

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 April 1984

**under Article 93 (2) of the EEC Treaty on a proposal by the Italian Government
to award aid to an undertaking in the textile and clothing industry**

(Only the Italian text is authentic)

(84/351/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, and having regard to those comments,

Whereas :

I

By letter dated 6 September 1983, the Italian Government notified the Commission of a proposal to award aid to an undertaking in the textile and clothing industry at Bologna which manufactures mainly pyjamas (MFA category 24), a sector in which the Italian clothing industry is considered to be highly competitive and which is therefore normally excluded from aid under Law No 675/77 on Industrial Restructuring and Conversion, and knitted underwear (MFA category 13), which is also a sector in which the Italian industry is competitive and any proposed aid to which is subject to prior notification.

The Italian Government nevertheless wishes to award assistance under Law No 675/77 to the firm, which employs about 250 people. The firm's programme does not involve any reduction in its capacity of 2

million pieces and in fact anticipates an increase in output of about 200 000 pieces a year.

The award is to take the form of an interest subsidy of 7,94 percentage points on a loan in the form of bonds to a value of Lit 925 million at a reference rate of interest of 19,85 % over 10 years with a two-year grace period. The total planned investment expenditure of Lit 5 020 million included Lit 3 200 million for stock purchases, of which Lit 440 million would be covered by the aid. The remainder was for purchasing plant and equipment, chiefly machinery to modernize the firm's production plant, for which an undertaking ought normally to raise the finance itself.

The Commission considered that the aid did not fulfil the eligibility conditions for aid under Law No 675/77, which it had approved on 18 January 1983.

The Commission therefore opened the procedure provided for in Article 93 (2) of the Treaty in respect of the proposed aid and by letter dated 15 December 1983 gave the Italian Government notice to submit its comments.

II

In their reply sent on 1 February 1984 in accordance with the Article 93 (2) procedure, the Italian authorities failed to adduce any new facts or arguments capable of inducing the Commission to revise the view of the proposal it had formed when opening the procedure. They merely pointed out that the invest-

ment plan was mainly intended to improve quality and automate production and argued that a contribution in the Community interest should not necessarily be sought in each aided undertaking but could be found in the consistency of the project with the overall programme for the industry approved by the Inter-ministerial Committee on Industrial Policy.

In the course of the procedure observations were also received from three Member States and three national textile and clothing industry associations. These submissions supported the Commission's position and drew particular attention to the fact that the firm was intending to increase output, was in a sector of the industry that was very competitive at Community level, and that the planned investment mainly involved the purchase of new plant and machinery for modernizing production and could not be considered to be restructuring.

III

The proposed award of aid by the Italian Government is liable to affect trade between Member States and distorts or threatens to distort competition within the meaning of Article 92 (1) of the Treaty by favouring the firm in question and production of its goods.

Article 92 (1) of the Treaty lays down the principle that aid having the features there described is incompatible with the common market. The exceptions from this principle set out in Article 92 (3) specify objectives in the Community interest transcending the interests of the aid recipient. These exceptions must be construed narrowly when any regional or industry aid scheme or any individual award under a general aid scheme is scrutinized. In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not contributing to such an objective would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition

to be distorted without any justification on grounds of Community interest.

In applying these principles in its scrutiny of individual aid awards, the Commission must satisfy itself that the aid is justified by the contribution the recipient is making to attainment of the objectives set out in Article 92 (3), and is necessary to that end. Where this cannot be demonstrated, it is clear that the aid does not contribute to the attainment of the objectives specified in the exceptions but merely serves to bolster the financial position of the recipient firm.

The objectives in the Community interest to which aid to the textile and clothing industry must contribute were further specified by the Commission in the Community framework codes for aid to the industry laid down in 1971 and 1977. These objectives rule out *inter alia* any support intended merely to keep a firm in business, which is liable merely to transfer difficulties from one Member State to another.

The recipient in the present case cannot be said to be making such a contribution in return for the aid.

The Italian Government has been unable to give, or the Commission to discover, any justification for a finding that the planned aid falls within one of the categories of exceptions in Article 92 (3).

With regard to the exceptions provided for by Article 92 (3) (a) and (c) for aids that promote or facilitate the development of certain areas, the area in which the recipient undertaking's factory is located is not one where the standard of living is abnormally low or where there is serious under-employment within the meaning of point (a), and the award does not appear likely to facilitate the development of certain economic areas within the meaning of point (c), a purpose moreover for which it is not intended.

As far as the exceptions in Article 92 (3) (b) are concerned, the measure does not have the features of a project of common European interest or of a project likely to remedy a serious disturbance in the economy of a Member State, whose promotion justifies application of a derogation to the rule against aids set out in Article 92 (1).

On 18 January 1983 the Commission, in lifting its objections to the implementation of the aid scheme under Law No 675/77 excluded from the scheme some sensitive sectors of the textile and clothing industry such as pyjamas (MFA category 24) and required prior notification of any proposed award to an undertaking manufacturing knitted underwear (MFA category 13).

These conditions were prompted mainly by the fact that the Italian industry was already highly competitive in these sectors, and were intended to prevent trade being affected to an extent contrary to the common interest.

It is apparent from the facts set out above that this aid, which would mainly be used to help pay for investment in more modern machinery and in stocks by the undertaking in question, does not involve a contribution to a Community objective, and that the Commission would therefore be wholly unjustified in departing from the principle of the incompatibility of State aid with the common market by applying to the aid the exception provided for in Article 92 (3) (c),

HAS ADOPTED THIS DECISION:

Article 1

The aid which the Italian Government proposes to award under Law No 675/77 to an undertaking manu-

facturing pyjamas and knitted underwear at Bologna, and which was notified to the Commission by letter dated 6 September 1983, is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must therefore not be granted.

Article 2

The Italian Government shall inform the Commission within one month of the date of notification of this Decision of the measures taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 April 1984.

For the Commission

Frans ANDRIESEN

Member of the Commission