COMMISSION

COMMISSION DECISION

of 8 March 1989

on the French Government's aid proposal in favour of Caulliez Frères, cotton yarn producer located in Prouvy, France

(Only the French text is authentic)

(89/456/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 93, and having regard to those comments,

Whereas :

I

By letter dated 3 March 1988 and with reference to the Community guidelines on aid to the textile and clothing industry of 1971 and 1977 as communicated to the Member States by letters of 30 July 1971 and 4 February 1977, the French Government notified the Commission of a proposal to grant financial assistance to Caulliez Frères, a producer of cotton yarn located in Prouvy.

The aid would be granted under the Regional Planning Grant Scheme (prime d'aménagement du territoire — PAT) and would take the form of a grant amounting to FF 5,3 million. It is intended to facilitate investments of FF 77,6 million for the purpose of creating a new cotton yarn spinning plant.

Following an initial scrutiny, the Commission considered that the proposed aid would not meet the conditions which must be fulfilled in order to benefit from any of the exceptions set out in Article 92 (2) and (3) of the Treaty establishing the EEC and, in particular, that it would not be in line with the Community guidelines on aid to the textile and clothing industry and would affect trading conditions to an extent contrary to the common interest.

Consequently, the Commission initiated the procedure provided for in the first subparagraph of Article 93 (2).

By letter of 20 April 1988, it gave the French Government notice to submit its comments. The other Member States were informed on 11 August and third parties on 18 August 1988.

II

By letter dated 29 June 1988, the French Government submitted its comments under the procedure thus initiated. It underlined that the aid would be granted under the Regional Planning Grant Scheme as approved by the Commission on 10 October 1984 by Decision 85/18/EEC [1], which is why it considered that the procedure should not have been initiated at all in respect of this aid proposal.

Concerning the substance of the case the French Government took the view that the sector concerned, combed cotton yarn, is far from being in an overcapacity situation and that other Member States' industries constantly increase their production capacities, whereas in France output has significantly been reduced over the years. It is also pointed out that the investment project is vital for the firm concerned because only by way of modernizing and rationalizing production the company can avoid falling behind technologically which would lead to its disappearance from the market. Furthermore, the French Government states that the new capacity to be created amounts to 1 750 tonnes of combed cotton yarn whereas the present capacity of Caulliez Frères is 2 400 tonnes. This new capacity, representing according to the French Government a mere 0,6 % of present Community production, is considered unable to distort competition.

The French Government points also to the situation on the French market where imports from all sources represent currently approximately 60 % of total consumption. Of these imports more than 50 % come from third countries, within and outside Europe.

(1) OJ No L 11, 12. 1. 1985, p. 28.

After having highlighted the fact that the projected investment is highly capital-intensive with FF 9 million per worker, the French Government finally points to the economic problems of the region concerned and considers that in a situation where unemployment stands at 17 % the proposed investment project is of great importance for the development of the area.

One other Member State and three parties other than Member State commented under this procedure.

By letter dated 11 November 1988, the French Government informed the Commission that it wished to withdraw the notification of 3 March 1988.

It is normal practice that the Commission close formal examination procedures under Article 93 (2) when in receipt of both a withdrawal and a formal confirmation of the government of the Member State concerned according to which the aid at issue will not be granted. In this case, however, the formal confirmation was not given.

Accordingly, the Commission, during a meeting held on 25 November and by letter dated 1 December 1988, rejected the request of the French Government and took the view that it does not have an effect on the Article 93 (2) procedure, unless completed by the confirmation that the aid at issue will not be granted. The French Government was invited to provide this confirmation at the latest by 8 December 1988 but no reply was received.

In these circumstances the Commission is justified in coming to the conclusion that the French Government has given no guarantee as to the non-implementation of this aid. Therefore, the Commission considers itself obliged to continue the procedure opened and to take this Decision.

III

There is a high volume of trade in cotton yarn and particularly in combed cotton yarn with approximately 35 % of total Community production being traded within the Community. The company in question, the production capacity of which will rise by 72,9 % from 2 400 tonnes to 4 150 tonnes as a result of the investment project, participates actively in this intra-Community trade by exporting some 25 % of its output to other Member States. Caulliez Frères presently represents 13,9 % of total French production of combed cotton yarn and 0,9 % of total EEC-production. By way of the project these shares would rise to 24 % and 1,6 % respectively, Furthermore, with a turnover of some FF 230 million and employing 430 people, the firm is already considerably larger than the average combed cotton yarn producer in France and the European Communities.

Combed cotton yarn represents approximately 30 % of total cotton yarn production, the rest being taken by carded and open-end carded yarn. All these yarns are used by the textile and clothing industry, the main utilization of combed cotton yarn being for knitted clothing. All three subgoups of cotton yarn put together form the Multi-Fibre Arrangement product-category 1, one of the most sensitive product groups existing in textiles and clothing. The high degree of sensitivity results from a very considerable pressure from third countries. Also, the decline in weaving and knitting in the Community in recent years has reduced the demand for Community spun yarn. Moreover, there has been increasing use of filament yarn made of man-made fibres in stockings, socks, other garments and — above all — in carpets and industrial textiles which has reduced the demand for spun yarn.

As a result there exists a very high degree of competition amongst the approximately 90 producers of combed cotton yarn in the European Communities. Prices are seriously depressed and production has dropped by another 5 % in early 1988 compared to the same period in 1987. This has led to a capacity utilization which is considered insufficient, particularly in view of the considerable and still growing pressure from third countries.

The proposed assistance of FF 5,3 million to be granted under the Regional Planning Grant Scheme is State aid within the meaning of Article 92 (1) of the Treaty. This amount, even if relatively small in absolute terms, contains an important advantage because the aid would reduce the investment costs by 3,96 % net grant equivalent and would allow the firm to increase its capacity by 72,9 % without having to support all the costs related to this increase as unaided competitors would have to, if they wished to undertake such investments. Therefore, the aid would strengthen the firm's position compared to its competitors in intra-Community trade and the latter would be affected by this aid. As there is considerable trade in combed cotton yarn in the Community, because competition is very keen and as the firm participates actively in intra-EC trade, the proposed assistance is liable to affect trade and distort or threaten to distort competition within the meaning of Article 92 (1).

IV

Article 92 (1) of the EEC 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 (2) are not applicable in this case because of the character of the aid and as the Act under which the aid is to be granted is not intended for such purposes.

Article 92 (3) sets out which aids may be considered to be compatible with the common market. The compatibility with the Treaty must be determined in the context of the Community and not of a single Member State. In order to safeguard the good functioning of the common market and taking into account the principles of Article 3 (f) of the Treaty, the exceptions from the principle of Article 92 (3) must be construed narrowly when an aid scheme or any individual award 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 or where an aid is not necessary to that end would be to give unfair advantages to certain Member States' industries or undertakings, the financial positions of which would merely be bolstered, and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest as set out in Article 92 (3).

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

V

Combed cotton yarn production is a subsector of the textile industry. Therefore, the financial assistance proposed in favour of Caulliez Frères is subject to the conditions for aids to the textile and clothing industry, which also is why the French Government in its notification of the aid project dated 3 March 1988 specifically referred to these guidelines.

They contain a number of criteria worked out by the Commission with the aid of national experts in order to guide the Governments of the Member States on interventions they may possibly wish to make in this sector. In the 1971 guidelines the Commission points out that aids in the textile and clothing sector, which is marked by a very high degree of competition at Community level, involve a risk of causing distortion of competition which is unacceptable to competitors who do not benefit from such measures. Aids, which generally have very marked repercussions in this sector of industry, may under these guidelines be justified if they improve the structure of the textile industry. Such aids must be understood, according to the guidelines, to refer to aids to textile undertakings intended, *inter alia,* to facilitate the elimination of surplus capacity in the branches or sub-branches where it exists and to encourage the conversion of marginal activities to activities other than those of the textile sector. Aids of this nature must, however, meet certain conditions specified in the Guidelines of 1971, in particular they must not load to increases in capacity.

Subsequent developments, in particular several aid schemes and individual aid awards introduced because of the pressure of the economic situation and employment considerations and found to conflict with the Community interest in a number of respects, confirmed the Commission's concern so that it specified the guidelines in 1977. With a view to overcoming problems regarding structures and overcapacity, the Commission repeated and stressed that 'aids to create new capacity in those sectors of the textile and clothing industry where there is excess capacity or persistent stagnation of the market should be avoided'. It pointed out that in such sectors only assistance to firms converting to activities outside the industry or sector may, *a priori,* be given a favourable consideration.

Combed cotton yarn is a textile product which is characterized by stagnation and even reduction in demand, as outlined above and below, and capacity utilization also is insufficient.

The whole of the Community textile and clothing industry has undergone an extremely rapid progress of change over the last ten years. Production has declined under lthe pressure of outside competition both on traditional export markets and on the Community market. One million jobs, representing nearly 40 % of total employment in these industries, have been lost between 1975 and 1985. Both the secerity and length of the crisis have forced undertakings in this sector to make great efforts to restructure and to modernize their production plants. As a result, the industry has been able to adapt and to reestablish progressively its competitiveness and profitability. The important role played by the Community Guidelines for aid to this sector in restoring a certain balance and in maintaining or reestablishing a true market economy has been widely recognized. As, however, the industry remains very vulnerable, not least because it continues to be subject to extremely strong international competition, the Commission takes the view that uncoordinated State intervention would conflict with the Community interest, particularly by putting at serious risk the past and, indeed, present efforts undertaken by the Community textile and clothing producers to adopt to changing market conditions. Therefore, the Commission continues to attach the greatest value to the taking into account by Member States of the abovementioned Guidelines.

In a situation where the production of combed cotton yarn in the Community is subject to severe pressures, both from imports and from a difficult market situation, itself contributed to by growing imports of fabric, garments and household textiles, so that capacity exceeds demand and pressure on margins is severe and competition intense, any artificial lowering of the expansion costs of a demand cotton yarn producer would weaken the competitive position of other producers and would have the effect of reducing capacity utilization and depressing prices, to the detriment and possible withdrawal from the market of producers which have hitherto survived owing to restructuring and productivity improvements undertaken from their own resources. Despite the abovementioned unpromising background, companies elsewhere in the Community and, indeed, in France have continued to invest, unaided, in modernizing and replacing combed cotton yarn spinning capacity. The economies of such investments are, however, fragile and would be affected by any subsidized increase in capacity. The aided capacity increase by 72,9 %, making the firm Caulliez Frères the most important French combed cotton yarn producer, thus would have particularly marked effects, especially as the long-term volume increase in demand for textile products in the Community is under 1 % per year. As a result of the projected investment the company would rank amongst the 15 most important and largest manufacturers of this yarn in the European Community. Thus, the French Government's argument that the projected increase in capacity is insignificant must be rejected.

It also has to be pointed out that — in contrast to the French Government's claim that the French production share in the European Community in this product group is constantly going down — the French share of total Community production has in fact remained practically unchanged since the early 1980's. It has even increased recently following a rise in production of 20,3 % in 1987, whereas, for example, the United Kingdom and Germany have seen their shares being reduced (from 5,4 % to 4,9 % and 28,4 % to 27 % respectively). In the United Kingdom, moreover, cotton spinning is even in such a depressed state that many spinning mills operate on short time while others had to extend their 1988 holiday shutdown to reduce production. German combed cotton yarn production was down by 8 % in the first half of 1988. These facts not only indicate that the situation of the French industry is comparatively good, they also underline again the sensitivity of the sector. In this respect it should also be noted that French intra-Community exports of cotton yarn have risen considerably in the past years, most spectacularly by 15 % in the year 1987 making France one of the most important participants in this trade.

Furthermore, and with a view to the comment of the French Government under the procedure regarding the need to modernize and rationalize production of Caulliez Frères in order to survive technologically, the Commission recalls that it has always considered that, particularly in textiles and clothing, investments made by an enterprise for this purpose and without effecting any basic change do not qualify for assistance. On the contrary, in textiles aids for modernization, rationalization and increases in capacity in subsectors facing the problems described above have always been rightly regarded as not bringing about any lasting improvement in the industry either at national or at Community level. They would instead affect conditions of competition in the common market without facilitating an improvement in the industry's competitive position which is a prerequisite for its recovery and success on the international textile market.

Finally, it has to be pointed out that permitting this aid project to go forward would set a precedent for the future and could lead to the growth of State aid on a large scale in this highly sensitive sector of the textile industryand, consequently, to very serious distortions of competition.

In view of all the foregoing considerations it is concluded that the aid proposal at issue here is not in line with the Community Guidelines on aids to textile and clothing industries. The aid proposed for the benefit of Caulliez Frères by favouring a capacity expansion project which increases existing capacities by 72,9 % in a sector facing severe problems throughout the Community must be considered as adversely affecting trading conditions to an extent contrary to the common interest. Therefore, the aid cannot benefit from the sectoral derogation under Article 92 (3) (c) of the Treaty.

With regard to the exemption provided for in Article 92 (3) (a) relating to aids intended to promote the development of certain areas, it must be observed that the standard of living in the area concerned here, Prouvy (Nord), is not abnormally low nor is there serious underemployment within the meaning of the exemption specified under Article 92 (3) (a).

With regard to the exemption under Article 92 (3) (c) in favour of aid to facilitate the development of certain economic areas, it must be noted that in the Community Guidelines on aid to the textile and clothing industry there manifests itself a Community policy which has the explicit support of all Member States.

Under this policy, and in the situation in which the combed cotton yarn industry presently finds itself, aided investments for the purpose of creating new yarn capacities do not facilitate the development of certain economic areas as they would not make a production plant financially and economically viable in the medium or long term and would not secure the jobs to be provided. Thus, the 17 % unemployment rate, pointed to by the French Government, would not be lastingly reduced, so that the objectives set out in Article 92 (3) (c) would not be attained. In this respect the Commission would also point to the capital-intensity of the project with FF 9 million per worker. While it is intended to create a total of 53 new jobs over a period of three years, this does not outweigh the negative effects of the project already referred to above which also have to be taken into account when assessing whether the exemption under Article 92 (3) (c) for economic areas can be applied.

Furthermore, spinning of cotton yarn was the original industrial textile process and the bulk of the sector is concentrated in areas which today face problems of industrial decline in the EEC. In such a situation regional development at Community level would not be facilitated by the aid in question. Also, in view of the situation of the industry concerned and as outlined above, the aid to be granted in favour of a capacity increase of 72,9 % would be liable to affect trading conditions to an extent contrary to the common interest. Therefore, the proposed aid cannot benefit from the regional exemption under Article 92 (3) (c).

This conclusion cannot be changed by the fact that it is being proposed to grant the aid under the Regional Planning Grant Scheme which has been approved by the Commission, as pointed out by the French Government under the procedure. While it is correct that the region of Prouvy (Nord) is principally eligible for aid under this system, it must be observed that the Commission, in Article 7 of Decision 85/18/EEC approving the PAT-scheme, explicitly referred to the need to respect the specific rules existing in certain sectors. one of these sectors is the textile and clothing industry, where the Guidelines, as already referred to, have to be respected, which is why the French Government considered necessary the notification of this case. As pointed out above, the condtions set by these Guidelines are not met in the case at issue, so that the aid proposal cannot benefit from the general approval of the regional aid system in question. In this respect the Commission would specifically refer to the fact that the Guidelines specify that the regional aspect of aids must be assessed in the light of their effects on the sector concerned from the viewpoint of competition and intra-Community trade in order to control the sectoral effects of regional aids even in depressed areas.

As regards the exemptions provided for in Article 92 (3) (b), it is evident that the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious distrubance of the French economy. A specific aid in favour of only one cotton yarn producer is not suited to remedying the kind of situation described in Article 92 (3) (b).

Finally, the Commission would point out that for the same or similar reasons it had to turn down aid proposed or granted in favour of other textile and clothing companies or, indeed, the sector as such in the past. It would expressly refer to some of its decisions, namely concerning Boussac Saint Frères (87/585/EEC) (1). ENI/Lanerossi (89/43/EEC) (2), Van den Berghe (88/173/EEC) (3), the French parafiscal levies scheme (85/380/EEC) (4), the textile aid scheme proposed by the United Kingdom (85/305/EEC) (5) and the 1984 Belgian textile industry aid scheme (84/564/EEC) (6).

VI

In view of all the foregoing considerations it is therefore concluded that the aid proposed for the benefit of Caulliez Frères, as notified to the Commission by letter dated 3 March 1988, does not meet the conditions which must be fulfilled in order for one of the exceptions under Article 92 (2) and (3) of the EEC Treaty to apply,

HAS ADOPTED THIS DECISION:

Article 1

The proposed aid amounting to FF 5,3 million to be granted to Caulliez Frères and notified to the Commission by letter of 3 March 1988 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

France shall therefore refrain from implementing this proposal.

Article 2

France shall inform the Commission within two months of the dated notification of this Decision of the measures taken to comply herewith.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 8 March 1989.

For the Commission

Sir Leon BRITTAN

Vice-President

(1) OJ No L 352, 15. 12. 1987, p. 42.
(2) OJ No L 16, 20. 1. 1989, p. 52.
(3) OJ No L 78, 23. 3. 1988, p. 44.
(4) OJ No L 217, 14. 8. 1985, p. 20.
(5) OJ No L 155, 14. 6. 1985, p. 55.
(6) OJ No L 312, 30. 11. 1984, p. 27.