

French Republic
v
Commission of the European Communities

(State aid — Textile and clothing sector)

Report for the Hearing	4394
Opinion of Mr Advocate General Mancini delivered on 4 June 1987	4406
Judgment of the Court, 11 November 1987	4411

Summary of the Judgment

- 1. Community law — Principles — Right to a fair hearing — Application to administrative procedures initiated by the Commission — Examination of aid schemes — Scope (EEC Treaty, Art. 93 (2))*
- 2. Aid granted by Member States — Concept — Sectoral aid financed by a parafiscal charge levied on national production in the sector in question — Arrangement of no consequence for the purpose of the application of Article 92 of the Treaty (EEC Treaty, Art. 92)*
- 3. Aid granted by Member States — Prohibition — Derogations — Adverse effect on trading conditions to an extent contrary to the common interest (EEC Treaty, Art. 92 (3) (c))*

1. Observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question.

Applied to the Commission's examination of aid schemes, that principle requires that the Member State in question must

be enabled effectively to make known its views on the observations which interested third parties have submitted under Article 93 (2) of the Treaty and on which the Commission proposes to base its decision. In so far as the Member State has not been afforded the opportunity to comment on those observations, the Commission may not use them in its decision against that State without infringing the right to be heard. For such an infringement to result in an annulment it must, however, be established that, had

- it not been for that irregularity, the outcome of the procedure might have been different.
2. The mere fact that a system of subsidies which benefits certain traders in a specific sector is financed by a parafiscal charge levied on every supply of national goods in that sector is not sufficient to divest the system of its character as aid granted by a Member State within the meaning of Article 92 of the Treaty. The assessment of that system for the purposes of Article 92 depends on the detailed arrangements under and the effects of the system.
 3. The Commission does not exceed the limits of its discretion in taking the view that even relatively little aid may nevertheless adversely affect trading conditions to an extent contrary to the common interest for the purposes of Article 92 (3) (c) of the Treaty when, in a sector characterized by its narrow profit margins, that aid helps the recipient undertakings to finance investments in technologically advanced equipment so as to raise productivity and product-quality, thereby enabling the sector in question to compete more effectively with imports, which come mainly from the other Member States.

REPORT FOR THE HEARING delivered in Case 259/85 *

I — Facts and procedure

1. In 1982 the French Government issued Decrees No 82-1242 and No 82-1243 of 31 December 1982 (*Journal officiel de la République française* (French Official Gazette) of 13.1.1983, pp. 301 and 302), authorizing the continued collection of two parafiscal charges during the period 1983-85. The charges were introduced in order to encourage research, innovation and the renovation of industrial and commercial structures, and are levied according to the same rules as value-added tax — in particular on sales and supplies in France of textiles and clothing, except in the case of products originating in other Member States

or put into free circulation there. It was provided that the revenue from those charges would be transferred to the comité interprofessionnel de rénovation des industries du textile et de l'habillement (Joint Trade Committee for the renewal of the textile and clothing industries, hereinafter referred to as 'the Joint Trade Committee') which in turn was required to remit part of that revenue for the promotion of individual aid programmes for undertakings in the textile and clothing industries.

By Decision 83/486 of 20 July 1983 (Official Journal L 268, p. 48), however, the Commission decided that such aid was incompatible with the common market for

* Language of the Case: French.