

19.7.72

Official Journal of the European Communities

No L 163/19

## COMMISSION DECISION

of 26 May 1972

on granting aid to establish a reserve to cover apple and pear producers in the Netherlands against the risk of hail damage

(72/251/EEC)

(Only the Dutch text is authentic)

## THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 (1), the first subparagraph of Article 93 (2), and Article 93 (3) thereof;

Having regard to Regulation No 23<sup>1</sup> of 4 April 1962 on the progressive establishment of a common organization of the market in fruit and vegetables, and in particular Article 7 thereof;

Having regard to the comments submitted by those concerned;

Whereas the Netherlands Government, by letter of 31 July 1970 from the Office of its Permanent Representative to the European Communities, notified the Commission, in accordance with Article 93 (3) of the EEC Treaty, of its intention to pay by way of subsidy part of the premium of the company for mutual insurance against hail in the fruit sector; whereas this subsidy would be degressive and of limited duration; whereas its amount and duration would be fixed as soon as the Commission had reached a decision on the general issue;

Whereas the Commission, by its letter of 26 September 1970 on the application of Article 93 (1) and (3) of the EEC Treaty to certain aid granted or provided for in the fruit and fruit preparations sector, excluding citrus fruit, informed all the Member States that aid covering part of the insurance premium for natural disasters may be an incentive to the taking out of insurance for natural disasters of a kind against which crops cannot be totally protected; whereas, since in most Member States only a relatively small proportion of farmers are insured against such risks, it appeared that the aim of improving the efficiency of agricultural production would be served by thus encouraging a practice of modern farm

management, thereby bringing these measures within the scope of the derogations provided for in Article 92(3) (c) of the Treaty; whereas, for this incentive to be a genuine one, the aid granted or envisaged should meet the following three criteria: the subsidy should be relatively low at the outset (for example, not more than 30 % of the insurance premiums) and it should be degressive and of limited duration, for example seven years; whereas, in the letter of 26 September 1970 addressed to the Netherlands Government, it was stated that the measure proposed by that Government in the letter of 31 July 1970 from the Office of its Permanent Representative was of this kind;

Whereas, by letter of 1 December 1970 from the Office of its Permanent Representative to the European Communities, the Netherlands Government informed the Commission of the 'Order of 1970 on insurance against hail damage' decided upon by the Minister for Agriculture and Fisheries and which was to enter into force by 15 December 1970; whereas this Order provided for the granting of a subsidy to fruit growers cultivating apple and pear orchards of not less than three hectares (later reduced to two hectares<sup>2</sup>) and of not less than three years' standing, to reduce the costs of covering hail damage risk for the year 1970; whereas both the premium payable by the fruit grower in respect of insurance against hail damage and the sums set aside by him to establish a reserve to cover the risk of hail damage were considered as costs of covering hail damage risk; whereas the subsidy had been fixed at a flat rate of 140 florins per hectare, an amount corresponding to 30 % of the annual premium normally payable in respect of insurance against hail damage;

Whereas the Commission, having learned in May 1971 that the subsidy would again be paid from 1 May 1971 until 1975 at annual rates of 115, 90, 70, 50 and 25 florins per hectare respectively, initiated the procedure provided for in Article 93 (2) of the

<sup>1</sup> OJ No 30, 20.4.1962, p. 265/62.

<sup>2</sup> Notice in the *Nederlandse Staatscourant* of 2 March 1971.

Treaty to oppose this measure, seeing that it included provision for granting aid for the establishment of reserves to cover the hail damage risk; whereas the Commission gave notice to the parties concerned to submit their comments, as regards Member States by a letter of 17 September 1971, and as regards other interested parties by a notice published in the *Official Journal of the European Communities*<sup>1</sup>;

Whereas the granting of this aid is not subject to any conditions and therefore constitutes an advantage to apple and pear producers in the Netherlands of the same kind as an increase in the selling price; whereas this advantage might induce a certain number of those producers to lower their selling price or to increase production; whereas this measure could in any case tend to lower prices;

Whereas this advantage to apple and pear producers in the Netherlands is likely to favour the production and marketing of their fruit in competition with fruit of other Member States and possibly even with products which, within the Community, are in competition with apples and pears;

Whereas the subsidy granted by the Netherlands Government not only distorts competition but also affects trade between Member States; whereas there is substantial trade in apples and pears within the Community (in 1969/70 about 600 000 metric tons of apples in a market totalling 5.6 million metric tons, and 260 000 metric tons of pears in a market totalling 2.1 million metric tons); whereas exports of apples and pears from the Netherlands to other Member States exceed, on average, the quantities exported by Member States to the Netherlands and whereas during the 1968/69 and 1969/70 marketing years such exports represented on average 15 % of the pear sales and 11 % of the apple sales of Netherlands fruit growers; whereas the continuing surplus of these products on the Community market has led the Council to adopt special measures for reorganizing fruit production<sup>2</sup>; whereas, therefore, the granting of a subsidy, which could constitute an incentive to the expansion of apple and pear production in the Netherlands, is likely to increase the imbalance of the market and to reduce the share of the Community market available to producers of other Member States under conditions of free competition within the common market;

Whereas the subsidy granted by the Netherlands Government distorts or threatens to distort competition and affects trade between Member States, and whereas it therefore comes under the prohibition set out in Article 92 (1) of the Treaty;

Whereas exemption from this prohibition cannot be

justified under one of the derogations provided for in paragraphs 2 and 3 of that Article, nor in particular under Article 92 (3) (c), since the conditions stated by the Commission in its letter of 26 September 1970 for bringing the aid then envisaged within the scope of that paragraph assumed that it would help to popularize a practice of modern farm management, that is to say the taking out of insurance, whereas the measure now complained of offers no guarantee as to how the money granted will be spent;

Whereas the Netherlands Government urges in support of its measure of aid the fact that many Netherlands fruit growers are opposed, on principle, to covering the risk by a contract of insurance; whereas, however, the Government does not require the recipient to show proof that the aid granted is actually used to establish a reserve to cover the hail damage risk and has made no provision for government control over the way the recipient uses the aid; whereas, in these circumstances, there is no guarantee that the amounts granted will be used for the purposes for which the aid measure was intended;

Whereas the Netherlands Government also urges in support of its measure of aid that the establishment of a reserve to cover the hail damage risk must be equated, from an economic point of view, with the payment to a mutual insurance company of an insurance premium against hail damage; according to that Government, it is then difficult to maintain that one form of risk cover is a more modern form of management than another; whereas, even allowing that the establishment by an undertaking of its own reserve would be economically advantageous if, for example, it carried interest and taking into account also that the aid is degressive, the fact remains that this method provides insufficient security for it to be generally equated with insurance cover; whereas the taking out of insurance cover against hail damage offers fruit growers greater economic advantages, particularly in the long term; whereas, by taking out insurance, fruit growers run smaller economic and financial risks than by establishing their own reserves; whereas, therefore, such insurance is to be considered as a practice of modern farm management which should be encouraged; whereas only regularly recurring charges resulting from obligations undertaken (payment of premium) can justify the limited granting of degressive aid; whereas, although in certain cases the establishment of individual reserves may seem preferable, it does not however lend itself in the same way as insurance to verification that funds granted by way of aid are actually used together with the grower's own contribution to provide effective security against these risks;

Whereas, finally, the measure of aid of the Netherlands Government which provides for granting to apple and pear growers aid to establish reserves to cover the risk of hail damage is incompatible with the common market,

<sup>1</sup> OJ No C 95, 28.9.1971, p. 1.

<sup>2</sup> Council Regulation (EEC) No 2517/69 of 9 December 1969 (OJ No L 318, 18.12.1969, p. 15.).

HAS ADOPTED THIS DECISION:

*Article 1*

The Kingdom of the Netherlands shall, not later than 1 August 1972, abolish the aid provided for by Administrative Decision No 83 on fixing a contribution towards the cost of covering the risk of hail damage (Decision of 1 April 1971 of the Development and Improvement Fund) – Bestuursbesluit nr 83 inzake de vaststelling van een bijdrageregeling in de dekking van de kosten van de risico's van hagelschade (Besluit van het ontwikkelings- en saneringsfonds van 1 April 1971) – in so far as this aid is granted for

the establishment by the fruit grower of a reserve to cover the risk of hail damage.

*Article 2*

This Decision is addressed to Kingdom of the Netherlands.

Done at Brussels, 26 May 1972.

*For the Commission*

*The President*

S. L. MANSHOLT