II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 February 1988

amending Decision 86/614/EEC authorizing Greece to take certain safeguard measures under Article 108 (3) of the EEC Treaty

(Only the Greek text is authentic)

(88/438/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 108 (3) thereof,

Whereas :

Commission Decision C/85/1344, which was notified to the Greek Government on 13 August 1985, ordered Greece to abolish the export aid provided for by Decision 1574/70 of the Greek Monetary Committee as amended by Decision 350/82 ;

Commission Decision 85/594/EEC (1) authorized Greece to take certain safeguard measures under Article 108 (3) of the EEC Treaty ; among other things it authorized Greece to continue to grant until 31 December 1986 the export aid provided for by the said Decision at a rate no higher than 26,4 % of the fob price ;

Commission Decision 86/614/EEC (2) amending Commission Decision 85/594/EEC required Greece to reduce by 40 % the rate of aid applied previously to allow for the effects of the introduction of VAT and to phase out the remaining 60 % of the said export aid in four equal annual steps beginning on 1 January 1987, so that the maximum rate of aid for 1987 was 11,88 % of the fob price ;

Article 3 of the Decision 86/614/EEC provided that the Commission was to reduce or exclude all aid should evidence be presented to it which, upon examination and after consultation with the interested parties, showed that the grant of Greek export aid to any particular sector was causing or threatened to cause major changes in traditional trade flows and that the changes were causing or threatening to cause serious material injury in an established industry in other Member States to a degree contrary to the common interest.

I

In March 1983 a Dutch firm producing candied fruit peel (NIMEXE 20.04-30) first complained to the Commission that Greek export aid in their sector had reached 32 % of the fob price, causing an extremely severe distortion of competition in the common market. Over the years, on numerous occasions, these complaints continued.

On 29 April 1987 this complainant, joined by the Dutch Fruit and Vegetable Processing Industry Association and, in particular, the Preserved Fruit Manufacturers section, asked the Commission to apply Article 3 of Decision 86/614/EEC and exclude all aid to the Greek preserved fruit industry.

The first complainant is the biggest of four small Dutch producers of candied fruit peel all situated in and around Franeker in Friesland. Traditionally these produce most candied fruit peel sold in the Netherlands, in Germany, and in the UK. Their main market is Germany. The first complainant's specialty is fruit peel sold in 100 gram packs ; the other producers mainly sell in bulk to industrial users.

Four Italian and one French producer buy the raw material and sell the finished product mostly in their own countries.

(1) OJ No L 373, 31. 12. 1985, p. 9.
(2) OJ No L 357, 18. 12. 1986, p. 28.

The Dutch firms buy their raw material in Puerto Rico; the only substantial growing region in Europe is Crete. From there the raw material for candied fruit peel is offered to the Dutch producers at prices up to more than 100 % higher, depending on the product, than in Puerto Rico.

In 1983 the Cretan Citrus Growers Association started to offer candied fruit peel in 100 gram packs in Germany, identical to those sold by the first complainant, at prices which, on the basis of data provided by the Dutch undertaking and calculating costs from the Cretan raw material prices plus Dutch manufacturing and comercialising costs, appear to be sold up to 34 % below cost. It is alleged that this has caused serious material injury to the Dutch undertaking, and caused the loss of nine jobs out of 57.

According to the first complainant Greek exports in 100 gram packs tripled between 1983, when they first appeared on the market, and 1986 (from 200 tonnes to 610 tonnes). Given the fairly static demand in this market, Dutch sales, capacity utilization and profits have fallen accordingly. There are no stocks; production is geared to sales.

In 1987 the Cretan Citrus Growers Association opened a new large capacity factory and started also to underbid significantly the Dutch producers in the German market in industrial sales. In spite of the agreed reduction of export aid, prices remained at the same level as before. Allegedly this threatens to cause serious material injury also to the other Dutch producers.

II

The Greek Government, having been informed of the Dutch undertakings' request to apply the safeguard measures provided for in Article 3 of Commission Decision 86/614/EEC, replied on 15 October and 4 December 1987 without giving the requested detailed information. A letter dated 22 December 1987 did not provide any new relevant information.

Pursuant to the first paragraph of Article 2 of Decision 86/614/EEC the Greek Government has to submit 'within four weeks of the end of the relevant period, i.e. up to 30 June and 31 December for each year ... a six monthly report on the granting of export aid broken down by the number of transactions showing their value and the aid granted, by sector, to allow the Commission to carry out a six-monthly monitoring procedure to ensure correct application of this Decision'.

The first report was received on 9 November 1987 and contained global information only. According to this, the Greek Government, between 1 January and 30 June 1987, actually paid 21,4 billion Drs in export aid pursuant to Decision 1574/70 as amended by Decision 350/82. During this period eligible exports were made at a fob price of 56,8 billion Drs. The Greek Government maintains that a large portion of the payments corresponded to shipments made between 1 Janaury 1983 and 31 December 1986. However, in actual fact Greek exporters received, on average, aid on the basis of Decision 1574/70 as amended by Decision 350/82 representing 38 % of the fob price of their eligible exports.

On 4 December 1987 the Greek Government sent a letter stating that the Cretan Citrus Growers Association from 1983 to 1986 had received different percentages of the fob price of their eligible exports in aid, depending on the different percentages of 'export value added' they had realised.

(in % of fob price)

Year	Export value added	Aid
1983	45	19,685
1984	35,5	15,59
1985	56,6	24,76
1986	33,88	14,82

According to information given to the Greek Government by the Bank of Greece, payments for 1987 have not yet been made.

III

Neither within the framework of the report to be submitted pursuant to Article 2 of Decision 86/614/EEC nor when consulted on the Dutch request pursuant to Article 3 and the second paragraph of Article 2 of Decision 86/614/EEC has the Greek Government been able to supply the required and agreed detailed breakdown of information; nor has it contested the figures supplied to the Commission by the complainant.

Figures obtained from the Statistisches Bundesamt (the German federal statistical office) show imports into Germany of candied fruit and fruit peel from the Netherlands and from Greece as follows:

(in tonnes)

Year	Total imports into Germany	From the Netherlands	From Greece
1983	6 265	5 049	501
1984	6 500	5 120	493
1985	6 217	4 653	696
1986	6 359	4 647	655

These figures show that, in a rather stable market, between 1983 and 1986 the Dutch market share fell by 8 % while the volume of Greek exports rose by 30 %.

The figures contained in the letter of 4 December 1987 only confirm that the Cretan Citrus Growers Association over the years received large sums of export aid under the Decision of the Greek Monetary Committee. Beyond this they do nothing to clarify the situation. In particular, there is no explanation as to why the 'export value added' which is calculated along the lines of normal value added and on which depends the percentage of the fob price to be granted as aid, varies considerably from year to year for the same product sold by the same undertakings.

The statement that no aid has been paid for 1987 does not necessarily mean that no aid was received. According to the Greek Government more than 83 % of the aid actually paid during the period January to July 1987 was for exports not made during that time and going back as far as 1983. This makes it impossible for the Commission 'to carry out a six-monthly monitoring procedure to ensure correct application of this Decision' as prescribed by Decision 86/614/EEC.

The continued lack of precise information which had been requested within the framework of this procedure on 27 July 1987, most of which should have been submitted by the Greek Government pursuant to Article 2 of Decision 86/614/EEC by 31 July at the latest, cannot indefinitely hinder the Commission from taking a decision under the procedure provided for by Article 3 of Decision 86/614/EEC which enjoins the Commission to take a decision excluding export aid granted in a sector if this causes serious damage to competitors in other Member States and which, by its very nature, is urgent.

The complainants stated as from March 1983 that their Greek competitors received various export aid totalling 32 % of the fob price causing them to lose their established market for candied fruit and fruit peel sold in 100 gram packs mainly in the Federal Republic of Germany. The opening of a new large factory in 1987 together with an almost unlimited bargaining power caused by the actual amount of aid enables the Greek sellers to sell and deliver large quantities; this will accentuate the major change in traditional trade flows and threatens to cause serious material injury to the whole of the Dutch industry of the sector in question.

All Dutch manufacturers are situated in and around Franeker in Friesland. This is considered as a priority development area in the Netherlands because of its high unemployment and low per capita income. A folding up of the Dutch industry and further loss of employment is contrary to the common interest.

Therefore it appears that the conditions set out in Article 3 of Decision 86/614/EEC are met so that the Commission should amend the said Decision,

HAS ADOPTED THIS DECISION:

Article 1

Article 1 of Decision 86/614/EEC is hereby amended by the addition of the following paragraph:

'The provisions of the foregoing paragraph shall not apply to the candied fruit peel sector (NIMEXE 20.04-30). In respect of that sector Greece shall exclude all export aid.'

Article 2

This Decision shall take effect on 4 February 1988.

Article 3

Greece shall inform the Commission within seven days of the date of this Decision, of the measures it has taken to comply with the conditions laid down in Article 1.

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 4 February 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission