COMMISSION

COMMISSION DECISION

of 10 September 1982

on the aids granted in Sicily in the citrus fruit, fruit and vegetables sector

(Only the Italian text is authentic)

(82/651/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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 1738/82 [2], and in particular Article 31 thereof,

Having given notice, pursuant to the first subparagraph of Article 93 (2) of the Treaty, to those concerned to submit their comments and having regard to those comments [3],

I

Whereas, by letters of 13 January and 9 February 1981, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of the draft Law of the Region of Sicily laying down measures for the rationalization of the citrus fruit and fruit and vegetable processing industry and measures to assist marketing, which had been approved by the Legislative Committee of the Regional Assembly;

Whereas at a meeting between the Italian authorities and Commission staff on 26 and 27 March 1981 the Italian experts supplied details concerning the legal instrument in question; whereas other information was supplied by telex of 8 May 1981 from the Permanent Representation of Italy;

Whereas the Commission staff learned meanwhile that the measure in question had been adopted as Regional Law No 10/81 of 3 February 1981;

Whereas the Commission, after examining Law No 10/81, took the view that the subsidies of 40 % for the purchase of packaging materials for citrus fruit, fruit and vegetables for export provided for in Article 3 (e) of Law No 10/81 constituted incompatible aids; whereas it considered that the measure — even after the amendments made to it by Article 21 of Law No 16/81 of 2 March 1981 providing for the aid to be granted for packaging materials for citrus fruit, fruit and vegetables which were to be marketed in Italy — constituted:

— both operating aid, in the case of aid being granted to undertakings which marketed packaged citrus fruit and fruit and vegetables in Italy,

— and a measure contrary to the provisions of the common organization of the market in fruit and vegetables, in the case of aid being claimed by undertakings which exported packaged citrus fruit and fruit and vegetables;

Whereas the Commission also took the view that the measures provided for in Article 6 of Law No 10/81 constituted aid for exports to other Member States and non-member countries and were therefore incompatible with the common organization of the market in the products in question; whereas this measure provides for the grant to single farms or groups of farms exporting citrus fruit, fruit and vegetables of 12 % interest-rate subsidies on loans for one year taken up in anticipation of sums amounting to 80 % of the selling price subsequently paid by foreign importers purchasing their products;

Whereas the Commission therefore initiated the procedure laid down in Article 93 (2) of the EEC Treaty in respect of all the abovementioned measures and gave notice to the Italian Government by letter of 31 July 1981 to submit its comments;

II

Whereas, by telexes of 30 September 1981 and 12 February 1982, the Italian Government replied to the Commission's letter, stressing, among other things, that as regards the aids for packaging materials provided for in Article 3 (e) of Law No 10/81 the

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 190, 1. 7. 1982, p. 7.
[3] OJ No C 335, 23. 12. 1981, p. 2.

Sicilian authorities had not applied the measure to packaging materials for citrus fruit, fruit and vegetables for export and that as regards the advances to exporters provided for in Article 6 of Law No 10/81 this measure was not an export aid since it was also granted to economic operators marketing their produce in Italy and that the measure was subject to the provisions on the safeguarding of employment and minimum wages ; it was therefore to be regarded as aid to promote employment, not export aid ; whereas the Italian authorities also stated that the measure was applicable in 1979 and 1980 only ;

Whereas following the Commission's notice to other Member States to submit their comments, several Member States did so ; whereas they endorsed the opinion expressed by the Commission ;

III

Whereas the 40 % subsidy on the purchase price of packaging materials for citrus fruit, fruit and vegetables provided for in Article 3 (e) of Law No 10/81 has a direct effect on the selling prices of these products since that purchase price represents an average of about 40 % of wholesale prices ;

Whereas the interest-rate subsidies granted to producers of citrus fruit, fruit and vegetables provided for in Article 6 of Law No 10/81 represent a considerable advantage to these producers and thus also have a direct effect on the cost of marketing the products in question and hence on their selling price ;

Whereas these two measures have therefore artificially increased or at least maintained the present level of citrus fruit, fruit and vegetable production in Sicily ; whereas, on the other hand, it can reasonably be imagined that these aids may in practice have encouraged those in receipt thereof to supply the products in question at prices lower than those which would apply in the absence of this public aid ;

Whereas these measures are liable to affect intra-Community trade and to distort competition by favouring Italian producers to the detriment of producers in other Member States who are in a position to offer for sale the same products on the Community market and do not receive comparable aids ;

Whereas the Commission has been unable to accept the arguments put forward by the Italian Government concerning Article 3 (e) of the Law in question : whereas the Italian Government stated that the subsidy for the purchase of packaging materials for exports had been abolished, but did not supply the same information with regard to aids for the purchase of packaging materials for citrus fruit, fruit and vegetables for marketing in Italy or any other information of an economic nature likely to induce the Commission to change the position which it communicated on 31 July 1981 ;

Whereas the Commission has also been unable to accept the argument put forward by the Italian Government in support of the aids provided for in Article 6 of Law No 10/81, since the extension of the aids to individual farms or groups of farms marketing citrus fruit, fruit and vegetables in Italy does not render the measure compatible with Community law ;

Whereas, on the other hand, the main aim of the measure is to assist farms growing citrus fruit, fruit and vegetables ; whereas protection of employment and employees' pay levels is an indirect effect rather than the reason for this measure ; whereas, therefore, this argument put forward by the Italian Government cannot be accepted as justification for the measure ;

Whereas the measures in question therefore fulfil the criteria of Article 92 (1) of the Treaty ;

Whereas the prohibition laid down in Article 92 (1) cannot be lifted under paragraph 2 of that Article since the derogations provided for therein clearly do not apply in this case ;

Whereas, as regards the derogations provided for in Article 92 (3), these must be interpreted strictly when any national or regional measure is being examined ; whereas they can be permitted only where the Commission can establish that the aid is necessary to achieve one of the objectives referred to in these provisions ;

Whereas to apply the said derogations to aids not serving this purpose would be tantamount to allowing damage to trade between Member States and distortions of competition without any justification on grounds of the Community interest and to allowing unfair advantages for certain Member States ;

Whereas in the case in point the aids provided for in Articles 3 (e) and 6 of Law No 10/81 do not offer any such reciprical advantage ;

Whereas the Italian Government has been unable to give, and the Commission unable to find, any justification for finding that the aids in question meet the conditions for application of one of the derogations provided for in Article 92 (3) of the Treaty ;

Whereas the aids are not measures to promote the economic development of an area where the standard of living is abnormally low or where there is serious under-employment within the meaning of Article 92 (3) (a), since they do not constitute measures likely to promote the development of the island or the growing of citrus fruit, fruit or vegetables, being in fact operating aids without any structural effect ; whereas the situation of Sicily and of the abovementioned lines of production will not be permanently affected after the aid ceases ;

Whereas the measures in question do not constitute an important project of common European interest or measures to remedy a serious disturbance in the Italian economy ; whereas, therefore, Article 92 (3) (b) of the Treaty is not applicable ;

Whereas these measures constitute operating aids for the farmers concerned ; whereas the Commission has always been opposed to such aids which do not meet

the conditions enabling them to qualify as exceptions under Article 92 (3) (c) of the Treaty since they are not, by reason of their limited effectiveness, likely to facilitate development as provided for therein ;

Whereas in the present situation on the market in citrus fruit, fruit and vegetables an aid, even on a small scale, alters the trading conditions to an extent contrary to the common interest ;

Whereas it results from the foregoing that the abovementioned aids do not meet the conditions for ranking as exceptions under Article 92 (3) of the Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The subsidies :

(a) of 40 % for the purchase of packaging materials for citrus fruit, fruit and vegetables for the purpose of marketing these products, provided for in Article 3 (e) of the Law of the Region of Sicily No 10/81, and those

(b) provided for in Article 6 of the said Regional Law for single farms or groups of farms marketing citrus fruit, fruit and vegetables in Italy or exporting these products, granted in the form of a 12 % interest-rate subsidy on loans for one year taken up in anticipation of prices which will subsequently be paid,

are incompatible with the provisions of Article 92 of the EEC Treaty and, as far as the aid referred to in Article 6 is concerned, with the provisions of the common organization of the market in fruit and vegetables. These subsidies must therefore cease to be granted and the corresponding provisions of Articles 3 (e) and 6 of Regional Law No 10/81 must be amended in such a way as to abolish the subsidies in question.

Article 2

The Italian Republic shall notify the Commission, within one month, of the measures which it has taken to ensure compliance with Article 1.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 September 1982.

For the Commission

Poul DALSAGER

Member of the Commission