COMMISSION

COMMISSION DECISION

of 17 February 1977

concerning an aid for the pigmeat sector in the United Kingdom of Great Britain and Northern Ireland

(Only the English text is authentic)

(77/172/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 regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat [1], and in particular Article 21 thereof,

Having regard to the observations submitted by the parties concerned [2],

Whereas, by a letter from the Office of its Permanent Representative to the European Communities dated 19 January 1977 and received by the Commission on 20 January 1977, the Government of the United Kingdom of Great Britain and Northern Ireland informed the Commission under Article 93 (3) of the Treaty of its intention to grant from 31 January 1977, for an unspecified period, a temporary subsidy of approximately 5·5 pence per kilogram dead weight to pig producers, and further that the aid would be announced publicly by the British Ministry of Agriculture on 20 January 1977;

Whereas the Commission, taking the view that this scheme was not compatible with the common market under Article 92 of the Treaty, began proceedings under Article 93 (2) in respect thereof on 25 January 1977;

Whereas the trend in the pig breeding herd in the United Kingdom runs parallel to that in the other Community countries, which is currently undergoing a cyclical increase involving in the short term an increase in the pig supply;

Whereas that supply is already in surplus in the Community as a whole, and is likely to remain so for some time;

Whereas therefore by favouring pigmeat production in the United Kingdom the aid in question threatens to distort competition in the Community;

Whereas moreover the United Kingdom in 1975 imported 675 000 tonnes (511 000 tonnes in the first nine months) of pigmeat products, of which 587 000 tonnes (443 000 tonnes in the first nine months) were from other Member States; whereas in the first nine months of 1976 the United Kingdom imported 490 000 tonnes thereof, of which 438 000 tonnes were from other Member States; whereas the United Kingdom is thus the Community's largest importer of pigmeat products;

Whereas there was no abnormal rise in imports between 1975 and 1976 notwithstanding the fact that, according to the British authorities, the monetary compensatory amounts were excessive; whereas, in this context, the measure could affect intra-Community trade to a considerable extent, in particular because it puts imports from other Member States at a disadvantage;

Whereas the proposed measure accordingly is covered by the prohibition laid down in Article 92 (1) of the Treaty;

Whereas aid introduced by the British authorities applies throughout the United Kingdom; whereas it is granted according to the amounts produced and is aimed not at the lasting development of production but at its temporary protection against competition from other Member States; whereas as such it rates as an aid to the functioning of the enterprises in the

[1] OJ No L 282, 1. 11. 1975, p. 1.
[2] See in particular OJ No C 22, 29. 1. 1977.

sector concerned and thus is a type of aid which the Commission has always, in principle, condemned;

Whereas such aids to functioning, which are not granted subject to conditions calculated to give them a development effect, cannot qualify for any of the exemptions from prohibition provided for under Article 92 (3) (a) and (c) of the Treaty;

Whereas the aid in question clearly does not meet the conditions required for it to qualify for the exemptions provided for under Article 92 (2) of the Treaty; whereas in addition it cannot qualify for the exemption provided for under Article 92 (3) (b), since, being granted in respect only of one sector of the British economy, a sector which only constitutes a small part of the gross national product, it is not calculated to remedy a serious disturbance of that economy;

Whereas moreover an analysis of the pigmeat sector in the United Kingdom shows that the average size of pig-rearing establishments stands at 170 head, compared with a Community average of 26 head; whereas in the last quarter of 1976 the price average for pig carcases converted at the official rates was 126·7 units of account per 100 kilograms in the United Kingdom and 115·6 units of account in the Community; whereas the monthly average slaughter of sows and boars in the United Kingdom in the last quarter of 1976 was 37 000 head, compared with a monthly average of 47 000 in the crisis months of the first quarter of 1974;

Whereas such analysis does not therefore indicate an abnormal situation by reference to the cyclical fluctuations which may be expected in this sector, and consequently the reasons for the intervention by the Government of the United Kingdom cannot be justified;

Whereas in its observations of 4 February 1977 the Government of the United Kingdom drew the attention of the Commission to the disrupting effect of the method of calculation of the monetary compensatory amounts in the pigmeat sector, and to the compatibility, as it sees it, of the aid in question with the common market under Article 92 of the Treaty;

Whereas these observations, and similar observations submitted by another UK party concerned, contain no new matters on the strength of which the Commission could change its position; whereas, in particular, the method of calculation of the monetary compensatory amounts, which is effected in accordance with the Community rules in force, cannot possibly be regarded as a reason for granting a national aid;

Whereas certain Member States and other parties concerned have submitted their observations to the Commission, to the effect that they consider that the measure taken by the United Kingdom threatens to distort competition and affects trade between Member States without assisting the development of the sector in question; whereas those Member States which have submitted their observations are extremely concerned about the said aid and are urging the Commission to take action against it with the utmost expedition;

Whereas, furthermore, the granting of the said aid notified to the Commission on 20 January 1977 was announced publicly on the same day by the British Ministry of Agriculture without any reference to the need for its acceptance by the Commission; whereas in its letter of 4 February 1977 the Government of the United Kingdom stated that it had brought the measure in question into force; whereas in so doing it failed to inform the Commission in sufficient time as required by the first sentence of Article 93 (3) of the Treaty; whereas by putting the measure into force after the Commission had begun proceedings under Article 93 (2) of the Treaty the Government of the United Kingdom is in breach of the third sentence of Article 93 (3) of the Treaty; whereas the measure in question is therefore illegal under Community law;

Whereas the decisions of the Court of Justice show that the prohibition against putting a proposed measure of aid into effect contained in the last sentence of Article 93 (3) of the Treaty has a direct effect in the internal legal system of the Member States;

Whereas, this being so, no period of time should be allowed for the British Government to discontinue its aid;

Whereas the Government of the United Kingdom made application to the Council by letter dated 4 February 1977, under the third subparagraph of Article 93 (2) of the Treaty, for a decision that the said aid be considered to be compatible with the common market, in derogation from the provision of Article 92; whereas this application was rejected by the Council at its meetings of 8, 14 and 15 February 1977; whereas the procedure provided for in the first subparagraph of Article 93 (2), which was suspended by virtue of the application, may now be resumed,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom of Great Britain and Northern Ireland shall forthwith terminate the provision of the aid in the form of a subsidy to pig producers the plan

for which was notified to the Commission by letter dated 19 January 1977.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 17 February 1977.

For the Commission

Finn GUNDELACH

Vice-President