COMMISSION DECISION

of 1 December 1990

concerning aid and the parafiscal charge collected for the Comité national interprofessionnel de l'horticulture florale, ornementale et des pépinières (CNIH) — draft decree introducing a parafiscal charge for the benefit of the CNIH

(Only the French text is authentic)

(91/255/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 234/68 of 27 February 1968 on the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage [1], as last amended by Regulation (EEC) No 3991/87 [2],

After having given the parties concerned notice to submit their comments [3], in accordance with the first subparagraph of Article 93 (2), and having regard to those comments,

Whereas :

I

By letter dated 13 March 1990 the Office of the Permanent Representative of France to the European Communities notified the Commission pursuant to Article 93 (3) of the Treaty of the draft decree prolonging until 31 December 1992 the parafiscal charge for the benefit of the CNIH.

By telex message dated 8 May 1990 and letter No SG(90) D/25239 dated 1 June 1990, the Commission notified the French Government of its decision to initiate proceedings under Article 93 (2) of the Treaty in respect of the draft decree.

By letters dated 9 July and 14 November 1990 the Office of the Permanent Representative of France to the European Communities transmitted the comments of its Government on the Commission's position.

Comments by other interested parties were communicated to the French authorities by letter No IV/D/19765 dated 4 December 1990.

II

1. The draft decree extends until 31 December 1992 the parafiscal charge on sales and imports of non-edible flowers, ornamental foliage and nursery products listed in Article 1 of Decree No 64-283 of 26 March 1964 for the benefit of the Comité national interprofessionnel de l'horticulture florale, ornementale et des pépinières (National Joint Trade Committee for Floral and Ornamental Horticulture and Nurseries). This represents the continuation of a scheme which began in 1964 (Article 10 of Decree No 64-283 of 26 March 1964), notified by the French authorities to the Commission by letter of 11 November 1987 in response to an inquiry by the Commission into aid financed by parafiscal charges in all the Member States.

2. The charge is levied :

(a) at the time of first marketing by producers on all amounts and values of goods and services received or to be received, exclusive of tax, in return for the supply of chargeable products ;

(b) on imports, on the value, exclusive of tax, assessed at the place of importation into metropolitan France ;

(c) on resale by traders on the purchase price, exclusive of tax.

In the case of producers subject to the agricultural flat-rate scheme, a flat-rate determination of chargeable sales takes the place of a general declaration of sales made.

The charge is levied at the rate of 0,28 % on first marketing and on imports and at 0,14 % on sales by traders.

Where products which have been marketed or imported are resold, both charges are levied cumulatively.

In 1989 the total collected by the charge amounted to FF 41 million (ECU 5,6 million).

The French authorities assessed the value of imported non-edible horticultural products in 1988 at FF 3 612 million (ECU 524 million) and that of exports in the same year at FF 664 million (ECU 96 million).

The bulk of imports (94,9 %) come from the other Member States, with 66,3 % being of Dutch origin.

[1] OJ No L 55, 2. 3. 1968, p. 1.
[2] OJ No L 377, 23. 12. 1987, p. 19.
[3] OJ No C 170, 12. 7. 1990, p. 7.

According to the French authorities, 25 % of the yield of the charge is derived from imports.

3. The CNIH grants financial aid from the charge of research, vocational training, advertising, participation in fairs and exhibitions, etc.

The French authorities consider that the CNIH undertakes work designed to improve product quality and develop new production techniques. Its research on selection, conservation, growing techniques and mechanization is carried out in close cooperation with institutes and universities in many Community countries, particularly through Community research programmes (Eclair).

This cooperation includes the dissemination of technical and economic information.

The CNIH also plays a very important role in vocational training in an effort to give horticultural trades higher status and to diversify the activity of producers.

The proceeds of the parafiscal charge are also used for advertising, promotional activities and communications: distribution of publications, attendance at national and international horticultural shows, open days, etc., provided these are such as to improve product marketing. French producers and traders are also provided with regular information on changes in Community rules in the horticultural sector. The French authorities have confirmed that the content of advertising campaigns has always conformed to the criteria laid down by the Commission in its framework for national aid for the advertising of agricultural products and certain products not listed in Annex II to the EEC Treaty, excluding fishery products (1).

4. Although the Commission considered that the aid financed in this way was such as to facilitate the development of the sector concerned, without adversely affecting trading conditions to an extend contrary to the common interest within the meaning of Article 92 (3) (c) of the Treaty, it nevertheless decided on 8 May 1990 to initiate proceedings against the draft decree because of the way in which the planned aid was financed.

III

By letters dated 9 July and 14 November 1990, the French authorities sent the Commission their comments on its position.

In their letter of 9 July 1990, the French authorities argued that the method of financing the CNIH bore equally on national and imported products and so did not distort intra-Community trade.

The parafiscal charge collected by that body was intended not to finance aid for certain producers or undertakings but to enable the CNIH to carry out the duties assigned to it by the supervisory authorities, principally research, experimentation and market surveys. Its scientific and administrative work could not have the effect of making national products better able to compete within the Community.

The French authorities had also taken care to avoid an imbalance between the charges levied on importers and the benefit they derive from the CNIH's activites. Research and market development do not benefit French horticulture exclusively but are available and widely circulated throughout the Community with the specific aim of developing exchanges of information with researchers in other producer countries.

In their letter dated 14 November 1990, the French authorities amplified these initial comments and undertook to conform to the Commission's position on charges levied on horticultural products imported from other Member States by 1 January 1992 if the Commission were unable to accept a later date.

That interval was regarded as necessary because conforming to the Commission's position would entail a complete reorganization of the CNIH's structure and work, very probably including a change in the system of charges levied on national products. It would therefore be necessary to prepare a new draft decree, which would be notified to the Commission in accordance with the Community rules on aids.

Such a reform required a transitional period to ensure the continuity of measures whose compatibility with Community law was acknowledged as regards both their form and the objectives sought.

Accordingly, a period of two years was initially planned. The French Government asked the Commission to agree to allow the draft decree currently under consideration to run for a limited period of at least one year until 31 December 1991.

So that permission could be given for this period of adaptation as soon as possible, the French authorities notified the Commission of their undertaking to conform to the

(1) OJ No C 302, 12. 11. 1987, p. 6.

Commission's position on charges levied on horticultural products imported from other Member States by 1 January 1992 if the Commission were unable to accept a later date.

IV

1. The aid financed by the CNIH is such as to affect trade between the Member States and distort competition within the meaning of Article 92 (1) of the Treaty by favouring the sector concerned. However, since the aid facilitates the development of the sector concerned without affecting trading conditions to an extent contrary to the common interest, it could be argued that the aid should enjoy a derogation under Article 92 (3) (c) of the Treaty.

2. However, this conclusion cannot be accepted because the aid is financed from charges on products imported from other Member States.

According to the case law of the Court of Justice, the financing of a State aid by a special compulsory charge is an essential feature of such aid and, in assessing such aid, both the aid and its financing should be considered in the light of Community law.

Hence, although the planned aid is compatible as regards both form and objectives, it has been ruled by the Court of Justice that the financing of aid by parafiscal charges which are also imposed on imported Community products has a protective effect going beyond the aid itself.

Even if the CNIH makes its research, experimentation and publicity work available to all interested parties in the other Member States, this does not necessarily mean that they all actually participate in this work and derive equal benefit from it since, even if the rules provide for equal treatment, the situation in practice inevitably favours French operators, because the work is based on specializations, needs and shortcomings detected in France. It should also be noted that operators in the other Member States often support work of the same kind either directly or by making a financial contribution to similar national research centres, and feel no need to make use of the results produced by the CNIH.

The same conclusions apply to measures to promote consumption and vocational training.

Furthermore, the principle of non-collection of the charge on imported products should be extended to sales by dealers so that exemption at the frontier does not lead simply to payment of the charge on imported products being transferred to later stages.

3. The financial aid granted by the CNIH and described at III (3) cannot therefore be considered compatible with the common market because of the way in which it is financed and should therefore be abolished.

4. However, account should be taken of the position of the French authorities, as set out in their replies to the Commission to the effect that, since this is an existing measure, there are many research, publicity and promotional contracts with private bodies which cannot be broken off immediately. The need for fundamental changes to the system of finance and for preparation of a new decree should also be considered.

In view of these facts and the undertaking by the French authorities to conform to the Commission's position from 1 January 1992, the aid in question should be abolished from 1 January 1992,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by the French Government in the sector of non-edible horticultural products and financed by the parafiscal charge referred to in the draft decree notified by letter No 433 dated 13 March 1990 from the Office of the Permanent Representative of France to the European Communities is incompatable with the common market within the meaning of Article 92 of the Treaty and must be abolished from 1 January 1992 to the extent that the charge is also levied on products imported from other Member States either at the point of importation or at the point of sale by dealers.

Article 2

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

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 1 December 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission