COMMISSION DECISION

of 11 October 1989

concerning aid granted in the Netherlands and financed by means of levies payable by the Produktschap voor Landouwzaaizaden (Commodity Board for the Seed Sector)

(Only the Dutch text is authentic)

(90/189/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 2358/71 of 26 October 1971 on the common organization of the market in seeds [1], as last amended by Regulation (EEC) No 1239/89 [2], and in particular Article 8 thereof, and to the corresponding provisions of other Regulations on the common organization of markets in agricultural products,

Having given notice to the parties concerned, in accordance with Article 93 (2) of the Treaty [3], to submit their comments,

Whereas :

I

Following a written question (No 1532/85) from a Member of the European Parliament, the Commission invited the Dutch authorities to forward to the Commission, in accordance with Article 93 (3) of the Treaty, all the necessary information about produktschappen.

Sectoral organizations have existed in the Netherlands for more than thirty years by virtue of the Sectoral Organization Act of 14 February 1950 (Wet op de Bedrijfsorganisatie). It is a skeleton law authorizing the creation, at the request of the economic sectors involved, of central industrial boards, industry boards and commodity boards.

A Central Commodity Board and Commodity Boards can be set up for the benefit of two or more groups of undertakings which carry out different operations *vis-à-vis* a given product or group of products (vertical organizations).

A Central Industrial Board and Industry Boards can be set up for the benefit of undertakings which carry out identical or similar operations *vis-à-vis* different products (horizontal organizations).

The competent minister may designate one or more persons to represent him at the meetings organized by the steering committee of a 'produktschap' or a 'hoofdproduktschap'.

These ministerial representatives have an advisory capacity. If a regulation or other decision requires the approval of the minister or ministers concerned, approval can be withheld only on grounds of incompatibility with the law or the public interest.

Sectoral organizations are financed by levies (heffingen) at the different production, processing and marketing stages. The organizations' rules imposing these levies (heffingverordening) apply to all undertakings whose activities fall within the scope of those organizations. The levies are compulsory ; refusal to pay them is punishable. The levies can therefore be seen as parafiscal taxes.

The levies are either general (algemene heffingen) or specific (specifieke heffingen). The former are mainly to finance administration and organization costs, the latter to finance specific expenditure, such as aid for various objectives.

These parafiscal taxes are collected at the different marketing stages : direct sale by the producer, sale at auctions (veilingen), sales by wholesalers and retailers and the sale of processed products by manufacturers. The regulations which impose the levies may also contain rules governing levies on imported products.

II

1. After an exchange of correspondence between the Commission and the Dutch authorities, the Commission informed the Dutch Government, in a letter dated 23 December 1986, that it had decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aids in question, since it did not possess sufficient information to establish that they were eligible for a derogation under Article 92 (2) and (3) of the Treaty. Under the said procedure, the Commission therefore requested additional information :

— on the method for charging the parafiscal taxes used to finance the aids, in order to establish whether or not these taxes had an effect equivalent to customs

[1] OJ No L 246, 5. 11. 1971, p. 1.
[2] OJ No L 128, 11. 5. 1989, p. 35.
[3] OJ No C 115, 30. 4. 1987, p. 5.

duties or constituted discriminatory internal taxes or whether the system, in view of the aids it financed, was compatible with the requirements of Article 92 of the Treaty;

— on the aids themselves, in order to establish if, by virtue of their objective and in the light of Article 92 of the Treaty they could be considered compatible with the common market.

The Commission also gave notice to the other Member States and to the other parties concerned to submit their comments.

2. The aids to which this Decision refers are used to finance research on value for cropping and use (aid No 71 — data sheet No NL/XXX/14-00/007/00 of the modified and supplemented inventory sent to the Commission by the Dutch authorities by letter No SG(87) A/4895 of 15 April 1987) and breeding trials to develop new products (aid No 73 — data sheet No NL/XXX/14-00/009/00).

These two aids are financed by taxes on both domestic and imported products. The tax amounts to HFl 2 per 100 kg for fodder beet seed, fodder cabbage seed (mergkool) and forage turnip seed; HFl 1,50 per 100 kg for grass seed and HFl 1 per 100 kg for fodder cabbage seed (bladkool), maize, lucerne and clover seed.

The yield from these taxes in 1985 amounts to:

(in HFl)

Taxes collected on products imported from other Member States:	150 000
Taxes collected on products imported from non-member countries:	100 000
Taxes collected on domestic products:	360 000
Total	610 000

Taxes collected in 1986 totalled HFl 650 000. These amounts were used by the 'Produktschap' to finance several aids, including those covered by this Decision, namely:

(in HFl)

	Aid No 71	Aid No 73
1985	300 000	354 000
1986	310 000	250 000

III

The aids financed by the 'Produktschap voor Landbouwzaaizaden' are likely to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the Treaty by giving an advantage to the sector concerned. However, because they are intended to facilitate the development of the sector in question and are unlikely adversely to affect trade to an extent contrary to the common interest, they could qualify for the exemption provided for in Article 92 (3) (c) of the Treaty.

However, this option cannot be considered because the aids are financed by taxes imposed on products imported from other Member States.

According to the case law of the Court of Justice of the European Communities, financing a State aid by imposing a compulsory charge constitutes an essential element of the aid and, when assessing such aid, both the aid and the method of financing should be examined for compatibility with Community law.

Although research aids are compatible with the common market as regards both their form and their objective, financing such aids by means of parafiscal taxes imposed equally on imported Community products has a protective effect beyond that of the aid itself, according to the Judgment given by the Court of Justice on 26 June 1970 in Case 47/69 (1).

Even if the research bodies were to place the results of their research at the disposal of any interested parties in other Member States, this would not necessarily result in all parties genuinely and equally sharing in the benefits of the research, since even if equality of treatment were legally guaranteed, at a practical level Dutch operators would inevitably be in a more favourable position.

Such research is prompted by national specialization, needs and shortcomings. In addition, operators in other Member States often pay for identical research, either directly or by paying a financial contribution to their counterpart national research centres, and therefore have no need to make use of the findings of Dutch bodies.

This being the case, the research aids described in Point II (2) are incompatible with the common market because of the method by which they are financed, and must therefore be abolished,

HAS ADOPTED THIS DECISION:

Article 1

The Dutch Government shall cease to grant aids for research on value for cropping and use and breeding trials to develop new products in the seed sector through the

(1) [1970] ECR 487.

'Produktschap voor Landbouwzaaizaden' (Sheets No NL/XXX/14-00/007/00 and No NL/XXX/14-00/009/00 of the inventory attached to the letter dated 15 April 1987 from the Dutch authorities to the Commission) unless it amends beforehand the method of financing these aids so that products imported from other Member States are no longer taxed.

Article 2

The Dutch Government shall inform the Commission, within two months from the notification of this Decision, of the measures it has taken to comply with this Decision.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 11 October 1989.

For the Commission

Ray MAC SHARRY

Member of the Commission