit institution could not receive any commission and early repayment carried a 1 % penalty in the case of a fixed interest rate. The operation was carried out by participating banks and savings banks.

f) the final recipient company paid Euribor interest less 0,5 %;

g) in order to make it easier for the companies to receive guarantees, 67 % of the guarantee costs granted by the regional mutual guarantee schemes was refinanced by the Compañía Española de Reafianzamiento S.A. (CERSA);

h) the Ministry of Industry, Tourism and Trade granted an annual interest rate of up to 1,25 % in general or up to 1 % if guaranteed by a mutual guarantee scheme.

Companies or groups of companies whose main activity involved distribution were excluded. The planned budget for this measure was EUR 450 million.

5. *Promoting exports of Spanish products (ICEX)*

(19) The Spanish Institute for Foreign Trade (ICEX) had implemented several aid measures under the Textile Plan:

a) creation of information infrastructure such as Internet portals;

b) services to companies for their group participation in trade fairs;

c) advice about the export potential of firms that had so far not exported.

(20) The measures were implemented as part of initiatives such as the Global Fashion Plan (*Plan Global de la Moda*), the Spanish Habitat Plan (*Plan Hábitat de España*), official stands, sectoral plans, export consortia, plans for setting up businesses abroad, plans to promote Spanish brands, introductory plans to foreign trade promotion (PIPE), assistance for participation in fairs, meetings of representatives, trade missions, business investment and cooperation forums, creation and updating of data bases of operators, communication and advertising campaigns.

6. *Continuing training*

(21) The aim of this measure was to provide training for workers employed in the Spanish textile and clothing sector in order to improve their skills and thereby enhance the company's competitiveness and keep pace with modernisation.

(22) Under national legislation [2], in order to help finance their specific training programmes, firms could use part of the contributions paid during the previous year to the Social Security General Fund for specific training programmes by deducting them from their ordinary social security contributions. Some percentages had been improved for the textile and clothing sector:

[1] In accordance with Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, 28.12.2006, p. 5).

[2] Royal Decree 395/2007 of 23.3.2007, Order TAS 2307/2007 of 27.7.2007 and Law 51/2007 of 26.12.2007.

— for companies with 1 to 2 employees: 100 % of the contribution or EUR 420 (EUR 420 in the general measure),

— for companies with 3 to 5 employees: 100 % of the contribution or EUR 600 (EUR 420 in the general measure),

— for companies with 6 to 9 employees: 100 % of the contribution or EUR 720 (in the general measure the only requirement was 100 % of the contribution),

— for companies with 10 to 49 employees: 100 % of the contribution (instead of 75 %),

— for companies with 50 to 249 employees 80 % of the contribution (instead of 60 %),

— for companies with 250 or more employees: 60 % of the contribution (instead of 50 %).

(23) Companies were also entitled to an additional credit of 5 % to offset the working time lost during training.

(24) To benefit from these measures companies had to present a retraining plan to the Spanish Employment Service describing the changes in the production process, the introduction of a new organisational structure, training for new machinery and retraining for laid-off workers. They also had to give productivity and job maintenance targets in a separate paper and indicate the amount of the investment and their own contribution. This retraining plan also needed the approval of the sector's Joint Committee (50 % business representatives and 50 % from the textile sector unions).

7. *Safeguarding the jobs of older workers*

(25) In line with Spain's general legislation, a company employing a worker who is over 60 years old is entitled to a 50 % reduction in social security contributions. In the Textile Plan the age has been brought forward to 55 years for workers with an open-ended contract and who have worked for the company for at least five years.

8. *Guarantee waiver for deferred payments to the social security system*

(26) Under Spain's general social security legislation (Article 33(4) of Royal Decree 1415/2004 of 11 June 2004) social security debts can be deferred and paid in instalments if certain conditions are met, including the provision of guarantees to cover these debts. However, its implementing provisions [1] allow the Spanish authorities to authorise a guarantee waiver for social security debts in 'exceptional circumstances'.

2.4. **Legal basis of the scheme**

(27) The legal basis for measure 1 (recitals 11 to 13) is Order ITC/217/2005 of 4 February 2005 [2], which is based on Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises [3].

(28) Measure 2 (recitals 14 and 15) was based on aid measures N 101/2005 approved by Commission Decision C(2005) 1523 (recital 15) and XR/70/2007 under the regional investment aid scheme [4].

(29) The legal basis for measure 3 (recitals 16 and 17) is Law 30/2005 of 29 December 2005 [5].

(30) The legal basis for measure 4 is the 21st additional provision of the above-mentioned Law 30/2005 – Action by the Official Credit Institute on loans for firms in the textile, footwear, furniture and toys sector.

(31) Measure 5 (recitals 19 and 20) was based on Articles 14(1)(d) and 17(3)(m) of Law 38/2003 of 17 November 2003.

(32) Measure 6 (recitals 21 to 24) is governed by Royal Decree 1046/2003 of 1 August 2003, Order TAS/500/2004 of 13 February 2004.

(33) The general provision covering measure 7 (recital 25) is in Royal Decree Law 5/2006 of 9 June 2006.

(34) Measure 8 (recital 26) is covered by Article 33(4) of Royal Decree 1415/2004 of 11 June 2004.

2.5. **Duration of the scheme**

(35) The Textile Plan was apparently signed in June 2006 and applied until 31 December 2008. According to information provided by the Spanish authorities on 17 September 2008, there are no plans to extend it further (as mentioned under Article I(2) of the Textile Plan itself). Measure 1, however, applied from 2005 to 2007.

[1] Article 33(4)(d) of Royal Decree 1415/2004 of 11 June 2004.
[2] Official State Gazette (B.O.E.) of 9 February 2005.
[3] OJ L 10, 13.1.2001, p. 33.
[4] OJ C 169, 21.7.2007, p. 18.
[5] General State Budget Act, 27th additional provision.

3. REASONS FOR INITIATING THE PROCEDURE

(36) In its decision of 13 November 2007 to initiate the formal investigation procedure (decision to initiate the procedure), the Commission expressed its doubts about the compatibility of the measures with the common market and referred to the possibility of an undue combination of the different measures under the Textile Plan.

a) As regards measure 1, scheme N 415/2004 only applied until 2007, whereas the Textile Plan applied until 2008. The Spanish authorities had to explain how the intended aid measures for technical research complied with the conditions of scheme N 415/2004.

b) Regarding measure 2, the Commission had doubts about how the measure complied with all the conditions of the Community block exemption Regulation for regional aid ([1]).

c) Concerning measure 3, it was unclear to the Commission how the Spanish authorities would comply with the *de minimis* Regulation.

d) The Commission was concerned that the de minimis measure 4 could be unduly combined with other types of aid for the same eligible costs.

e) As for measure 5, the information provided by the Spanish authorities was insufficient to assess whether it was compatible with the Commission block exemption Regulation for small and medium-sized enterprises ([2]).

f) The legal basis for measures 6 and 7 had not been given.

g) As for measure 8, the Commission was unsure whether the measure was discriminatory and required prior notification to the Commission.

4. COMMENTS FROM SPAIN

(37) The Spanish authorities maintained that the decision to initiate the procedure was at variance with the Italgrani II case-law ([3]).

Measure 1

(38) The Spanish authorities explained that besides the legal basis of N 415/2004, a scheme for large undertakings, which expired on 31 December 2007 and had been mentioned in earlier correspondence, also applied, as did scheme XS 50/2005 ([4]) for SMEs, already approved, and which expired on 30 June 2007.

(39) The budget actually disbursed was EUR 14,24 million in grants and EUR 36,72 million in interest-free loans with a 12-year term. On 21 October 2008, the Spanish authorities reiterated their compliance with the conditions laid down in the scheme and confirmed that scheme N 415/2004 had not been and would not be applied after 31 December 2007 and that scheme XS 50/2005 had not been and would not be applied after 30 June 2008.

Measure 2

(40) The Spanish authorities explained that scheme N 101/2005 expired once Regulation 1628/2006 came into force ([5]). The Spanish authorities subsequently notified scheme N 430/2006, which was withdrawn on 26 January 2007. Since then, according to information provided by the Spanish authorities on 30 May 2008, the measures were based on XR/70/2007 ([6]). The synthetic fibres industry was not eligible for schemes N 101/2005 and XR/70/2007, according to paragraph 4 of Order ITC/1014/2005 and paragraph 4 of Order ITC/3098/2006, as amended by paragraph 3 of Order ITC/643/2007.

(41) The Spanish authorities also confirmed that the measure could qualify as initial investment, as in Ministerial Order ITC/643/2007 of 2 October 2007 amending Order ITC/3098/2006 ([7]). The description of the recipients in paragraph 4 of Ministerial Order ITC/643/2007 corresponded to the definition of initial investment as provided for by the Regional Aid Guidelines ([8]) and Regulation No 1628/2006.

(42) The budget disbursed was EUR 10,97 million in grants and EUR 150,8 million in repayable loans.

([1]) OJ L 302, 1.11.2006, p. 29.
([2]) Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).
([3]) Judgment of the Court of Justice in Case C-47/91 Italy v Commission (Italgrani II) [1994] ECR I-4635.
([4]) XS 50/2005 Programme to promote technical research for the textile/clothing sector (OJ C 19, 26.1.2006, p. 3).
([5]) Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).
([6]) OJ C 169, 21.7.2007, p. 18.
([7]) BOE of 10.10.2006.
([8]) Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

Measure 3

(43) The Spanish authorities confirmed that the recipients were exclusively SMEs. The estimated maximum amount of aid of EUR 30 000 per company had been calculated on the basis of a maximum loan of EUR 1 000 000. From 1 January 2006 until 13 January 2008, ten companies benefited from the measure, whilst 23 companies were refused. The interest rate subsidy of 0,5 percentage points had not been granted.

(44) On 30 May 2008 and at the meeting on 11 September 2008, the Spanish authorities underlined that financing had been granted on normal market terms but that large undertakings and firms in difficulty were excluded. The Spanish authorities confirmed this in writing by letter of 21 October 2008 and undertook not to apply this measure until the expiry of the Textile Plan.

Measure 4

(45) The legal basis for this measure was the de minimis Regulation. The maximum loan per recipient was fixed at EUR 2,3 million. The de minimis thresholds were respected at all times. These amounts could not be combined with other aid if it meant that the permitted *de minimis* threshold was exceeded. Accordingly, every recipient had to fill in an annual declaration form. The ICO drew up annual records of the measure, which were sent to the credit institutions that collaborated with the ICO.

(46) By September 2008, EUR 54,79 million of the EUR 450 million had been disbursed. The maximum amount of a loan was EUR 2,3 million. Interest rates were between 5,59 % and 4,94 % after the European reference rate for Spain became 5,19 %. The Spanish authorities confirmed that they had applied the new Communication on Reference Rates [1] as of 1 July 2008. According to the Spanish authorities, the participating financial bodies determined the margin that was added to the reference rate. The ICO also provided them with information about the average margins applied in Spain on the basis of data provided by the Bank of Spain.

(47) On 21 October 2008, the Spanish authorities presented an overview of the de minimis aid granted in 2006, 2007 and 2008, together with the corresponding declarations. The Spanish authorities undertook to comply with the de minimis Regulation in future.

Measure 5

(48) The measures in question were general measures open to all sectors. The subsidised activities were similar to those mentioned in Article 5 of the SME Regulation. It was very difficult to estimate the amount of aid as the scheme was applied intermittently, indirectly and unclearly.

(49) Between 2006 and 2008 funds totalling EUR 7,5 million were disbursed. The Spanish authorities indicated that this measure, which also benefited large undertakings, was covered by the *de minimis* Regulation.

(50) As regards application of the *de minimis* Regulation, the Spanish authorities explained that ICEX required from each recipient a declaration of the aid received based on the eligible costs pursuant to Article 14(1)(d) of Law 38/2003 of 17 November 2003. Recipients were required to inform ICEX of future subsidies. In line with Article 17(3)(m), ICEX had to check compatibility with other aid received on the basis of the same eligible costs. The Spanish authorities provided a table showing that the *de minimis* aid granted by the ICO and the ICEX from 2006 to 2008 in the textile and clothing sector did not exceed the threshold of EUR 200 000 per company over three tax years.

Measure 6

(51) The measure was of a general nature, although it was primarily targeted at SMEs. Therefore only firms with fewer than 5 employees could receive higher amounts than those paid in the previous year to the Social Security General Fund. Other recipients could only recover a percentage of the contribution paid for special training purposes in the current financial year. According to the Spanish authorities, the aid intensity for SMEs was about 11,3 % and 20 % for large enterprises. The planned budget was EUR 50 000 per year.

(52) By 13 January 2008, only one company had been selected for the measure. The Spanish authorities confirmed that in accordance with the rescue and restructuring Guidelines [2], firms in difficulty were excluded from the scheme.

Measure 7

(53) The Spanish authorities stressed that firms were only eligible if their employees over the age of 55 had been employed by the company for at least 5 years, which reduced eligibility to approximately 50 %. Most of the recipients (53 %) were women, while 76 % had very low skills and training, which made it difficult for them to find another job.

(54) The Spanish authorities stressed that Article 137(1) and Article 4 of the EC Treaty gave Member States autonomy in social security matters.

[1] OJ C 14, 19.1.2008, p. 6.

[2] Community Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

(55) By 1 January 2008, 6 313 employees in 2 015 firms had benefited from the scheme, corresponding to 16,6 % of firms and 4,5 % of employees in the sector. 56 % of the recipient companies benefited from the measure for only one worker, 30 % for 2, 3 or 4 workers and 13 % for between 5 and 30 workers; only 1 % benefited from the measure for more than 30 workers. 1 428 companies received a subsidy of less than EUR 500. The budget for this measure was EUR 15 million per year. The average aid per worker aged 55-58 was EUR 151/month, which corresponds to an intensity of 8,3 % of labour costs. Aid to workers aged 59 years amounted to EUR 44/month, i.e. 2,6 % of labour costs. Only 5,2 % of workers in the sector were eligible for this measure. The average impact for a company was 0,3 % of its labour costs.

(56) Despite its name, this was not a measure aimed at maintaining employment but an alternative to early retirement. The Spanish authorities also claimed that the amount of EUR 151/month was a sufficient incentive for keeping the person employed rather than hiring the same person and not declaring him.

(57) The measure could be applied to the synthetic fibres industry if the company had its main activity in the textile sector and if it was included in the collective bargaining for the textile and clothing sector rather than the chemical industry. Consequently there was only a slight possibility that these synthetic fibre producers would benefit from the measure.

Measure 8

(58) By letter of 17 September 2008 the Spanish authorities confirmed that this was a general measure and that no tax deferrals had been granted to companies in the textile sector under the Textile Plan.

(59) On 21 October 2008, the Spanish authorities agreed that in the unlikely event of a textile or clothing company requesting a guarantee exemption for tax deferrals, the request would be dealt with on the basis of the general legislation and not the Textile Plan.

(60) Lastly, the Spanish authorities undertook to comply with the Community legislation on the combination of de minimis measures.

5. COMMENTS FROM INTERESTED PARTIES

(61) The Commission received comments from two parties, who wished to remain anonymous.

(62) The first set of comments rejected sectoral State aid to the textile industry because it distorted competition. The authors favoured the line taken by the Commission in the decision to initiate the procedure and underlined that the Textile Plan set no limits on the subsidies that each company could receive. The justifications put forward by the Spanish authorities were insufficient. Aid for R & D was useful, but should be limited to SMEs. They considered that State aid for intangible assets should be rejected because it was too easily misused. Furthermore, although training measures for employees laid off from the textile industry were beneficial, giving an 80 % discount on social security contributions would only benefit employees indirectly and was not acceptable. If textile companies had more advantages than other sectors as regards paying social security debts by instalments, this would constitute unlawful State aid.

(63) The other comments referred to Geotexan's extremely low prices on the Spanish market, which could be due to implementation of the Spanish Textile Plan.

6. SPAIN'S RESPONSE TO THE INTERESTED PARTIES' COMMENTS

(64) The Spanish authorities argued that the Commission did not classify the measures as State aid in the decision to initiate the procedure but simply referred to that possibility. Spain also replied that the training subsidy for companies with 50-249 employees amounted to a 20 % rather than an 80 % increase. The intensity complied with the limits given in Article 4 of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid [1]. Moreover, the recipient of the training measure was the worker, who could either stay in the company or upgrade his training in order to seek a new job.

(65) As regards the second comment, the Spanish authorities argued that the allegations were submitted late and no proof was provided. The aim of the Textile Plan was to adapt companies in the sector to market liberalisation and not to favour the position of any specific company. As to the company expressly mentioned, Geotexan was founded in 2004. According to the eligibility criteria for maintaining older workers in their jobs, they needed to have worked in the company for over five years, which was not possible in this case. There is no record of Geotexan having benefited from the training aid measures. In any event, it would have received a subsidy of EUR 970 per year, which would not be a decisive factor in developing an aggressive pricing policy.

(66) In short, the comments did not contain any new legal facts or grounds and they were presented in general terms without providing any proof. Hence they should not be taken into account.

[1] OJ L 10, 13.1.2001, p. 20.

7. ASSESSMENT

7.1. State aid nature of the measures

(67) As stated in Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(68) According to the Spanish authorities, measure 3 had not been applied: the 0,5 % interest rate subsidy had not been granted and funding was based on normal market conditions. The Commission asked the Spanish authorities for information about the interest rates actually granted to the ten recipients. The Spanish authorities replied on 13 March 2009. The interest rate was less than the year's lowest reference rate in only two cases (a loan of EUR 300 000 and another of EUR 100 000 at an interest rate of 4 114 % in 2007, when the lowest reference rate was 4,62 %). Given the tiny difference between the two rates, the Commission must conclude that the State aid would have been so small that it would fall below the *de minimis* threshold. The Spanish authorities undertook not to apply this measure until the Plan expired. In these circumstances, the Commission must conclude that the amount of aid was less than the de minimis threshold and that it was not a question of State aid.

(69) On measures 4 and 5 the Spanish authorities said that they were covered by the Commission Regulation on *de minimis* aid and therefore did not constitute State aid. The Commission must accordingly examine whether the conditions of the *de minimis* Regulation were fulfilled.

(70) As regards measure 4 the Spanish authorities provided evidence of having complied with the *de minimis* Regulation in the past and undertook to do so in future. They also gave assurances that they had complied with the new Communication on Reference Rates since 1 July 2008.

(71) Regarding measure 5, the *de minimis* Regulation excludes aid for export promotion. In general, export aid is traditionally defined in Article 1(d) as 'aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity'. The *de minimis* Regulation further clarifies in recital 6 that 'aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market does not normally constitute export aid'. Thus, if aid is granted for group participation in trade fairs, it is covered by the *de minimis* Regulation [1]. By letter of 30 May 2008 the Spanish authorities confirmed that the measure was intended to encourage firms that had so far not exported to come to international fairs. It therefore met that condition. Aid for setting up information infrastructure via Internet portals is not export aid and therefore falls within the scope of the *de minimis* Regulation. Lastly, the provision of consultancy services to foster companies' export potential is covered by the *de minimis* Regulation and therefore does not come under the definition of export aid.

(72) Nevertheless, the Commission continued to harbour doubts about whether the Spanish authorities had complied with the *de minimis* Regulation in the past. It therefore asked the Spanish authorities to prove on the basis of Article 3(3) of the *de minimis* Regulation that it had been complied with in the past as regards measures 4 and 5. The Commission also called on the Spanish authorities to undertake to respect the Regulation in future, in accordance with Article 3(1). This implied that the ceiling of EUR 200 000 per undertaking had been respected in all three tax years, especially as regards possible combination with other measures in the Textile Plan based on the same eligible costs. As already mentioned in recital 47, the Spanish authorities provided evidence that the *de minimis* Regulation had been complied with in the past and they undertook to respect it in future. Therefore, measures 4 and 5 do not constitute State aid.

(73) Measure 8 is a general measure provided for by Spanish law which, according to the Spanish authorities, had never been applied under the Textile Plan. If a company requested a tax deferral in future, the Spanish authorities undertook to apply the general rules and not this measure. Since measure 8 had not been applied, no State aid was involved.

(74) Measures 1, 2, 6 and 7 were granted through State resources. These measures appear to offer a better selective advantage to companies from the textile and clothing sector than the conditions applied under the general rules and consequently to favour those undertakings. There is extensive trade in the textile and clothing sector so the measures could affect trade between Member States. Therefore, these measures constitute State aid within the meaning of Article 87(1) of the Treaty.

[1] See also Commission Decision C 89/01 of 24 September 2002 on an aid scheme which the Federal Republic of Germany is planning to implement — 'Guidelines on assistance for SMEs — Improving business efficiency in Saxony' (OJ L 91, 8.4.2003, p. 13), and, in particular recital 72 (aid towards the costs of participation in trade fairs or of studies or consultancy services needed for the launch of a new or existing product on a new market ... does not normally constitute export aid).

7.2. **Compatibility with the common market**

Measures 1 and 2

(75) Concerning measure 1, the Commission noted that the approved aid scheme N 415/2004 is only applicable to large enterprises and eligible R & D activities: personnel costs, relevant instruments and equipment, external consultancy costs, operating costs and additional general costs deriving from the research activity. The budget was EUR 16 million in the form of grants and EUR 74,45 million in the form of subsidised loans.

(76) The Textile Plan defined the following as eligible projects for large enterprises: R & D projects, projects to disseminate the results of R & D activities and projects to set up and develop inter-company cooperation agreements. The budget was EUR 12,5 million in the form of grants and EUR 51 million in the form of subsidised loans.

(77) On 13 January 2008 the Spanish authorities reiterated that they would respect the conditions imposed on the scheme. On this basis, the Commission must conclude that measure 1 for large undertakings fulfils the criteria laid down in the scheme.

(78) As regards measure 1 for SMEs, which according to the Textile Plan are the main focus of measure 1, the Spanish authorities explained that it would be covered by aid scheme XS 50/2005. The objectives of scheme XS 50/2005 are to promote research projects for SMEs, enhance cooperation between SMEs and research entities and to disseminate research results. Like the previous scheme, this one covers personnel costs, relevant instruments and equipment, external consultancy costs, operating costs and additional general costs deriving from the research activity, as well as investment in tangible and intangible assets and consultancy services. The annual budget was EUR 22 million in the form of grants and subsidised loans.

(79) The eligible projects of the Textile Plan were R & D projects, investments in tangible and intangible assets with a view to incorporating advanced technologies in their production processes, projects to disseminate the results of R & D activities and projects to set up and develop inter-company cooperation agreements.

(80) The Commission is of the view that measure 1 applicable to SMEs fulfils the criteria laid down in aid scheme N 415/2004, which has already been approved, and in aid scheme XS 50/2005.

(81) As for measure 2, it was based on approved aid scheme N 101/2005, which lasted from June to 1 November 2006. The aim of this scheme was to encourage the restructuring of declining industrial areas in assisted regions. The scheme was open to all industrial enterprises that invested in assisted regions except the coal, steel and synthetic fibre sectors. The aid had to be disbursed as interest-free loans of a maximum duration of 10 years including a 5-year grace period. The planned budget was EUR 400 million.

(82) The Textile Plan meets the basic criteria apart from the one for interest-free loans. These had a maximum duration of 15 years with a 5-year grace period instead of the maximum duration of 10 years as specified in point 11 of the scheme. After examining this point the Commission must accept it since Chapter I 7,2 of Order ITC/3098/2006 states that the maximum duration is 10 years plus a 5-year grace period. The Commission must therefore conclude that measure 2 meets the criteria laid down in the scheme.

(83) On 3 July 2006, the Spanish authorities re-notified the scheme in order to bring it into line with the new regional aid guidelines [1] (N 430/2007) and on 26 January 2007 they withdrew it in order to base it on Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid [2]. On 20 March 2007 scheme XR/70/2007 was adopted.

(84) In accordance with Order ITC/3098/2006 and Order ITC/643/2007, eligible projects included: technical infrastructure, setting up technology parks, transfer of specialist know-how, strengthening and diversifying the local economy, creating new industrial activities, developing mature sectors and creating and expanding emerging sectors. The synthetic fibres industry was not eligible and the measure qualified as initial investment.

(85) The Commission is therefore of the view that measure 2 fulfils the criteria set out in approved aid schemes N 101/2005 and XR/70/2007.

(86) The Spanish authorities also undertook not to apply the measures after the expiry of the schemes they were based on. The Commission therefore considers that measures 1 and 2 were covered by those schemes and should thus constitute compatible aid.

[1] Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13).

[2] OJ L 302, 1.11.2006, p. 29.

Measure 6

(87) The Commission considers that this measure on specific training is not covered by either Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) [1] or the previous Regulation on aid for training, as the measure does not concern 'new employment' and large enterprises also benefit from it.

(88) The Commission must therefore assess it directly on the basis of Article 87(3)(c) of the Treaty. Accordingly, aid to facilitate the development of certain economic activities may be considered compatible with the common market, where it does not adversely affect trading conditions to an extent contrary to the common interest.

(89) The Commission will assess the compatibility of measure 6 by analogy [2] with the Training aid Regulation between 2006 and 1 August 2008 and with the General block exemption Regulation from 29 August 2008 until 31 December 2008.

(90) The intensity of the specific training aid was 19,96 % for SMEs and 20 % for large enterprises. This aid intensity is well below the threshold of 35 % that the Training aid Regulation imposes on the application for training aid and the 25 % imposed by Article 39 of the General block exemption Regulation.

(91) Furthermore, the amounts barely diverge from the general rules. The increase depends on the number of staff employed and the contribution paid to the social security system the previous year. The conditions for entitlement to the measure were very restrictive, as the companies had to establish a plan, which needed to be approved by the Joint Committee (see recital 24).

(92) On 20 February 2009, the Spanish authorities confirmed that the additional incentive effect for large enterprises pursuant to Article 8(3) of the General block exemption Regulation was already taken into account in paragraph I. 1.A c) of the Textile Plan. Accordingly, the applicant companies had to present a retraining plan to the Public Employment Service detailing the employment objectives and the specific measures. The Public Employment Service checked that one or more of the requirements in the above Article of the General block exemption Regulation were met. This plan included a document giving the productivity and job maintenance objectives and the size of the investment in question. The Joint Committee also issued a report on the retraining plan submitted by each company or group. On the basis of the information provided in the plan and the report submitted by the Industrial Observatories, the Member State checked that the criteria for the incentive effect for large enterprises were met.

(93) The Commission must conclude that the effect of the aid on competition and trade is very limited. The Commission therefore considers that the measure does not adversely affect trading conditions to an extent contrary to the common interest. Therefore, the Commission considers this measure compatible with the common market on the basis of Article 87(3)(c) of the Treaty.

Measure 7

(94) Measure 7 is also granted through State resources and apparently favours the sector. Regarding compatibility, it does not appear to be covered entirely by Article 15 of Regulation (EC) No 800/2008 (General block exemption Regulation) or by Commission Regulation (EC) No 2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment [3], given that 37 firms out of a total of 11 544 active in the sector in 2007 are large enterprises and the measure does not concern new employment. Therefore, the present measure is assessed on the basis of Article 87(3)(c) [4].

(95) State aid in the form of wage subsidies designed to raise the demand for disadvantaged workers 'can provide additional incentives to enterprises to increase their levels of employment of this category of workers.' The workers concerned fall within the category of disadvantaged workers by being over 50 years old. 76 % of the workers aged between 55 and 59 years had low training and skills, which prevented their transfer to other sectors if they were laid off. As regards the number of workers concerned, only 10 215 of the 123 574 employees in the sector in 2008 were aged between 55 and 59 and only 6 700 had worked in the company for more than 5 years and had open-ended contracts. This figure corresponded to 5,2 % of all workers in the sector and the intensity of the measure per company was estimated at 0,3 % of their labour costs, which is well under the threshold of 50 % of the eligible costs provided for in Article 40 of the General block exemption Regulation. The impact of the measure was also slight as it mainly concerned (74 %) microenterprises and the amount of aid was minimal (0,3 % of labour costs). Although the financial impact for the company was minimal, according to the Spanish

[1] OJ L 214, 9.8.2008, p. 3.
[2] See the Commission Decision of 2 June 2004 in Case N 443/03, Second water circuit, Belgium (C(2004) 1356 final).
[3] OJ L 337, 13.12.2002, p. 3.
[4] See the reasoning in measure A2 in Commission Decision N 244/2008 Spanish Programme for the footwear, tanning and leather manufacturing sector (OJ C 52, 5.3.2009, p. 1).

authorities it provided an incentive to keep the employees in question in their jobs for a few more years rather than firing them or employing them undeclared. Therefore, the aid appeared to be necessary, proportional and well-targeted at the age group of disadvantaged workers.

(96) As regards the negative effects of the aid, it should be noted that the measure is focused solely on the textile and clothing sector, a declining industry with 40 % job losses since 2001.

(97) After weighing up the positive and negative effects, it was concluded that the aid had positive effects because it encouraged firms – mainly microenterprises – to keep on their workers aged over 55 years in their jobs (instead of employing them undeclared), until they reached the age of 60, whilst the distortion of competition was likely to be limited due to the very small amount of aid.

(98) Measure 7 is therefore compatible with the common market and in line with Article 87(3)(c) of the Treaty.

8. **CONCLUSION**

HAS ADOPTED THIS DECISION:

Article 1

1. The aid granted by Spain under measures 1 and 2, referred to in recitals 11 to 15, in respect of a programme to promote technical research and a programme for the industrial redevelopment of the textile and clothing sector was covered by the approval of schemes N 415/2004 and N 101/200 and by schemes XS 50/2005 and XS 70/2007 and therefore does not constitute State aid.

2. Measures 3, 4 and 5, referred to in recitals 16 to 20, concerning preferential loans granted by ENISA for the modernisation of SMEs, loans with a preferential interest rate granted by the ICO and export promotion undertaken by the ICEX are below the threshold set by the *de minimis* Regulation and therefore do not constitute State aid.

3. The aid granted by Spain under measures 6 and 7, referred to in recitals 21 to 25, offering continuing training for employees and maintaining the jobs of older workers in the textile and clothing sector are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

Article 2

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 24 March 2009.

For the Commission

Neelie KROES

Member of the Commission