

COMMISSION

COMMISSION DECISION

of 30 April 1996

concerning aid granted by Italy to the footwear industry

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/542/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having given notice in accordance with those Articles to interested parties to submit their comments,

Whereas:

I

By letter dated 24 April 1995⁽¹⁾, the Commission informed the Italian Government that it had initiated the procedure provided for in Article 93 (2) of the Treaty in the case of aid granted to the footwear industry. By letter from the Office of the Italian Permanent Representative, received on 11 October 1994, the Italian Government belatedly notified the measures.

Article 6 of Decree-Law No 40 of 18 January 1994, which was converted, after several extensions, into Law No 451 of 19 July 1994 (hereinafter referred to as 'Law 451/94'), establishes measures to promote employment. Under that Article, enterprises in industries experiencing serious employment difficulties which set up job-creation schemes qualify for total or partial exemption from employers' social security contributions in respect of newly recruited workers.

The job-creation schemes must be drawn up by the trade-union and employers' organizations for the industry in question and approved by decree of the Minister for Labour and Social Security in agreement with the Minister for the Treasury. They are not intended for businesses that have dismissed workers in the twelve months preceding any new recruitment. There must accordingly be a net creation of jobs.

The employers' and trade-union organizations in the Italian footwear industry have introduced measures to increase employment in existing businesses and to create new enterprises with a view to curbing the tendency for businesses to relocate abroad and offsetting the effects this has on employment in Italy.

The Ministerial Decree of 31 March 1994 approving the scheme for extraordinary assistance to support production and employment in the footwear industry (hereinafter referred to as 'the MD of 31 March 1994') constitutes the first application to the industry of Article 6 of Law 451/94.

The measure applies to 5 000 jobs that are to be created, of which half will be of indefinite duration. Budgetization of the social security contributions will decrease over time, at least as regards the indefinite contracts.

The Commission decided to initiate the Article 93 (2) procedure in respect of the measure on the ground that the total or partial budgetization of social security contributions paid by the enterprises constituted sectoral aid. The fact that the measure may benefit 'sectors experiencing an employment crisis' also introduces an element of discretion in the Italian Government's selection of the industries qualifying for aid.

⁽¹⁾ OJ No L 271, 17. 10. 1995, p. 7.

The sectoral element is further accentuated by the fact that employer-trade union negotiations on defining aid take place at the level of the sector concerned. It is likely, therefore, that the benefits in each sector will be different since the problems are different.

The Commission's policy in this field has always been to reject any sectoralization of aid especially as, in this case, the large volume of intra-Community trade and the share of that trade accounted for by Italian businesses (almost 50 %) mean that the aid received by them distorts or threatens to distort competition.

The other Member States and interested parties were given notice to submit their comments on this matter.

The Italian Government's comments reached the Commission on 22 June 1995. A meeting with Italian Government representatives was held in Brussels on 20 December 1995. Further information was received on 17 January 1996, together with a 'Multiannual Employment Programme' which had already been sent to the Council on 23 October 1995.

As part of the procedure, the Commission received comments from the German Government, various European or national associations of footwear producers and distributors, and a French enterprise.

The comments were forwarded to the Italian authorities on 18 December 1995 and 19 January 1996. The Italian Government's replies to these comments were received on 17 January and 7 February 1996.

II

The comments of the Italian authorities may be summarized as follows:

— The measure in question was not notified immediately in view of uncertainty as to whether it constituted State aid. It was subsequently decided to notify (October 1994). As the measure had not yet been applied at that date, the Italian authorities consider that they have met their obligations under Article 93 (3).

— Article 6 of Law 451/94 (which grants total or partial exemption from employers' social security contributions to firms in sectors experiencing employment difficulties, provided that both sides of industry in the relevant sector draw up a job-creation scheme) is a general measure applied for the first time to the foot-

wear industry. Other sectors may also put forward job-creation schemes and may also be the subject of implementing decrees. In any sector experiencing an employment crisis, the aim of the Law is to experiment with a new *modus operandi* that does not prejudice general application of the benefits envisaged.

The requirement that sectoral schemes be drawn up is dictated by the need to verify immediately, on a case-by-case basis, whether the experiment is valid and effective, with a view to its possible extension. In addition, the bargaining structure for the two sides of the industry in question was designed to enhance the role of employers' and trade union organizations in the management of employment problems.

The experimental nature of the measure is enhanced by the fact that it relates only to net job creation and is limited over time (five years).

— The provisions of Article 6 are intended to deal with:

- (a) the serious employment situation, especially of women, in Italy;
- (b) the cost to the State of the usual means of providing income support for workers in ailing industries (mobility allowance, wage guarantee fund), and this prompted the idea of recruiting above all these categories of worker by devising lower-cost solutions. There is also a change of approach in the fight against unemployment, the utilization of State resources being aimed at job creation rather than at supporting the jobless;
- (c) the laying-off of less-skilled workers and the lack of solutions, in particular at Community level;
- (d) the fact that the current growth of the economy does not seem sufficient to reduce unemployment.

In view of the seriousness of the situation, the Italian Government considers that the aid in question can be regarded as qualifying for exemption under point (b) of Article 92 (3) of the EC Treaty since it is intended to remedy a serious disturbance in the economy of a Member State.

The Italian authorities emphasize the need for the Commission to take a decision on the aid machinery established by Article 6 of Law 451/94.

— The budgetization of social security contributions does not constitute operating aid, but aid to job creation. It is not therefore intended for industries in financial difficulties since, for obvious reasons, they are unable

to create jobs. Intervention is possible only in industries with a sound competitive base, where business strategies can be directed towards maximizing the utilization of manpower.

In practice, owing to the shortage of available resources, the machinery can be applied only where it is possible to predict significant and lasting results.

- The sectoral measure has neither the object nor the effect of improving the structures of the recipient firms owing to the low level of the resources available (Lit 50 billion or ECU 26,5 million over five years). The budgetization of social security contributions will not lead to any increase in production capacity or in the competitiveness of Italian products in relation to similar products in other Member States since, without the aid, the businesses would maintain their production capacity whilst relocating certain stages of the production process abroad. Thus, the only difference would be that the jobs would be created outside the Community.

It should nevertheless be pointed out that, according to the Italian authorities, the footwear businesses that have applied to benefit from the measure are planning additional investments of some Lit 47 billion. While this figure may seem small, it must be remembered that the firms concerned include medium-sized enterprises but, above all, small enterprises.

- The measure will be limited to small and medium-sized enterprises, as defined in the Community guidelines on State aid for small and medium-sized enterprises⁽¹⁾ (hereinafter referred to as 'the Community SME guidelines').
- One of the aims of the measure is to prevent Italian enterprises from moving to non-member countries those stages of production requiring less-skilled workers (cutting-out and preparation of uppers).

According to a study quoted by the Italian Government⁽²⁾, relocating those stages of production to low-wage countries would produce cost savings of over 30 %.

Labour costs in the manufacture of the intermediate product (the uppers) represent 60 % of the total cost of the product. As social security contributions account for 40-45 % of labour costs, total exemption from them reduces the cost of the product by between 24 % and 27 % per worker. This is fairly close to the cost reduction associated with relocation.

In comparison to the cost price of a pair of shoes, total budgetization of the charges linked to the labour costs of the intermediate product gives a reduction of 7-8 % per worker. The impact of the measure on the price of the finished product is fairly low. The measure does not therefore distort trade, with the result that the key condition for deciding on aid incompatibility is not met.

Furthermore, analysis of footwear production between 1989 and 1993 shows that there is a significant correlation between production and an increase in relocation and an inverse correlation between production and employment. The Italian authorities state that it is possible to deduce from these data that, given the current level of labour costs required to maintain the level of employment, a reduction in domestic production is unavoidable. The only alternative would be relocation, which allows production levels to be maintained owing to lower labour costs. Consequently, the contention that an increase in employment in Italy entails an increase in production and hence adversely affects competition is not justified in the circumstances.

- The budgetization measure was applied in all cases where the aid per enterprise did not exceed the *de minimis* threshold (at the time ECU 50 000 over three years) laid down in the Community SME guidelines⁽³⁾ with 1 240 jobs being created (a maximum of four jobs per craft enterprise and three per industrial firm). Compatibility of the sectoral measure is thus required only for the remaining 2 460 jobs since, at the time they sent in their comments, the Italian authorities announced that 3 700 job-creation requests had been approved.
- Lastly, the Italian Government forwarded to the Commission its Multiannual Employment Programme, into which the provisions of Article 6 of Law 451/94 had been incorporated.

III

As part of the procedure, the German Government and several interested parties submitted comments.

The German Government generally agreed with the Commission's position. It stressed the importance of labour costs in production costs in the industry and the fact that this further accentuated the distorting effect of the Italian sectoral measure.

⁽¹⁾ OJ No C 213, 19. 8. 1992, p. 2.

⁽²⁾ Prepared by Landell Mills Commodities Studies in 1993.

⁽³⁾ Amended by the notice published in OJ No C 68, 6. 3. 1996.

The European Footwear Producers Association supported the Italian measure, which, in its view, was consistent with the White Paper on Growth, Competitiveness and Employment and with the conclusions reached by the European Council at its meeting in Essen on 9 and 10 December 1994. It stated that the measure was not intended to resolve the problem of unemployment but to relocate the footwear industry in Italy. The Law had no effect on competition in the industry as the aid amounted to only 0,07 % of estimated turnover (over five years). Lastly, it was important for both sides of industry to participate in the drafting of agreements of this type.

The European Footwear Distributors Association adopted a neutral position. It considered, however, that it was not right for the footwear industry in one Member State to enjoy an advantage over its counterparts in the other Member States. The Association's principal contribution was to furnish data which more clearly identified the industry's problems. It claimed that, according to a report carried out on the Commission's behalf (⁽¹⁾), Italy's position was so strong that it had no competitors in western Europe. The devaluation of the lira further strengthened that position.

Again according to that study, although labour costs were rising in the Community, output remained very high; nevertheless, it seemed inevitable that firms would relocate to low-wage countries. Employment in the Community had been affected to the same extent as employment in the new market leaders (e.g. Korea and Taiwan), which in turn are relocating to lower-wage countries. Such relocation occurs even within the Community, for example to Portugal.

The Spanish Footwear Producers Association supports the Italian measure. It highlights the importance of dialogue between the two sides of industry and firmly believes that all the Member States should take similar steps.

Lastly, a French enterprise pointed out that labour costs in the footwear industry were already lower in Italy than elsewhere; it took the opportunity, however, to draw attention to the problem of counterfeiting and to allege that it was the victim thereof at the hands of certain Italian undertakings.

IV

The footwear industry is made up of a very large number of small businesses. In 1992 there were 14 730 firms in the Community employing, on average, 21 persons. In

1993 there were 14 225 and in 1994, 14 132 (⁽²⁾). Over half the firms are located in Italy, with just under 60 % of them employing fewer than 50 persons.

European footwear production totalled ECU 17 472 million in 1991, ECU 17 317 million in 1992, ECU 16 718 million in 1993 and ECU 17 344 million in 1994 (⁽³⁾). In 1993 41,4 % of European production (by volume) was carried out in Italy, with this figure climbing to 42,5 % in 1994. Then came Spain (17,2 %), France (14 %), the United Kingdom and Portugal (between 9 % and 10 %), and Germany (4,42 %). Production is thus concentrated in certain Member States and, within those Member States, in certain regions. In Italy, for example, almost two thirds of production is carried out in Marche, Tuscany and Veneto.

An analysis by Member State shows that the value of production (at constant prices) has fallen in recent years in most Member States, with the exception of Italy and Denmark, where it has risen significantly.

Production is highly diversified and the products are distinguished by the materials used (leather, synthetics, rubber, textiles, etc.).

As regards demand, at the beginning of the 1990s, the three leading consumer countries were France, Germany and the United Kingdom, which together accounted for 65 % of consumption (in 1991), with Italy, Spain and Portugal accounting for only 25 %. Furthermore, between 1983 and 1990 consumption rose by 20 % in the northern Member States (Denmark, France, United Kingdom), against only 8 % in the three southern Member States (Italy, Spain, Portugal).

Employment fell sharply throughout the Community, especially in the north: by 38 % between 1982 and 1992. In the south, over the same period, employment fell by less than 10 % (⁽⁴⁾).

In Italy the footwear industry is very dynamic. In 1993, compared with 1992, production increased by 10,9 % in value terms, to Lit 12 786 billion, and by 4 % in volume terms, with 451 million pairs of shoes being produced. This increase took place despite a fall in domestic demand, with products not sold on the domestic market being exported. In 1994 the rate of increase held steady at 4 %, with output totalling 471 million pairs of shoes (in value terms Lit 13 828 billion, i.e. 8,1 % higher than in

(⁽²⁾) All market data are estimates provided by the European Footwear Confederation (EFC), unless otherwise stated.

(⁽³⁾) Source: Panorama of EU Industry 1995.

(⁽⁴⁾) Prepared by Landell Mills Commodities Studies in 1993.

(⁽¹⁾) Prepared by Landell Mills Commodities Studies in 1993.

the preceding year). Italy produces two and a half times more footwear than it consumes (1991 data⁽¹⁾). Its consumption of shoes per inhabitant is one of the lowest in the Community.

Despite a significant reduction in employment (108 000 persons employed in 1994 against 123 000 in 1987) and a fall in the number of businesses (a reduction of 1 412 between 1982 and 1994), Italy is still the fifth largest producer worldwide (by volume), the fourth leading exporter and the main producer worldwide of leather shoes.

The footwear industry is relatively highly labour-intensive, with the result that Community firms are becoming increasingly vulnerable to competition from low-wage countries. This is confirmed by the deterioration in the Community's trade balance with the rest of the world. Since 1991 the Community has been a net importer of footwear.

It should be borne in mind that European producers wishing to take advantage of the low wages paid in certain countries in the developing world are relocating production there, thereby aggravating the trade deficit.

Although the Community is a net importer, Italy is a net exporter. In 1993 it exported 70,2 % in value terms of its production to the rest of the world. Its exports increased sharply in 1993 by 11,7 % in volume terms and by 6,15 % in 1994.

Intra-Community trade is important since it accounts for between a third and a half of Community production. In 1991 37,55 % of Community production was traded between Member States (ECU 6 520 million); in 1992 this decreased to 34,45 % (ECU 6 407 million)⁽²⁾. In 1991 47,9 % by volume of European production was traded between Member States, 50,6 % in 1992, 51,8 % in 1993 and 53,4 % in 1994.

Italy's share of intra-Community trade is shown in the following tables:

(a) Exports

	1992	1993	1994
value	46,04 %	46,28 %	44,45 %
volume	44,21 % (*)	43,82 %	41,49 %

Source: Eurostat, except for (*), which are EFC estimates.

(b) Imports

	1992	1993	1994
value	—	4,08 %	4,52 %
volume	6,46 % (*)	3,65 %	4,93 %

Source: Eurostat, except for (*), which are EFC estimates.

The other Member States have long been the Italian footwear industry's major customers.

V

By way of this Decision, the Commission is required to decide on the compatibility of the budgetization of the employers' social security contributions provided for in the MD of 31 March 1994. Its assessment does not extend to Article 6 of Law 451/94, which is dealt with separately.

It goes without saying that the Commission regards measures to promote employment as an essential priority and that success in this area is conditional on closer integration of the macro-economic and industrial policies of the Member States, which, together with the Commission, need to show imagination and audacity in the search for new solutions to overcome the scourge of unemployment. The success of that task calls for a radical review of the role of employment in today's society and the Commission is prepared to play its part and make a constructive contribution. These are the considerations that result from the White Paper on Growth, Competitiveness and Employment.

Such is the background against which the Italian authorities implemented the measure in question.

The Commission's criticisms are not aimed at the Italian authorities' objectives in the area of job creation (it also examined with great interest the Multiannual Employment Plan communicated by the Italian authorities, into which Law 451/94 had been incorporated), but rather at the arrangements introduced to attain those objectives and their consequences.

The conditions and arrangements relating to the total or partial budgetization of social security contributions were described in the Commission notice initiating the procedure. Briefly, the contributions are budgetized on a decreasing scale for workers on indefinite contracts (100 % budgetization in the first three years and 90 % for the following two years).

In the case of total budgetization (100 %), the benefit is estimated by the Italian authorities at ECU 4 437 per year and per worker recruited by an industrial enterprise and at ECU 3 944 per year and per worker recruited by a craft enterprise.

It should be noted that the Italian authorities have partially implemented this measure in all cases where the

(1) Prepared by Landell Mills Commodities Studies in 1993.

(2) Source: Panorama of EU industry 1994.

benefit to each enterprise does not exceed *de minimis* threshold within the meaning of the Community SME guidelines.

VI

The Commission considers that the Italian Government has not met its obligations under Article 93 (3) as the notification was addressed to the Commission after the enterprises could have benefited from the aid. In its notification, however, the Italian Government undertook not to grant any aid until the Commission had come to a decision. This undertaking was fulfilled as regards aid exceeding the *de minimis* threshold in force at the time, i.e. ECU 50 000 over three years.

The Italian authorities' justification for applying Law 451/94 to individual sectors is threefold: the need for negotiations between the two sides of industry, the experimental nature of the measure and the inadequacy of budgetary resources.

The Commission considers that, in the present case, allowing the conditions for granting the aid to be determined by both sides of industry rather than laying them down in Law 451/94 reinforces the sectoral nature of the measure, when it could have been generally applicable. The same type of agreement between both sides of industry relating to the other parts of the plan (definition of types of employment contract, part-time work, initial wages, etc.) could have existed alongside a general law laying down the conditions for granting aid. Furthermore, a measure is not general in nature simply by dint of being applied to several sectors, as the characteristics of the aid would be likely to differ from one sector to another because of the wide range of problems to be resolved.

As regards the need to proceed by stages, both in order to check the viability of the approach and because of limited financial resources, the Commission has already set out its position in Decision 80/392/EEC⁽¹⁾ concerning the partial taking-over by the State of employers' contributions to sickness insurance schemes in Italy. In that Decision, the Commission considered that insufficient budgetary resources could be an argument for authorizing a situation in which the budgetization system did not yet apply to all sectors of the Italian economy. In that case, the measure covered a large part of the Italian economy, viz., all industrial enterprises and some firms in the service sector. In the present case, however, the situation is very different as only one sector is concerned by the measure even if others may eventually benefit.

By budgetizing social security contributions, a large number of jobs are created (the aim of the measure being to prevent Italian firms from relocating some of their activities to low-wage countries). The measure should therefore be assessed in the light of both the guidelines on aid to employment⁽²⁾ and the case-law of the Court of Justice of the European Communities on the budgetization of social charges. Since the Italian authorities intended to restrict application of the budgetization scheme to small and medium-sized enterprises within the meaning of the Community guidelines on SMEs, those guidelines must apply if appropriate.

There can be no doubt that the system for budgetizing employers' social security contributions provided for in the MD of 31 March 1994 constitutes aid inasmuch as it is aimed at totally or partially exempting enterprises in a specific industrial sector from the financial charges resulting, in respect of a certain number of newly recruited workers, from the normal application of the general social security system.

The Italian authorities consider that the aid does not affect trade and does not distort competition and that, accordingly, Article 92 (1) does not apply. This view is also supported by the comments submitted as part of the procedure by other interested parties, who point out that the aid in relation to turnover in the industry amounts to only 0,07 %, a very small figure in terms of intra-Community trade and competition.

The Commission cannot agree with the conclusion inasmuch as the criterion chosen (turnover) includes elements that do not relate to activity in the industry, e.g. purchase of raw materials. A more accurate assessment of the amount of aid is obtained by comparing the amount of the aid with the value added by the industry, i.e. the increase in value attributable to the processing of the product within the industry.

This comparison serves only as a guide as it is not possible to know in advance the value added by the industry during the duration of the aid. Nevertheless, the relationship between the amount of aid available each year — Lit 10 billion (ECU 5,28 million) — and the value added by the industry in Italy in 1993 (the only statistic available) is 0,33 %. This figure would probably be lower if calculated for subsequent years in view of the likely increase in value added attributable to the healthy performance of the Italian footwear industry.

⁽¹⁾ OJ No L 264, 8. 10. 1980, p. 28.

⁽²⁾ OJ No C 334, 12. 12. 1995, p. 4.

In any event, that figure is an average and will tend to rise as the proportion of workers benefiting from budgetization in relation to the total workforce of an enterprise increases. Furthermore, the impact may also differ according to the type of product (e.g. leather footwear, which costs more to produce in terms of labour). According to the Italian authorities, the impact of the aid on the cost price of a pair of shoes is 7-8 % per worker concerned. As the aid is intended for an unspecified number of businesses, it is very difficult to assess, in advance and in detail, its effects on the footwear market as a whole.

While the impact of the aid may be only slight, it is none the less discernible. In its judgment of 11 November 1987 in Case 259/85⁽¹⁾, the Court of Justice found that 'the Commission did not exceed the limits of its discretion in taking the view that even relatively little aid would adversely affect trading conditions to an extent contrary to the common interest'. It should also be borne in mind that compatibility with the Treaty must be viewed in a Community context and not in the context of a single Member State.

The factors indicating that competition has been distorted and trade affected in the present case are as follows:

- (1) Sectoral nature of the aid: since the arrangements for budgetizing social security contributions were not spelt out in Law 451/94, the scheme does not rank as a generally applicable measure, something which, in the present case, would have enabled it not to be considered as aid within the meaning of Article 92 (1) of the Treaty. If this had been the case, all enterprises, even foreign ones established in Italy, could have benefited from the aid. Although it is possible that even general measures may affect intra-Community trade, the Treaty has provided, in Articles 99 to 102, for the possibility of harmonizing disparities between Member States.

Furthermore, sectoral aid is inherently more distorting than horizontal measures and *ad hoc* aid. Horizontal measures are applicable to all the enterprises concerned, a fact which diminishes or indeed cancels out any adverse effect on intra-Community trade. In a semi-flexible exchange-rate system like the EMS and especially as regards currencies that fluctuate freely such as the Italian lira, the effects of horizontal measures uniformly improve the competitiveness of the economy and hence the trade balance, but are offset by exchange rate fluctuations. This is not the case with measures applicable in a single sector. In the case of *ad hoc* aid, compensatory arrangements can be

sought which limit the impact on competition and intra-Community trade.

- (2) In addition to recruiting 5 000 persons, the Italian firms concerned will be investing Lit 47 billion. This is sufficient to invalidate the claim that the measure will in no way improve the structures of the recipient enterprises. Furthermore, it is difficult to understand how there will be no change in production when both the labour input and the capital input are increased, especially in view of the fact that the enterprises concerned are small enterprises.

According to the report drawn up for the Commission on the situation in the footwear industry⁽²⁾, the tendency to relocate certain stages of the production process to low wage countries is inevitable if European enterprises are to become more competitive. Without going into the question of relocating, it must be acknowledged that if Italian businesses have agreed to create jobs in Italy under conditions very similar to those in certain low-wage countries, this is because they expect to achieve equivalent increases in productivity. This appears to be confirmed by the Italian authorities with their observation that there is a significant correlation between production and a higher rate of relocation. A similar correlation should exist between production and a reduction in wage costs since, in the present case, the budgetization of social security contributions permits a reduction in cost similar to that associated with relocation.

Lastly, it should be stressed that the proposed measure is to be implemented under the MD of 31 March 1994, which also provides for other types of measure (part-time work, reduction in initial wages) aimed at lowering labour costs. It is unlikely that a rule aimed specifically at supporting production will have no effect on production in the industry.

- (3) As stated in section IV, Italy has always been the largest footwear producer in the Community, exporting between 40 % and 50 % of production to other Member States. Its position has been strengthened by the devaluation of the Italian lira. The measure objected to thus assist a sector of the Italian economy which leads the market in the Community.
- (4) Competition on the Community footwear market is very keen. In 1982 the six major Community producers (Italy, Spain, France, Germany, Portugal, United Kingdom) employed 378 468 workers. By 1994 the figure was only 272 253 workers. While the reduction is due partly to pressure on the Community market

⁽¹⁾ French Republic v. Commission [1987] ECR 4393, paragraph 24.

⁽²⁾ Prepared by Landells Mills Commodities Studies in 1993.

from low-wage countries, nevertheless certain segments of the industry such as leather footwear have to contend chiefly with competitors in other Community countries (intra-Community imports exceed imports from outside the Community). The Commission considers in this respect that, in the economic sectors where there is substantial intra-Community trade, enterprises are naturally in competition with each other.

(5) In its Judgment of 2 July 1974 in Case 173/73 ⁽¹⁾, the Court of Justice held that, as a reduction in social charges has the effect of reducing labour costs and as the industry receiving such aid is in competition with enterprises in the other Member States, the modification of production costs in that industry by the reduction in the charges in question necessarily affects trade between Member States. This position accords with the Commission's opinion in the same case, namely that in a market where the volume of trade is substantial, any aid, irrespective of its amount or intensity, distorts or threatens to distort competition by virtue of the fact that the recipients receive external aid not enjoyed by their competitors.

(6) The Italian Government has not shown that the enterprises in the sector concerned have to contend with more problems than their competitors in other Member States; on the contrary, it acknowledged that this type of measure is applicable only to enterprises that are capable of competing on the market. Since almost all Community footwear businesses are encountering similar problems, there is a risk that the aid will help to shift the problems from one Member State to another.

VII

In the light of the foregoing, the total or partial budgetization of employers' social security contributions in the footwear industry constitutes aid that is incompatible with the common market under Article 92 (1) of the Treaty in so far as it adversely affects trade between Member States and distorts or threatens to distort competition. It is therefore necessary to consider whether the aid qualifies for one of the derogations in Article 92 (3).

The derogation in point (a) of Article 92 (3) is not applicable since the measure in question applies to Italy as a whole.

⁽¹⁾ *Italy v. Commission*, [1974] ECR 709.

The derogation in point (b) of Article 92 (3) is not applicable because the Italian authorities have not shown that budgetization of employers' social security contributions in the footwear industry is necessary to remedy a serious disturbance in the Italian economy.

The Italian authorities stated that the sole recipients would be small and medium-sized enterprises. The Community SME guidelines state, *inter alia*, that the Commission will normally not object to job-creation schemes involving aid of not more than ECU 3 000 per job created. The guidelines cannot be applied to the present case since the aid is sectoral and the aid per job created ranges from ECU 3 944 to ECU 4 437 for one of the five years in which the scheme will be applied in the event of total budgetization (for indefinite-duration contracts in either a craft or an industrial enterprise). In the case of the least favourable terms of remuneration for a worker, i.e. a one-year non-renewable contract, the aid would be ECU 2 958. It should, though, be noted that, under the agreement between the two sides of industry, recruitment will be on the basis of alternate indefinite and fixed-term contracts.

Point 23 of the Commission guidelines on aid to employment reads as follows: 'Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.'

Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve their market share to the detriment of their Community competitors both within the Member State concerned and for exports inside and outside the Community, with all the attendant implications in terms of a worsening of the employment situation in those sectors in the other Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other Member States generally outweigh the common interest involved in active measures to reduce unemployment; the Commission will usually consider such aid to be incompatible with the common market.'

For the reasons stated above, it must be concluded that the effects of the aid on intra-Community trade are greater than those indicated by a straightforward comparison between the amount of the aid and the value added by the industry.

In accordance with point 23 of the guidelines, on aid to employment, the Commission is obliged, even in the case of aid for job creation, to adopt a strict attitude to sectoral aid in order to forestall any escalation of aid in good time and to ensure that the very concept of the internal market is not called into question.

In view of the pressure exerted on all Community producers by imports from third countries, the difficult employment situation in this industry in all the Member States (with the exception of Portugal), the importance of intra-Community trade and hence of competition, and the predominant role played by the Italian footwear industry, this sector must be regarded as a sensitive sector under the guidelines. The sensitivity of a particular sector should not be defined solely in relation to economic difficulties since the guidelines contain a subsequent reference to sectors in crisis. It should, therefore, be the subject of a broader assessment.

Consequently, the aid in question cannot be regarded as promoting development if it is assessed from a Community standpoint rather than from that of a particular Member State. The sectoral measure may lead to a change in the balance between the Member States at a time when all of them are experiencing problems that are of varying intensity but similar in nature.

According to point 23 of the guidelines, 'The Commission will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold up the prospect of considerable job creation'. The aid in question is not for a sub-sector manufacturing a specific product but for a specific stage in the production process where the reduction in costs has repercussions for the entire production process downstream. The above point is not, therefore, applicable to the aid being examined.

Accordingly, for the reasons stated above, the derogation in point (c) of Article 92 (3) of the Treaty cannot apply to the total or partial budgetization of employers' social security contributions provided for in the MD of 31 March 1994 since it adversely affects trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The total or partial budgetization of employers' social security contributions provided for in the Ministerial Decree of 31 March 1994, which approves the scheme for extraordinary assistance to support production and employment in the footwear industry, constitutes aid that is incompatible with the common market within the meaning of Article 92 (1) of the Treaty and does not qualify for any of the derogations provided for in point (c) of Article 92 (3) of the Treaty.

Article 2

Italy shall take the appropriate steps to delete the provision relating to the budgetization of employers' social security contributions from the Decree referred to in Article 1.

Article 3

Repayment of the aid granted by Italy under the Decree referred to in Article 1 shall not be required inasmuch as it is below the *de minimis* threshold.

Article 4

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 April 1996.

For the Commission

Karel VAN MIERT

Member of the Commission