II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1988

on regional aid for mandarin growers in Sicily

(Only the Italian text is authentic)

(89/204/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 2238/88 [2], and in particular Article 31 thereof,

After giving notice to the parties concerned, pursuant to Article 93 (2), to submit their comments [3],

Whereas:

I

1. In accordance with Article 93 (3) of the Treaty, by letter of 23 June 1987, recorded as received on 29 June 1987, the Italian Permanent Representation to the European Communities notified the Commission of draft Law No 86/A introducing aid in respect of citrus production and damage caused to citrus plantations by bad weather between December 1986 and March 1987.

By letter of 30 July 1987, the Italian Permanent Representation notified the Commission that the Sicilian Regional Assembly had adopted the draft law as Law No 24 of 27 May 1987. In bringing the Law into force, the Italian authorities infringed Article 93 (3) of the Treaty. In cases where aid schemes have been approved, such aid is to be regarded as unlawful.

2. Article 9 of the Law provides that the Regional Councillor for Agriculture and Forests is authorized to grant aid for mandarin growers through producers' organizations recognized under Italian law; the aid is equal to the aid approved at Community level for industrial processing of oranges of the 'Biondo commune' variety for the current marketing year [4]; the aid was ECU 6,51/100 kg for 1986/87 and ECU 6,39/100 kg for 1987/88.

For the 1987 financial year, the Law makes provision for a total amount of Lit 5 000 million (about ECU 3,4 million); about 50 000 tonnes of mandarins could therefore be eligible for regional aid.

The aid is granted to producers through recognized producers' organizations which have signed processing contracts. Processors must undertake to pay a minimum price to the growers; this minimum price corresponds to the average of prices fixed for the current year for products corresponding to Class II of the Community quality standard.

II

1. By letter of 28 August 1987 (No SG(87) D/10832), addressed to the Italian Government, the Commission stated that it had decided to initiate, in respect of the aid, the procedure provided for in Article 93 (2).

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 198, 26. 7. 1988, p. 1.
[3] Letters from the Commission to the Governments of the Member States of 3 November 1987 and communication to other interested parties (OJ No C 290, 30. 10. 1987, p. 3).
[4] Regulation (EEC) No 2601/69 of 18 December 1969 (OJ No L 324, 27. 12. 1969, p. 21).

2. In the same letter the Commission informed the Italian authorities that since the effects of the aid scheme ceased once the scheme came to an end it regarded the aid as an operating aid with no lasting effect on the development of the sector concerned. As a rule, such schemes are regarded by the Commission as incompatible with the common market.

Furthermore, the Community rules for the common organization of the markets for fruit and vegetables (Regulation (EEC) No 1035/72) constitute a complete and comprehensive system which rules out any option for the Member States to take additional independent measures to support fruit or vegetable growers' incomes. The rules do not provide for any processing aid for mandarins, although they do for oranges.

The regional aid therefore constitutes an infringement of Community law.

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

It also gave notice to the other Member States and other interested parties to submit their comments.

III

By telex of 29 October 1987, the Italian Government answered the Commission's letter of notice. It submitted the following comments:

(a) the chronic problems of the mandarin market are familiar to the Commission; these problems necessitated the withdrawal of 1 557 071 quintals during 1986/87;

(b) in these circumstances, the regional measure is designed to:

   (i) limit withdrawals, thereby also limiting Community expenditure,

   (ii) encourage processing, thus avoiding the need for destruction of the fruit,

   (iii) ensure fairer returns for growers;

(c) the regional measure is an aid measure consistent with the Community's policy on stabilizers as it establishes a guarantee threshold for the marketing of mandarins;

(d) according to the regional authorities, the measure is exceptional and limited to the current marketing year;

(e) Article 31 of Regulation (EEC) No 1035/72 provides that state aid may be granted subject to scrutiny in the light of Articles 92 and 94 of the Treaty.

IV

With regard to the arguments put forward by the Italian authorities, the following points should be underlined:

(a) the problems of the mandarin market are not new; the market is subject to permanent structural surpluses, which have not yet been reduced despite Community programmes of structural reform introduced for citrus fruit in Italy. Although the regional aid scheme in 1987 may have increased outlets on a purely regional scale, the application of such a measure does not encourage growers to take the necessary structural steps to remedy the chronic problems persisting in Italy.

   If, as the regional authorities aver, the measure is an exceptional one, the provisions of the Law should not authorize the Regional Councillor with responsibility for agriculture to take such measures every year.

   The aid scheme encourages growers to maintain, or even increase, mandarin production. Indirectly, therefore, it could increase the quantities offered to the market and thus affect intra-Community trade.

   Furthermore, the regional aid is supplementary to the Community 'marketing premium' or financial compensation provided for in Article 6 of Council Regulation (EEC) No 2511/69 [1], granted under certain conditions, in particular in respect of mandarins marketed in other Member States;

(b) to solve the problems facing the mandarin market, all the requisite measures must be taken at Community level in order to prevent the creation of even greater problems as a result of unilateral national measures which might shift problems from assisted mandarin-growing areas to non-assisted areas;

(c) the fact that Articles 92 to 94 of the Treaty apply to aid for the production and marketing of mandarins enables the Commission to regard certain aid schemes as compatible with the common market on condition that they are eligible for exception under Article 92; however, as explained below, the scheme in question does not satisfy the conditions of eligibility for such an exception;

(d) in view of the foregoing, the reasoning put forward by the Italian authorities is unacceptable.

(1) OJ No L 318, 18. 12. 1969, p. 1.

V

The mandarin market is affected by structural surpluses, particularly in Italy; mandarin production in Italy totalled 291 000 tonnes in 1985/86, 283 100 tonnes in 1986/87 and 196 100 tonnes in 1987/88 (1); mandarin production in Sicily accounts for more than 50 % of national production and the production area in 1983 was 8 412 hectares (2); Community withdrawal measures concerned 248 000 tonnes in 1985/86, 201 400 tonnes in 1986/87 and 5 608 tonnes in 1987/88 (1); export outlets are small and mandarins are subject to competition from other citrus fruits, particularly clementines.

Total Italien exports of mandarins represent, as an annual average, less than 2 % of Italian production; among the Member States which produced and exported mandarins (7 490 tonnes) to the rest of the Community in 1987 (1), Italy was in second place (1 840 tonnes), after Spain (2 956 tonnes); Italy does not import mandarins.

About 50 000 tonnes of mandarins were concerned by the regional aid scheme in 1987, representing about one quarter of mandarin production in Italy in that year; the quantity of mandarins concerned by regional aid (about ECU 3,4 million) is greater than the quantity exported.

VI

1. Articles 92 to 94 of the Treaty apply to the production and marketing of mandarins pursuant to Article 31 of Regulation (EEC) No 1035/72.

The aid scheme in question gives a special advantage to Sicilian mandarin growers by providing an income supplement which they could not have obtained from the market under normal conditions. Its effect, therefore, is to distort competition between the recipients of the aid and growers not receiving such aid in Italy and the other Member countries.

Article 9 of Law No 24/87, and in particular the provision granting aid in 1987, encourages mandarin growers to maintain or even increase production by guaranteeing an outlet at a minimum price; the financial advantage enjoyed by the recipients of the regional aid will enable them to exert pressure to bring down prices of mandarins offered fresh on the market and, in particular, those offered for export to other Member States; the measure may thus affect intra-Community trade in mandarins grown in Sicily; the aid thus affects intra-Community trade.

(1) Source: Eurostat.
(2) Source: Annuario di statistica agraria.

The aid may also affect products processed from mandarins (fruit juice, essential oils and peel used in the manufacture of feedingstuffs); because of the regional aid, the processing industries may be encouraged to produce larger quantities than they would have done without aid; the quantities of processed products exported to the other Member States may therefore be affected by the aid scheme.

The scheme in question therefore satisfies the criteria of Article 92 (1) of the EEC Treaty, which provides that such aid is incompatible with the common market.

2. The exceptions provided for in Article 92 (2) are clearly not applicable to the aid measure in question; those provided for in paragraph 3 relate to objectives pursued in the Community interest and not simply in the interest of individual branches of the national economy; these exceptions must be interpreted strictly.

They may be allowed only in cases where aid is required for the attainment of one of the objectives referred to in the provisions; allowing exceptions in respect of aid not satisfying this condition would be tantamount to allowing interference in trade between Member States and distortions of competition without any justification on grounds of Community interest, together with undue advantages for certain Member States.

In the case in point, these conditions are not satisfied; the Italian Government has been unable to provide, and the Commission unable to discern, any evidence that the aid satisfies the conditions for any of the exceptions provided for in Article 92 (3) of the Treaty.

The measures are not intended to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since the effects of the scheme on trade may be counter to the common interest.

The measure is not intended to remedy a serious disturbance in the economy of a Member State within the meaning of Article 92 (3) (b).

With regard to the exceptions provided for in Article 92 (3) (a) and (c) in respect of aid to promote or facilitate the economic development of regions, and the development of certain activities referred to in (c), the measure cannot bring a lasting improvement in the situation of the economic sector concerned by the aid since, when the scheme is discontinued, the sector will be in the same structural situation as it was before the scheme came into effect; in the case in point, the effect of the aid might even be to maintain or increase existing problems.

Consequently, the aid should be regarded as operating aid for the undertakings concerned, to which the Commission has always been opposed, as a matter of principle, because such aid is not subject to conditions qualifying it for one of the exceptions provided for in Article 92 (3) (a) and (c).

Furthermore, the products are subject to a market organization and there are limits to the power of the Member States to intervene directly in the operation of market organizations comprising a system of common prices, for which the Community has exclusive competence.

Consequently, the scheme disregards the principle that Member States no longer have the power to act unilaterally on farmers' incomes.

Even if an exception under Article 92 (3) had been open to consideration, the fact that the scheme infringes the market organization rules out the application of any exception in its respect.

3. Because of the potential effect of the Sicilian scheme on the production of mandarins and products processed from mandarins, it may also have the effect of increasing expenditure from the European Agricultural Guidance and Guarantee Fund; it must therefore be regarded as counter to the common interest.

4. The aid scheme is therefore incompatible with the common market within the meaning of Article 92 of the Treaty and must be discontinued.

5. This Decision is without prejudice to any consequences which the Commission may deduce for the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

The aid provided for in Article 9 of the Sicilian Regional Law No 24 of 27 May 1987 for mandarin growers is unlawful under Article 93 (3) of the Treaty. Furthermore, the aid is incompatible with the common market within the meaning of Article 92 of the Treaty and must be discontinued.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 November 1988.

For the Commission

Ray MAC SHARRY

Member of the Commission