COMMISSION

COMMISSION DECISION

of 23 December 1992

on the AIMA national programme on aid to agricultural operators for the export of citrus fruit to the USSR and the east European countries

(Only the Italian text is authentic)

(93/175/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 1754/92 [2], and in particular Article 31 thereof,

After giving notice [3], in accordance with Article 93 (2) of the Treaty, to those concerned to submit their comments,

Whereas :

I

1. The Italian Permanent Representation to the European Communities notified the Commission by letter No 3857 of 3 April 1991, recorded as received on 18 April 1991, of the aid measures in question pursuant to Article 93 (3) of the EEC Treaty.

2. The aid measures in question were drawn up on the basis of the CIPE (Comitato Interministeriale per la Programmazione Economica) decision of 24 May 1990.

3. The aid measures provide for aid of Lit 150 per kilogram of citrus fruit exported in respect of a total quantity of 200 000 quintals.

The recipients are individual and associated agricultural operators.

The aid was introduced to facilitate the marketing of higher-quality citrus fruit in the east European countries and the USSR.

II

1. By letter No SG(91) D/12651 of 3 July 1991 the Commission notified the Italian Government that it had decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aid.

2. By that letter the Commission informed the Italian authorities that it considered the aid to be operating aid, which it has consistently regarded as incompatible with the common market pursuant to Articles 92, 93 and 94 of the Treaty; such aid has the direct effect of artificially lowering cost prices and improving production conditions and market outlets for the producers concerned as compared with producers in other Member States not in receipt of comparable aid.

As the products concerned are the subject of intra-Community trade (see point V), the aid is consequently liable to distort competition and affect trade between the Member States; it meets the criteria in Article 92 (1) of the Treaty without being eligible under any of the exceptions set out in Article 92 (2) and (3) thereof.

The Commission also pointed out that the Community rules on the market organization for fruit and vegetables (Regulation (EEC) No 1035/72) form a complete and comprehensive system which precludes the possibility of Member States' taking further measures independently.

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 180, 1. 7. 1992, p. 23.
[3] OJ No C 251, 26. 9. 1991, p. 3.

The aid in question consequently constitutes an infringement of the Community provisions.

3. Under the aforementioned procedure, the Commission gave notice to the Italian Government to submit its comments.

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

III

By letter of 5 August 1991 the Italian Government replied to the Commission's letter of formal notice and made the following observations :

(a) although the Commission's assertions cannot be disputed from a legal viewpoint, it should be emphasized that the measure covers a limited quantity (200 000 quintals) and a certain period only ;

(b) the exceptional and temporary nature of the measure, which is intended to resolve a very difficult short-term situation on the market in Italy, should therefore be underlined ;

(c) lastly, account must be taken of the highly limited funds (Lit 3 000 million) involved, which cannot therefore be considered liable to distort competition.

IV

With regard to the arguments put forward by the Italian authorities, the following should be stressed.

To solve the difficulties on the market for citrus fruit, any measure necessary must be taken within the framework of the market organization with a view in particular to preventing even greater difficulties emerging as a result of unilateral national measures, which may shift problems arising in the regions benefiting from such measures to other citrus-producing regions where such support is not provided.

The difficulties on the market for citrus fruit are not new ; a feature of this market is long-term structural surpluses of numerous products, which have not yet been disposed of despite the Community structural improvement programmes introduced for citrus fruit in Italy. The aim of the aid scheme in question is to promote the marketing of Italian citrus fruit ; the result is thus to encourage production of the crops receiving aid. Such aid therefore tends to defeat the purpose of the structural measures laid down in the Community programmes to provide a lasting solution to such persistent difficulties observed in Italy.

The Commission does not consider that the measure in question can provide a solution to the socio-strucural difficulties of the citrus industry on account of the nature of the aid itself and the adverse effects it may have on measures to improve the industry.

The granting of the export aid in question encourages existing citrus plantations to be maintained and may possibly lead to a rise in production. It may even result in an increase in supply to the market and thus affect intra-Comunity trade.

The aid measure in question cannot be considered compatible with the common market as it is in conflict with the arrangements under the market organization for fruit and vegetables, which provide for a refund on exports to third countries (Article 30 of Regulation (EEC) No 1035/72).

The argument concerning the small size of the funds involved cannot be accepted. In accordance with the decisions of the Court of Justice of the European Communities, the relativelvy low level of aid does not of itself rule out the possibility that trade between Member States may be affected (judgments of 17 September 1980 in Case 730/79 Philip Morris v. Commission, [1980] ECR 2671 ; of 15 January 1986 in Case 52/84, Commission v. Belgium, [1986] ECR 89 ; of 10 July 1986 in Case 234/84, Belgium v. Commission, [1986] ECR 2263 ; of 11 November 1987 in Case 259/85, France v. Commission, [1987] ECR 4393 ; of 21 March 1990 in Case C-142/87, Belgium v. Commission, [1990] ECR I-959).

V

During the 1990/91 marketing year, Italian citrus production amounted to 2 930 000 tonnes and that of the Community to approximately 8 965 000 tonnes. During the same period, Italian citrus fruit imports from other Member States totalled 48 000 tonnes and those from third countries 57 000 tonnes. Italian exports of such products to the other Member States amounted to 162 000 tonnes while exports to third countries were 170 000 tonnes.

The aid for exports amounting to 20 000 tonnes is accordingly likely to have a significant effect on trade.

VI

1. Articles 92, 93 and 94 of the Treaty apply to citrus-fruit production and trade pursuant to Article 31 of Regulation (EEC) No 1035/72.

The aid in question affords a special advantage directly to exporters and indirectly to citrus growers by providing them artificially with a financial contribution they could not have secured on the market normal conditions. It consequently has the effect of distorting competition between recipients and other operators not in receipt of that aid in Italy and the other Member States.

Aid of type can have the effect of encouraging producers to maintain or even increase citrus production.

The measure in question therefore meets the criteria laid down in Article 92 (1) of the Treaty, which states that such aid is incompatible in principle with the common market.

2. Furthermore, account should be taken of the fact that the aid relates to a product subject to a common organization for the market and that there are limits to the Member States' power to intervene in the operation of market organizations entailing a system of common prices, for which the Community has exclusive competence.

The common organizations of the market should be considered complete, comprehensive systems which preclude any power on the part of Member States to take supplementary market measures.

The grant of the aid in question is not in accordance with the conditions laid down under the market organization for fruit and vegetables, which do not permit the grant of national aid of this type.

The aid should therefore be deemed to infringe Community rules.

3. The exceptions to the principle of incompatibility with the common market provided for in Article 92 (2) do not apply to the aid in question. Those set out in Article 92 (3) refer to the objectives pursued in the interest of the Community and not only in that of particular sectors of the national economy. Such exceptions must be interpreted strictly.

They may in particular apply where the aid is necesary to achieve one of the objectives covered by those provisions. Where aid does not meet those conditions, to allow an exception to be made would be tantamount to permitting trade between Member States to be affected and distortion for competition which is not warranted having regard to the Community interest and at the same time allowing producers of certain Member States to enjoy undue benefits.

In the case in point, there is no evidence to suggest that the aid meets one of those objectives. The Italian Government has not provided and the Commission has not discovered any grounds allowing it to be established that the aid in question meets the conditions laid down for the application of an exception pursuant to Article 92 (3) of the Treaty.

The aid measure is not intended to promote the execution of an important project of comon European interest within the meaning of Article 92 (3) (b) since it runs counter ot the common interest by virtue of the effects it may have on trade.

Moreover, it is not intended to remedy serious disturbance in the economy of the Member States concerned within the meaning of that provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) in respect of aid to promote an facilitate the economic development of certain areas and of certain activities referred ot in (c), it should be noted that the measure cannot bring about a lasting improvement in the conditions affecting the sector of the economy benefiting therefrom since, once the aid ceases to be granted, the sector will relapse into the same structural situation existing prior to the introduction of the State aid.

The aid in question is an artificial inducement to exporters of the produced concerned to maintain or even increase exports and has adverse effects on measures to improve the industry concerned. Furthermore, the aid provides only a purely provisional guarantee that it will protect jobs in the undertakings concerned.

As a consequence, the aid must be regarded as operating aid for the undertakings concerned, a type of aid to which the Commission has always been opposed since it is not subject to conditions enabling one of the exceptions provided for in Article 92 (3) (a) and (c) to apply.

Furthermore, even if the agricultural products concerned could have benefited from exception pursuant to Article 92 (3), the fact that the aid in question constitutes an infringement of the common organization of the market concerned rules out the operation of such an exception.

4. The aid in question is therefore incompatible with the common market wihtin the meaning of Article 92 of the Treaty and cannot therefore be implemented,

HAS ADOPTED THIS DECISION :

Article 1

The aid decided on by the CIPE (Comitato Interministeriale per la Programmazione Economica), provided for in the decision of 23 October 1990 taken by AIMA (Azienda di Stato per gli interventi nel Mercato Agricolo), and entailing the grant of aid for the export of citrus fruit to the USSR and the east European countries is compatible with the common market within the meaning of Article 92 of the EEC Treaty and may not be implemented.

Article 2

Italy shall inform the Commission within two months of notification of his Decision of the measure it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 23 December 1992.

For the Commission

Karel VAN MIERT

Member of the Commission